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Complete Collection

OF

STATE-TRIALS,

AND

PROCEEDINGS

FOR

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE SIXTH.

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A Complete

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COLLECTION

OF

TRIALS, &c.

CLXXXV. *Proceedings in* PARLIAMENT *againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn, *upon an Impeachment for* High-Treaſon, Feb. 9. 1715. 2 GEO. I.

THE above-named Lords having excited a Rebellion, and levied War againſt his Majeſty, and being taken Priſoners whilſt in actual Hoſtilities, the Parliament at that time ſitting, it was moved in the Houſe of Commons, *January* 9, that they ſhould not be left to the ordinary method of Proſecutions, but be proceeded againſt by way of Impeachment: Upon which Occaſion Mr. *Lechmere* ſpake as follows:

After the general Aſſurances this Houſe has given his Majeſty, one Moment ought not to be loſt without taking ſome effectual Step towards making them good. The firſt and great Concern is to put an End to this *Rebellion*, not only to quiet the preſent Commotions, but to extinguiſh the very Poſſibility of their being renewed: For theſe Ends every Gentleman will agree to ſtrengthen the Hands of the King, in ſuch manner as will enable him ſpeedily and effectually to complete this Work: You will do this with abſolute Cheerfulneſs, from the certain Knowledge and Experience we have had of the Wiſdom and Juſtice of his Majeſty, who will make no other Uſe of any Confidence his Parliament ſhall repoſe in him, than to promote the common Welfare of his People; and whatever extraordinary Aſſiſtance the preſent Juncture of Affairs ſhall require, will be continu'd no longer than the public Neceſſity calls for. The next uſeful and neceſſary Step is the *National Juſtice*, which is incumbent on this Houſe, in Duty to the King, as well as in Juſtice to the People; and as ungrateful and diſagreeable a Part as this muſt be, yet when the Deſign of the Enemy is become ſo deſperate and ſo avowed, as to ſtrike at the Crown upon the King's Head, and to involve the Nation in the Calamities of a *Civil War*, the Houſe cannot exert themſelves too early, nor with too much Vigour; and as the Houſe ſhall acquit themſelves on this Occaſion, I dare promiſe myſelf the Effect will be anſwerable. The Spirit which ſhall be ſhewn in this Inſtance, will animate the Friends of the Government both at Home and Abroad; and the Terror it muſt ſtrike in our Enemies, will be equal at leaſt, and contribute as much to the Common Safety, as any other Preparation that has or can be made. I wiſh I could ſay or think that this Rebellion is the Project of thoſe only who appear'd to head it; or that it is the Reſult of the weak or raſh Counſels of thoſe who publickly avow it; I wiſh I could ſay, that it is the Work of *Papiſts* only, or of thoſe few *Proteſtants* who are wicked or weak enough openly to join in it. I wiſh I could ſay, that it was a *Plot* but of Yeſterday, and that it has taken no deeper Root, than ordinary Appearance will lead to ſuſpect: But I think it plain, that it is the Effect of many Years Labour, of the joint and united Labour of great Numbers, both Proteſtants and Papiſts, the plain and neceſſary Conſequence of the Meaſures which have been carrying on for ſome Years paſt: To frame a right Judgment of the Nature of this Rebellion, I think it neceſſary for us to look back and conſider the natural Tendency of the Public Proceedings of late Years, and the Connection they bear with the preſent unfortunate State of Things; when Men in ſacred Functions ſuffer'd themſelves to become *State Inſtruments*, and the great Merit of ſuch Men was under the Pretence of Aſſerting the Doctrines of the Church of *England*, to condemn the Revolution, I could never underſtand any other Deſign or Tendency from thoſe Practices, than to undermine the Foundation of the Proteſtant Succeſſion. I remember 'twas ſaid upon a very ſolemn Occaſion, by a very honourable Gentleman, *That the condemning the late happy Revolution, could have no other Meaning than to make way for another.* However wicked and dangerous theſe Practices were, they made too great an Impreſſion, and contributed a great deal to the preſent Calamity; for as the Deſigns of the Enemy grew more avow'd, State Principles of another Kind were advanc'd, which ſtill conduced to the ſame End. 'Twas well known what Induſtry was uſed to inculcate the Notions of *Hereditary Right* to the Crown, in Oppoſition to the Settlement which had been made of it in the Houſe of *Hanover* by the Authority of Parliament, and with no other View than to weaken that Settlement: Every one remembers what extraordinary Pains were taken to poiſon the People with this dangerous Notion; and that thoſe who made the beſt Court to Men in Power, were ſuch who eſpouſed this Opinion in the moſt notorious manner. I cannot forget with what Tenderneſs a certain Divine * of the Church of *England* was treated below Stairs, whilſt under Proſecution, for the moſt impudent † Libel that ever was publiſhed againſt any Government, that had either Will or Power to maintain itſelf. I think the Puniſhment that was inflicted on that Gentleman light enough, but I cannot avoid taking Notice of a remarkable Paſſage which then alarm'd every thinking Man, and will, one time or other, deſerve the Conſideration of this Houſe, *viz.* The Order from the Government, counterſign'd by a Secretary of State to the Judges of the *Queen's-Bench*, after the Judgment paſs'd, to ſuperſede the ignominious Part of the Puniſhment, by Reaſon of the *Sacred Function* of the Criminal: By which the moſt *unexampled and dangerous Diſtinction* was introduced; and which Proceeding could bear no other Conſtruction, than as a Licenſe and Protection, even from the Government, to Men in Holy Orders, to propagate that *deſtructive Poſition* with *Impunity*; and the Character of the Perſon, which ought in Juſtice to have aggravated his Guilt and heighten'd the Puniſhment, became his Indemnity againſt the Reproach of it, even by the Authority of the Government itſelf. I remember very well in what Manner every Thing of that Nature was treated in *Weſtminſter-Hall*; what Severities were exerciſed againſt thoſe Perſons who had Courage enough to aſſert the Intereſt of their Country, and of the Proteſtant Succeſſion, at the ſame time that the *Patrons* of *Hereditary Right* enjoy'd all *Indulgences*. I mention theſe Things on no Uncertainties, having been an Eye-witneſs of them myſelf, and it having fallen to my Share to bear ſome Part in them: This was one of the moſt ſucceſsful Parts of the Scheme of thoſe who had fix'd their Eyes on the Pretender: The Houſe need not be told how far it has operated, to the Prejudice of the Proteſtant Succeſſion. I could give many other Inſtances of this Kind, all which promoted the ſame End: The groſs Diſtinctions that were coin'd to elude the Oaths that had been made for the Security of the Government: The Endeavours that were uſed to poſſeſs the People with *falſe Fears of the Danger of the Church*; and the little Care that was taken, to ſay no worſe of it, to inſtil into the Youth of the Kingdom, ſuch Principles as were conſiſtent with the true Intereſt either of *Church* or *State*. I look upon theſe Things to be *the Foundation of the Scheme* that is now, by this *Rebellion*, carrying on into Execution; and I own that in this Reſpect the Authors of it were *wiſe in their Generation*, for by theſe Arts the very *Principle* on which the Proteſtant Succeſſion is founded was *ſhaken*; and tho' the Methods of doing it were baſe and vile, yet the Diſſatisfaction and Uneaſineſs that was created by them *in* the Minds of *the People made way for the Change* that was *deſired*. I muſt crave leave to put you in Mind of other Parts of this *Scheme* that were carrying on at the ſame Time. The Enemies to the preſent Government judging aright for their own Purpoſe, by all Methods to attack the Conſciences of the People, as to the *Legality* and *Juſtice* of the Settlement of the Crown in the Houſe of *Hanover*, thought it neceſſary at the ſame Time to diſable, as far as they could, thoſe Perſons who had been moſt remarkable for their Services in the Support of it: The great Effort was made at that great ‡ Man, who is not only the Honour and Ornament of his Country, but the Glory of the Age he lives in. I think I ſhall not be ſuſpected of Flattery at this Time, nor, I believe, at any Time, with Reſpect to that Great Man. Many who now hear me, remember the Part I took in Vindication of that Great Man, whilſt his Character was under Debate in this Houſe. I cannot forget the Rage and Inveteracy with which he was purſued; nor how much Streſs was laid upon obtaining the Cenſures of Parliament upon him: The Aſperſions then thrown upon him did not hurt that Great Man: and whatever Endeavours may at any Time be uſed to leſſen him, will hurt none but thoſe that ſhall promote them; But yet thoſe vain Endeavours were a very uſeful Part of the *Scheme* then carrying on. 'Twas a neceſſary Step for thoſe Men to put him out of the Way, whoſe very *Name* and *Appearance*, at that Time, would have been ſufficient to raiſe Armies in Favour of the Proteſtant Succeſſion and the Liberties of his Country:

* *Mr.* Bedford. † *The Hereditary Right aſſerted*, &c. ‡ *The Duke of* Marlborough.

Country: But I cannot but obſerve, That as ſerviceable as it was for the Meaſures of thoſe Men to wound his Character, it is now a Reproach to the Kingdom, that thoſe *groundleſs Aſperſions*, which have been caſt upon him, ſhould remain upon the Journals of Parliament. Another great * Lord fell under the Violence of thoſe Times, (I mean the Lord who was Miniſter in the *Low-Countries*, and was chiefly inſtrumental in procuring the *Treaty of Barrier and Succeſſion*) whoſe Proſecution was attended with uncommon Fury. Myſelf had ſome Share in juſtifying that great Man in this Houſe, when he was voted *an Enemy to his Country*. I obſerved at that Time, and the Event has made it evident, that the *Barrier* was but the *Pretence*, and that the great Services he had done to the *Proteſtant Succeſſion* was the *true Provocation* which drew that Rage upon him. Two other honourable † Gentlemen now ſitting near me, felt the Severity of thoſe Times: They had diſtinguiſhed themſelves by their Zeal and Firmneſs to the true Intereſt of their Country, and were too conſiderable to eſcape the Malice of thoſe who had other Views. Thoſe Proceedings, how uncertain ſoever the Deſign of them might appear while they were tranſacting, have been ſufficiently explained by what has followed. The Name of that General ‡, for whoſe immediate Service the great Man firſt mentioned was blemiſhed, and for whom there was Vanity enough to make him his Rival, is now become the *Reproach* of his Family and Country; he avows the Service of the *Pretender*, and ere long we may hear of him at the Head of an Expedition for eſtabliſhing *Popery* and *Arbitrary Power*. The Secretary of State § who diſtinguiſhed himſelf in the Purſuit of the other great Lord, has ſufficiently explained his Deſigns to the whole World; and the next Tidings that we may expect from abroad is, that he has taken upon him the Character of a Miniſter to the *Pretender*. I look upon this (namely the diſabling the great Aſſertors of the Proteſtant Intereſt) to be a ſecond, and no ſmall Part of the Scheme: and while theſe Things were carrying on, their little Engines and Tools were carrying on their Work ‖ below-ſtairs. Every Man who favour'd the *Hanoverian* Succeſſion was to be worried, and all open and ſcandalous Aſſertors of contrary Principles were treated with all the Care and Tenderneſs of Friends. Charters of Corporations were attack'd in a more unprecedented and dangerous manner than in any former Times, when Practices of that kind were moſt juſtly complain'd of; and no Stone was left unturn'd, to ſtrengthen themſelves in that Reſpect. I will not now trouble you any more upon that Head, having ſome Thoughts ere long to preſent you with a ſmall Collection of Things of that kind for your ſerious Conſideration. The *Maſter Strokes* of this grand Scheme are yet behind: The ſureſt Way to deſtroy the Government has been always thought to be by its own Hands; that is, by the Authority and Power of Parliament. For this Purpoſe, a *Confederacy*, by which the Liberties of *Europe* had been ſo long ſuſtained againſt the Power of *France*, was *broke to Pieces*, by *Votes* that were obtained *in this Houſe, in the moſt extraordinary Manner*. The Honour of the Nation, the Balance of Power, and the Proteſtant Intereſt in *Europe*, were effectually given up in the Negotiations and Concluſion of the Peace, by which *France* was reſtored to its ancient and formidable State: And every Body remembers how near we were by the ſame Influences, to have given up the whole Trade of the Nation to the Intereſt of the *French* King, who after that had no ſuitable Return left for him to make for ſuch Services, but to beſtow upon us a *Pretender* bred up in his own *Faith*, and in his own *Politics*. Nothing could have obſtructed this, but the many miraculous Providences that immediately followed, when his Power throughout *Europe* was unconteſtable; and, by the Meaſures that had been taken, the Proteſtant Succeſſion had ſcarce a Friend left in the World. The *King's Acceſſion* to the Throne, accompanied by ſo many providential Circumſtances, as it *diſappointed* the *immediate* Execution of the *Scheme*, ſo it quieted the Spirit of thoſe Men for ſome Time. If we could make a right Judgment of the preſent Rebellion, we muſt compare the Steps that immediately preceded, with thoſe which were taken in the laſt Reign, when the Hope was to have brought about the ſame End without a Stroke. The ſame Endeavours ſoon appear'd to propagate the ſame Principles both in Church and State: And thoſe Endeavours, tho' at firſt not ſo open, were yet as reſtleſs to create Diſſatisfaction againſt his Majeſty's Government, as they had been before to prevent its taking Place. As the Encouragement grew ſtronger, *Tumults* and *Riots* were univerſally fomented; and tis well known from what Quarter they roſe, and againſt whom they were levelled: But yet no one Inſtance has been aſſign'd throughout his Adminiſtration, that could offend or provoke any but a *Jacobite* Spirit. His Majeſty has done more for the Honour of the *Church*, and the true Intereſt of his Kingdom, than any of his Predeceſſors in three times the Number of Years. His *Perſonal Virtues*, and the *Wiſdom* and *Steddineſs* of his Government, have retrieved the Honour and Reputation of his Kingdoms, which had been ſo ſhamefully loſt: His *Weight* and *Influence* abroad, and the *Credit* he has obtained in all the known Parts of the World, has already procured the Settlement of the Matters in Difference between the two chief Powers of *Europe*, from whom alone we can expect Aſſiſtance in Times of Danger. No ſingle Inſtance can be aſſign'd of Hardſhip or Oppreſſion to any one of his Subjects, or that can give a juſt Reaſon of Diſſatisfaction; but on the contrary, thoſe who have ſhewn the *greateſt Averſion* to his Government, have received the kindeſt Invitations, and enjoy'd the higheſt Indulgences from him. If any *Errors* may have been committed in any Parts of the Adminiſtration during the preſent Diſorders, every honeſt Man ought to judge of them by this one Rule, that is, *the plain Deſign for which all Meaſures are calculated*, which every Body muſt admit to be, *the Preſervation of the Proteſtant Succeſſion:* All Incidents of ſuch an Adminiſtration, ought to be covered or juſtified by the Intereſt that ſhall appear to be carrying on throughout the whole; by the ſame Rule of Juſtice, *when the Deſtruction of the Common Intereſt was the plain Intention of the late Adminiſtration*, the greateſt Weight ought to be laid on every little Circumſtance that attended, in order to obtain a *public Satisfaction:* By taking in all theſe Conſiderations, I think we ſhall make a full and right Judgment of the Nature of this Rebellion; from whence it took its *Riſe*; how deep it has taken *Root*; to what *Influences* it is owing, and how far it extends. The Part the Lord *Derwentwater*, and others, have taken in it, are to be conſidered as the firſt Symptoms of that general Diſorder, for which ſo much Foundation was laid; for which Reaſon I think, that we cannot conſider this otherwiſe than as the *Cauſe of the Nation*, in the ſtrongeſt manner. In *Juſtice to the King*, as well as to the *People, we ought to take this into our own Hands*, and not to entruſt the Proſecution of it with any Body but ourſelves. Every Body knows to what *Hazards Proſecutions in the ordinary Courſe of Juſtice*, are liable, though they are never ſo well concerted by thoſe, whoſe Buſineſs it is to carry them on; but how ſure ſoever the Succeſs may be, in a Caſe ſo notorious as this, yet it is obvious to every Body, of what different Weight and Influence the Proſecutions of Parliament are from theſe in the *ordinary Forms*. I own I am ſurprized, that any Meaſures have been taken of that kind, againſt the Peers who have been *taken in open Rebellion*, during the ſitting of a Parliament which has ſhewn ſo much Zeal, and has contributed ſo much to the Preſervation of the Government, eſpecially at a time when *the Crown on the King's Head is fighting for*. I very well know, that tho' the *Houſe of Commons Right of Impeaching Criminals is unlimited*, yet they will exerciſe that Power by the Rules of *Wiſdom* and *Diſcretion*, and not engage in trivial Matters, but in ſuch only where the Offenders are not within the reach of the Ordinary Juſtice; or the Nature of their Crimes ſuch, as are not fit to be meddled with by the *Ordinary Juriſdictions:* The Caſe of the Lords taken in Rebellion is indeed notorious and of which the Proof will be eaſy, but tho' not from the Difficulty of the *Proſecution*, yet from the *Weight* and *Conſequences* of it, I think I need ſay little more to convince you, and make it our *Proſecution*, by which we engage every Commoner in *Great-Britain* as an immediate Party, againſt thoſe who have carried a War into the Bowels of the Kingdom. No Inſtance ever has riſen in the *Engliſh* Hiſtory, where our Anceſtors have permitted a Proſecution againſt the chief Actors, to be carried any where but in full Parliament. The five *Popiſh* Lords were purſued by the loud Voice and Weight of the Commons of *England:* And tho' at that time the Nation was in Peace, they would not permit the Fate of thoſe Proſecutions to depend on the Care or Skill of thoſe who are verſed in the *ordinary Forms of Juſtice*, and their Succeſs was anſwerable. I own my *Deſire* upon all Occaſions to *raiſe the Honour and Authority of Parliaments*, which I think the *greateſt Support of the Honour and the Prerogatives of the Crown*. For which Reaſon, I take this Occaſion to ſpeak more fully to the Nature of Impeachments, and the rather, becauſe I apprehend ſome Gentlemen have miſtaken Notions concerning them. The Power of *Impeachments is the moſt valuable and uſeful Privilege that belongs to the Body of the Commons*, at leaſt, *equal to that of giving Money*, which belongs ſolely to them. Gentlemen need not be apprehenſive of any *Intricacies* in thoſe Proceedings, eſpecially at a Time and upon an Occaſion, when there is no Doubt of the Concurrence of both Houſes. *Impeachments* are in themſelves more plain, regular, and diſintangled, than any other Forms of Juſtice: They are particularly *excepted out of the late Statute of Treaſons*, which has very much fetter'd *the ordinary Courſe of Proceedings*. *Impeachments* were never made *difficult*, but when they were carried on *againſt the Inclination of the Crown*, or at a Time *when there was no good Underſtanding between the two Houſes*; when little Occaſions might be ſought to raiſe Diſputes, and interrupt them; or elſe when they are undertaken before they are well conſidered, which cannot be the preſent Caſe. There is another Reaſon, which upon this Occaſion ſhould determine Gentlemen into this Method; I mean the Conſequence of the Judgment that ſhall be obtained againſt theſe Lords: 'Tis my clear Opinion, and what I think I can maintain, That *no Pardon under the Great Seal can diſcharge a Judgment obtain'd upon the Impeachment of the Commons:* This Opinion has been ſtrenuouſly aſſerted in this Houſe in former Reigns; and I think it not weakened by the *Declaration* in the *Act of Settlement of the Crown* upon the Houſe of *Hanover*. I have heard of a very *low Diſtinction* that has been coin'd *without Doors* to avoid this Opinion, *viz.* That the *Pardon is not pleadable in bar of the Impeachment, to prevent the Commons from examining into the Offence; but that it is pleadable after Judgment, and in bar of Execution.* Whenever that Queſtion ſhall come properly before you, I will undertake to ſhew the Idleneſs and Abſurdity of *that* Diſtinction: If that Diſtinction be framed to make Court to the Prerogative, I think it the moſt *falſe* and *deſtructive* Piece of *Flattery* of the kind that ever has been raiſed. It is *the greateſt Eaſe, Security, and Support of the Crown*, in my Opinion, *inſtead of any Diminution of it, that no ſuch Power ſhall be lodg'd there*, to be exerciſed on any Occaſion, to prevent the Poſſibility of the Crown's being wrought upon by any Influences to defeat the Judgment given in full Parliament, with the Concurrence of both Houſes, againſt the higheſt Offenders, *which muſt* inevitably *create the greateſt Jealouſy*, and *cauſe the higheſt Diſſatisfactions between the Crown and the People:* For this Reaſon, I take it to be the greateſt Advantage to the Crown, that the Conſtitution of the Kingdom has not, as I think, inveſted it with any ſuch Power: And on t' other ſide, it will clearly appear, that *ſuch a Power is utterly inconſiſtent with the fundamental Rights of Parliament*. I own I am ſurprized to hear, that any ſuch Diſtinction ſhould be ſtarted at this time: But if the Law be, as I apprehend it is, it is the ſtrongeſt Reaſon for the Commons to interpoſe in this *Proſecution to defend the Crown from the many Importunities* to which it will be ſubject, in the ordinary Courſe of Juſtice: The Weight of this *Proſecution*, and the *Conſequences of it, will be borne by the Commons*, as it ought to be *in a Caſe ſo National* as this. If Gentlemen want any other Motives, to induce them to make this Proſecution their own, I have a *Paper* in my Hand which will fire the Thoughts of every Gentleman here, it is the *Pretender's Declaration*, which nobody can read without the utmoſt Indignation; conſidering the *perſonal Indignities* which are therein caſt upon the beſt of Princes, whoſe Title to the Crown we are bound by all the Ties of Duty, Affection, and Intereſt to maintain. We can do no leſs than reſent this ſo far, as to make ourſelves the Proſecutors of thoſe who avow this Cauſe of the *Pretender*, and ſet themſelves at the Head of Armies,

* *The Lord Viſcount* Townſhend † *Mr.* Stanhope *and Mr.* Walpole. ‡ *The late Duke of* Ormond. § *The late Lord Viſcount* Bolingbroke. ‖ Weſtminſter-Hall.

in the Heart of the King's Dominions. In this Paper we ſhall ſee how we are treated ourſelves: 'We are repreſented as the moſt illegal and in-'famous Aſſembly of Men that ever met together.' Theſe Conſiderations ought, in Juſtice, to animate and invigorate our Proceedings in every Reſpect, till the 'Inveteracy and Inſolence of the Enemy are entirely ſub-'dued:' I do not think that the Proceedings of this Houſe ought in any Caſe to be governed by *Vindictive Conſiderations*, but by ſuch Circumſtances only as from their real Weight and Conſequence call for the Interpoſition of the Commons. I am ſenſible that the Commons have a great Work upon their Hands, from other *Impeachments*, which they have thought fit to enter upon, and which are ſtill depending; I know alſo what Situation theſe *Impeachments* are in; and hope they will be reſumed and carried on, in due Seaſon, with the ſame Vigour with which they were undertaken. I likewiſe believe, that the Nation *expects*, that our Enquiries upon this Head ſhall be extended and appear to be *impartial*, it not being poſſible, that a greater Diſhonour can be brought, or an heavier Imputation caſt upon our Proceedings, than that of Partiality, which cannot fail to ſink our Credit, and to prevent all the good Effects that are hoped and expected from them: However, every Gentleman will agree with me, that the preſent Situation and Conjuncture of Affairs make it neceſſary to give the Preference to thoſe Lords who have been taken in open Rebellion. And therefore I now *Impeach James* Earl of *Derwentwater* of *High-Treaſon*; which *Impeachment* I undertake to make good.

The Conſequence of this Speech was, that the Houſe came to a Reſolution to impeach *James* Earl of *Derwentwater* of *High-Treaſon*. Upon the like Motions they reſolved the ſame with regard to *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*; accordingly they were impeached at the Bar of the Houſe of Lords, and the ſame Night the Articles of Impeachment were carried up to the Lords; and the next Day the impeached Lords were brought to the Bar of the Houſe, and charged with the ſaid Articles, and ordered to put in their Anſwer by the 16th, and that not only Counſel, but any other Perſons, whom they ſhould name, ſhould have Liberty to aſſiſt them. They had afterwards Leave till the 19th to put in their Anſwers, when they ſeverally pleaded *Guilty* (except the Earl of *Wintoun*, who had further Time allowed him) and the 9th of *Feb.* was appointed to paſs Sentence on them.

On *Thurſday Feb.* the 9th, about one of the Clock, the Lords came from their own Houſe into the Court erected in *Weſtminſter-hall*, to paſs Sentence upon *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, in the Manner following:

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerk's Aſſiſtant to the Houſe of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commiſſion to the Lord High-Steward.

The Maſters in Chancery, two and two.

Then the Judges.

The Peers Eldeſt Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeomen Uſhers of the Houſe.

Then the Peers, two and two, beginning with the youngeſt Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purſe-Bearer.

Then Garter King at Arms; and the Gentleman-Uſher of the Black-Rod, carrying the White Staff before the Lord High-Steward.

William Lord *Cowper*. The Lord High-Steward alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack,

The Clerk of the Crown, in the Court of Chancery, ſtanding before the Clerk's Table, with his Face towards the State, having his Majeſty's Commiſſion to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, preſented the Commiſſion to the Lord High-Steward; after which, and uſual Reverence, the ſame was carried down to the Table: And then Proclamation for Silence was made in this manner.

O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High-Steward ſtood up, and ſpoke to the Peers.

Lord High-Steward. His Majeſty's Commiſſion is going to be read; your Lordſhips are deſired to attend.

All the Peers uncovered themſelves, and they and all others ſtood up uncovered while the Commiſſion was reading.

GEORGIUS R.

GEORGIUS, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Prædilecto & Fideli Conſiliario noſtro Willielmo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præſenti Parliamento, per Milites, Cives & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione per ipſos Jacobum Comitem de Derwentwater, Willielmum Dominum Widdrington, Willielmum Comitem de Nithiſdale, Georgium Comitem de Winton, Robertum Comitem de Carnwath, Willielmum Vicecomitem Kenmure, & Willielmum Dominum Nairn, commiſſ' & perpetrat' in nomine ipſorum Militum, Civium & Burgenſium, & nomine omnium Communium Regni noſtri Magnæ Britanniæ impetiti & accuſati exiſtunt; & ipſi prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, coram Nobis in præſenti Parliamento de Proditione prædict' ſe eſſe culpabiles ſeparatim cognoverunt: Nos conſiderantes quod Juſtitia eſt Virtus excellens & altiſſimo complacens, Volenteſque quod prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithiſdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, de & pro Proditione unde ipſi ut præfertur impetit' accuſat' & convict' exiſtunt coram Nobis in præſenti Parliamento noſtro, ſecundum Legem & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ, & ſecundum Conſuetudinem Parliamenti audiantur, ſententientur & adjudicentur, cæteraque omnia quæ in hac parte pertinent debito modo exerceantur & exequantur, ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro aſſemblat' Nobis humillime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac vice conſtituere dignaremur. Nos de fidelitate, prudentia, provida circumſpectione, & induſtria veſtris plurimum confidentes, Ordinavimus & Conſtituimus vos ex hac Cauſa Seneſcallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmiſſa diligenter intendatis, & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertin' & requiruntur hac vice faciatis, exerceatis, & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte me ipſo apud Weſtm' Nono Die Februarii, Anno Regni noſtri Secundo.

'Per ipſum Regem propria Manu Signat' *Wright.*'

Serjeant at Arms. God ſave the King.

Then the Herald and Gentleman Uſher of the Black Rod, after three Reverences, kneeling, preſented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermoſt Step but one of the Throne, as it was prepared for that Purpoſe, and then ſeated himſelf in the Chair, and delivered the Staff to the Gentleman Uſher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purſe on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of *London* bring forth your Priſoners to the Bar, according to the Order of the Houſe of Lords to you directed.

Then *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, were all brought to the Bar by the Deputy Governor of the Tower, having the Ax carried before them by the Gentleman Jaylor, who ſtood with it on the Left Hand of the Priſoners, with the Edge turned from him. The Priſoners when they approached the Bar (after kneeling) bowed to his Grace the Lord-High-Steward, and to the Houſe of Peers; which Compliment was returned them by his Grace, and the Houſe of Peers.

Lord High-Steward. Read the Articles of Impeachment.

ARTICLES *of Impeachments of High-Treaſon exhibited againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, George *Earl of* Wintoun, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn.

WHEREAS for many Years laſt a moſt wicked Deſign and Contrivance has been formed and carried on, to ſubvert the ancient and eſtabliſhed Government, and the good Laws of theſe Kingdoms, to extirpate the true Proteſtant Religion therein eſtabliſhed, and to deſtroy its Profeſſors; and inſtead thereof to introduce and ſettle Popery and Arbitrary Power; in which unnatural and horrid Conſpiracy great Numbers of Perſons of different Degrees and Qualities, have concerned themſelves and acted; and many Proteſtants, pretending an uncommon Zeal for the Church of *England*, have joined themſelves with profeſſed Papiſts, uniting their Endeavours to accompliſh and execute the aforeſaid wicked and traitorous Deſigns:

And whereas it pleaſed Almighty God in his good Providence, and in his great Mercy and Goodneſs to theſe Nations, to crown the unwearied Endeavours of his late Majeſty King *William* the Third, of ever-glorious Memory, by making him the Inſtrument to procure the Settlement of the Crown of theſe Realms in the illuſtrious Houſe of *Hanover*, as the only Means under God to preſerve our Religion, Laws and Liberties, and to ſecure the Proteſtant Intereſt of *Europe*; ſince which happy Eſtabliſhment the ſaid Conſpirators have been indefatigable in their Endeavours to deſtroy the ſame, and to make Way for the vain and groundleſs Hopes of a ſpurious Impoſtor and Popiſh Pretender to the Imperial Crown of theſe Realms.

And to accompliſh theſe Ends, the moſt immoral, irreligious and unchriſtian-like Methods have been taken, but more particularly in the laſt Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were uſed by the ſaid Conſpirators, to prejudice the Minds of the Subjects of this Realm againſt the Legality and Juſtice of the ſaid Settlement of the Crown: And for that purpoſe the Holy Scriptures were wreſted, and the moſt wholſome Doctrines of the Church of *England* perverted and abuſed by Men in Holy Orders, in the moſt public and ſcandalous Manner, in order to condemn the Juſtice of the late happy Revolution; and thereby to ſap and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced by particular Marks of public Favour and Diſtinction; falſe and dangerous Notions of a ſole Hereditary Right to the Imperial Crown of theſe Realms were propagated and encouraged by Perſons in the higheſt Truſt and Employments, contrary to the ancient, undoubted and eſtabliſhed Laws of theſe Kingdoms; jeſuitical and ſcandalous Diſtinctions were invented and publickly inculcated, to enervate the Force and Obligation of thoſe Oaths which had been

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contrived in the plaineſt and ſtrongeſt Terms by the Wiſdom of Parliament for the Security of the ſaid Eſtabliſhment; and to conceal their Deſigns, and thereby the better to enable them to carry on the ſame, great Numbers of the ſaid Conſpirators of all Ranks and Conditions, pretending a Zeal for the Proteſtant Succeſſion, openly and voluntarily took the ſaid Oaths; groundleſs Fears of the Danger of the Church of *England* were fomented throughout theſe Kingdoms, to diſorder the Minds of well-diſpoſed Proteſtants.

By all which, and many other ſuch ungodly Practices of the ſaid Conſpirators, the moſt cauſeleſs and dangerous Jealouſies and Diſſatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Proteſtants were much diſquieted.

But nevertheleſs, theſe diſhoneſt Methods were purſued by the ſaid Conſpirators with indefatigable Induſtry, as the only Means to weaken the Foundations of the ſaid happy Eſtabliſhment.

And whereas the Diſſolution of the late glorious Confederacy againſt *France*, and the Loſs of the Balance of Power in *Europe*, were further Steps neceſſary to complete the Deſigns of the ſaid Conſpirators; and the ſame being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Proteſtant Succeſſion was thereby brought into the moſt imminent Danger, and by theſe and other pernicious Meaſures the Deſtruction, ſo long intended by the ſaid Conſpirators, for theſe poor Nations ſeemed near at Hand.

At which Time, and under which moſt deplorable Circumſtances, it pleaſed Almighty God in his infinite Wiſdom to call to himſelf the late Queen *Anne*, and by a Concurrence of many moſt wonderful Providences to give a quiet and peaceable Acceſſion to his preſent moſt gracious Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege Lord; and altho' from the Moment his Majeſty aſcended the Throne to this Day, his Reign has been one Series of Wiſdom, Juſtice and Clemency; his Labours conſtant, unwearied and ſucceſsful to retrieve the Honour and Reputation of theſe Nations; to re-eſtabliſh the Trade and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderneſs ſhewn even to his Popiſh Subjects, and his conſtant Care has been to procure the univerſal Good of his People; nevertheleſs the ſaid Conſpirators have, by the moſt vile and impious Methods, renewed their Endeavours to throw theſe Kingdoms into the utmoſt Confuſion, and to entail endleſs Miſeries on us and our Poſterities: For theſe Ends many of the abovementioned moſt wicked and dangerous Practices have been repeated with the utmoſt Induſtry and Inveteracy, to delude, diſorder and corrupt the Minds of his Majeſty's good Subjects; the moſt groundleſs Jealouſies have been fomented againſt his wiſe and happy Adminiſtration, and in many Parts of his Kingdoms the moſt unnatural, unexampled Riots and Tumults, by the ſecret and malicious Endeavours of the ſaid Conſpirators, have been procured, ſtirred up, and encouraged againſt his peaceable Proteſtant Subjects, under falſe Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects and ſeduce them from their Allegiance, and prepare them for an open Rebellion.

And the ſaid Conſpirators having at length reſolved to deprive theſe Nations of the invaluable Bleſſings which they now enjoy under the wiſe and gentle Reign of his preſent moſt gracious Majeſty King *George*, and of the certain Proſpect of Happineſs which they have for their Poſterity, in a Succeſſion of Princes derived from himſelf, did contrive, confederate, and reſolve to put their moſt malicious, wicked, and traitorous Deſigns into immediate Execution; for which purpoſe, *James* Earl of *Derwenwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, Jun. the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townly*, *Thomas Butler*, *Thomas Walton*, *Gabriel Haſket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *George*, the only lawful and undoubted Sovereign of theſe Kingdoms, having withdrawn their Allegiance, and cordial Love and true and due Obedience, which they as good and faithful Subjects owed to his ſaid Majeſty, did, in or about the Months of *September*, *October*, or *November*, 1715, moſt wickedly, maliciouſly, falſely and traitorouſly imagine and compaſs the Death of his ſaid moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traitorous Purpoſe, they the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traitorouſly agree, confederate, conſpire, and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy within the Counties of *Tiviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaſter*, and elſewhere within this Kingdom, a moſt cruel, bloody, and deſtructive War againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, then Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traitorous Manner, in order to raiſe Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them, did form and compoſe, or did aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for and in behalf, and in favour of the ſaid Pretender to the Crown of theſe Realms; and the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times and Places aforeſaid, and at divers other Times and Places within this Kingdom did maliciouſly and traitorouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty, and in a warlike and hoſtile Manner did march thro' and invade ſeveral Parts of this Kingdom, and did unlawfully take and ſeize the Horſes and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty, and in other Places did take and ſeize, from his Majeſty's faithful Subjects, Guns, and other warlike Inſtruments, for the carrying on their traitorous Purpoſes.

And the ſaid laſt-mentioned Conſpirators, their Complices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the Imperial Crown of theſe Realms, did wickedly and traitorouſly cauſe and procure the ſaid Pretender to be proclaimed, in the moſt public and ſolemn Manner, as King of theſe Realms; and in ſeveral Places in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize from his Majeſty's Officers of the Revenue the public Money, for the Uſe and Service of the ſaid Pretender; and tho' many of the Conſpirators are avowed Profeſſors of the Popiſh Religion, yet the more effectually to cover and diſguiſe their moſt wicked and traitorous Deſigns, and to delude his Majeſty's Subjects, they did prevail on and procure ſeveral Men in Holy Orders, Miniſters of the Church of *England*, and who had before that Time abjured the ſaid Pretender, to accompany, countenance and abet the ſaid moſt traitorous Enterprize, and in ſeveral Places in the Counties aforeſaid, where the ſaid Conſpirators, their Complices and Confederates then were, to pray for the ſaid Pretender in the public Churches, as King of theſe Realms.

That the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth or Thirteenth of *November* aforeſaid, traitorouſly ſeize and poſſeſs themſelves of the Town of *Preſton* in the County *Palatine* of *Lancaſter* againſt his Majeſty, and did then and there in a warlike and hoſtile Manner levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects.

All which Treaſons and Crimes above-mentioned were contrived, committed, perpetrated, acted and done, by the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and againſt the Laws and Statutes of this Kingdom.

Of all which Treaſons and Crimes, the Knights, Citizens and Burgeſſes in Parliament aſſembled, do, in the Name of themſelves and of all the Commons of *Great Britain*, impeach the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſations or Impeachments againſt the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them; and alſo of replying to the Anſwers which the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them, ſhall make to the Premiſſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited according to the Courſe and Proceedings of Paliament, do pray, that the ſaid *James* Earl of *Derwentwater*, *William* lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Rbert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, be put to anſwer all and every the Premiſſes: And that ſuch Proceedings, Examinations, Trials and Judgments may be upon them and every of them had and uſed, as ſhall be agreeable to Law and Juſtice.

Lord High Steward. Clerk of the Parliament, read the Record of the Anſwers and Pleas of the Lords the Priſoners at the Bar to the Impeachments.

Die Jovis, 19 Januarii, 1715.

THE Order of the Day being read, for bringing *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, to this Houſe, in order to their putting in their ſeveral Anſwers to the Articles of Impeachment of High-Treaſon exhibited againſt them by the Houſe of Commons.

The ſaid Earl of *Derwentwater* was brought to the Bar by the Gentlemen-Uſher of the Black-Rod, where he kneeled until the Lord Chancellor directed him to riſe; and his Lordſhip acquainted him with the abovementioned Order, and demanded of him if he was ready to put in his Anſwer, which he ſaid he was, and deliver'd the ſame at the Bar.

Which Anſwer of the ſaid Earl of *Derwentwater* was read, and is as follows:

The Anſwer of James *Earl of* Derwentwater, *to the Articles of Impeachment of High-Treaſon exhibited againſt him by the Hon. the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament Aſſembled.*

TO a Charge of ſo high and heinous a Nature the ſaid Earl cannot anſwer without the deepeſt Concern and Affliction, which becomes more weighty from the Share the Honourable Houſe of Commons have been pleaſed to take in the Accuſation: He aſſures himſelf, however, that Great Aſſembly doth not engage in the Proſecution of an Offence, ſo open to Conviction in the ordi-

ordinary Course of Law, with design to intercept that Mercy which the Earl, from the Report of his Majesty's natural Goodness, had reason to expect. It would be a Thought unworthy any Member of that August Body, to imagine he could have the least Desire of spilling the Blood of any of his Fellow-Subjects, whom his Majesty's great Wisdom should think a fit Object of his Mercy; the said Earl therefore hopes that his Prosecution is taken out of the common Course of Justice, with Intention, that if in his particular Case there shall appear any Circumstances inducing Favour or Compassion, both your Lordships and the Commons may be Intercessors with his Majesty for Grace towards him; whereby the Exercise of the Royal Mercy, upon which the Earl depended (which amongst all the Virtues of the Crown most endears a Monarch to the Love and Affection of his People), may be extended in such Manner as may demonstrate that Clemency for which his Majesty is so greatly renowned, and not encourage any to offend upon the Presumption of it for the future. The said Earl acknowledges, with a real Sorrow, that at the time in the Articles mentioned he was in Arms, and with others did march through, and invade several Parts of this Kingdom; and confesses *he is thereby guilty of the Offence wherewith he is charged in the said Articles.* But if any Offence of that kind was ever attended with Circumstances which might move Compassion, the said Earl hopes he may be intitled to it: He begs Leave to inform your Lordships, That his Temper and Inclination disposed him to live peaceably under his Majesty's Government, and he never had the least Prejudice or Malice against his Person, nor was he ever heretofore concerned in, or privy to, any Design or Contrivance to subvert or disturb the established Government, the Laws or Religion of this Kingdom; and if any Methods were taken by others to accomplish any of those Ends, he was absolutely a Stranger to them; nor did he now engage in this unhappy Undertaking upon any previous Concert or Contrivance for any such Purpose; but being young and unexperienced, he rashly, and without any Deliberation, engaged himself to meet at *Plainfield* in *Northumberland*, on Assurance that many of his Relations and Acquaintance would appear there; that his Undertaking was sudden, appears in that he engaged in it without any previous Preparation of Men, Horses, Arms, or other warlike Accoutrements; and as the said Earl cannot be justly reproached with any cruel, severe, or harsh Action during the Continuance in Arms, so he took the first Opportunity that offered of submitting to the King's Mercy. After the sudden Skirmishes at *Preston*, the said Earl, with others, was sollicitous to prevent any farther Destruction of the Lives of his Majesty's Subjects, and instrumental to induce all in Arms to submit themselves to the King, provided they might be secured of their Lives. One of his Majesty's Officers, sent from the General, gave them Encouragement to believe, that the Surrender of themselves would be the ready Way to obtain the King's Mercy: In Confidence whereof, when a Cessation was agreed on, the said Earl offer'd himself to become one of the Hostages for them till the next Morning, in which time he received further Assurances from the Officers, that the King was a Prince of known Clemency; that this was a distinguishing Part of his Character, and that the free Surrender to Mercy would be the most proper Means to obtain it. The said Earl believes his Majesty's Officers were very sensible, and will be so just as to acknowledge, that it had not been impracticable for many of those at *Preston* to make their way through his Majesty's Forces; but this Attempt must have occasioned the Loss of many Lives, and might have been productive of ill Consequences to the Government, which the said Earl was desirous to prevent; and when the Time agreed on for the Cessation was near expired, and General *Wills* seemed uneasy in not having received any Message from those in the Town, the said Earl writ a Letter to exhort them to surrender to the King's Mercy; and at the same Time declared to the said General, and other Officers, that whatever happened he was determined to continue with them, and rely entirely on his Majesty's Clemency and Goodness, which he had Encouragement to expect; and in such Circumstances the said Earl cannot distrust your Lordships, or the Commons Readiness, to use their Mediation for Mercy on his Behalf, which will lay him under the highest Obligations of Duty and Affection to his Majesty, and perpetual Gratitude to both Houses of Parliament.

Derwentwater.

The material Words of which Answer appearing not to be sufficiently express and clear, the Lord Chancellor asked the said Earl if he meant by the said Answer to plead guilty to the High Treason in the said Articles of Impeachment contain'd.

He said he did, and submitted to the King's Mercy, and humbly desir'd their Lordships Intercession to his Majesty; and his said Answer and Plea was recorded accordingly.

And he withdrew.

Then the Lord *Widdrington* was brought to the Bar, and having there also kneeled, was acquainted by the Lord Chancellor with the aforemention'd Order, and ask'd the same Question as the Earl of *Derwentwater*; and he likewise delivered in his Answer, which was read as follows:

The Answer of William *Lord* Widdrington *to the Articles of Impeachment of High-Treason exhibited against him by the Hon. the Knights, Citizens and Burgesses of* Great-Britain *in Parliament assembled.*

IT is with inexpressible Concern and Affliction the said Lord appears before this August Assembly charged with Crimes of the most heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make use of all Manner of Defence, especially in the case of Life, yet as he surrendered himself at *Preston*, intirely relying on his Majesty's Mercy, so he is now resolved not to take any Measures which may argue the least Diffidence of that Mercy, or of your Lordships Goodness; and therefore the said Lord confesses he is guilty of the Treason wherewith he is charged in the said Articles; and after having thus freely acknowledged his Offence, he begs Leave to lay his Case before your Lordships, and humbly hopes, when the particular Circumstances are considered, it will not be thought to merit the most rigorous

Punishment, but that both your Lordships, and the Honourable House of Commons, which look upon him as a proper Object of his Majesty's Clemency; and he humbly hopes he may not be thought the less unworthy of Favour, in that he never before offended, nor was at any time privy to, or acquainted with, any Design or Contrivance to destroy or disturb the established Government, the Laws or Religion of this Kingdom, but came unawares into this sudden and unpremeditated Action; for although he had met with public Rumours and Reports of intended Invasions from Abroad, and Insurrections at Home, yet he never knew, or any other way heard of, any formed Design against the Government, till he was told the Night before of a Meeting intended at *Plainfield* in *Northumberland*, on the sixth of *October* last; and being soon after informed that almost all his Neighbours and Acquaintance had there met in Arms, he took a hasty and inconsiderate Resolution of joining them; nor was he in any sort prepared for such an Undertaking, having only some of his own Family with him, no Arms but his common Fowling-pieces and wearing Swords, and fewer Horses than he had constantly kept for several Years before; and nothing but the Report of so many of his Friends being engaged could have hurried him on to an Enterprize so unaccountably rash and unjustifiable; and he is willing to hope your Lordships will esteem it some Alleviation of his Crime, that in a Commotion of that Nature there was so little Violation of the Rights and Properties of those who opposed them; for he believes few Instances can be found, where such a Multitude continued so long in Arms without doing greater Acts of Violence and Injustice. The said Lord cannot charge himself with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes it was thence owing in some Measure, that there was shewn all along greater Marks of Moderation and Humanity than is common in such a warlike and hostile Proceeding. The Suddenness of the Attack at *Preston*, without any previous Summons, admitted no time for mediating a Submission before the Loss of that Blood which was there unfortunately spilt; but after the Heat and Surprize of the first Action was over, a Cessation of Arms was desired, and upon the mutual Messages which then passed, the Officers sent from the General encouraged them to believe the surrendering themselves would be the ready way to obtain the King's Mercy, and gave them repeated Assurances that they submitted to a Prince of the greatest Clemency in the World: Upon these Hopes and Assurances they made a general Surrender of themselves to the King; and the said Lord may justly take Notice to your Lordships, that as he was the last who took up Arms, so he was the first who procured a Meeting of the chief Persons among them, in order to lay them down; and cannot doubt but your Lordships, and the Honourable House of Commons, will think it equitable to make some Distinction between an obstinate Resistance and an early and humble Submission, whereby the Peace and Tranquillity of this Part of his Majesty's Dominions was intirely restored. Nature must have started at yielding themselves up to a certain and ignominious Death, when it must be acknowledged that it was not impracticable for many of them to have escaped; and it was possible so great a Number grown desperate might have obtained further Success, and thereby prevented the so speedy suppressing that Insurrection; but the said Lord, and the rest, having with the utmost Confidence relied on the Assurances of his Majesty's great Clemency, and the Hopes of Mercy, which had been given them from the Officers who commanded the Royal Forces, he is encouraged with great Earnestness to implore the Intercession of your Lordships, and the Honourable House of Commons, with his Majesty, for that Mercy on which they wholly depended; and as he doth not know where Mercy was refused to those who so early and with so much Resignation submitted to it, so he humbly hopes your Lordships may be induced to think, that the Exercise of this Divine Virtue by his Majesty towards those who cast themselves at his Royal Feet upon the sole Prospect and Expectation of it, will appear no less glorious to his Majesty, and prove no less advantageous to the future Quiet and Tranquillity of his Government, than any Examples of Justice in such a Case can be likely to do: And whatever Marks of Goodness and Favour his Majesty shall vouchsafe to the said Lord, will not fail to engage him by the strongest Ties of Gratitude, to demonstrate, in the future Course of his Life, the most constant inviolable Duty to his Majesty, and the most real Esteem and Veneration for your Lordships and the Honourable House of Commons.

Widdrington.

And the said Lord *Widdrington* being asked if he had any thing farther to say, he begg'd to be excused all Imperfections in his said Answer, said he had been indisposed with the Gout in his Stomach, and was not able to employ himself in preparing his Answer till last Night, and finished it but this Morning, and humbly implored their Lordships Intercession to his Majesty for Favour and Mercy; and his Answer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Nithisdale* was brought to the Bar, and having there likewise kneeled, was acquainted with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*, and he also delivered in his Answer, which was read as follows:

The Answer of William *Earl of* Nithisdale, *to the Articles of Impeachment of High-Treason exhibited against him by the Honourable the Knights, Citizens and Burgesses of* Great-Britain *in Parliament assembled.*

IT is with the utmost Confusion the said Earl appears at your Lordships Bar, under the Weight of an Impeachment by the Commons of *Great-Britain* for High-Treason; he humbly begs Leave, in Extenuation of his Crime, to assure your Lordships, that he was always a zealous Asserter of the Liberties of his Country, and never engaged in forming or carrying on any Design to subvert the antient established Government and the good Laws of this Kingdom; but being summoned by those entrusted with the Administration of the Government in *Scotland*

land to appear at *Edinburgh*, and being aſſured if he went thither he ſhould be made cloſe Priſoner, he did not obey the Summons; but in all humble Manner applied for their Indulgence in diſpenſing with his being committed to Gaol, offering to give any Bail for his peaceable and quiet Behaviour; which being refuſed, and being at that time in ſo ill a State of Health, that a Confinement in *Edinburgh* Caſtle would have endangered his Life, he was forced to abſcond, and kept private till ſeveral of the Perſons mentioned in the ſaid Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the ſaid Earl lay concealed; and then he inconſiderately and unfortunately (with four of his Domeſtics, and no other Perſon whatſoever) joined them, and proceeded in their Company to the Places in the ſaid Articles of Impeachment mentioned; but he knew nothing of the intended Inſurrection till they were actually in Arms. The ſaid Earl is deeply ſenſible of his great Offence, and not affecting Delay, nor being willing to give your Lordſhips, or the Honourable Houſe of Commons, any unneceſſary Trouble; he does with a Sorrow, equal to his Crime, confeſs, that he is guilty of the Treaſon in the ſaid Articles of Impeachment contained, and throws himſelf at his Majeſty's Feet, imploring his Royal Mercy; and to incline his Majeſty thereto, and induce your Lordſhips to recommend him as an Object thereof, he begs Leave to inform your Lordſhips, that when he, and the reſt that were with him at *Preſton*, had engaged in a Battle, a Ceſſation of Arms being agreed to, they had Intimations from his Majeſty's Officers, that if they ſubmitted, they might expect the King's Mercy; and Hiſtory abounding with Inſtances of Conditions ſtipulated with Generals, even with Rebels, and afterwards agreed to and confirmed by their Sovereigns, they were prevailed on by ſuch Encouragement, together with the Conſideration of his Majeſty's known Clemency, to ſurrender themſelves Priſoners, whereby the Lives of great Numbers of his Majeſty's good Subjects were ſaved, which by an obſtinate Reſiſtance would inevitably have been deſtroyed; and therefore he moſt humbly begs your Lordſhips would be pleaſed to repreſent his Caſe to his Majeſty in the moſt favourable Manner; not doubting but by your Lordſhips powerful Interceſſion he ſhall find, that as he performed the Duty of a good Chriſtian, in concurring to prevent the Effuſion of Blood; ſo he acted the Part of a wiſe Man in relying upon a Mercy ſo extenſive as that of his Majeſty: And he preſumes, when the Honourable Houſe of Commons are apprized of the Nature of his Caſe, they will not interpoſe to prevent him from having a Share in the Benefit of that Mercy.

Nithiſdale.

And the ſaid Earl of *Nithiſdale* being asked if he had any thing further to ſay, he ſaid he had nothing but to implore the King's Mercy; and his Anſwer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Carnwath* was brought to the Bar, and having there likewiſe kneeled, was acquainted by the Lord Chancellor with the foremention Order, and asked the ſame Queſtion as the Earl of *Derwentmentioned water.*

He ſaid he had no Anſwer in Writing, but deſired to throw himſelf on the King's Mercy, and humbly implored their Lordſhips Interceſſion to his Majeſty on his Behalf; and aſſured the Houſe, if the ſame were granted, he ſhould think himſelf obliged to live under the ſtricteſt Ties of Loyalty to his Majeſty; and as to the ſaid Articles, he ſaid he was guilty of the High-Treaſon contained in the ſaid Articles of Impeachment againſt him; and the ſaid Plea was recorded accordingly.

And he withdrew.

Then the Viſcount *Kenmure* was brought to the Bar, and having there kneeled alſo, was acquainted by the Lord Chancellor with the foremention Order, and aſked the ſame Queſtion as the Earl of *Derwentmentioned water.*

He ſaid he had no Anſwer in Writing, but was guilty of the Charge of High-Treaſon contained in the Articles of Impeachment againſt him, and begged the Houſe would intercede with his Majeſty for Mercy; and his Plea was recorded accordingly.

And he withdrew.

Then the Lord *Nairn* was brought to the Bar, and having there alſo kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and aſked the ſame Queſtion as the Earl of *Derwentwater.*

He ſaid he threw himſelf upon the King's Mercy, and begged the Interceſſion of this Houſe to his Majeſty; and as to the Articles of Impeachment exhibited againſt him, he ſaid he was guilty of the High-Treaſon contained in the ſaid Articles; and his Plea was recorded accordingly.

Then he delivered in a Petition at the Bar, and the ſame was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled.

The humble Petition of William *Lord* Nairn,

SHEWETH,

THAT your Petitioner was educated, and hath always continued a Proteſtant, according to the Diſcipline of the Church of *England*; and though, by reaſon of ſome miſtaken Principles he unwarily imbib'd in his tender Years, he did not in all reſpects conform to the late Revolution, lying under the leſs Neceſſity, for that he had married an Heireſs, in whom all the Right of your Petitioner's Eſtate is inveſted; and though he never took the Oaths, yet he always peaceably ſubmitted to, and lived quietly under, the Government as by Law eſtabliſhed, until the breaking out of this Rebellion, in which your Petitioner was inadvertently involv'd, but not before the Lord *Mar* and his Adherents had for a conſiderale Time made themſelves Maſters of *Perth* and *Dunkeld*, and thereby ſurrounded your Petitioner's whole Eſtate, and came to your Petitioner's Houſe, lying in the middle between thoſe Places.

Your Petitioner heartily repents of this raſh Undertaking, and ſolemnly declares he knew nothing of any previous Conſultations or Conſpiracies in Favour of the Pretender, before he actually appeared in Arms; nor knew any thing about croſſing the *Forth*, until the Morning he was ſent over under *Macintoch*'s Command; and then was ſo far from approving of that Expedition, that though, to avoid the Imputation of Cowardice he would hazard his own Perſon therein, your Petitioner ordered back all his Dependants, and was only attended by his Son and four Servants, who would not leave him in a Time of Danger, though often deſir'd; nor was your Petitioner privy to any Deſigns of marching into *England*; for having been bred a Seaman, he had no Pretenſions to Knowledge in the Land Service.

Your Petitioner being now ſenſible of his Errors, hath pleaded guilty to the Articles of Impeachment of High-Treaſon exhibited againſt him by the Honourable Houſe of Commons, and thrown himſelf at his Majeſty's Feet: humbly beſeeching your Lordſhips, in Commiſeration of the deplorable Circumſtances of your Petitioner and his twelve Children, to recommend him to his Majeſty for that Mercy, which at the Time of his Surrender he was made to believe he might reaſonably expect.

This will lay your Petitioner and his Poſterity under the greateſt Obligations of Duty and Gratitude to his Majeſty, and bind them for ever to bleſs your Lordſhips as the merciful Inſtruments of procuring ſuch a gracious Deliverance.

And your Petitioner ſhall ever pray, &c.]

N A I R N.

And being asked if he had any thing further to ſay, he ſaid he had not; and withdrew.

Lord High-Steward. My Lords that are the Priſoners at the Bar, I am to acquaint your Lordſhips, that upon any Occaſion which ſhall be offered you to ſpeak for yourſelves, you are to direct your Speech to the Lords in general; and ſo is any other Perſon that ſhall have Occaſion to ſpeak to this Court.

Lord High-Steward. James Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, You ſtand impeached of High-Treaſon by the Commons of *Great Britain* in Parliament aſſembled; which Treaſon is contained in the Articles that have been lately read; to this you have ſeverally pleaded guilty, and are thereby convicted. What ſay you, *James* Earl of *Derwentwater*, why Judgment ſhould not paſs upon you according to Law?

Earl of *Derwentwater.* I Only humbly beg Leave of my Noble Peers to repeat a few Circumſtances mentioned in my Anſwer to the Articles of Impeachment exhibited againſt me by the Honourable Houſe of Commons.

But the Terrors of your Lordſhips juſt Sentence, which at once deprive me of my Life and Eſtate, and compleat the Misfortunes of my Wife and innocent Children, are ſo heavy upon my Mind, together with my Unexperience, that I am ſcarce able to alledge what may extenuate my Offence, if any thing can do it. I have confeſſed myſelf guilty; but, my Lords, that Guilt was raſhly incurred without any Premeditation, as I hope your Lordſhips will be convinced by one Particular: I beg Leave to obſerve, I was wholly unprovided with Men, Horſes, Arms and other Neceſſaries, which in my Situation I could not have wanted, had I been privy to any formed Deſign: As my Offence was ſudden, ſo my Submiſſion was early; when his Majeſty's Generals thought fit to demand Hoſtages for ſecuring the Terms of the Ceſſation, I voluntarily offered myſelf, without which the Ceſſation might poſſibly have proved ineffectual: And whilſt I continued Hoſtage, the great Character of his Majeſty's Clemency, and the repeated Encouragement I had to hope for Mercy, by ſurrendering to it, ſoon determined me; and I accordingly declared my Reſolution to remain with his Majeſty's Forces, and from that Time ſubmitted myſelf to his Goodneſs, on which I ſtill entirely depend. I humbly hope to obtain the Mediation of your Lordſhips, and of the Honourable Houſe of Commons in my Behalf; ſolemnly proteſting my future Conduct ſhall ſhew me not altogether unworthy your generous Compaſſion for my Life, which is all I can beg of his Majeſty.

Lord High Steward. My Lord *Derwentwater*, your Lordſhip's Voice hath not been perfectly heard to this End of the Court, therefore I ask you whether you have pleaded any Thing in Arreſt of Judgment?

Lord *Derwentwater.* No, my Lords.

Lord High-Steward. Lord *Widdrington*, what have you to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord *Widdrington.* MY Lords I have abandoned all Manner of Defence ever ſince I firſt ſurrender'd myſelf to his Majeſty's Royal Clemency, and only now beg Leave to repeat to your Lordſhips ſome Circumſtances of my unhappy Caſe, which I have already ſet forth in my Anſwer.

Your Lordſhips ſee before you an unfortunate Man, who, after leading a private and retired Life for many Years, has by one raſh and inconſiderate Action expoſed himſelf and his Family to the greateſt Calamities and Miſery, and is now upon the Point of receiving the ſevereſt Sentence directed by any of our *Engliſh* Laws.

I do proteſt to your Lordſhips, that I was never privy to any concerted Meaſures againſt his Majeſty's Royal Perſon, or the eſtabliſhed Government: As to the Inſurrection in *Northumberland*, I only heard of it accidentally the Night before it happen'd, and being ſoon after inform'd that all my Neighbours and Acquaintance had met in Arms, a Crowd of confuſed and miſtaken Notions hurried me at once into a precipitate Reſolution of joining them; a Reſolution which, I muſt own, I could never ſince calmly reflect upon without Part of that Confuſion I find myſelf under in the public Acknowledgment of ſo much Raſhneſs and Folly. After thus plunging out of my Depth, as unprepar'd for ſuch an Enterprize as the Action was unpremeditated, I cannot, for my own Particular, upon the ſtricteſt Recollection, charge myſelf with any Violation of the Properties of my Fellow-Subjects: But on the contrary, I always endeavoured to encourage Humanity and Moderation during the whole courſe

courſe of our miſerable Expedition; and in order to make the beſt Atonement in my Power for the great Fault I had been guilty of, I can juſtly ſay, that I was in no ſmall Degree inſtrumental in procuring a general Submiſſion to his Majeſty. But, my Lords, however willing or deſirous, either I or any others might be to put a ſpeedy End to thoſe unfortunate Troubles; Self-preſervation, the firſt and moſt powerful Law of Nature, would have render'd the Propoſal vain and fruitleſs, had not the Officers who commanded the Royal Forces given us Hopes of Mercy, and aſſured us we ſubmitted to a Prince of the greateſt Clemency in the World. Theſe Hopes, and this Aſſurance, anſwered the ſtrongeſt Objections, overcame all remaining Difficulties, and gave the finiſhing Stroke to a general Surrender, whereby the further Effuſion of *Britiſh* Blood was prevented, and a perfect Tranquillity reſtored to theſe Parts of his Majeſty's Dominions.

My Lords, as this my firſt Attempt was raſh and unpremeditated, as I always uſed and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obſtinately perſiſt in my Fault, but was the firſt who propoſed an early Submiſſion to his Majeſty, I humbly hope my unhappy Caſe, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raiſe a generous Compaſſion in your Lordſhips, and the Honourable Houſe of Commons; and I muſt earneſtly intreat both your Lordſhips, and that honourable Houſe, to become Interceſſors with his Majeſty in my behalf, for that Mercy which I was encouraged to hope for when I firſt ſurrendered, and which I have ever ſince with the utmoſt Confidence relied on.

I have only to add my moſt ſolemn Aſſurance before this Auguſt Aſſembly, that no future Time ſhall ever find me wanting in the moſt inviolable Duty and Gratitude to that merciful Prince who gives me my Life, and reſtores a Father to five miſerable and diſtreſſed Orphans; and I ſhall always retain the higheſt Eſteem and Veneration for your Lordſhips and the Honourable Houſe of Commons.

Lord High-Steward. Lord *Widdrington*, for greater Certainty I aſk your Lordſhip whether you have pleaded any thing in Arreſt of Judgment?

Lord *Widdrington.* No, my Lords, I have not.

Lord High-Steward. *William* Earl of *Nithiſdale*, what hath your Lordſhip to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord *Nithiſdale.* MY Lords, I have confeſſed myſelf guilty, relying on his Majeſty's Mercy; and I beg leave to aſſure your Lordſhips I was never privy to any Plot or Deſign againſt his Majeſty's Perſon or Government, and was unprovided with any Neceſſaries for ſuch a Purpoſe; but raſhly and inconſiderately, with only four of my Servants, joined thoſe who appeared in Arms in my Neighbourhood, and was one of the laſt who went unto them.

At *Preſton*, my Lords, his Majeſty's Generals gave great Hopes and Encouragement to believe, that ſurrendering to his Majeſty's Mercy, was the ready Way to obtain it, with repeated Aſſurances that his Majeſty was a Prince of the greateſt Clemency.

Upon thoſe Hopes and Aſſurances I ſubmitted myſelf, and ſtill entirely depend on his Majeſty's Goodneſs, earneſtly beſeeching your Lordſhips, and the Honourable Houſe of Commons, to intercede with his Majeſty on my behalf.

And I ſolemnly promiſe your Lordſhips I ſhall, during the Remainder of my Life, pay the utmoſt Duty and Gratitude to his moſt gracious Majeſty, and the higheſt Veneration and Reſpect to your Lordſhips and the Honourable Houſe of Commons.

Lord High-Steward. I muſt alſo aſk your Lordſhip (your Lordſhip's Voice not reaching thus far) whether you have pleaded any thing in Arreſt of Judgment?

Lord *Nithiſdale.* No, my Lords, I have not.

Lord High-Steward. Lord *Carnwath*, what have you to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord *Carnwath.* MY Lords, I ſhall not trouble this great Aſſembly with a Repetition of what I ſaid, when formerly before your Lordſhips and his Majeſty's Council:

I hope theſe Noble Lords entertain that favourable Opinion of my ſincere Dealing then, as to believe that want of Experience and Knowledge of the Laws was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only thing which I can hope or wiſh for is his Majeſty's Mercy; he has the Character of a merciful Prince: Should it pleaſe him to think me a proper Object for it (tho' I muſt confeſs myſelf a very unworthy one), all I can ſay, my Lords, is, that the Remainder of my Life ſhall convince his Majeſty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body, the Peerage, now expecting your Lordſhips Judgment as to Life or Death: Should it be for Life, my Demeanor and Carriage for the future will be ſuch, as none of your Lordſhips ſhall be aſham'd of having ſhew'd me Compaſſion; but ſhould it be for Death, God's Will be done; to my laſt Hour I ſhall pray for the Nation's and your Lordſhips Proſperity; having this Comfort in my preſent Diſtreſs, that your Lordſhips are my Judges at this Tribunal: And yet a greater Comfort have I, that I am going to appear before a greater, where I can't deſpair of finding Mercy and Forgiveneſs for all my Sins.

I beg Almighty God's Pardon for them: I have already aſk'd his Majeſty's, and I do it now; and I do humbly beg leave, once more, and perhaps the laſt Occaſion that ever I ſhall have, to deſire that your Grace, this noble Houſe, and the Honourable Houſe of Commons of *Great Britain*, who are now here, would intercede with his Majeſty for me.

I take my Leave of your Lordſhips, and wiſh you all Happineſs.

Lord High-Steward. Does your Lordſhip offer any thing in Arreſt of Judgment?

Lord *Carnwath.* No, my Lords.

Lord High-Steward. Lord *Kenmure*, what have you to ſay for yourſelf, why Judgment ſhould not paſs upon you according to Law?

Lord *Kenmure.* MY Lords, I am truly ſenſible of my Crime, and want Words to expreſs my Repentance. God knows I never had any perſonal Prejudice againſt his Majeſty, nor was I ever acceſſary to any previous Deſign againſt him. I humbly beg my noble Peers and the Honourable Houſe of Commons to intercede with the King for Mercy to me, that I may live to ſhew myſelf the dutifulleſt of his Subjects, and to be the Means to keep my Wife and four ſmall Children from ſtarving; the Thoughts of which, with my Crime, make me the moſt unfortunate of all Gentlemen.

Lord High-Steward. My Lord, your Voice not being heard to this End of the Court, I would know whether, in what you have ſaid, you have offered any thing in Arreſt of Judgment.

Lord *Kenmure.* No, my Lords.

Lord High-Steward. Lord *Nairn*, what have you to ſay for yourſelf why Judgment ſhould not paſs upon you according to Law?

Lord *Nairn.* I Am very ſenſible how unfit I am to plead my own Cauſe before your Grace (my Lord High-Steward) and this auguſt Aſſembly; and therefore, though I could ſay much to extenuate the Crime for which I ſtand impeached, yet I chuſe rather to lay my whole Streſs upon the King's Mercy, for which he is ſo renowned, and which I was put in hopes of at the Time of my Surrender. In Conſideration whereof, and in Compaſſion to an afflicted Wife and twelve Children, I ſtill hope, by the Mediation of your Grace, my noble Lords, and the Honourable Houſe of Commons, I may obtain it; ſolemnly proteſting, that in Gratitude for ſo ſignal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his moſt gracious and ſacred Majeſty King *George*.

Lord High-Steward. My Lord, for greater certainty, I ask your Lordſhip whether you have offered any thing in Arreſt of Judgment?

Lord *Nairn.* No, my Lords.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence upon Pain of Impriſonment.

Lord High-Steward. *JAMES* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*;

You ſtand impeached, by the Commons of *Great Britain* in Parliament aſſembled, of High-Treaſon, in traitorouſly imagining and compaſſing the Death of his moſt ſacred Majeſty, and in conſpiring for that end to levy a bloody and deſtructive War againſt his Majeſty, in order to depoſe and murder him; and in levying War accordingly, and proclaiming a Pretender to his Crown to be King of theſe Realms.

Which Impeachment, tho' one of your Lordſhips, in the Introduction to his Plea, ſuppoſes to be out of the ordinary and common Courſe of the Law and Juſtice, is yet as much a Courſe of Proceeding according to the Common Law, as any other whatſoever.

If you had been indicted, the Indictment muſt have been removed and brought before the Houſe of Lords (the Parliament ſitting). In that caſe you had ('tis true) been accuſed only by the Grand Jury of one County; in the preſent, the whole Body of the Commons of *Great-Britain*, by their Repreſentatives, are your Accuſers.

And this Circumſtance is very obſervable (to exclude all poſſible Suppoſition of Hardſhip as to the Method of proceeding againſt you), That however all great Aſſemblies amongſt us are apt to differ on other Points, You were impeached by the unanimous Opinion of the Houſe of Commons (not one contradicting).

They found themſelves, it ſeems, ſo much concerned in the Preſervation of his moſt truly ſacred Majeſty, and the Proteſtant Succeſſion (the very Life and Soul of theſe Kingdoms), that they could not omit the firſt Opportunity of taking their proper Part, in order to ſo ſignal and neceſſary an Act of his Majeſty's Juſtice.

And thus the whole Body Politic of this free Kingdom has in a manner roſe up in its own Defence, for the Puniſhment of thoſe Crimes, which, 'twas rightly apprehended, had a direct Tendency to the everlaſting Diſſolution of it.

To this Impeachment you have ſeverally pleaded, and acknowledged yourſelves guilty of the High-Treaſon therein contained.

Your Pleas are accompanied with ſome Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part of which, as ſome of the Circumſtances ſaid to have attended your Surrender (ſeeming to be offered rather as Arguments only for Mercy, than any thing in Mitigation of your preceding Guilt) is not proper for me to take Notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I ſhould take this Occaſion to make ſome Obſervations to your Lordſhips upon it, to the end that the Judgment to be given againſt you may clearly appear to be Juſt and Righteous, as well as Legal; and that you may not remain under any fatal Error in reſpect of a greater Judicature, by reflecting with leſs Horror and Remorſe on the Guilt you have contracted than it really deſerves.

It is alledged by ſome of your Lordſhips, that you engaged in this Rebellion without previous Concert or Deliberation, and without ſuitable Preparations of Men, Horſes and Arms.

If this ſhould be ſuppoſed true, on ſome of you Lordſhips averring it, I deſire you to conſider, that as it exempts you from the Circumſtance of contriving this Treaſon, ſo it very much aggravates your Guilt in that Part you have undoubtedly borne in the Execution of it.

For it ſhews, That your Inclinations to rebel were ſo well known (which could only be from a continued Series of your Words and Actions), that the Contrivers of that horrid Deſign depended upon you, and therein judg'd rightly: That your Zeal to engage in this Treaſon was ſo ſtrong, as

to carry you into it on the leaſt Warning, and the very firſt Invitation: That you would not excuſe yourſelves by Want of Preparation, as you might have done; and that rather than not have a Share in the Rebellion, you would plunge yourſelves into it, almoſt naked and unprovided for ſuch an Enterprize: In ſhort, that your Men, Horſes, and Arms were not ſo well prepared as they might, and would have been on longer Warning; but your Minds were.

It is alledged alſo as an Extenuation of your Crime, that no cruel or harſh Action (I ſuppoſe is meant no Rapine or Plunder, or worſe) has been committed by you.

This may, in Part only be true. But then your Lordſhips will at the ſame time conſider, that the laying waſte a Tract of a Land bears but a little Proportion in point of Guilt, compared with that Crime of which you ſtand convicted; an open Attempt to deſtroy the beſt of Kings, to ruin the whole Fabric, and raiſe the very Foundations of a Government, the beſt ſuited of any in the World, to perfect the Happineſs, and ſupport the Dignity of human Nature: The former Offence cauſes but a Miſchief that is ſoon recovered, and is uſually pretty much confined; the latter, had it ſucceeded, muſt have brought a laſting and univerſal Deſtruction on the whole Kingdom.

Beſides, much of this was owing to Accident; your March was ſo haſty, partly to avoid the King's Troops, and partly from a vain Hope to ſtir up Inſurrections in all the Counties you paſſed through, that you had not time to ſpread Devaſtation, without deviating from your main, and, as I have obſerved, much worſe Deſign.

Farther, 'tis very ſurpriſing, that any concerned in this Rebellion ſhould lay their ingaging in it on the Government's doing a neceſſary and uſual Act in like caſes for its Preſervation; the giving Orders to confine ſuch as were moſt likely to join in that Treaſon: 'Tis hard to believe that any one ſhould rebel, merely to avoid being reſtrain'd from rebelling; or that a gentle Confinement would not much better have ſuited a crazy State of Health, than the Fatigues and Inconveniencies of ſuch long and haſty Marches in the Depth of Winter.

Your Lordſhips riſing in Arms therefore, has much more juſtified the Prudence and Fitneſs of thoſe Orders, than thoſe Orders will in any wiſe ſerve to mitigate your Treaſon. Alas! happy had it been for all your Lordſhips had you fallen under ſo indulgent a Reſtraint!

When your Lordſhips ſhall in good earneſt apply yourſelves to think impartially on your Caſe, ſurely you will not yourſelves believe, that it is poſſible, in the nature of the thing, to be engaged, and continue ſo long engaged, in ſuch a difficult and laborious Enterprize, through Raſhneſs, Surprize, or Inadvertency: Or that, had the Attack at *Preſton* been leſs ſudden, (and conſequently the Rebels better prepared to receive it) your Lordſhips had been reduced the ſooner, and with leſs, if not without any Bloodſhed.

No, my Lords; theſe, and ſuch like, are artful Colourings, proceeding from Minds filled with Expectation of continuing in this World; and not from ſuch as are preparing for their Defence before a Tribunal, where the Thoughts of the Heart, and the true Springs and Cauſes of Actions, muſt be laid open.

And now, my Lords, having thus removed ſome falſe Colours you have uſed; to aſſiſt you yet farther in that neceſſary Work of thinking on your great Offence as you ought, I proceed to touch upon ſeveral Circumſtances that ſeem greatly to aggravate your Crime, and which will deſerve your moſt ſerious Conſideration.

The Divine Virtues ('tis one of your Lordſhips own Epithets), which all the World as well as your Lordſhips acknowledge to be in his Majeſty, and which you now lay claim to, ought certainly to have with-held your Hands from endeavouring to depoſe, to deſtroy, to murder that moſt Excellent Prince; ſo the Impeachment ſpeaks, and ſo the Law conſtrues your Actions; and this is not only true in the Notion of Law, but almoſt always ſo in Deed and Reality: 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves. Had you ſucceeded, his Majeſty's Caſe would, I fear, have hardly been an Exception to that general Rule, ſince 'tis highly improbable, that Flight ſhould have ſaved any of that Illuſtrious and Valiant Family.

'Tis a farther Aggravation of your Crime, that his Majeſty, whom your Lordſhips would have dethroned, affected not the Crown by Force, or by the Arts of Ambition, but ſucceeded peaceably and legally to it; and on the Deceaſe of her late Majeſty without Iſſue, became undoubtedly the next in courſe of Deſcent capable of ſucceeding to the Crown, by the Law and Conſtitution of this Kingdom; as it ſtood declared ſome Years before the Crown was expreſly limited to the Houſe of *Hanover*. This Right was acknowledged, and the Deſcent of the Crown limited or confirmed accordingly, by the whole Legiſlature in two ſucceſſive Reigns; and more than once in the latter, which your Lordſhips Accomplices are very far from allowing, would biaſs the Nation to that Side.

How could it then enter into the Heart of Men, to think that private Perſons might with a good Conſcience endeavour to ſubvert ſuch a Settlement, by running to tumultuary Arms; and by intoxicating the dreggs of the People with contradictory Opinions, and groundleſs Slanders; or that God's Providence would ever proſper ſuch wicked, ſuch ruinous Attempts?

Eſpecially, if in the next place it be conſidered, that the moſt fertile Inventions on the ſide of the Rebellion, have not been able to aſſign the leaſt ſhadow of a Grievance as the Cauſe of it: To ſuch poor Shifts have they been reduced on this Head, that for want of better Colours, it has been objected, in a ſolemn manner, by your Lordſhips Aſſociates, to his Majeſty's Government; that his People do not enjoy the Fruits of Peace as our Neighbours have done ſince the laſt War: Thus they firſt robbed us of our Peace, and then upbraid us that we have it not. 'Tis a monſtrous Rebellion that can find no fault with the Government it invades, but what is the Effect of the Rebellion itſelf.

Your Lordſhips will likewiſe do well to conſider what an additional Burthen your Treaſon has made neceſſary on the People of this Kingdom; who wanted, and were about to enjoy ſome Reſpite: To this end 'tis well known, that all New, or encreaſe of Taxes, were the laſt Year carefully avoided, and his Majeſty was contented to have no more Forces than were juſt ſufficient to attend his Perſon, and ſhut the Gates of a few Garriſons.

But what his Majeſty thus did for the Eaſe and Quiet of his People, you moſt ungratefully turn'd to his Diſadvantage, by taking Encouragement from thence, to endanger his and his Kingdom's Safety, and to bring Oppreſſion on your Fellow-Subjects.

Your Lordſhips obſerve I avoid expatiating on the Miſeries of a Civil War, a very large and copious Subject; I ſhall but barely ſuggeſt to you on that Head, that whatever thoſe calamities may happen to be in the preſent Caſe, all who are at any Time, or in any Place Partakers in the Rebellion (eſpecially Perſons of Figure and Diſtinction), are in ſome degree reſponſible for 'em: And therefore your Lordſhips muſt not hold yourſelves quite clear from the Guilt of thoſe Barbarities which have been lately committed, by ſuch as are engaged in the Treaſon with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby expoſing many Thouſands to Cold and Hunger in this rigorous Seaſon.

I muſt be ſo juſt to ſuch of your Lordſhips, as profeſs the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treaſon, which the others had not; in that 'twas evident, Succeſs on your Part muſt for ever have eſtabliſhed Popery in this Kingdom, and that probably you could never have again ſo fair an Opportunity.

But then, good God! how muſt thoſe Proteſtants be covered with Confuſion, who entered into the ſame Meaſures, without ſo much as capitulating for their Religion (that ever I could find from any Examination I have ſeen or heard), or ſo much as requiring, much leſs obtaining a frail Promiſe, that it ſhould be preſerved, or even tolerated.

It is my Duty to exhort your Lordſhips thus, to think of the Aggravations, as well as the Mitigations (if there be any) of your Offences; and if I could have the leaſt Hopes, that the Prejudices of Habit and Education would not be too ſtrong for the moſt earneſt and charitable Entreaties, I would beg you not to rely any longer on thoſe Directors of your Conſciences, by whoſe Conduct you have, very probably, been led into this miſerable Condition; but that your Lordſhips would be aſſiſted by ſome of thoſe pious and learned Divines of the Church of *England*, who have conſtantly bore that infallible Mark of ſincere Chriſtians, univerſal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you (and ſorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which muſt be the ſame that is uſually given againſt the meaneſt Offender in the like Kind.

The moſt ignominious and painful Parts of it are uſually remitted by the Grace of the Crown to Perſons of your Quality; but the Law in this Caſe being deaf to all Diſtinctions of Perſons, requires I ſhould pronounce, and accordingly it is adjudged by this Court,

"That you, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*,
"*William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William*
"Viſcount *Kenmure*, and *William* Lord *Nairn*, and every of you,
"return to the Priſon of the *Tower* from whence you came; from
"thence you muſt be drawn to the Place of Execution; when you
"come there, you muſt be hang'd by the Neck, but not till you be
"Dead; for you muſt be cut down alive, then your Bowels muſt
"be taken out, and burnt before your Faces; then your Heads muſt
"be ſever'd from your Bodies, and your Bodies divided each into
"four Quarters; and theſe muſt be at the King's diſpoſal."
And God Almighty be merciful to your Souls.

Serjeants at Arms. O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High Steward ſtood up uncovered, and declaring there was nothing more to be done by Virtue of the preſent Commiſſion, broke the Staff, and pronounced it diſſolv'd: And then leaving the Chair, came down to the Wool-pack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

And then the Houſe adjourned to the Houſe above, and the Lords and others returned in the ſame Order they came down.

After Sentence paſt, great Intereſt was made on their Behalf for Mercy; inſomuch, that the Houſe of Lords preſented an Addreſs to the King to *Reprieve ſuch of them as ſhould deſerve his Mercy*; to which the King graciouſly anſwered, *That on this and all other Occaſions he would do what he thought moſt conſiſtent with the Dignity of his Crown, and the Safety of his People.* However, Lord *Widdrington*, Lord *Carnwath*, and Lord *Nairn* were reprieved, and afterwards pardoned; but the other three, Lord *Derwentwater*, Lord *Nithiſdale* and Lord *Kenmure*, were ordered for Execution on *Febr.* 24.

The Earl of *Nithiſdale* eſcap'd the Blow, having found means of getting out of the *Tower* in Diſguiſe, the very night before the Execution.*

Early the next Morning the Scaffold on *Tower-Hill* was ſurrounded with the Guards, and a little before ten o' the Clock the Earl of *Derwentwater* and the Lord Viſcount *Kenmure*, were carried in an Hackney Coach from the *Tower*, to the *Tranſport-Office* on *Tower-Hill*, where there was a Room hung with Black for their Reception, and there was a Paſſage or Gallery rail'd in, which led from thence to the Scaffold, which was alſo covered with Black.

The Earl of *Derwentwater* was firſt led to the Scaffold, where having ſpent ſome time in praying with a Book, he then addreſſed himſelf to the Sheriff, and deſired the Liberty to read a Paper, which he had drawn up: This Requeſt being readily granted, he went to the Rails of the Scaffold and read as follows:

'BEING in a few Minutes to appear before the Tribunal of God, 'where, though moſt unworthy, I hope to find Mercy, which I have 'not found from Men now in Power, I have endeavoured to make my Peace 'with his Divine Majeſty, by moſt humbly begging Pardon for all the Sins

* The King being told of this the next Morning, merrily ſaid, *It was the beſt thing a Man in his Condition could have done.*

'of my Life; and I doubt not of a merciful Forgiveneſs, thro' the Merits 'of the Paſſion of and Death of my Saviour *Jeſus Chriſt*; for which End I 'earneſtly deſire the Prayers of all good Chriſtians.

'After this, I am to ask Pardon of thoſe whom I might have ſcandalized 'by pleading guilty at my Trial. Such as were permitted to come to me, 'told me that having been undeniably in Arms, pleading guilty was but the 'Conſequence of having ſubmitted to Mercy; and many Arguments were 'us'd to prove there was nothing of moment in ſo doing; among others the 'univerſal Practice of ſigning Leaſes, whereof the Preambles run in the 'Name of the Perſon in Poſſeſſion.

'But I am ſenſible that in this I have made bold with my Loyalty, hav-'ing never owned any other but King *James* the Third for my rightful and 'lawful Sovereign; him I had an Inclination to ſerve from my Infancy, and 'was mov'd thereto by a natural Love I had to his Perſon, knowing him 'to be capable of making his People happy; and though he had been of a 'different Religion from mine, I ſhould have done for him all that lay 'in my Power, as my Anceſtors have done for his Predeceſſors, being 'thereto bound by the Laws of God and Man.

'Wherefore, if in this Affair I have acted raſhly, it ought not to af-'fect the Innocent; I intended to wrong nobody, but to ſerve my King 'and Country, and that without Self-intereſt; hoping by the Example I 'gave, to have induc'd others to their Duty; and God, who ſees the Se-'crets of my Heart, knows I ſpeak Truth. Some Means have been pro-'poſed to me for ſaving my Life, which I look'd upon as inconſiſtent with 'Honour and Conſcience, and therefore I rejected them; for, with God's 'Aſſiſtance, I ſhall prefer any Death, to the doing a baſe, unworthy Action. 'I only wiſh now, that the laying down my Life might contribute to the 'Service of my King and Country, and the Re-eſtabliſhment of the ancient 'and fundamental Conſtitution of theſe Kingdoms; without which, no 'laſting Peace, or true Happineſs, can attend them; then I ſhould, indeed, 'part with Life even with Pleaſure: As it is, I can only pray, that theſe 'Bleſſings may be beſtow'd upon my dear Country; and ſince I can do no 'more, I beſeech God to accept of my Life, as a ſmall Sacrifice towards it.

'I die a *Roman Catholick*; I am in perfect Charity with all the World, 'I thank God for it, even with thoſe of the preſent Government, who are 'moſt inſtrumental in my Death. I freely forgive ſuch as ungenerouſly re-'ported falſe Things of me; and I hope to be forgiven the Treſpaſſes of 'my Youth, by the Father of infinite Mercy; into whoſe Hand I com-'mend my Soul.

JA: DERWENTWATER.'

P. S. 'If that Prince who now governs, had given me my Life, I ſhould 'have thought myſelf obliged never more to have taken up Arms againſt 'him.'

After the reading this Paper, he delivered it to the Sheriff to do with it as he pleaſed. Then turning to the Block he view'd it cloſe; and finding in it a rough Place, which might offend his Neck, he bid the Executioner chip it off. Having prepar'd himſelf for the Blow by pulling off his Coat and Waiſtcoat, he lay down to fit his Head to the Block, telling the Executioner that the Sign he ſhould give him was, *Lord Jeſu receive my Soul*, and at the third time of repeating it he was to do his Office; which accordingly he did at one Blow.

Immediately after the Earl of *Derwentwater* was executed as above, the Lord *Kenmure* was brought to the Scaffold, accompany'd by his Son and ſome Friends, and attended by two Clergymen of the Church of *England*, which was the Religion he profeſs'd. He made no formal Speech; but teſtify'd his Sorrow for having pleaded guilty. Then laying down his Head on the Block, he rais'd it up again, and ſtill continuing on his Knees, gave the Executioner ſome Money, and told him, he would give him no Sign, but that when he laid down his Head again, he might perform his Office as he ſaw good. Then having lifted up his Hands a ſhort time in Prayer, he reſolutely laid down his Head, which at two Blows was ſever'd from his Body.

After his Execution a Letter was found which he wrote to the Pretender (by the Style of King *James*) in which he declared, *That he died for his faithful Services to his Majeſty, but hoped the Cauſe he died for would flouriſh after his Death: And as he ſuffered for his Service, he hop'd his Majeſty would provide for his Wife and Children.*

CLXXXVI. *The Trial of* George *Earl of* Wintoun, *before the Houſe of Lords, upon an Impeachment for* High-Treaſon, March 15, 16, 19, 1715. 2 GEO. I.

Die Lunæ 9 Januarii, 1715.

THE Earl of *Wintoun* was impeach'd of High-Treaſon; and the Articles were brought up againſt him and read the ſame Day in the Houſe of Lords: and it was order'd that the ſaid Earl with the other impeach'd Lords, ſhould be brought to the Bar of the Houſe of Lords the next Day, to hear the ſaid Articles read, and to abide ſuch further Order as the Houſe ſhould think fit to make concerning them.

Die Martis 10 Januarii, 1715.

The Earl of *Wintoun* and the other impeach'd Lords were brought to the Bar in the uſual Form; then the ſaid Articles of Impeachment were read unto them; after which the Lord Chancellor aſked them ſeverally what they had to ſay thereunto, and acquainted them, that if they had any thing to requeſt of the Houſe this was their proper Time.

Thereupon the Earl of *Wintoun* acquainted the Houſe he was unprepared, and very ignorant of the Form of their Lordſhips Judicature, and deſired he might have a Copy of the ſaid Articles, and ſuch Time to anſwer as the Houſe ſhould think fit, and that Counſel might be aſſign'd to aſſiſt him. He was directed to withdraw; and being accordingly withdrawn, the Houſe took his Requeſts into Conſideration, and thereupon

Ordered, That his Lordſhip ſhould be allowed a Copy of the ſaid Articles of Impeachment, and Time 'till *Saturday* next to put in his Anſwer thereunto; and that Counſel ſhould be aſſign'd him in order to aſſiſt him in preparing his Anſwer, and likewiſe in his Defence in Matters of Law.

Then his Lordſhip was called in again, and the Lord Chancellor acquainted him with the ſaid Order, and that the Houſe expected he ſhould name ſuch Counſel as he deſired to have.

To which he anſwered, that nobody was allow'd to come to him, he was a Stranger and unprepared, and deſired to be allowed Time to name his Counſel.

Then his Lordſhip being again withdrawn,

After ſome time he was again called in, and the Lord Chancellor, by Order of the Houſe, acquainted him, That the Houſe was pleaſed, beſides Counſel, to allow him a Sollicitor, and to give him leave to name whom he deſired to come to him this Evening, or To-morrow Morning, in order to adviſe him in the naming of Counſel and Sollicitor.

To which purpoſe the Earl of *Wintoun* named Mr. *Hereat*, a Clergyman, Mr. *Menzies*, Major *Sinclair*, and Mr. *George Leſly*, a Lawyer.

And then he again withdrew.

And the Names of the ſeveral Perſons mentioned by the Earl of *Wintoun* being read to him,

Ordered, That they have leave to repair to the ſaid Earl at any convenient Hour, any time before the ſitting of the Houſe To-morrow, in order to adviſe him in the naming of Counſel, and a Sollicitor to aſſiſt him in his Defence.

Ordered, That the ſeveral Lords impeached, or any of them, have Liberty to cauſe Search to be made, and Copies of Records and Journals to be taken out, in order to their Defence; and that the ſaid Lords ſhall have Summons iſſued for ſuch Witneſſes as they ſhall reſpectively ſend in the Names of, to be by them made uſe of at their Trials; which Witneſſes ſhall have the Protection of this Houſe for their ſafe coming and going, during the Time of the ſaid Trials.

Die Jovis 12 Januarii, 1715.

A Petition of *George* Earl of *Wintoun* was preſented to the Houſe and read, praying that he may have ſome further Time for nominating Counſel and a Sollicitor to act for him, and in the mean time to allow his Friends formerly named to have Acceſs to him; he having cauſed Application to be made to Sir *Thomas Powis*, and Mr. *Mead*, to have appeared for him, but they both excuſed themſelves.

Ordered, That the ſame Perſons before allow'd to go to the Petitioner, have leave to reſort to him at any ſeaſonable Time, before Eleven of the Clock To-morrow in the Forenoon, in order to the adviſing him in naming other Counſel, inſtead of thoſe who have refuſed.

Whereas by Order of this Houſe on *Tueſday* laſt, the Lords impeached were to put in their reſpective Anſwers to the Articles of Impeachment of High-Treaſon exhibited againſt them by the Houſe of Commons on *Saturday* laſt: The Houſe being this Day moved at the Requeſt of the Earl of *Derwentwater* and Lord *Widdrington*, to grant them further Time to put in their Anſwers to the ſaid Articles of Impeachment: It is Ordered, that all the ſaid Lords have hereby further Time allowed to put in their reſpective Anſwers to the ſaid Articles, till *Monday* next at one of the Clock.

Die Lunæ 16 Januarii, 1715.

Whereas by Order of this Houſe on *Thurſday* laſt, the Lords impeached were allowed Time to put in their Anſwers till this Day to the Articles of Impeachment exhibited againſt them, the Houſe being this Day, moved in regard the Counſel aſſign'd ſome of the ſaid Lords refuſed to be concerned for them, that *Thurſday* next may be appointed peremptorily for them to put in their ſeveral Anſwers to the ſaid Articles: It is Ordered, That the ſeveral Lords do peremptorily put in their ſeveral Anſwers, to the ſaid Articles on *Thurſday* next at one of the Clock; and that the Lieutenant of his Majeſty's Tower of *London* do bring to this Houſe, on that Day, by that Time, the ſaid ſeveral Lords for the Purpoſes aforeſaid; and that Notice be forthwith given them of this Order.

Die Jovis 19 Januarii, 1715.

The Earl of *Wintoun* was brought to the Bar, by the Gentlemen-Uſher of the Black-Rod, where he kneeled until the Lord-Chancellor directed him to riſe, and his Lordſhip acquainted him with the above-mentioned Order, and demanded of him if he was ready to put in his Anſwer.

He ſaid he had a Petition to preſent to the Houſe: He was an entire Stranger to the Nature of their Lordſhips Proceedings, and deſired his Petition might be read; and the ſame was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled;

The Humble Petition of *George* Earl of *Wintoun*,

Humbly Sheweth,

THAT on *Thurſday* laſt I having applied to your Lordſhips, repreſenting how I had cauſ'd Application to be made to two Lawyers, to act as Counſel for me, in the Impeachment exhibited before your Lordſhips againſt me by the Honourable Houſe of Commons, and that they both declin'd to meddle, for Reaſons then given; your Lordſhips were pleaſed to allow me ſome more Time for Nominating of Counſel, and Sollicitors, and this Day for giving in my Anſwers; but by Reaſon of my cloſe Confinement, and that your Lordſhips Order for allowing ſome Perſons to have Acceſs to me, expired on *Friday* laſt at Eleven Forenoon, I have had no Opportunity of naming other Counſel and Sollicitors; nor can I have the Aſſiſtance of any, 'till they are appointed by your Lordſhips and they allow'd acceſs to me.

That your Petitioner has ſeveral Specialities and Matters of great Moment, which he conceives neceſſary to be a Part of his Anſwers, and which cannot be drawn into Form, without the Aſſiſtance of his Counſel and Sollicitors.

Foraſmuch therefore, as this Affair is to me of the greateſt Importance; may it pleaſe your Lordſhips to aſſign Sir *Conſtantine Phipps*, and Mr. *Peer Williams*, to be Counſel, and *Charles Menzies*, and Mr. *James Leſlie* to be my Sollicitors; and to order that they may have Acceſs to me from Time to Time during my Trial; as alſo that your Lordſhips would be pleaſed to allow Mr. *George Hereot*, a Miniſter of the Church of *England*, to have Acceſs to me from Time to Time, ſeeing I am confined in a Room alone.]

And your Petitioner ſhall ever pray, &c. WINTOUN.

The ſaid Earl of *Wintoun* was directed to withdraw; and being withdrawn accordingly,

The Order made on *Thurſday* laſt upon his Petition was read, as alſo the ſeveral Orders made on *Monday* laſt.

Ordered, That the Counſel mentioned in the ſaid Petition be aſſigned him, and that either of the ſaid Sollicitors be likewiſe aſſigned, and that he have Time to put in his Anſwer to the ſaid Articles till *Monday* next. And that the Clergyman mentioned in his Petition, being his Relation, may have Acceſs to him, provided he will ſtay in Cuſtody with him during his Confinement.

Then the Earl of *Wintoun* was again called in, and the Lord Chancellor acquainted him, that the Houſe had conſidered his Petition, and aſſign'd him the Counſel he deſir'd; and would aſſign him either of the two Sollicitors he ſhould chuſe; and that the Clergyman above-mentioned might come to him upon the Condition before expreſſed. Then the ſaid Earl of *Wintoun* naming Mr. *Menzies*, the Houſe accordingly aſſign'd him for his Sollicitor, and ordered, that the ſaid Counſel and Sollicitor may have Acceſs to him from Time to Time at all ſeaſonable Hours; and he withdrew.

Die Sabbati 21 *Januarii*, 1715.

A Petition of *George* Earl of *Wintoun* was preſented to the Houſe and read, praying that their Lordſhips would allow him ſuch further Time for putting in his Anſwer, as their Lordſhips ſhall think fit.

Ordered, That the ſaid Petition be rejected.

Die Lunæ 23 *Januarii*, 1715.

The Earl of *Wintoun* being brought to the Houſe according to Order by the Lieutenant of the Tower, the Gentleman-Uſher was commanded to bring him to the Bar, where he kneel'd until he was directed by the Lord Chancellor to riſe; and his Lordſhip acquainted him that this was the peremptory Day appointed by the Houſe for his putting in his Anſwer to the Articles of Impeachment exhibited againſt him by the Houſe of Commons, and asked him if he was ready to put in his Anſwer.

He thereupon made ſome Excuſes, and deſired further Time for that Purpoſe;

And was directed to withdraw.

Ordered, That the Earl of *Wintoun* be called in, and acquainted, that this Houſe, upon conſidering his Petition on *Saturday* laſt, for further Time to put in his Anſwer to the Articles of Impeachment exhibited againſt him, did reject his ſaid Petition; and having indulged him more than any of the Lords impeached, are ſtill of Opinion (this being the peremptory Day for putting in his Anſwer) to allow him no further Time, and that the Conſequence of his refuſing to plead which will enſue in Law is, that Judgment will be awarded againſt him, as if he had pleaded guilty. Then,

He was accordingly called in, and the Lord Chancellor acquainted him with the ſaid Matter.

He thereupon delivered in at the Bar his Anſwer fairly engroſſed on Parchment, which was read.

Die Sabbati 28 *Januarii*, 1715.

The Commons replied to the Anſwer of the Earl of *Wintoun*.

Die Mercurii 8 *Februarii*, 1715.

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *Thurſday* the ſixteenth Day of this inſtant *February* be, and is hereby appointed for the Trial of *George* Earl of *Wintoun* at the Bar of this Houſe in *Weſtminſter-Hall* upon the Impeachment of High-Treaſon exhibited againſt him by the Houſe of Commons.

Die Veneris 10 *Februarii*, 1715.

Upon reading the Petition of *George* Earl of *Wintoun*, ſetting forth, that he had a Petition in the Houſe on *Wedneſday* laſt, when their Lordſhips appointed *Thurſday* next for the Petitioner's Trial, deſiring that Conſideration might be had to the Diſtance of the Place, and the Seaſon of the Year, for bringing up of his Witneſſes, both Men and Women, from *Scotland* and other Parts; but the Noble Peer who promiſed, and would have moved the ſaid Petition, not being preſent at the Time of making the Motion for appointing a Day of Trial, the ſaid Petition was not preſented in Form, which occaſioned the Appointment of ſo ſhort a Time, wherein it is altogether impoſſible to prepare any Thing in order for the ſaid Trial: And praying that this Houſe will grant an Order to compel the ſeveral Witneſſes following (*viz.*) *John Gordon*, *George Trotter*, *George Hogg*, *John Stewart*, all Servitors to the Earl of *Wintoun*, —— *Beatoun*, Wife to Mr. *David Nicholſon* in *Tranent*, *Adam Purvis*, Clerk of the Epiſcopal Meeting-Houſe in *Tranent*, *Chriſtopher Seton* in *Port-Seton*, Lieutenant-General, —— *Wills*, —— *Forſter*, Eſq; —— *Miller*, Eſq; Capt. *Alexander Streton*, —— *Mackintoſh* of *Bordlim*, —— *Aenſlie*, and —— *Todd*, Bailiffs of *Muſſelbrough*, and the School-maſter of *Fiſherau*, to appear before this Houſe at the Trial, to give Evidence on Behalf of the Petitioner; and to allow ſuch Time for their coming hither, as, in regard to the Diſtance of the Place, and the Seaſon of the Year, and the Importance of the Affair, their Lordſhips, in their great Wiſdom and Juſtice ſhall think reaſonable: It is Ordered, That the Time appointed for the Trial of the Petitioner in *Weſtminſter-Hall* be, and is hereby, enlarged to *Thurſday* the eighth Day of *March* next: And that the ſeveral Perſons afore-named be, and are hereby, required to attend this Houſe on *Thurſday* the ſaid eighth Day of *March*, as Witneſſes on Behalf of the Petitioner, except ſuch of the ſaid Perſons as are now Priſoners for High-Treaſon; and that they ſhall have the Protection of this Houſe for their ſafe coming and going, during the Time of the ſaid Trial.

Trial put off to Thurſday March 8.

Die Lunæ 5 *Martii*, 1715.

Upon reading the Petition of *George* Earl of *Wintoun*, ſetting forth, that his Agents have uſed all Diligence poſſible in ſerving the Order of this Houſe for the Attendance of his Witneſſes; and now they are all on their Way hither, Part by Sea and Part by Land: And that the Nature of his Defence is ſuch, that if the Witneſſes were arrived, as none of them are, the Time would be too ſhort to prepare his Briefs, and inſtruct his Counſel; and praying that the Time appointed for his ſaid Trial may be enlarged for ſuch Time as their Lordſhips, in their great Juſtice and Wiſdom, ſhall think proper, in a Caſe of ſo great Conſequence: It is ordered, that the Time appointed for the Petitioner's Trial be, and is hereby, enlarged, till *Thurſday* the fifteenth Day of this inſtant *March*, at ten of the Clock in the Forenoon.

Die Lunæ 12 *Martii*, 1715.

A Petition of *George* Earl of *Wintoun* was preſented to the Houſe and read, ſetting forth, that his Agents have uſed all poſſible Diligence in getting his Witneſſes hither, and ſeveral of them are lately arrived, but four of the moſt material of them, though they all be on their Way hither, are not yet come up, ſome of them being lame and others very infirm, ſo that they are not able to travel ſo quickly; and praying, that the Time appointed for his Trial may be enlarged for ſuch Time as their Lordſhips, in their great Juſtice and Wiſom, ſhall think proper, in a Caſe of ſo great Concern.

And after Debate thereupon, and reading the Orders made in relation to the ſaid Trial, *Charles Menzies*, the Petitioner's Sollicitor, was called in, and examined upon Oath at the Bar, touching the Allegations of the ſaid Petition; and failing to make good the ſame;

And being withdrawn,

It was moved to reject the Petition.

And the Queſtion being put whether the ſaid Petition ſhall be rejected, it was reſolved in the Affirmative.

Die Martis 13 *Martii*, 1715.

Several Orders were made for preſerving the Peace, and touching the Courſe of Proceeding, to and at the enſuing Trial; and among them,

Ordered, That the Counſel aſſigned the ſaid Earl of *Wintoun* may be preſent when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any ſuch ſhall ariſe.

Die Mercurii 14 *Martii*, 1715.

Upon reading the Petition of *George* Earl of *Wintoun*, praying that his Houſe will be pleaſed to aſſign and add Mr. *Kettelby* and Dr. *Strahan* to his Counſel formerly named, and that they may have Acceſs to him during his Confinement: It is Ordered, that the Counſel above-mentioned be aſſigned the Petitioner, to be heard to Matters of Law, but not to Matters of Fact, ſo as not to put off the Petitioner's Trial, and that they, or either of them, have Acceſs to the Petitioner from Time to Time, at all ſeaſonable Times.

A Motion being made, that the following Perſons, whoſe Names were contained in a Liſt exhibited at the ſame Time, on Behalf of the Earl of *Wintoun*, might be ſummoned as Witneſſes for the ſaid Earl at his Trial; being then, as alledg'd, in or near the City of *London*.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, That *John Gordon* of *Kirkhill*, *Alexander Nisbet* Writer in *Edinburgh*, *William Knox*, *Thomas Bain*, *John Watteſone*, all three of *Seaton*, Mrs. *Magdalen Coriſhie* of *Canongate*, *Agnes Duncan* of *Seaton*, Dr. *Lidderdale*, a Phyſician, Doctor *Cockburne* a Divine, Dr. *John Inglis*, Major *Sinclaire* *George Trotter*, and *George Hogg* of *Seaton*, be and are hereby required to attend this Houſe in *Weſtminſter-Hall*, To-morrow at ten of the Clock in the Forenoon, in order to be examined as Witneſſes on the Behalf of *George* Earl of *Wintoun* at his Trial.

The Houſe being informed that the Earl of *Wintoun* deſired that General *Carpenter* might be examined as a Witneſs at his Trial:

The ſaid General *Carpenter* being a Member of the Houſe of Commons;

A Meſſage was ſent to that Houſe by Mr. *Holford* and Mr. *Lovibond*, to acquaint them, that the Lords do deſire that they will give Leave to the ſaid General *Carpenter* to be examined at the ſaid Earl's Trial.

Ordered, That the Witneſſes which ſhall be produced by the Earl of *Wintoun* to be examined in his Defence, ſhall be examined upon Oath, which Oath to be adminiſter'd to the Witneſſes on both Sides at the ſaid Trial ſhall be this:

> *The Evidence which you ſhall give in this Trial, concerning* George *Earl of* Wintoun, *Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth.*
>
> So help you God, and the Contents of this Book.

Die Jovis 15 *Martii*, 1715.

The Meſſengers ſent Yeſterday to the Houſe of Commons, return Anſwer, that the Commons have given Leave to General *Carpenter* to be examined as a Witneſs at the Trial of *George* Earl of *Wintoun*.

The Houſe was then adjourned to *Weſtminſter Hall*.

Begun in Weſtminſter-Hall *on* Thurſday, March 15, 1715-16.

The firſt Day.

ABOUT one of the Clock, the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, in the Manner following.

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerks Aſſiſtant to the Houſe of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commiſſion to the Lord High-Steward.

The Maſter in Chancery, two and two.

Then the Judges.

The Peers Eldeſt Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeomen Uſhers of the Houſe.

Then the Peers, two and two, beginning with the youngeſt Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purſe-Bearer.

Then Garter King at Arms; and the Gentleman-Uſher of the Black Rod, carrying the White Staff before the Lord High-Steward.

William Lord *Cowper*. The Lord High-Steward alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack.

The Clerk of the Crown, in the Court of Chancery, ſtanding before the Clerk's Table, with his Face towards the State, having his Majeſty's Commiſſion to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, preſented the Commiſſion to the Lord High-Steward; after which, and uſual Reverences, the ſame was carried down to the Table: And then Proclamation for Silence was made in this manner:

O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High-Steward ſtood up, and ſpoke to the Peers.

Lord High-Steward. His Majeſty's Commiſſion is going to be read; your Lordſhips are deſired to attend.

All the Peers uncovered themſelves and they and all others ſtood up uncovered while the Commiſſion was reading.

GEORGIUS R.

'GEORGIUS, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Prædilecto & Fideli Conſiliario noſtro Willielmo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem, Cum Georgius Comes de Winton, cum aliis, coram Nobis in præſenti Parliamento, per Milites, Cives & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione per ipſum Georgium Comitem de Winton, & al' commiſſ' & perpetrat' in nomine ipſorum Militum, Civium & Burgenſium, & nomine omnium Communium Regni noſtri Magnæ Britanniæ impetit' & accuſat' exiſtit. Nos conſiderantes quod Juſtitia eſt Virtus excellens & Altiſſimo complacens, Volenteſque quod prædict' Georgius Comes de Winton, de & pro Proditione unde ipſe ut præfertur impetit' & accuſat' exiſtit coram Nobis in præſenti Parliamento noſtro, ſecundum Leg' & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ, & ſecundum Conſuetudinem Parliamenti audiatur, ſententietur & adjudicetur, cæteraque omnia quæ in hac parte pertinent debito modo exerceantur & exequantur, ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro aſſemblat' Nobis humillime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac vice conſtituere dignaremur. Nos de fidelitate, prudentia, provida circumſpectione, & induſtria veſtris plurimum confidentes, Ordinavimus & Conſtituimus vos ex hac Cauſa Seneſcallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmiſſa diligenter intendatis, & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertinent & requiruntur hac vice faciatis, exerceatis, & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte meipſo apud Weſtm' Decimo Quinto Die. Per ipſum Regem propria Manu Signat'

Wrighte.'

Serjeant at Arms. God ſave the King.

Then the Herald and Gentleman Uſher of the Black Rod, after three Reverences, kneeling, preſented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermoſt Step but one of the Throne, as it was prepared for that purpoſe, and then ſeated himſelf in the Chair, and delivered the Staff to the Gentleman Uſher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purſe on the Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then another Proclamation was made, as follows:

O Yes, O Yes, O Yes! Lieutenant of the Tower of *London*, bring forth your Priſoner to the Bar, according to the Order of the Houſe of Lords to you directed.

Then *George* Earl of *Wintoun* was brought to the Bar by the Deputy Governor of the Tower, having the Ax carried before him by the Gentleman Jaylor, who ſtood with it on the Left Hand of the Priſoner, with the Edge turned from him. The Priſoner when he approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the Houſe of Peers; which Compliment was returned him by his Grace, and the Houſe of Peers.

And Proclamation being again made for keeping Silence,

The Lord High-Steward ſpake to the Priſoner as follows:

George Earl of *Wintoun*, you are brought to the Bar of this Auguſt Judicature, in order to a fair and impartial Trial, on the Impeachment of High-Treaſon exhibited againſt you by the Commons of *Great-Britain* in Parliament aſſembled; to which you have anſwered, and pleaded Not Guilty: Thereupon the Commons have replied, and undertaken to prove you guilty of the High-Treaſon whereof you ſtand impeached.

Under this heavy Charge (of which your Lordſhip has long ſince had a Copy, and which you will now hear read again) nothing can be a greater Support to your Mind (eſpecially if not conſcious of Guilt) than to conſider, that you are about to be tried by your Peers; not any ſelect Number of them, but by their whole Body aſſembled in Parliament, and indifferently ſummoned to attend this Trial.

Hence your Lordſhip may be aſſured, that Juſtice will be adminiſter'd to you, attended not only with that Common Degree of Compaſſion which Humanity itſelf derives to Perſons in your Condition, but alſo with that extraordinary Concern for you, which naturally flows from a Parity of Circumſtances common to yourſelf, and to them who judge you; (thoſe Bonds, the weighty Accuſation laid upon you, with its Conſequences, almoſt only excepted.)

On the other hand, you muſt not hope, that if you ſhall be clearly prov'd guilty, their Lordſhips, being under the ſtrongeſt Obligation to do Right that can be laid on noble Minds, I mean that of their Honour, will not break through all the Difficulties unmerited Pity may put in their way, to do perfect Juſtice upon you, however miſerable that muſt render your Condition.

Your Lordſhip will not be interrupted while you are making your Defence in a proper manner; and therefore you will alſo attend with Patience to what ſhall be ſaid by the Managers of the Houſe of Commons, or given in Evidence againſt you.

When any of the Witneſſes produced againſt you by the Gentlemen of the Houſe of Commons are thoroughly examined by them, your Lordſhip will have Liberty to croſs-examine every Witneſs before another is called.

But the Counſel aſſigned you are not to croſs-examine any Witneſſes, nor to give you any Aſſiſtance public or private, while Matter of Fact only is in Queſtion; but if any Matter of Law ariſe during the Courſe of your Trial, they may ſpeak to it in your Lordſhip's Behalf: And to that End they are permitted to be within hearing, that they may be the more ready and able to ſerve your Lordſhip on ſuch Occaſion.

Your Lordſhip is the firſt that on an Impeachment for High-Treaſon will have had the Benefit of a good Law made in the firſt Year of the late Queen (ſince the Revolution;) whereby in all Trials for High-Treaſon, as well as other capital Offences mentioned in the Act, the Witneſſes produced on the Part of the Priſoner are to be examined on their Oaths: So that your Witneſſes will become entitled, in Reſpect of the Obligation under which they give their Teſtimony, to the ſame Degree of Credit as the Witneſſes produced againſt you will be.

I take it for granted, that if your Lordſhip deſires it, you will be allowed the Uſe of Pen, Ink, and Paper, to take Notes in order to your Defence: And I doubt not but if during the Trial you are obſerved to omit any juſt Advantage which the Law allows you, I ſhall not only be excuſed, but approved, if I put you in mind of it.

I am alſo commanded to acquaint your Lordſhip, that when you have Occaſion to ſpeak, you are to addreſs yourſelf to the Lords in general, and not to any Lord in particular; as all others who ſhall have Occaſion to ſpeak in this Trial will likewiſe take notice they are to do.

The Lord High-Steward having done, commanded the Articles of Impeachment, and the Earl of *Wintoun*'s Anſwer thereunto, as alſo the Replication of the Commons to the ſaid Anſwer, to be read; and the ſame were read accordingly, as follows.

ARTICLES *of Impeachment of High-Treaſon exhibited againſt* James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, George *Earl of* Wintoun, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn.

WHEREAS for many Years laſt a moſt wicked Deſign and Contrivance has been formed and carried on, to ſubvert the ancient and eſtabliſhed Government, and the good Laws of theſe Kingdoms, to extirpate the true Proteſtant Religion therein eſtabliſhed, and to deſtroy its Profeſſors; and inſtead thereof, to introduce and ſettle Popery and Arbitrary Power; in which unnatural and horrid Conſpiracy great Numbers of Perſons of different Degrees and Qualities have concerned themſelves and acted; and many Proteſtants, pretending an uncommon Zeal for the Church of *England*, have joined themſelves with profeſſed Papiſts, uniting their Endeavours to accompliſh and execute the aforeſaid wicked and traitorous Deſigns.

And whereas it pleaſed Almighty God in his good Providence, and in his great Mercy and Goodneſs to theſe Nations, to crown the unwearied Endeavours of his late Majeſty King *William* the Third of ever-glorious Memory, by making him the Inſtrument to procure the Settlement of the Crown of theſe Realms in the Illuſtrious Houſe of *Hanover*, as the only Means under God to preſerve our Religion, Laws and Liberties, and to ſecure the Proteſtant Intereſt of *Europe*; ſince which happy Eſtabliſhment the ſaid Conſpirators have been indefatigable in their Endeavours to deſtroy the ſame, and to make Way for the vain and groundleſs Hopes of a ſpurious Impoſtor and Popiſh Pretender to the Imperial Crown of theſe Realms.

And to accompliſh theſe Ends, the moſt immoral, irreligious and unchriſtian-like Methods have been taken, but more particularly in the laſt Years of the Reign of the late Queen *Anne*, during which Time all imaginable Endeavours were uſed by the ſaid Conſpirators to prejudice the Minds of the Subjects of this Realm againſt the Legality and Juſtice of the ſaid Settlement of the Crown: And for that purpoſe the Holy Scriptures were wreſted, and the moſt wholeſome Doctrines of the Church of *England* perverted and abuſed by Men in Holy Orders, in the moſt public and ſcandalous Manner, in order to condemn the Juſtice of the late happy Revolution; and thereby to ſap and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced by particular Marks of public Favour and Diſtinction; falſe and dangerous Notions of a ſole Hereditary Right to the Imperial Crown of theſe Realms were propagated and encouraged by Perſons in the higheſt Truſt and Employments, contrary

to the ancient undoubted and eſtabliſhed Laws of theſe Kingdoms; jeſuitical and ſcandalous Diſtinctions were invented and publickly inculcated, to enervate the Force and Obligation of thoſe Oaths which had been contrived in the plaineſt and ſtrongeſt Terms by the Wiſdom of Parliament for the Security of the ſaid Eſtabliſhment; and to conceal their Deſigns, and thereby the better to enable them to carry on the ſame, great Numbers of the ſaid Conſpirators of all Ranks and Conditions, pretending a Zeal for the Proteſtant Succeſſion, openly and voluntarily took the ſaid Oaths; groundleſs Fears of the Danger of the Church of *England* were fomented throughout theſe Kingdoms, to diſorder the Minds of well-diſpoſed Proteſtants.

By all which, and many other ſuch ungodly Practices of the ſaid Conſpirators, the moſt cauſeleſs and dangerous Jealouſies and Diſſatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Proteſtants were much diſquieted.

But nevertheleſs theſe diſhoneſt Methods were purſued by the ſaid Conſpirators with indefatigable Induſtry, as the only Means to weaken the Foundations of the ſaid happy Eſtabliſhment.

And whereas the Diſſolution of the late glorious Confederacy againſt *France*, and the Loſs of the Balance of Power in *Europe*, were further Steps neceſſary to compleat the Deſigns of the ſaid Conſpirators; and the ſame being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Proteſtant Succeſſion was thereby brought into the moſt imminent Danger; and by theſe and other pernicious Meaſures, the Deſtruction, ſo long intended by the ſaid Conſpirators, for theſe poor Nations, ſeemed near at Hand.

At which Time, and under which moſt deplorable Circumſtances, it pleaſed Almighty God in his infinite Wiſdom to call to himſelf the late Queen *Anne*, and by a Concurrence of many moſt wonderful Providences to give a quiet and peaceable Acceſſion to his preſent moſt Gracious Majeſty to the Throne of his Anceſtors, to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject and good Proteſtant, as their only lawful and rightful Liege-Lord; and altho' from the Moment his Majeſty aſcended the Throne to this Day, his Reign has been one Series of Wiſdom, Juſtice and Clemency; his Labours conſtant, unwearied and ſucceſsful to retrieve the Honour and Reputation of theſe Nations; to re-eſtabliſh the Trade and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderneſs ſhewn even to his Popiſh Subjects, and his conſtant Care has been to procure the univerſal Good of his People; nevertheleſs the ſaid Conſpirators have, by the moſt vile and impious Methods, renewed their Endeavours to throw theſe Kingdoms into the utmoſt Confuſion, and to entail endleſs miſeries on us and our Poſterities: For theſe Ends many of the above-mentioned moſt wicked and dangerous Practices have been repeated with the utmoſt Induſtry and Inveteracy, to delude, diſorder and corrupt the Minds of his Majeſty's good Subjects; the moſt groundleſs Jealouſies have been fomented againſt his wiſe and happy Adminiſtration, and in many Parts of his Kingdoms the moſt unnatural, unexampled Riots and Tumults, by the ſecret and malicious Endeavours of the ſaid Conſpirators, have been procured, ſtirred up, and encouraged againſt his peaceable Proteſtant Subjects, under falſe Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and ſeduce them from their Allegiance, and prepare them for an open Rebellion.

And the ſaid Conſpirators having at length reſolved to deprive theſe Nations of the invaluable Bleſſings which they now enjoy under the wiſe and gentle Reign of his preſent moſt gracious Majeſty King *George*, and of the certain Proſpect of Happineſs which they have for their Proſperity, in a Succeſſion of Princes derived from himſelf; did contrive, confederate, and reſolve to put their moſt malicious, wicked, and traitorous Deſigns into immediate Execution; for which purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, Jun. the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Clavering*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townly*, *Thomas Butler*, *Thomas Walton*, *Gabriel Haſket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traitors to his preſent moſt ſacred Majeſty King *George*, the only lawful and undoubted Sovereign of theſe Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his ſaid Majeſty, did, in or about the Months of *September*, *October*, or *November*, 1715, moſt wickedly, maliciouſly, falſely and traitorouſly imagine and compaſs the Death of his ſaid moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traitorous Purpoſe, they the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traitorouſly agree, confederate, conſpire, and reſolve, together with many other evil-diſpoſed Perſons, to raiſe, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County Palatine of *Lancaſter*, and elſewhere within this Kingdom, a moſt cruel, bloody and deſtructive War againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traitorous Manner, in order to raiſe Tumults and Rebellion within this Kingdom; and having procured great Quantities of Arms, Ammunition and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them, did form and compoſe, or did aſſiſt in the forming and compoſing an Army of Men, conſiſting of his Majeſty's Liege Subjects, in order to wage War againſt his ſaid Majeſty, for and in behalf, and in favour of the ſaid Pretender to the Crown of theſe Realms; and the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, at the Time and Times and Places aforeſaid; and at divers other Times and Places within this Kingdom, did maliciouſly and traitorouſly make, levy, and raiſe War and Rebellion againſt his moſt ſacred Majeſty; and in a warlike and hoſtile Manner did march thro' and invade ſeveral Parts of this Kingdom; and did unlawfully take and ſeize the Horſes and other the Goods and Chattels of many of the peaceable and good Subjects of his Majeſty, and in other Places did take and ſeize from his Majeſty's faithful Subjects, Guns, and other warlike Inſtruments, for their carrying on their traitorous Purpoſes.

And the ſaid laſt-mentioned Conſpirators, their Complices and Confederates, during their March and Invaſion aforeſaid, in open Defiance of his moſt ſacred Majeſty's juſt and undoubted Title to the Imperial Crown of theſe Realms, did wickedly and traitorouſly cauſe and procure the ſaid Pretender to be proclaimed in the moſt publick and ſolemn Manner, as King of theſe Realms; and in ſeveral Places in the Counties aforeſaid, or ſome of them, did unlawfully take and ſeize from his Majeſty's Officers of the Revenue the publick Money, for the Uſe and Service of the ſaid Pretender; and though many of the Conſpirators are avowed Profeſſors of the Popiſh Religion, yet the more effectually to cover and diſguiſe their moſt wicked and traitorous Deſigns, and to delude his Majeſty's Subjects, they did prevail on and ſecure ſeveral Men in Holy Orders, Miniſters of the Church of *England*, and who had before that time abjured the ſaid Pretender, to accompany, countenance and abet the ſaid moſt traitorous Enterprize; and in ſeveral Places in the Counties aforeſaid, where the ſaid Conſpirators, their Complices and Confederates then were, to pray for the ſaid Pretender in the public Churches, as King of theſe Realms:

That the ſaid laſt-mentioned Conſpirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforeſaid, traitorouſly ſeize and poſſeſs themſelves of the Town of *Preſton* in the County Palatine of *Lancaſter* againſt his Majeſty, and did then and there in a warlike and hoſtile Manner levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects.

All which Treaſons and Crimes above-mentioned were contrived, committed, perpetrated, acted and done, by the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and againſt the Laws and Statutes of this Kingdom.

Of all which Treaſons and Crimes, the Knights, Citizens and Burgeſſes in Parliament aſſembled, do, in the Name of themſelves and of all the Commons of *Great Britain*, impeach the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſations or Impeachments againſt the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them; and alſo of replying to the Anſwers which the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them, ſhall make to the Premiſſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited according to the Courſe and Proceedings of Parliament; and do pray, that the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, be put to anſwer all and every the Premiſſes: And that ſuch Proceedings, Examinations, Trials, and Judgments may be upon them and every of them had and uſed as ſhall be agreeable to Law and Juſtice.

The Anſwer of George *Earl of* Wintoun, *to the Articles of Impeachment exhibited againſt him by the Honourable Houſe of Commons, for High-Treaſon, and other High Crimes and Miſdemeanours.*

THE ſaid Earl ſaving to himſelf all Benefit of Exception to the Incertainties and Inſufficiencies in the ſaid Articles of Impeachment contained, and alſo all Advantages and Privileges belonging to him as a Peer of *Great Britain*, for Anſwer to the ſaid Articles ſays, That he cannot but eſteem it the greateſt Addition to his Afflictions, to fall under the Diſpleaſure of the Honourable Houſe of Commons: Yet as his Innocence under theſe Misfortunes is his Support, ſo he hopes it will be his Security. He being taken with Perſons that were in Arms againſt the Government, might reaſonably be preſumed to be equally guilty, and to be juſtly joined with them in the ſame Impeachment; but when it ſhall appear how much the Circumſtances of his Caſe differ from others, he does not doubt but your Lordſhips great Juſtice will diſtinguiſh him in Judgment; and that it will be as pleaſing to that Honourable Body, who are his Accuſers, to have an innocent Man acquitted, as one that is guilty condemned. He begs leave to take notice, that he is deſcended from a very ancient, noble Family, in whoſe Blood the Streams of Loyalty were always pure, never corrupted or polluted with Treaſon or Sedition; and he never degenerated ſo much from his Loyal Anceſtors, as to form or carry on any Deſign to ſubvert or alter the Conſtitution of theſe Kingdoms, but for the Preſervation of it was upon all Occaſions ready to ſacrifice his Fortune, and even his Life: He

was so cautious to avoid giving occasion to be suspected by the Government, that about eight Years ago, upon his Return from his Travels, he withdrew from all Conversation, and confined himself to his House, never corresponded by Letter with any Person whatsoever; yet to his great Misfortune, he could not be quiet or safe in his closest Retirement; for many Persons, both Officers and others of the Militia of the Shire of *Lothian*, under the specious Pretence of serving the Government, but in reality actuated by private Pique and Revenge, several times, contrary to Law, forcibly entered by Night into his Dwelling-House, called *Seaton* Palace, rifled it, turned his Servants out of Doors, and carried away the Provisions of his Family. The most Sacred Places did not escape their Fury and Resentment, they broke into his Chapel, defaced the Monuments of his Ancestors, took up the Stones of their Sepulchres, thrust Irons through their Bodies, and treated them in a most barbarous, inhuman and unchristian-like manner; Cannon and Mortars were brought to demolish his House, and several Troops of Dragoons having gotten the Possession thereof, some of them kept Guard there, and when they left it, many of the Militia enter'd, and kept Possession thereof till they were driven from thence by the Highlanders, by whom he was likewise very ill-treated, he being the only Person that was plunder'd by them. By these and many other Severities, the said Earl was forced to leave his House, and seek for Shelter among his Tenants and Neighbours, where he was pursued from House to House, and at last very unfortunately driven into the Company of some of the Gentlemen named in the Impeachment. He presumes to affirm to your Lordships, that he did not join them with a Traitorous, or Rebellious Design, but only with an Intention to preserve himself from being insulted and assassinated; for he had been once before taken up without any Warrant or Authority, and having got from the Persons in whose Custody he was, they threatened, if they could retake him, to murder him; and had before imbrued their Hands in the Blood of the Son of a neighbouring Gentleman. He never intended to have left his own Country; and when some Gentlemen mentioned coming into *England*, he oppos'd it; he was far from assisting or encouraging them in their Undertakings; he was not admitted into their Secrets, nor informed of their Designs, and was so much a Stranger to their Proceedings, that when they marched towards *Northumberland*, he was told they were going along the Skirts of the Hills in *Scotland* to avoid General *Carpenter*; but afterwards discovered they were in *England* when it was too late, and to return alone into *Scotland* was too hazardous, which he did not attempt, because he had reason to believe they would soon go back to *Scotland*.

Although he was constrain'd to keep the other Lords and Gentlemen Company, yet he never joined with them in any Act of Hostility, nor assisted in taking any of the public Money, or in seizing any Guns or other warlike Instruments, or countenanced or abetted them therein. He did not at *Preston* or elsewhere fire a Pistol, offer Violence to any Person whatsoever, or in any other manner fight against, or resist his Majesty's Forces, but with the rest surrendered himself to General *Wills*. The Honour of a Peer is more valuable than Life itself, and therefore he ought to be so much the more cautious that it be not stained with the least Imputation of Guilt. The said Earl knows his Innocence, and hopes your Lordships will excuse him, if in Justice to himself, and for the Preservation of his Honour, he does not take upon him the Guilt of Crimes, the very Thoughts of which were always Strangers to his Breast: And therefore, in Answer to the Impeachment, he says, that he is Not Guilty of the Treason and other the Crimes and Misdemeanors mentioned in the said Articles, or any of them, in Manner and Form as is therein alledged; and for his Trial puts himself on your Lordships, who are his Peers, and begs your Lordships to believe that his Answer proceeds from the Sense he has of the Truth of it, and not from Obstinacy or any Inclination to give your Lordships and the Honourable House of Commons any unnecessary Trouble, or from the least Doubt or Mistrust of his Majesty's Clemency. But if upon his Trial it shall appear, that he hath committed any Act which in the Rigour of the Law may be construed to amount to the Crime of High-Treason, he hopes the Innocence of his Heart, and his Ignorance in the Law will, by the Power of your Lordships Intercession, render him an Object of his Majesty's Mercy, which he and the rest at the Time of surrendering themselves were encouraged by his Majesty's Officers to depend upon. The said Earl submits his Case thus circumstanced to your Lordships great Wisdom and Judgment, and humbly prays your Lordships favourable Interpretation thereof, not doubting but to make his Innocence appear to your Lordships Satisfaction.

WINTOUN.

The Reply of the House of Commons to the Answer of George *Earl of* Wintoun.

A Message was brought from the House of Commons by Mr. *Hampden* and others, to acquaint this House, that they have considered the Answer of *George* Earl of *Wintoun* to the Impeachment exhibited against him by the Knights, Citizens, and Burgesses assembled in Parliament, and do aver their Charge against the said *George* Earl of *Wintoun* for High-Treason to be true, and that the said Earl of *Wintoun* is guilty of the High-Treason in such manner as he stands impeached; and that the Commons will be ready to prove their Charge against him at such convenient time as shall be appointed for that purpose.

Lord High-Steward. The Distance of this Place from the Bar is so very great, that I am obliged to ask your Lordships Leave that I come down to the Table.

Lords. Ay, ay.

Which being done accordingly,

The *Lord High-Steward* said, Gentlemen of the House of Commons, you will be pleased now to proceed.

Mr. *Hampden.* MY Lords, we appear in this Place in behalf of all the Commons of *Great-Britain*, to make good the Impeachment of High-Treason against the Prisoner at the Bar *George* Earl of *Wintoun*.

The Commons in Parliament assembled being justly alarmed with the Dangers to which this Nation has been exposed by the late unnatural Rebellion, have found it incumbent on them to enquire into the Authors and Promoters of so fatal and pernicious an Attempt, which was no less than to deprive these Nations of the invaluable Blessings which they enjoy under the wise and gentle Reign of his most sacred Majesty King *George*.

The indispensable Duty which the Commons owe to his Majesty, and to those they represent, engage them to appear in the Cause of their Country, by examining into the Rise and Progress of the said late traitorous Enterprize, contrived and carried on with an Intent to depose and murder his said Majesty, and to set up a Popish Pretender to the Crown of these Realms, and in consequence, to change the Constitution of this Nation, and to introduce a slavish and arbitrary Government.

The Earl of *Wintoun* appearing to the Commons to have been deeply engaged in the late Rebellion, their Zeal and affection, and their Concern for the Safety of the Nation, and the Protestant Succession, and the Liberties of the People, have rendered it necessary for them to bring to your Lordships Bar this Offender, against whom they have, in the Name of themselves, and of all the Commons of *Great-Britain*, exhibited Articles of Impeachment of High-Treason, setting forth and charging,

That the Earl of *Wintoun* (with his Associates named in the Articles and divers others), contrary to his Allegiance, did traitorously conspire and imagine the Death of his most Sacred Majesty; and in Aid of such Treason, did in the Months of *September*, *October*, or *November* 1715, resolve to levy in several Parts of *Scotland* and *England* a most destructive War against his Majesty.

That his Lordship, with other his Confederates, did assemble in a warlike manner, and procur'd Arms, Ammunition, and warlike Instruments, and did compose an Army to wage War against his Majesty, and did March thro' and invade several Parts of this Kingdom, and unlawfully seiz'd his Majesty's Treasure for the Service of the Pretender, and took away the Horses and other Goods of many of his Majesty's peaceable Subjects.

And that during the said March and Invasion, the Earl of *Wintoun*, with other Rebels, did, in open Defiance of his Majesty's undoubted Title to the Crown of these Realms, frequently cause the Pretender to be proclaimed in a public and solemn manner as King of these Realms.

That the more effectually to disguise these wicked Intentions, and to delude his Majesty's Subjects, the said Earl, with other Rebels did prevail on several Ministers of the Church of *England*, and who had abjur'd the Pretender, to pray for the Pretender in several public Churches as King of these Realms.

And that the said Earl, his Associates, and Accomplices, did in *November* last, traitorously possess themselves of the Town of *Preston*, in the County-Palatine of *Lancaster*, and did levy War and fight against his Majesty's Forces, and procured a miserable Slaughter and Murther of many of his Majesty's good and faithful Subjects.

My Lords, the Earl of *Wintoun* has, in his Plea to the said Impeachment, thought fit to deny part of this great and heavy Charge; and in Answer to other Parts of it, he suggests to your Lordships to the Effect following:

That being taken with Persons that were in Arms against the Government, he might be presum'd to be equally guilty with them; but that when your Lordships shall consider the Circumstances of his Case, he doubts not of finding a Distinction from others in your Judgment.

He acquaints your Lordships with the Loyalty of his Ancestors, from whose Character, he says, he is not so much degenerated, as to form or carry on a Design against the Constitution of these Kingdoms.

That to avoid being suspected by the Government, he withdrew himself some Years ago from all Conversation, and retir'd to his own House; but that several of the Militia of the Shire of *Lothian*, under pretence of serving the Government, did, contrary to Law, forcibly enter his Lordship's House, which they rifled, and committed several other Disorders there.

That afterwards Cannon and Mortars were brought to demolish his House, and several Troops of Dragoons took Possession of it; and upon their leaving it, the Militia came and kept Possession of his House till they were driven thence by the Highlanders, by whom he was also very ill treated.

That by these Severities, and afterwards not being suffered to live quietly among his Tenants, where he had retir'd for Shelter, he was driven into the Company of some of the Gentlemen named in the Impeachment; but affirms to your Lordships, that it was with an Intent to preserve himself from being assassinated.

That he opposed the Proposition of coming into *England*, and was not acquainted with the Designs of the other Gentlemen with him; and was surpriz'd when he found himself in *England*, but declin'd going back, because he believ'd they would soon return to *Scotland*.

That he did not assist in taking any of the public Money, or in seizing any warlike Instruments.

That he did not at *Preston*, or elsewhere, fire a Pistol, offer Violence to any Person, or fight against his Majesty's Forces, but surrender'd himself to the King's General.

And as an Inducement for such Surrender, his Lordship says, that he, and the rest with him, were at that time encouraged by his Majesty's Officers to depend on his Majesty's Mercy.

My Lords, notwithstanding what is contain'd in the Earl of *Wintoun*'s Plea to the Impeachment of the Commons, and the specious Explanation which his Lordship has given to such Proceedings of his, as were a Foundation to the Commons to include his Lordship in the Articles against the other Lords mentioned therein; we make no question but we shall shew the Fallacy and Insufficiency of the said Plea to our Charge against him, and make it appear, that no less is contain'd in our Accusation against his Lordship, than what the Law in every Man's Breast, the Light of Nature, and the Rules of Society disapprove of and condemn.

We shall in the Course of our Evidence prove to your Lordships, that the Earl of *Wintoun* joined early with the Rebels in *Scotland* in the Beginning of this Enterprize; and that the Disorders mentioned in his Plea to have been committed at his House, and which he alledges of the

the Ground of his leaving it, and ſeeking Shelter among the Rebels, were not the true Cauſe of his joining them, ſince his Lordſhip had left his Houſe before the Highlanders came to it.

This Noble Peer was too great a Perſon to act an ordinary Part in this Rebellion. He openly engag'd in it, and not only appeared in Perſon, but led on, and encouraged his Aſſociates in it; ſome of which, through the Bleſſing of God on his Majeſty's Arms, are now in the Hands of Juſtice, and others have ſuffer'd for the ſame Treaſon.

We ſhall prove to your Lordſhips, that the Earl of *Wintoun* form'd a Troop of Horſe, which he maintain'd at his own Charge.

That he afterwards commanded a Squadron of Horſe, and that he continued his Command thereof in the ſeveral Marches to *Preſton*, and until the Surrender of that Place to the King's Forces.

That during the ſeveral Marches of the Rebels, the Earl of *Wintoun* was with them on Horſeback, arm'd with a Sword and a Caſe of Piſtols; and that he never ſhew'd any Uneaſineſs, but always appear'd as forward as any one; and that at the Action at *Preſton* his Lordſhip was aſſiſting, and very active among the Rebels.

That at ſeveral Places in *Scotland* and *England*, his Lordſhip, and other Rebels, caus'd the Pretender to be proclaimed King of theſe Realms, and that his Lordſhip was preſent at ſuch Proclamations.

That his Lordſhip, and other Rebels, did in ſeveral Places cauſe his Majeſty's Treaſure to be ſeiz'd, for the Service of the Pretender; and did in ſeveral Places prevail on Miniſters of the Church of *England*, and who had abjur'd the Pretender, to pray for him in the public Churches, as King of theſe Realms.

That when the Rebels ſurrender'd themſelves at *Preſton* to the King's Forces, they were far from receiving any Aſſurances of Mercy from his Majeſty's Officers; but were acquainted by the ſaid Officers, that his Lordſhip, and others taken with him, had no Reaſon to expect Mercy, ſince they were taken in open Rebellion againſt his Majeſty.

My Lords, the Commons, who are ever vigilant for the Safety of his Majeſty, and for the Preſervation of the Liberties of the People, cannot anſwer it to God or their Country, if they ſhould neglect to exert themſelves, in bringing to exemplary Juſtice the open and declared Inſtruments of this Rebellion; and it is a Satisfaction to the Commons, that in the Courſe of their Interpoſition, to reſcue the Nation from the fatal Conſequences of the late unprovok'd Rebellion, whatever Miſrepreſentations other Proſecutions may have been formerly liable to, the Notoriety of this Rebellion has been ſo evident, that the moſt malicious of our Enemies want Confidence to deny it.

We are not ſurpriz'd, that Papiſts ſhould be engag'd in this Rebellion, tho' the moſt unnatural and unexampled in its Circumſtances, by being void of the leaſt Pretext of Provocation, ſince they maintain it lawful to kill a Heretic King, and ſuch they term his preſent Majeſty, and 'tis declar'd by them, that ſuch a Piece of Service is not only lawful, but pious, and agreeable to God.

But how Proteſtants could be poſſeſſed with ſuch a Spirit of Infatuation, and to ſuch a Degree be deluded, as to believe the moſt ſecure and effectual Way to protect the Church, was to have Recourſe to a Popiſh Prince, to reſcue it from the Danger they imagined it liable to, from the Proteſtant Succeſſion taking place: And how it could enter into the Hearts of Proteſtants to be fir'd with ſuch an ill-directed Zeal, as to act in conjunction with avow'd Enemies of their Religion and Liberties, is not to be accounted for; unleſs ſuch unnatural and deſtructive Attempts are ſome of the neceſſary Conſequences of the late Male-Adminiſtration.

No leſs was to be the Sacrifice, than of his Majeſty, and his Royal Family, (a Succeſſion of Princes appointed by Divine Providence to be the Guardians of the Proteſtant Intereſt in *Europe*) and of our preſent happy Conſtitution, to appeaſe the Fury of Papiſts and Proteſtants aſſociated in this Rebellion, and who envied us the Bleſſings we enjoy'd by the uninterrupted Exerciſe of our Religious and civil Rights and Privileges.

Had this Rebellion taken place, this Nation, the Glory of the Reformation, the moſt ſubſtantial Bulwark againſt Popery, and that had at the happy Revolution, under the Influences of King *William* the Third, of immortal Memory, triumph'd over the arbitrary Deſigns of our Enemies to ſubvert our Conſtitution, was to fall a Victim to Bigotry, Superſtition and Slavery, the pernicious and neceſſary Conſequences of introducing a Religion, void of natural Senſe and natural Conſcience.

If an Attempt to ſubvert the Government, to deſtroy the King, and ſet up a Popiſh Pretender: if marching in an hoſtile Manner: if carrying on a deſtructive War in the Bowels of the Nation, are only Acts of Surprize and Inadvertency, any Rebellion may be palliated over and excus'd; ſince ſcarce any Circumſtances can be added in Aggravation of that, which has lately been rais'd and carried in this Kingdom.

My Lords, I have acquainted your Lordſhips with the neceſſary Occaſion of this Proſecution: I have endeavour'd in the moſt impartial Manner to diſcharge the Truſt repos'd in me, by opening the Nature of the Charge againſt the Earl at the Bar. I have likewiſe ſtated to your Lordſhips the Subſtance of his Plea to the Impeachment of the Commons. I have given your Lordſhips a general View of the Evidence which we ſhall produce to make good our Charge, and to ſhew the Invalidity of the ſaid Plea; and from the Malignity of the late rebellious and traitorous Enterprize, and its fatal Tendency, I have repreſented the Neceſſity the Commons were under of applying to your Lordſhips for National Juſtice. I am not inſenſible how deficient I have been, in not ſetting a Matter of this Importance in the moſt advantageous Light; but I make no doubt, but that what is wanting in me, will be ſupplied by the Abilities of others that follow, and that your Lordſhips will find no Defect in their Diſcharge of the Parts they have taken in this Proſecution, whatever you may have found in the Opening of the Charge, and in that Part which has come to my Share.

Sir Joſeph Jekyll. I HAVE the Command of the Houſe of Commons upon me, to bear a Part in the Proſecution of their Impeachment againſt this Lord at the Bar.

And that which is aſſigned to me, is firſt to obſerve to your Lordſhips the Nature of the Charge; and in the next Place, to take notice of the Defence made to that Charge; and laſtly, to give your Lordſhips a general View of the Evidence which the Commons will produce to maintain their Accuſation.

And this I ſhall do with all the Plainneſs I am capable of, without attempting ſo vain and wicked a Thing, as to impoſe upon your Lordſhips, or divert you from the true Merits of this Cauſe.

My Lords, The Charge exhibited againſt this Lord, is a Charge of High-Treaſon; High-Treaſon at the Common Law, as declared by the Statute of the 25th of King *Edward* III. And there are two Species of High-Treaſon mentioned in that Statute, which the Commons have taken notice of in their Articles of Impeachment. The Firſt is compaſſing and imagining the Death of the King; the Second is levying War againſt his Majeſty.

My Lords, The Overt-Acts that are ſet down in the Articles, I think, may be reduced to theſe Heads: Firſt, A Conſpiracy of the Earl of *Wintoun*, with other Lords and Gentlemen his Accomplices, to levy War with an Intent to depoſe the King; and a Conſpiracy to levy ſuch a War hath been held a ſufficient Overt-Act of compaſſing and imagining the Death of the King.

My Lords, The next Overt-Act is, his Lordſhip's joining with his Accomplices in proclaiming the Pretender, which is endeavouring to ſet up another Prince in the Room of his Majeſty; and I believe it will not be doubted, but that is likewiſe an Overt-Act of the ſame Species of Treaſon. And if there wanted another Overt-Act, the levying War againſt the King with an Intent to depoſe him (which is likewiſe mention'd in the Articles, as a diſtinct Species of Treaſon) may ſerve for an Overt-Act of the other Species of compaſſing and imagining the King's Death; for tho' it is reckon'd in the Statute as a diſtinct Treaſon; yet it doth not thereby ceaſe to be of the Nature of an Overt-Act of compaſſing and imagining the King's Death which it was antecedent to, its being declar'd a diſtinct Species; and this Point is likewiſe ſupported by Authorities, and many Attainders have been upon it.

My Lords, The ſecond Species of High-Treaſon I charge upon this Lord, is, that of levying War againſt the King; and the Overt-Acts mentioned are, the forming an Army, marching in an hoſtile Manner, ſeizing a Town, the Town of *Preſton*, engaging and fighting with the King's Forces.

My Lords, perhaps it was not neceſſary to have alledged any of theſe Overt-Acts of levying War againſt the King, becauſe levying War itſelf being an Act, it ſuperſedes the Neceſſity of inſtancing particular Acts of Hoſtility. But to avoid all Cavals, theſe particular Acts are likewiſe alledged in the Commons Impeachment.

My Lords, I find another Crime charged upon this Lord who ſtands at the Bar, and that is Murder, the Murder of many of the King's faithful Subjects. And although this Crime is not mentioned in the Title of the Articles, and there was a good Reaſon for not doing it, ſince it is ſwallow'd up in the High-Treaſon, the greater Crime in the Eye and Eſtimation of the Law, yet it doth not thereby loſe its moral Exiſtence or real Guilt; but on the contrary, by accompanying the other Crime of High-Treaſon, is aggravated, and ſhews with what Miſchief his Heart may be filled, who at the ſame time he is murdering his Fellow-Subjects, is meditating the Deſtruction of his Prince, and the Overthrow of his Country's Liberty.

My Lords, this is the Nature of the Charge againſt my Lord. In the next Place I ſhall take notice of that which occurs to me to be material in his Lordſhip's Defence, or the Anſwer he hath put in to this Charge.

My Lords, he hath pleaded generally Not Guilty; but not wholly relying on that general Plea, he hath in his Anſwer added a particular Specification of his Caſe. He begins in his Anſwer, by taking notice and admitting, That 'he being taken with Perſons that were in Arms againſt 'the Government, might reaſonably be preſumed to be equally guilty, 'and to be juſtly joined with them in the ſame Impeachment.' He goes on to acquaint your Lordſhips with what ſevere and barbarous Uſage he met with at his Dwelling-Houſe, which he ſays forced him from his Houſe. He tells your Lordſhips at laſt, he was 'very unfortunately dri-'ven into the Company of ſome of the Gentlemen named in the Im-'peachment; *but* he preſumes to affirm to your Lordſhips, that he did not 'join them with a traitorous or rebellious Deſign, but only with an In-'tention to preſerve himſelf from being inſulted and aſſaſſinated; *then he* '*ſays*, Although he was conſtrain'd to keep the other Lords and Gentle-'men Company, yet he never joined them in an Act of Hoſtility.' But yet he is ſtill under ſome Diffidence of his Caſe, therefore your Lordſhips will find at the Cloſe of his Anſwer he ſays, 'But if upon his Trial it 'ſhall appear that he hath committed any Act, which in the Rigour of the 'Law may be conſtrued to amount to the Crime of High-Treaſon, he 'hopes the Innocence of his Heart, and his Ignorance in the Law, will, 'by your Lordſhips Interceſſion, render him an Object of his Majeſty's 'Mercy, which he and the reſt, at the Time of ſurrendering themſelves, 'were encouraged by his Majeſty's Officers to depend upon.'

My Lords, this ſpecial Caſe which my Lord hath made in his Anſwer, is not at all like the Caſe in my Lord Chief Juſtice *Coke*'s Third Inſtitutes, Fol. 10. upon an Impeachment of High-Treaſon. Several Perſons were found to join with Sir *John Oldcaſtle* and others (who were in open Rebellion) *pro timore Mortis, & quam cito potuerunt receſſerunt*, and thereupon they were acquitted; but here my Lord doth not pretend that any Force was upon him, when he went in and joined the Rebels. I may therefore preſume to ſay this Lord's Defence is a weak and doubtful one, but far be it from the Commons to deſire to convict his Lordſhip of the High-Treaſon charged upon him by an Infirmity in his Defence, or by any Means whatever, but by the Strength and Clearneſs of the Evidence they ſhall produce to your Lordſhips, and for that I ſhall trouble your Lordſhips but a very little with repreſenting to you the general View of the Evidence that we ſhall produce, and it is this: This Lord thought fit to go in and join the Rebels, not alone, but accompanied with fourteen of his own Servants; when he was there, he formed a Troop, conſiſting of his own Servants, and others; he paid the Troop, com-

commanded a Squadron of the Rebels Horſe in their March; aſſiſted at the ſeveral Proclamations of the Pretender; when there was an Alarm given of the coming of the King's Forces, he got on Horſe-back in order to oppoſe and fight them; and he was in Arms and active with the Rebels in the Action at *Preſton*; and we ſhall ſhew your Lordſhips that at the Surrender there no Promiſe was made, no Expectation of Mercy was raiſed by any of the King's Officers in the Mind of this Lord, or of any of his Accomplices.

My Lords, though this be not material to the Iſſue now joined before your Lordſhips, yet it being put into my Lord's Anſwer, and being neceſſary for the Vindication of public Juſtice, we ſhall ſhew plainly there was not the leaſt Encouragement or Intimation of that kind given.

My Lords, the Evidence will be more largely and particularly taken notice of by the Gentleman who is to come after me; and I am ſure my Defects will be amply made up, by what he will offer to your Lordſhips.

But I can't ſit down without taking notice, that if this heavy Accuſation be prov'd againſt the Lord at the Bar, it is a ſtrange Notion of Loyalty, ſo much boaſted of in my Lord's Anſwer, which he hath been pleaſed to entertain.

My Lords, there is not a nobler or more uſeful Principle belonging to a *Britiſh* Subject, than true Loyalty: Loyalty is a faithful and dutiful Obedience to the King, under the Sanction and Direction of the Law. If therefore his Lordſhip hath contracted the Guilt of this high Offence againſt the Law, which is charged upon him, he hath offended againſt this Principle: And this I will ſay in general, whoever they be who caſt the Law out of the Idea of Loyalty, they looſen the Bands of Allegiance; for it is the Law that binds upon the Conſcience of the Subject the Faith and Allegiance he owes to his Sovereign, as it doth upon the Conſcience of the Sovereign, that Juſtice and Protection he affords to his Subjects.

Mr. Attorney-General. Sir Edward Northey. MY Lords, the Charges of High-Treaſon mentioned in the Articles of Impeachment exhibited by the Commons of *Great-Britain* againſt the Earl of *Wintoun*, the Priſoner at the Bar, and the Nature of his Crimes, having been fully open'd by Mr. *Hampden* and Sir *Joſeph Jekyll*; what remains for my Part is to give your Lordſhips an Account of the Nature of the Evidence we ſhall produce to your Lordſhips againſt the Priſoner, to prove him guilty of the High-Treaſon for which he ſtands impeached. He is charged with two Species of Treaſon, mentioned in the Statute of the 25 *Edw.* III. *viz. Firſt*, Compaſſing and imagining the Death of our Sovereign Lord the King, whom God long preſerve. *Secondly*, Levying War againſt the King within this Realm.

The Evidence that will be a Proof of the latter Treaſon, will alſo prove the firſt: For levying War to depoſe the King, is an Overt-Act of conſpiring the Death of the King, and hath always been ſo adjudged.

I ſhall briefly, and with as much Clearneſs and Truth as I can, ſtate the Evidence againſt the Priſoner, as it will appear by the Witneſſes we ſhall produce, without aggravating any thing which I do not think proper or neceſſary, your Lordſhips being Judges of the Fact, and of the Law ariſing thereupon. I ſhall only make this Obſervation on the Preamble to the Earl's Plea, that it directly contradicts his Plea of Not Guilty; and that if what he alledges be taken as true, he therein owns himſelf to be guilty, though from thence he concludes, that he is not guilty.

In *September* laſt the late Earl of *Mar* in *Perthſhire*, and in the beginning of *October* Mr. *Forſter* with ſome of the attainted Lords in *Northumberland*, with a great Number of armed Men, raiſed a Rebellion in Favour of the Pretender, and proclaimed him King of theſe Realms, and ſet up his Standard.

About the ſeventh or eighth Day of *October* laſt, the Earl of *Wintoun* left his Seat at *Seaton* in the County of *Lothian*, armed with a broad Sword and Piſtols, and carry'd with him fourteen or fifteen of his Servants well mounted, and ſo armed; about the tenth Day of *October* joined the Earl of *Carnwath* and the Lord Viſcount *Kenmure* at *Moffett* in the County of *Annandale*, and there they formed a little Army, which was commanded by Lord *Kenmure* till they joined *Forſter*.

The Lord *Wintoun* formed a Troop with his own Servants and others, and it was called his Troop, and he paid his own Servants eighteen-Pence or two Shillings a Day, and he commanded from that Time a Squadron of Horſe, till he and the others ſurrendered to the King's Forces at *Preſton*.

About the fourteenth or fifteenth Day of *October*, the Earl of *Wintoun* and the reſt of the Rebels marched from *Moffett*, in a hoſtile Manner, with Trumpets and a Standard to *Lochmaben*. There the Pretender was proclaimed King of *Scotland*, *England*, &c. and the Earl of *Wintoun* attended and joined in the Proclamation, with his Sword drawn. Thence the Rebels marched to

Auchtelfechen, *Jedburg*,
Langholm, *Rodberry*,
Hawick, *Wooler*,

where, about the twentieth Day of *October*, *Forſter* and his Rebels, being about five hundred, joined the Lord *Wintoun* and the other *Scots*, being three Troops of Horſe.

From *Wooler* they all marched to *Kelſoe* in *Tiviotdale*, where the Highland Foot, commanded by *Mackintoſh*, joined them. There, at the Croſs, the Pretender was again proclaimed King, with Sound of Trumpet and Colours flying, the Lord *Wintoun* and the reſt aſſiſting.

On the ſeventeenth Day of *October* they marched back to *Jedburg*, and there were alarmed with an Account that the King's Forces were near; on which they mounted, and marched out of Town, and drew up, the Earl of *Wintoun* being very active; but the Forces advancing being diſcovered to be part of the Rebels, they returned to *Jedburg*; and on the twenty-ninth Day of *October* they marched to *Hawick*.

Here Cockades were made of blue and white Ribbons for the *Scots* Rebels, to diſtinguiſh them from the *Engliſh*, who had red and white, and the Earl of *Wintoun* wore one, and gave others to his Men.

On the thirtieth Day of *October*, from *Hawick* they marched to *Langholm*: Here, on the thirty-firſt Day of *October*, about five or ſix Hundred of the Highland Foot left them, and went back; and they would not ſuffer any Perſon to come to them, to perſuade them to return, but the Earl of *Wintoun*; and he went to perſuade them, but could not prevail, and he returned, and declared it was not his Fault that they went away; and he after very much promoted the Rebels coming into *England*.

Here the Earl might have ſafely left the Rebels, if he had thought fit, without Hazard; and he had not gone alone, as in his Preamble he alledges.

From *Langholm* the Rebels marched to *Langtown* in *Cumberland*; and on the firſt Day of *November* to *Brampton*; on the Second to *Penrith*; on the Third to *Appleby*; on the Fifth to *Kendall*; and on the Sixth to *Kirby-Lonſdale*.

At all theſe Places the Pretender was proclaimed King, the Earl of *Wintoun* aſſiſting.

On the Seventh Day of *November* they marched from *Kirby-Lonſdale* to *Lancaſter*, into which the Rebels marched with their Swords drawn, particularly the Earl of *Wintoun*; and here they again proclaimed the Pretender King, Lord *Wintoun* aſſiſting in the Circle.

Here the Rebels ſeized Arms, and ſome Pieces of Cannon.

From *Lancaſter* the Horſe of the Rebels marched on the Ninth Day of *November* to *Preſton*, the Foot halted at *Garſtang*, and came to *Preſton* the Tenth.

In the Way to *Preſton* the Rebels were joined with about Fifteen Hundred Men, moſt part being of the County of *Lancaſter*.

And at *Preſton* the Pretender was again proclaimed at the Croſs.

During this March, at ſeveral Places, particularly at *Duns*, *Brampton* and *Appleby*, the publick Revenue of the King was collected by the Rebels, and Ceſſes raiſed on the King's Subjects.

They marched with Drums, Trumpets and Colours; and, where they could, took Priſoners ſuch as appeared for his Majeſty.

They cauſed the Pretender to be pray'd for, as King, in the Churches in *Lancaſter*, and other places in their March.

Their conſtant Health was the Pretender's, by the Name of King *James*, and Succeſs to their Cauſe.

During the whole March the Earl of *Wintoun* never ſhewed any Uneaſineſs or Backwardneſs, but always appeared as forward and active as any of the Rebels.

Mr. *Calderwood*, their Quarter-Maſter quartered the *Scots* in all Places; and the beſt, next to the Lord *Kenmure*'s, he provided for the Earl of *Wintoun*, who uſed to complain, if good Quarters were not provided for him.

The next Part of our Evidence will be to ſhew what happened at *Preſton*, of which the Rebels had taken Poſſeſſion the Tenth Day of *November*.

On *Saturday* the Twelfth Day of *November*, about One in the Afternoon, General *Wills* with the King's Forces inveſted the Town, and attacked it that Day and on *Sunday*, and the Rebels defended it, and had made a Barrier at the entering of the Town, and planted the Foot in ſeveral Lanes and Streets for their Defence, and had the Cannon with them which they ſeized at *Lancaſter*.

The Earl of *Wintoun* during the Attack was with the other Lords, at the Head of two hundred Men, drawn up in the Market-Place; he had his Sword, a Piſtol in one Hand, and another in his Breaſt; during that Attack, ſeveral of his Majeſty's Officers and Soldiers were killed.

On *Sunday*, about Ten in the Morning, General *Carpenter* came alſo to *Preſton*, with the King's Forces under his Command. Thereupon the Rebels finding themſelves to be ſurrounded, about Three in the Afternoon ſent out Colonel *Oxborough* to the Generals, to know what Terms would be granted to them, if they would ſurrender: The Generals gave this Anſwer, That no Terms would be granted to them, but that they muſt ſurrender at Diſcretion.

Soon after the Rebels ſent out Captain *Dalziel*, to deſire time till Seven a-Clock on *Monday* Morning, to conſider whether they ſhould ſurrender at Diſcretion. Upon which General *Carpenter* ſent Colonel *Churchill*, and General *Wills* Colonel *Cotton*, into the Town, to acquaint the Rebels that the Time deſired ſhould be allowed them, provided they ſent out immediately an *Engliſh* Lord, and one of the *Mackintoſhes*, as Hoſtages, that none within the Town ſhould attempt to Eſcape, or make any Works for their Defence.

Colonel *Churchill* and Colonel *Cotton* went into the Town, and there met the Earl of *Wintoun* and the other Lords, and Mr. *Forſter*, and told them their Meſſage: All the Lords treated with them about the ſurrendering the Town, and ſeverally gave their Words, that if Time might be allowed them till next Morning to ſurrender, they would uſe their Endeavours that none ſhould make their Eſcape, and that they would not throw up any new Works for their Defence. Which Terms were agreed to, and the Earl of *Derwentwater* and Colonel *Mackintoſh* were delivered to them, and brought to the Generals as Hoſtages, and ſtaid all Night; and in the Morning early the Rebels agreed to ſurrender at Diſcretion; and the Lord *Foreſter* took Poſſeſſion of the Town, where he found the Earl of *Wintoun* in Arms, and he ſurrendered himſelf to the Lord *Foreſter*, and delivered to him two Caſes of Piſtols; and being in Cuſtody, complained of the little Regard Mr. *Forſter* had ſhewed to a Man of his Quality, and ſaid all the Reſpect that he had ſhewed him, was to give him the Poſt of Honour when there was any Danger.

The Generals *Carpenter* and *Wills* never offered any other Terms than that the Rebels ſhould ſurrender at Diſcretion, never promiſed them Mercy, or that they would even intercede for Mercy for them; nor gave the Colonels, ſent into the Town, any Orders to offer Mercy; nor did they: All the Encouragement they gave them to ſurrender at Diſcretion, was, that if they did ſo, they ſhould not be immediately put to the Sword by the Soldiers; and denied to promiſe, even to recommend them to the King's Mercy.

This is the Subſtance of the Evidence we ſhall lay before your Lordſhips, and the Order we ſhall give it in; and if what I have opened be proved, as I believe it will, or I would not have mentioned it, I apprehend it will fully prove the Charge againſt the Noble Lord, and ſhew how vain the Allegations in the Preamble to his Plea are.

I beg leave to ſay one thing more. The Noble Lord alledges, in the Preamble to his Plea, that he never ſhot off a Piſtol: Certainly that is not material, for aſſembling and marching in a Hoſtile Manner for a publick Purpoſe, and oppoſing the King's Forces, is levying a War, although the Lord accuſed never ſhot off a Piſtol.

We will call our Witneſſes, and begin with *William Calderwood*, who was Quarter-Maſter the whole time with Lord *Wintoun*.

Sir *J. Jekyll.* My Lords, we deſire that *William Calderwood* may be ſworn.

L. H. Steward. Is it *William Calderwood* you call?

Sir *J. Jekyl.* My Lords, we deſire *William Calderwood* may be ſworn.

And he was ſworn by the Clerk accordingly.

Sir *J. Jekyll.* Mr. *Calderwood*, pray, acquaint my Lords with what you know concerning this Rebellion, or any Part that the Noble Lord at the Bar had in it; tell the Story according to your own Method.

L. H. Steward. Do you hear what Queſtion is aſked? You are upon your Oath; give an Account of what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it.

Calderwood. Upon the Eleventh of *October* I went, with about Seventy Horſe, to join my Lord *Carnwath*, my Lord *Wintoun*, and my Lord *Kenmure* at *Moffett*; where the Pretender was proclaimed.

Att. Gen. We deſire that he may acquaint your Lordſhips, what Number of Men they had at *Moffett*.

Calder. One Hundred and Fifty.

Att. Gen. What Number of Men?

Calder. One Hundred and Fifty.

Att. Gen. Was the Priſoner at the Bar amongſt them? and did he bring in any with him?----*Calder.* Yes.

Att. Gen. About what time did he come in?

Calder. Towards the Evening of the Eleventh Day.

Att. Gen. What Day?----*Calder.* The Eleventh.

Sir *J. Jekyll.* What Number did the Lord *Wintoun* bring with him?

Calder. About Fourteen.

L. H. Steward. You ſpeak of the Priſoner at the Bar; he came in with Fourteen Men?--*Calder.* Yes, my Lord.

Att. Gen. Were they all armed? or how many were armed?

Calder. I don't know whether all were, but the moſt part of them were, with Sword and Piſtol.

L. H. Steward. You have ſaid at what Place they were, but your Voice did not reach hither; at what Place?

Calder. At *Moffett*.

Sir *J. Jekyll.* When my Lord at the Bar joined the Rebels, what did they do? Go on, and tell your Story.

Calder. They went to *Lochmaben*.

Sir *J. Jekyll.* When did the Lord at the Bar join them there?

Calder. The next Day.

Att. Gen. What was done there?

Calder. The Pretender was proclaimed there next Day.

Att. Gen. Was the Noble Lord at the Bar aſſiſting at the proclaiming of him?---*Calder.* Yes, he was.

Att. Gen. In what manner did he aſſiſt?

Calder. With his Sword drawn, on Horſeback.

L. H. Steward. Who did aſſiſt at the Proclamation with a drawn Sword?

Calder. The Earl of *Wintoun*.

Att. Gen. Whence did you march from thence?

Calder. To *Auchtelfechen*.

Att. Gen. Whither did you march from thence?

Calder. To *Langholm*.

Sir *J. Jekyll.* And whither then?

Calder. To *Hawick*.

Att. Gen. Go on.

Calder. The Pretender was proclaimed there.

Sir *J. Jekyll.* Was the Lord *Wintoun* preſent at the Proclamation?

Calder. Yes.

Sir *J. Jekyll.* Whence did you go from thence?

Calder. To *Jedburg*.

L. H. Steward. Was the Pretender proclaimed there?---*Calder.* Yes.

Sir *J. Jekyll.* Who were preſent?

Calder. The Earl of *Wintoun*, *Carnwath*, and all the Lords.

Att. Gen. Where did you march then?---*Calder.* To *Rodberry*.

Att. Gen. What happened there?

Calder. We were join'd by General *Forſter*.

Att. Gen. How long did you ſtay there?---*Calder.* Two Nights.

Att. Gen. Was the Pretender proclaimed at *Rodberry*?---*Calder.* No.

Att. Gen. What Place did you go next to?---*Calder.* To *Wooler*.

Att. Gen. Whither from thence?

Calder. To *Kelſoe*; where we were join'd by the Highland Foot.

Sir *J. Jekyll.* What Foot do you mean?

Calder. The Highlanders.

Sir *J. Jekyll.* Who commanded them?---*Calder.* Brigadier *Mackintoſh*.

Sir *J. Jekyll.* From *Kelſoe* whither did you go?

Calder. Back again to *Jedburg*.

Sir *J. Jekyll.* Whither from *Jedburg*?---*Calder.* To *Hawick*.

Att. Gen. What happened at either of theſe Places?

Calder. Nothing.

Sir *J. Jekyll.* At *Hawick*, did nothing happen there?---*Calder.* No.

Att. Gen. Was the Pretender proclaimed at *Hawick* at either of the Times?

Calder. Yes, the firſt time, but not the ſecond.

Att. Gen. Who were preſent?---*Calder.* All the Lords.

Att. Gen. Name them---Was the Priſoner at the Bar there?

Calder. Yes.

Sir *J. Jekyll.* From *Hawick*, the ſecond time, to what Place did you go?

Calder. To *Langholm*.

Att. Gen. What happened at *Langholm*?

Calder. Five or Six Hundred of the Highland Foot went from us.

Att. Gen. Was there any Endeavours uſed to bring thoſe Five Hundred Highlanders back again?

Calder. I don't know of any.

Sir *J. Jekyll.* Who went to them? Did any of thoſe that were in Arms go to them?

Calder. I was not there when they went off.

Att. Gen. Did the Noble Lord attempt to go with them, the Priſoner at the Bar?

Calder. No; at *Jedburg* the Earl of *Wintoun* went up to them, to make them come back; where the Foot deſigned to go, and the Horſe were drawn up; and they would have nobody come to them but the Priſoner.

L. H. Steward. I do not hear you; What do you ſay?

Calder. At *Jedburg* the Earl of *Wintoun* went to them.

Att. Gen. Did he declare any thing after his Return, about their going off, or their not returning?

Calder. No, not at *Jedburg*.

Att. Gen. Any where elſe?

Calder. I heard him at *Langtown* ſay, it was not his Fault they were gone off.

Att. Gen. Pray, might not my Lord *Wintoun* have gone off with them, if he would?---*Calder.* Yes, he might.

Att. Gen. From *Langtown* whither did you go?

Calder. To *Brampton*.

Att. Gen. Whither next?---*Calder.* To *Penrith*.

Att. Gen. Whither next?---*Calder.* To *Appleby*.

Att. Gen. Whither next?---*Calder.* To *Kendall*.

Att. Gen. Whither next?---*Calder.* To *Kirby-Lonſdale*.

Att. Gen. What happened there?

Calder. The Pretender was proclaimed at the two laſt Places.

Sir *J. Jekyll.* Who was there?

Calder. I ſaw him there.

Sir *J. Jekyll.* Who?

Calder. The Earl of *Wintoun* at *Kirby-Lonſdale*.

Sir *J. Jekyll.* Whither did you go from thence?

Calder. To *Lancaſter*.

Sir *J. Jekyll.* Was the Pretender proclaimed there?

Calder. Yes.

Sir *J. Jekyll.* Who were preſent?

Calder. Earl of *Wintoun*, *Kenmure*, *Carnwath*, *Nithiſdale*.

Sir *J. Jekyll.* How did they enter the Town of *Lancaſter*?

Calder. Sword in Hand.

Att. Gen. Was there any Arms or any Guns ſeized?

Calder. Yes, ſix Cannon were ſeized.

Att. Gen. From whence did they take them?

Calder. From a Ship.

Att. Gen. Speak up, and tell my Lords.

Calder. They ſeized ſix Guns.

Att. Gen. Whence did they take them?

Calder. From a Ship.

Att. Gen. What became of them?

Calder. They carried them to *Preſton*, and mounted them there.

Att. Gen. What time came you to *Preſton* from *Lancaſter*?

Calder. What time? we ſtaid two Nights at *Lancaſter*.

Mr. *Cowper.* Sir, I deſire to ask you a Queſtion——Whether you was at Church at *Lancaſter*?---*Calder.* Yes.

Mr. *Cowper.* Who was prayed for there?

Calder. The Pretender as King of *England*.

Sir *J. Jekyll.* Who was at Church? Was it the Pariſh Church?

Calder. Yes, the Pariſh Church.

Sir *J. Jekyll.* Who was preſent at Church?

Calder. I don't remember.

Mr. *Cowper.* From *Lancaſter* whither did you go then?

Calder. We went to *Preſton*.

Mr. *Cowper.* What Day did you arrive at *Preſton*?

Calder. The Ninth or Tenth Day of *November*.

Mr. *Cowper.* Did the Horſe and Foot arrive the ſame Day?

Calder. No, the Horſe came in one Day, and the Foot another.

Mr. *Cowper.* How long after the Horſe did the Foot come?

Calder. The next Day; then the Pretender was proclaimed. The Horſe came in on a *Wedneſday*, the Foot on *Thurſday*.

Att. Gen. Had you any Diſtinction between the *Scots* and *Engliſh*, by Cockades?---*Calder.* Yes.

Att. Gen. What was the Diſtinction?

Calder. The *Scots* had Blue and White, and the *Engliſh* had Red and White.

Att. Gen. Did the noble Lord meddle with any Cockade?

Calder. Yes, he had one at *Hawick*.

Att. Gen. Did he diſtribute them?

Calder. Yes, he delivered them from my Hands.

L. H. Steward. Who do you ſpeak of? Raiſe your Voice.

Calder. I ſay, my Lord, the Earl of *Wintoun* had a Cockade at *Hawick*, and took ſeveral of them from my Hands, and gave them away as he thought fit.

Sir *J. Jekyll.* You ſaw the Earl of *Wintoun* at *Preſton* when the King's Forces came thither; do you remember what paſſed afterwards?

Calder. My Lord, I ſaw him, he had Sword and Piſtols; he was a-Foot by the Church-yard.

Att. Gen. As you came along to *Preſton*, acquaint my Lords whether you know any think of the public Revenues being collected?

Sir *J. Jekyll.* Before that, when my Lord was on Foot with Sword and Piſtols going towards the Church-yard, was there any Forces drawn up there?

Calder. Yes, both Horſe and Foot were drawn up in the Church-yard.

Sir *J. Jekyll.* While my Lord was in Company, and in this March, was there any Troop formed?

Calder. Yes, there was a Troop.

Sir *J. Jekyll.* Who had any of thoſe Troops?

Calder. My Lord *Wintoun* had the Firſt.

Sir *J. Jekyll.* Of whom did his Troop conſiſt?

Calder. In conſiſted partly of Gentlemen, and partly of his own Servants.

Sir *J. Jekyll.* By whom were they paid?

Calder. By my Lord *Wintoun*.

Sir *J. Jekyll.* How much a Day?

Calder. Two Shillings a Day.

Sir *J. Jekyll.* In what manner was the Troop accoutred?

Calder. Very well, with Swords and Piſtols.

Att. Gen. Did my Lord's Servants retain his Livery in the Army?
Calderwood. He had five in Liveries.
Att. Gen. What were the reſt? ——*Calder.* Domeſtic Gentlemen.
Att. Gen. Did my Lord command only that, or any other Body?
Calder. He commanded a Squadron.
Sir *J. Jekyll.* In your Paſſage, did my Lord diſcover any Uneaſineſs, or ſeek for any Opportunity of leaving them?
Calder. He never did that I know of.
Sir *J. Jekyll.* I think you quarter'd him; Did he complain of his Quarters at any Time?
Calder. He order'd me to give him good Quarters.
Sir *J. Jekyll.* And accordingly you did for him? ——*Calder.* Yes.
Att. Gen. We will go on. What happened at *Preſton?* What Time did the King's Forces come there?
Calder. We came on *Wedneſday*, they came on *Saturday*.
Att. Gen. Tell my Lords what happen'd after the King's Troops came to Town.
Calder. We defended the Town two Nights.
Att. Gen. When did they ſurrender?
Calder. They ſurrender'd on *Monday*.
Att. Gen. What paſt before? Did the King's Troops attack it, and demand a Surrender? ——*Calder.* Yes; and we defended it.
Sir *J. Jekyll.* Was there any Proviſion made to ſecure the Town? Acquaint my Lords how it was defended.
Calder. We barricado'd it in every Street.
Sir *J. Jekyll.* After what manner? How?
Calder. We had two Cannon in every Street.
Att. Gen. During the Time the King's Troops were at the Town, What Share did my Lord *Wintoun* bear in the Defence of it? Where was he?
Calder. I ſaw him go towards the Church-yard.
Att. Gen. Was there a Body of Men with him in the Church-yard?
Calder. Yes, there was.
Sir *J. Jekyll.* When my Lord joined the Men, and in his March, was there any levying of Money?
Calder. They raiſed Taxes, as they called it, a Ceſs.
Sir *J. Jekyll.* We have done with this Witneſs; if my Lord hath a Mind to aſk him any Queſtions, he is at Liberty to do it.
L. H. Steward. My Lord, if you have any Queſtion to aſk, propoſe it, and it ſhall be aſked.
L. *Wintoun.* I can't examine him; I deſire my Counſel may examine him.
L. H. Steward. I told your Lordſhip your Counſel are not to aſſiſt your Lordſhip in croſs-examining the Witneſſes; you have a Liberty of croſs-examining them yourſelf, by propoſing your Queſtions, and they will be aſk'd by the Court.
L. *Wintoun.* I never examined a Witneſs in my Life, I deſire my Counſel may do it for me.
L. H. Steward. Have you any Queſtions?
L. *Wintoun.* My Lord, I hope you will allow my Counſel to ſpeak for me.
L. H. Steward. Have you any Queſtion you deſire to be aſk'd, and it ſhall be aſk'd?
L. *Wintoun.* I deſire my Counſel may aſk for me; it is very hard to have none to ſpeak for me, and there are twenty againſt me.
[*Proclamation for Silence as uſual.*]
L. H. Steward. My Lord *Wintoun*, I hope now you will be better heard. If you have any Queſtion to aſk this Witneſs, if your Lordſhips propounds it, it ſhall be aſk'd him.
L. *Wintoun.* My Lord, allow my Counſel to ſpeak for me, I have but two.
L. H. Steward. My Lord, I have acquainted you, (but apprehend you did not hear me) that the Law of the Land doth not allow it.
Sir *J. Jekyll.* My Lords, if my Lord at the Bar doth not think fit to aſk this Witneſs any Queſtions, nor your Lordſhips, we muſt call another Witneſs.
L. H. Steward to Calderwood *the Witneſs.* Direct your Anſwer this way. You have mention'd ſeveral Proclamations of the Pretender, was there any at which my Lord, the Priſoner at the Bar, was not preſent?
Calder. I did not ſee him at the Proclamation at *Preſton*.
L. H. Steward. At how many other Places did you ſee him?
Calder. I ſaw him at *Wooler*, *Jedburg*, *Kelſoe*, and *Kirby-Lonſdale*, and *Lancaſter*, where the Pretender was proclaimed.
L. H. Steward. Did he join in cauſing him to be proclaim'd, or did he ſeem to miſlike it?
Calder. No, my Lord, he was always among the reſt.
Att. Gen. With your Lordſhip's Favour, the next Witneſs is *James Lindſey*, we deſire he may be ſworn.
L. *Wintoun.* My Counſel are preſent, pray, allow my Counſel to ſpeak for me, I am not uſed to ſpeak in ſuch Aſſemblies.
[Lindſey *was ſworn accordingly.*]
L. H. Steward. Who do you call next, Gentlemen?
Att. Gen. James Lindſey is ſworn, we deſire he may give your Lordſhips an Account, whether he was at any time at *Moffett* when the Pretender was proclaim'd, and what Share my Lord *Wintoun* had in it?---I believe it will be better to have ſomething for the Witneſſes to ſtand upon;---ſtay a little, till ſomething is brought to ſtand upon.
(*A Chair was brought to ſtand upon.*)
Sir *J. Jekyll.* Was you at *Moffett?*
Lindſey. Yes.
Sir *J. Jekyll.* What paſt there? and who was at that Place?
L. H. Steward. Keep your Face, and direct your Anſwer this way; tho' the Gentlemen on the left Hand aſk you Queſtions, keep your Face this way.
Lindſey. I ſaw ſeveral Gentlemen.
Sir *J. Jekyll.* But did you ſee my Lord *Wintoun* there?
Lindſey. Firſt I ſaw him there; the ſecond time at *Jedburg*; the third Time at *Kendall*; and the laſt at *Preſton*.
Sir *J. Jekyll.* You ſaw him at theſe Places you have mentioned, What happened at either of theſe Places?
Lindſey. The firſt time I ſaw him, he was riding on a grey Horſe, mounted with Sword and Piſtol; the ſecond Time ſitting with the Guard; and at *Kendall* on Horſeback, when he came out of Town, I ſaw him riding on Horſeback; and at *Preſton*, I ſaw him riding at the Market-Place, with other Gentlemen along with him.
Sir *J. Jekyll.* Was there any Proclamation made at any of theſe Places?
Lindſey. Yes, there was a Proclamation at *Jedburg*; they told me they proclaim'd the Pretender.
Sir *J. Jekyll.* Did you hear the Proclamation?
Lindſey. I heard the Voice, but not the Words pronounced.
Sir *J. Jekyll.* Who aſſiſted at it?
Lindſey. A great many Gentlemen on Horſeback.
Sir *J. Jekyll.* Was the Priſoner at the Bar there?
Lindſey. I did not ſee him.
Sir *J. Jekyll.* Was the Priſoner at the Bar at *Lancaſter?*
Lindſey. I do not know, I was not there.
Sir *J. Jekyll.* Was he at *Preſton?*
Lindſey. Yes, he was there.
Sir *J. Jekyll.* Was you preſent when they proclaimed the Pretender there?
Lindſey. I was ſtanding at a great Diſtance, but did not hear it; but ſaw the Army.
Sir *J. Jekyll.* From thoſe Places when you marched, in what manner did you march? In Squadrons? ——*Lindſey.* Yes, in Squadrons.
Sir *J. Jekyll.* Did the noble Lord at the Bar command a Squadron?
Lindſey. I did not know what his Lordſhip's Command was; he rode at the Head of the firſt Squadron.
Att. Gen. Did he march along with the Forces?
Lindſey. I had very ſeldom Occaſion to ſee his Lordſhip. I believe he did.
Sir *J. Jekyll.* Do you know any thing of raiſing Money.
Lindſey. I heard talk of it only.
Sir *J. Jekyll.* What Troops were with the Rebels?
Lindſey. I can't tell how many.
Sir *J. Jekyll.* Do you remember any one Troop?
Lindſey. Yes, there was *Lockhart*'s.
Sir *J. Jekyll.* Any beſide?
Lindſey. There was one went by the Name of my Lord *Wintoun*'s; but I knew it not.
Att. Gen. Who was there in that Troop of *Lockhart*'s?
Lindſey. Several Gentlemen.
Att. Gen. Was there any but Gentlemen?
Lindſey. Some private Men and Servants.
Att. Gen. Whoſe Servants?
Lindſey. The Captain's, Mr. *Lockhart*, had two or three himſelf.
Att. Gen. Was there any other Servants?
Lindſey. No; I don't think there was any other.
Att. Gen. Did you know the Troop called my Lord *Wintoun*'s?
Lindſey. I did not know it, there was one called his.
Att. Gen. Was there any Servants in it?
Lindſey. There were Servants in that Company.
Sir *J. Jekyll.* Were they armed with Sword and Piſtol?
Lindſey. Yes.
Sir *J. Jekyll.* Was you at *Preſton* when the King's Forces inveſted it?
Lindſey. Yes.
Sir *J. Jekyll.* How did the Priſoner behave himſelf?
Lindſey. I cannot tell.
Sir *J. Jekyll.* My Lords, we have done with our Examination of this Witneſs.
L. H. Steward. My Lord *Wintoun*, if you would aſk this Witneſs any Queſtion, propoſe it, and it ſhall be aſked.
[*After a conſiderable Pauſe,*]
Att. Gen. Our next Witneſs is *Elias Cammeron*, we deſire he may be ſworn.
[*He was ſworn accordingly.*]
Mr. Cowper. My Lords, we deſire he may be aſked whether he was in the Rebels Army.
L. H. Steward. You hear the Queſtion; direct your Anſwer this way.
Cammeron. Yes, I was there.
Mr. Cowper. Under whoſe Command?
Cammeron. Under the Command of Captain *Mackleane.*
Mr. *Cowper.* And in whoſe Regiment?
L. H. Steward. Turn your Face this way, that your Voice may be heard.
Cammeron. My Lord *Charles Murray*'s Regiment.
L. H. Steward. Whoſe Command was you under?
Cammeron. Under Captain *Mackleane.*
Sir *J. Jekyll.* In whoſe Regiment?
Cammeron. In my Lord *Charles Murray*'s Regiment.
Sir *J. Jekyll.* Will you give a general Account of what you know from the firſt time you came into the Army of the Rebels?
Cammeron. I joined them at *Moffett*, and then we proceeded to a Place called *Lockmaben*; and then we march'd to *Duns*, from thence to *Kelſoe*; within two Miles of *Kelſoe* we met the Horſe. Then we went from *Kelſoe* to *Jedburg*, I ſaw my Lord *Wintoun* there; the next Day we reſted. Then we marched, from *Langtown* to *Brampton*; from *Brampton* to *Penrith*; from *Penrith* to *Kirby-Lonſdale*; and from *Kirby-Lonſdale* to *Lancaſter*, where I ſaw my Lord *Wintoun* at the Head of his Horſe with a Trumpet ſounding before him; I ſaw them march; we ſtaid a Day at *Lancaſter*, and the Horſe went into *Preſton* the next Day; either *Wedneſday* or *Thurſday* I ſaw my Lord *Wintoun*; and after the King's Forces were come I ſaw my Lord *Wintoun* with other Lords.
Mr. *Cowper.* You have mentioned proclaiming the Pretender at one or two Towns, pray, give an Account at how many Places you obſerved that he was proclaimed?
Cammeron. I heard him proclaimed at *Duns*, at *Kelſoe*, and at *Lancaſter*.
Mr. *Cowper.* I deſire to know if at any of theſe Places you obſerved the Priſoner, my Lord *Wintoun?*
Cammeron. At *Lancaſter* I did obſerve him to go into the Ring when they were going to proclaim him, but at the Time of the Proclamation I did not ſee him, being in the outward Part of the Ring.

Att. Gen. Pleaſe to acquaint my Lords, whether in your March you took any Priſoners?

Cammeron. When we were near *Penrith*, we took a great many Priſoners. I did not ſee them taken.

Att. Gen. Was the Priſoner at the Bar with you in that March?

Cammeron. I can't really determine. I ſaw him there.

Att. Gen. Where did you ſee him firſt?

Cammeron. At *Kelſoe*, when the Foot join'd us.

Att. Gen. Where did you take the Priſoners?---*Cammeron.* At *Penrith.*

Att. Gen. Did the noble Lord at the Bar ever leave you after he join'd you?

Cammeron. I heard he was not for coming into *England.* I only heard this by Report.

Sir *J. Jekyll.* Wasyou at *Seaton* Houſe?---*Cammeron.* Yes.

Sir *J. Jekyll.* Was my Lord *Wintoun* there?

Cammeron. No, only Brigadier *Mackinteſh* and the Foot.

Sir *J. Jekyll.* What Time did they come to *Seaton* Houſe?

Cammeron. On *Saturday*, to my beſt Remembrance, they were at *Seaton* Houſe; then the Duke of *Argyle* returned back, and that Night about ſix or ſeven o'Clock we retreated to *Seaton* Houſe, and ſtaid there *Sunday*, *Monday* and *Tueſday*.

Att. Gen. At the Time the Highlanders came to *Seaton* Houſe, was this Lord there?---*Cammeron.* No, I do not know that he was.

Att. Gen. Do you know any thing of the public Revenues being gathered at *Duns*, *Brampton* and *Appleby*?---*Cammeron.* Yes.

Att. Gen. Did they give any Receipts?

Cammeron. Yes, they gave Receipts. I ſaw one which was to this Effect: After the Year and Date, then, Received ſuch a Sum of Money as Exciſe-Duty, due from ſuch a Perſon to ſuch a Perſon.

Att. Gen. During the Time the King's Forces attack'd *Preſton*, what did you obſerve my Lord *Wintoun* do?

Cammeron. What I obſerved of my Lord *Wintoun* was this: I was there by the Church-Yard, there I ſaw my Lord *Wintoun* in the Church-yard, with my Lord *Kenmure* and *Derwentwater* at the Time of the Action, but I did not ſee him in the Action, and whether he had Piſtols or not I can't be poſitive.

Att. Gen. Were there any Perſons at the Market-Place?

Cammeron. I was not at the Market-Place.

Att. Gen. You was at the Church-Yard?---*Cammeron.* Yes.

Sir *J. Jekyll.* When you obſerved my Lord *Wintoun*, what did you ſee him do?

Cammeron. I obſerved nothing, but he was like the reſt, riding to and fro with the reſt.

Sir *J. Jekyll.* Did you ſee him aſſiſting at the Proclamation of the Pretender at *Preſton?*

Cammeron. I ſaw him go into the Ring with the reſt; but I did not ſee him at the Time of the Proclamation.

L. H. Steward. I believe in this Narration his Voice did not reach this End of the Court; therefore if he hath ſaid any Thing proper to be taken Notice of, you will do well to have it over again.

Att. Gen. We ask him, whether he knew the noble Lord to be at any of thoſe Places aſſiſting at proclaiming the Pretender?

Cammeron. I did not obſerve him but at *Lancaſter.*

Att. Gen. What happened there?

Cammeron. They proclaimed the Pretender there, and I ſaw him go into the Ring.

Att. Gen. But did you not obſerve him at the Time of proclaiming the Pretender?

Cammeron. I ſaw him go into the Market-Place with the reſt.

L. H. Steward. You ſaw him go in when the reſt went in to proclaim the Pretender?---*Cammeron.* Yes.

Att. Gen. Did he then ride at the Head of the *Scots* Horſe?

Cammeron. Yes, he rid at the Head of ſome Horſe, and a Trumpet ſounding before him.

Att. Gen. Was that the Time when the Pretender was proclaimed at *Lancaſter?*---*Cammeron.* Yes.

Att. Gen. Whether had my Lord his Sword by his Side, or had he it drawn?

Cammeron. Really I cannot be poſitive to that.

L. H. Steward. My Lord *Wintoun*, will you ask this Witneſs any Queſtion?

L. *Wintoun.* My Lords, I be not prepared, ſo I hope your Lordſhips will do me Juſtice; I was not prepared for my Trial; I did not think it would come on ſo ſoon, my material Witneſſes not being come up, and therefore I hope you will do me Juſtice, and not make uſe of *Cowper*-Law, as we uſed to ſay in our Country, hang a Man firſt, and then judge him.

L. H. Steward. Did you hear? My Lord *Wintoun*, pleaſe to ſpeak it again.

L. *Wintoun.* I ſaid that I was not prepared for my Trial; I did not think it would come on ſo ſoon. Some Gentlemen are juſt come up; pleaſe your Lordſhips to let me know what they ſay, that I may be the better able to make my Defence.

L. H. Steward. If your Lordſhip will ask this Witneſs any Queſtion, now is your Time; but if what you are ſaying is your Defence, you ſhould reſerve that till the Commons have done.

[*Robert Patten* is called and ſworn.]

[Proclamation made for Silence as uſual.]

Sir *W. Thomſon.* With your Lordſhips Permiſſion I beg Leave to ask this Witneſs, whether at any Time he was in Company with theſe Rebels, and when he firſt joined them?

Patten. I joined them on the 20th of *October*, at *Wooler.*

Sir *W. Thomſon.* Pray, Sir, will you give an Account what paſt from that Time you join'd them till they were taken.

Patten. I remember from *Wooler* we march'd to *Kelſoe.*

Sir *W. Thomſon.* Did you ſee my Lord *Winteun* at *Wooler?*

Patten. I can't ſay I did.

Sir *W. Thomſon.* Did you ſee him at *Kelſoe?*

Patten. I ſaw him when the Proclamation was there.

Sir *W. Thomſon.* What Proclamation?

Patten. To proclaim the Pretender.

Sir *W. Thomſon.* Was my Lord *Wintoun* preſent?---*Patten.* Yes.

Sir *W. Thomſon.* In what Manner?

Patten. He appeared among the reſt of the Gentlemen.

Sir *W. Thomſon.* Was he armed?---*Patten.* Only his Sword, that I ſaw.

Sir *W. Thomſon.* Pray what paſſed afterwards?

Patten. We came to *Kelſoe*, and from thence we went to *Jedburg.*

Sir *W. Thomſon.* Where did you go?---*Patten.* To *Jedburg.*

Sir *W. Thomſon.* What paſſed there?

Patten. After they came to *Jedburg*, they were alarmed by a Party, they thought of the King's Forces, but it happened to be ſome of their own Party.

Sir *W. Thomſon.* What happened on that occaſion?

Patten. I ſaw the Lords, and among the reſt my Lord *Wintoun*, at the Head of ſome Horſemen there drawn up.

Sir *W. Thomſon.* In what Manner?

Patten. The Earl of *Wintoun* was drawn up with his Men, and the *Scots* Lords with their Men.

Sir *W. Thomſon.* With what Intent?

Patten. They apprehended General *Carpenter*, with the King's Forces, was coming to attack them.

Sir *W. Thomſon.* You ſay my Lord *Wintoun* marched out at the Head of ſome Horſemen?

Patten. I can't ſay I ſaw him march out, but I ſaw him at the Head of ſome Horſe.

Sir *W. Thomſon.* What happened afterwards?

Patten. They returned to *Jedburg* and ſtaid all Day, and the next Day they marched to *Hawick.*

Sir *W. Thomſon.* What happened at *Hawick?*

Patten. At Midnight we were again alarmed with a Party.

Sir *W. Thomſon.* What happened upon that?

Patten. I ſaw my Lord *Wintoun* in the Street.

Sir *W. Thomſon.* Was there any Preparation made for Defence?

Patten. Yes; they were going out to defend themſelves.

Sir *W. Thomſon.* You ſaw my Lord *Wintoun* there?---*Patten.* Yes.

Sir *W. Thomſon.* In what Manner?

Patten. He had his Sword by his Side.

Sir *W. Thomſon.* When you went from that Place, where did you go then?

Patten. We went to *Langholm.*

Sir *W. Thomſon.* What paſſed there?

Patten. We continued there till next Morning, when we conſulted whether to march for *England* or for *Scotland*; a Party of Horſe went for *Dunfreiſe.* The Highlanders, a great Part of them went off there, and would not march for *England.*

Sir *W. Thomſon.* Was my Lord *Wintoun* with them at their going off?

Patten. I ſaw my Lord *Wintoun* go off, and come up again: I ſpoke to my Lord upon that Account.

Sir *W. Thomſon.* What did his Lordſhip ſay?

Patten. Nothing material; but asked me if I knew the Country.

Sir *W. Thomſon.* When the Foot went off at *Langholm*, did my Lord go to them?

Patten. I ſaw him go up to them, and make a Halt.

Sir *W. Thomſon.* But he came back again?---*Patten.* Yes.

Sir *W. Thomſon.* At that Time, if my Lord had had any Inclination to it, whether might he not have gone off?

Patten. Yes; I can't tell my Lord's Inclination, but any Body might have gone off, there was no Reſtraint upon him.

Sir *W. Thomſon.* Whither did you march from *Langholm?*

Patten. To *Langtown.*

Sir *W. Thomſon.* Did any thing happen at *Langtown?*

Patten. We marched through.

Sir *W. Thomſon.* Whither did you go then?---*Patten.* To *Brampton.*

Sir *W. Thomſon.* Whither from thence?---*Patten.* To *Penrith.*

Sir *W. Thomſon.* What happened there?

Patten. There was the *Poſſe Comitatus*, whether that *Poſſe Comitatus* were the Militia, I can't tell; they were got together, and upon our advancing they diſperſed themſelves.

Sir *W. Thomſon.* Where was my Lord *Wintoun* then?

Patten. I ſaw him among the *Scots* Lords there, after his uſual manner, on Horſeback, with Sword and Piſtols.

Sir *W. Thomſon.* Was his Sword drawn?---*Patten.* No.

Sir *W. Thomſon.* Whither did they go then?

Patten. They went to *Appleby.*

Sir *W. Thomſon.* What paſſed at *Appleby?*

Patten. They went from *Appleby* to *Kendall.*

Sir *W. Thomſon.* What happened there?

Patten. A Proclamation was read, as at moſt of the Towns.

Sir *W. Thomſon.* Did you ſee my Lord *Wintoun* at any of thoſe Proclamations?---*Patten.* No, I did not.

Sir *W. Thomſon.* Where did you go then?---*Patten.* To *Kirby-Lonſdale.*

Sir *W. Thomſon.* Did any Thing happen remarkable there?

Patten. I dined with the *Scots* Lords at *Kirby.*

Sir *W. Thomſon.* What happened there? and what Healths were drank there?

Patten. The Pretender's Health, and Succeſs to our Cauſe, that was the uſual Health.

Sir *W. Thomſon.* Was my Lord *Wintoun* there?

Patten. Yes; there was my Lord *Kenmure*, *Carnwath*, and the other Lords.

Sir *W. Thomſon.* Did he drink the Health among the reſt?

Patten. All the Table did.

Sir *W. Thomſon.* From thence whither did you go?

Patten. To *Lancaſter.*

Sir *J. Jekyll.* At the Place where you drank Healths, was there any other remarkable Health?

Patten. The uſual Health was good Succeſs to the Cauſe in Hand.

L. H. Steward. Who drank that Health?---*Patten.* All the Company.

L. H. Steward. Who was in Company? was the Priſoner at the Bar in Company?

Patten. Yes, he was.

Sir *W. Thomſon.* When you came to *Lancaſter*, in what Manner did you enter that Town?

Patten. We entered that Town more regularly than any other we had marched through.

Sir *W. Thomſon*, After what Manner?

Patten. They marched into the Town with their Swords drawn, and the

the Highlanders were drawn round the Croſs; the Gentlemen marched into the Town on Horſeback; the Pretender was proclaimed there.

Sir *W. Thomſon.* You was by when the Pretender was proclaimed?

Patten. Yes.

Sir *W. Thomſon.* Was my Lord *Wintoun* there?

Patten. I can't ſay I ſaw him there: I ſaw him in the Town at the head of ſome Horſe, with his Sword drawn.

Sir *W. Thomſon.* Was there any Cannon ſeized at *Lancaſter?*

Patten. Some Pieces of Cannon were ſeized.

Sir *W. Thomſon.* What did you do with the Cannon?

Patten. We carried them with us to *Preſton.*

Sir *W. Thomſon.* When there were Prayers in the Pariſh Church at *Lancaſter*, who was prayed for?—*Patten.* The Pretender.

Sir *W. Thomſon.* Do you know who were preſent?—*Patten.* A great many.

Sir *W. Thomſon.* Was the Lord *Wintoun* there?—*Patten.* I can't tell.

Sir *W. Thomſon.* Did you obſerve at any time any Force or Compulſion uſed to detain my Lord *Wintoun?*—*Patten.* No, none at all.

Sir *W. Thomſon.* Did he ſhew any Uneaſineſs, or any Backwardneſs to go with them?

Patten. I can't be Judge of my Lord's Uneaſineſs, it did not appear ſo.

Sir *W. Thomſon.* By whoſe Direction was the Prayer for the Pretender?

Patten. By Order of Mr. *Forſter.*

Sir *W. Thomſon.* My Lords, we have done with this Witneſs.

L. H. Steward. My Lord *Wintoun*, will you pleaſe to aſk this Witneſs any Queſtion?—L. *Wintoun.* No.

Att. Gen. My Lords, we deſire to call my Lord *Forreſter.*

[Then a Chair was placed for Lord *Forreſter* near the Clerks Table.]

And the Oath was adminiſtred to him by the Lord High Steward.

Sir *J. Jekyll.* My Lords, we beg leave to aſk this Noble Lord a Queſtion or two: Was your Lordſhip at *Preſton?*

L. *Forreſter.* Yes, my Lords.

L. H. Steward. Your Lordſhip will pleaſe to raiſe your Voice.

L. *Forreſter.* I was there with the King's Troops, and had the Honour to command Brigadier *Preſton*'s Regiment. We came before *Preſton* on *Saturday* the 12th of *November.*

Att. Gen. Will your Lordſhip acquaint my Lords what paſs'd at *Preſton* when you was there? whether you was by at *Preſton* when the King's Forces attacked it, and whether it was defended by the Rebels, and what elſe paſſed there?—L. *Forreſter.* I was there, and commanded one of the Attacks under Brigadier *Honywood.*

Att. Gen. Was the Town defended by the Rebels, and were any of the King's Officers and Soldiers killed?—L. *Forreſter.* Yes, a great many.

Att. Gen. Pleaſe to give an Account what Number.

L. *Forreſter.* We loſt a great many.

Att. Gen. Can you gueſs the Number?

L. *Forreſter.* No, I can't exactly tell: A good many; we had 'twixt ſixty and ſeventy of the Regiment I had the Honour to command killed and wounded.

Att. Gen. How many were killed?

L. *Forreſter.* About thirty were killed dead on the Spot.

Att. Gen. How long did that Attack laſt, before they deſired to capitulate?—L. *Forreſter.* From *Saturday* till *Sunday* Morning between one and two o'Clock.

Sir *J. Jekyll.* I think your Lordſhip had a Command to take Poſſeſſion of the Town?—L. *Forreſter.* Yes; I took Poſſeſſion of the Church-yard *Monday* Morning about ſix o'Clock.

Sir *J. Jekyll.* Will you pleaſe to give an Account of what you know of the Noble Lord at the Bar when the Town ſurrendered.

L. *Forreſter.* The Town ſurrender'd at ſix a-Clock in the Morning; I came into the Church-yard and took Poſſeſſion of it; then I went to the *Mitre-Tavern*, where that Lord and the reſt of the Lords were; I diſarm'd them.

Att. Gen. What Arms did my Lord *Wintoun* deliver up at that Time?

L. *Forreſter.* Two Caſes of Piſtols.

Sir *J. Jekyll.* If my Lord hath a mind to aſk any Queſtion of the Noble Lord that hath been examined, we deſire he may do it.

L. H. Steward. My Lord *Wintoun*, will you be pleaſed to aſk this Noble Lord any Queſtion concerning this matter at *Preſton?*

L. *Wintoun.* I had no Arms: Pleaſe to aſk him whether I had Sword or Piſtol in my Hand?

L. H. Steward. Take my Lord's Queſtion in Writing.

[*Then the Clerk went and took it.*]

Queſtion. Whether the Arms your Lordſhip mentioned to have been delivered to you, whether he had the Arms then about him, or his Lordſhip did not ſay they were in the Stable?—L. *Forreſter.* He brought the Arms to me himſelf, and gave them me out of his own Hands.

L. H. Steward. My Lord ſays you brought the Arms to him yourſelf, and gave them him out of your own Hands.

L. *Forreſter.* I got ſo many of them that I ſhould not have made any Diſtinction of his from the reſt, but that I remember he gave me his Arms out of his own Hands, and deſired me to give them to my Lord *Kimmergem.*

L. H. Steward. You deſired my Lord *Forreſter* to give them my Lord *Kimmergem.*

L. H. Steward. Another Queſtion propoſed is, Whether my Lord *Wintoun* did not give Orders to his Servant to bring the Arms out of the Stable, and to give them my Lord *Kimmergem?*

L. *Forreſter.* I believe he did bring them out of the Stable.

L. H. Steward. My Lord believes you did bring them out of the Stable.

L. *Wintoun.* I deſire he may be aſked, whether I had a Sword about me?

L. H Steward. My Lord *Forreſter*, the Queſtion is, Whether your Lordſhip found a Sword about my Lord *Wintoun?*

L. *Forreſter.* I did not ſee any Sword that he had; he had a great Coat on, and might have had a Sword under that; but I ſaw none.

L. H. Steward. My Lord *Forreſter*, did the Priſoner at the Bar deliver himſelf and his Arms to your Lordſhip as one of thoſe in the Surrender?

L. *Forreſter.* I took it ſo.

Sir *J. Jekyll.* We beg leave to call General *Carpenter*, and deſire he may be ſworn in his Place, and give your Lordſhips his Evidence.

[*General* Carpenter *was ſworn in his Place.*]

[*Proclamation for Silence as uſual.*]

Sir. *J. Jekyll.* Mr. *Carpenter*, pleaſe to give my Lords an Account when you came to *Preſton*, and what happened there.

Gen. *Carpenter.* I came to *Preſton* on *Sunday* the 13th of *November* laſt: The Troops under Mr. *Wills* had been there the Afternoon before. I got there about Ten a-Clock on *Sunday* Morning, with Three Regiments of Dragoons; and there had been no Intercourſe nor Meſſage paſſed before I came.

Att. Gen. Pleaſe to inform my Lords what paſſed there after you came to *Preſton.*

Gen. *Carpenter.* After I came, the Rebels ſent to know what Terms they might expect, and were anſwered none but at Diſcretion. They ſoon after ſent out one Captain *Dalziel* to deſire a Ceſſation till next Morning; upon which I ſent in Colonel *Churchill* to tell them, I agreed to a Ceſſation, provided they ſent out an *Engliſh* Lord and a *Scots* Lord as Hoſtages: I nam'd my Lord *Derwentwater* and my Lord *Kenmure.* Captain *Dalziel* ſaid he thought my Lord *Kenmure* would not come out. I named then Brigadier *Mackintoſh:* He alſo thought he would not come out. I was unwilling to make great Difficulties, it growing towards Night; and ſaid either of the *Mackintoſhes* and an *Engliſh* Lord: And he brought out my Lord *Derwentwater* and Col. *Mackintoſh* as Hoſtages, that they ſhould make no Attempt to eſcape, nor any Works for Defence in the Town.

Att. Gen. Pray, Sir, acquaint my Lords who you ſent in with Colonel *Churchill?*

Gen. *Carpenter.* Colonel *Cotton.*

Att. Gen. When did they agree to the Surrender of the Place?

Gen. *Carpenter.* Not till the next Morning. The Hoſtages were, that none ſhould attempt to eſcape, nor any Defences ſhould be made in the Town till the next Morning, at which time they would determine whether they would ſurrender or not.

Att. Gen. I deſire you to acquaint my Lords, whether theſe were all the Terms offered, or whether there was any Hopes of Mercy given them?

Gen. *Carpenter.* I gave them none at all myſelf, and it is very unlikely any body elſe ſhould: I commanded in Chief his Majeſty's Forces there: Nobody ought to have done it; and if any Officer whatſoever took upon him ſo to do without my Order or Leave, it was very unanſwerable by the Rules and Diſcipline of War; and what he cannot anſwer: I hope nobody did: I am ſure I gave no ſuch Directions: Colonel *Churchill* can acquaint your Lordſhips whether I directed him to mention any other Conditions to them than at Diſcretion.

Sir *J. Jekyll.* Did you hear any other Officer give them any Hope or Expectation of Mercy?

Gen. *Carpenter.* No, I did not.

Sir *J. Jekyll.* If my Lord *Wintoun* hath any Queſtions to aſk this honourable Perſon, he may do it.

L. H. Steward. My Lord *Wintoun*, now is your Time if you'll aſk any Queſtion of General *Carpenter.*

L. *Wintoun.* Whether I was concern'd in making any——

L. H. Steward. I don't hear the Queſtion——[Then the Clerk was ſent down to take it in Writing.]

[*And the Queſtion being brought up to the Lord High-Steward by the Clerk.*]

L. H. Steward. The Queſtion my Lord aſks, is, Whether he was concerned in making any Capitulation, or knew any thing about it?

Gen. *Carpenter.* Not that I know of; it is impoſſible for me to know, except by Hearſay: He was not the Perſon treated with, I treated with my Lord *Derwentwater* and one of the *Mackintoſhes*, ſo that I know nothing of his being concerned in any manner of Treaty.

L. H. Steward. You hear the Anſwer.

Sir *J. Jekyll.* We beg leave to call General *Wills.*

L. *Wintoun.* I deſire to aſk my Lord *Forreſter* a Queſtion.

L. H. Steward. My Lord *Wintoun* deſires to propoſe a Queſtion to my Lord *Forreſter.*

Sir *J. Jekyll.* Though that be out of Method, yet don't oppoſe it.

L. H. Steward. Bring up the Queſtion. My Lord, the Queſtion my Lord *Wintoun* propoſes is, Whether he had any Sword or Arms when he firſt ſaw your Lordſhip at *Preſton?*

L. *Forreſter.* I don't remember I had a Sword from him; I can't tell whether he had a Sword about him, for he had a great Coat on; but I remember I took none from him, I had only the two Caſes of Piſtols which he gave me.

L. H. Steward. He could not tell whether you had a Sword about you, you had a great Coat that he could not well ſee; but he remembers he took none from you, only the two Caſes of Piſtols which you gave him.

L. H. Steward. Who do you call next?

Sir *J. Jekyll.* My Lords, we deſire that General *Wills* may be ſworn.

[*He was ſworn accordingly.*]

Sir *J. Jekyll.* Mr. *Wills*, pray, give my Lords an Account when you came before the Town of *Preſton*, and what happened there.

Gen. *Wills.* My Lords, I had the Honour to command the King's Troops that attack'd the Rebels at *Preſton*; I came before that Town the 12th of *November* laſt about One o'Clock, and ordered two Attacks upon the Town; that Attack which leads two *Wigan* was commanded by Brigadier *Honywood*, who beat the Rebels from their firſt Barricade, and took Poſſeſſion of ſome of the Houſes in the Town; the other Attack which leads to *Lancaſter* was commanded by Brigadier *Dormer*, who lodg'd his Troops nigh the Barricade of the Rebels. The next Day, about Two o'Clock, Mr. *Forſter* ſent out one Mr. *Oxborough*, an *Iriſhman*, offering to lay down their Arms and ſubmit themſelves, and hoped that I wou'd recommend them to the King for Mercy; which I refuſed, and told them I would not treat with Rebels, for that they had killed ſeveral of the King's Subjects, and that they muſt expect to undergo the ſame Fate; upon which he ſaid, that as I was an Officer, and a Man of Honour, he hoped I wou'd ſhew Mercy to People who were willing to ſubmit: Upon which I told them, all I would do for them was, that if they laid down their Arms, and ſubmitted Priſoners at Diſcretion, I would prevent the Soldiers from cutting them to pieces till I had further Orders, and that I would give them but one Hour to conſider of

of it; and ſent him back again into the Town to acquaint *Forſter* of it; before the Hour was expired they ſent out Mr. *Dalziel*, Brother to the Earl of *Carnwath*, and he wanted Terms for the *Scots*. My Anſwer was, that I would not treat with Rebels, nor give them any other Terms than what I had before offered them: Upon which it was deſired that I would grant further Time till Seven o'Clock next Day, to conſult the beſt Method of delivering themſelves up. I agreed to grant them the Time deſired, provided that they threw up no new Intrenchments in the Streets, nor ſuffered any of their People to eſcape, and that they ſent out the chief of the *Engliſh* and *Scots* as Hoſtages for the Performance; and I ſent in Colonel *Cotton* to bring them out, who brought out the Earl of *Derwentwater* and Mr. *Mackintoſh*. The next Day about Seven o'Clock Mr. *Forſter* ſent out to let me know, that they were willing to give themſelves up Priſoners at Diſcretion, as I had demanded. Mr. *Mackintoſh* being by when the Meſſage was brought, ſaid he could not anſwer that the *Scots* would ſurrender in that manner; for that the *Scots* were People of deſperate Fortunes, and that he had been a Soldier himſelf, and knew what it was to be a Priſoner at Diſcretion; upon which I ſaid, Go back to your People again, and I will attack the Town, and the Conſequence will be, I will not ſpare one Man of you. *Mackintoſh* went back, but came running out immediately again, and ſaid, that the Lord *Kenmure*, and the reſt of the Noblemen, with his Brother, would ſurrender in like manner with the *Engliſh*.

Sir *J. Jekyll.* When the Attack was made by the King's Forces, whether any, and how many were killed?

Gen. *Wills.* I believe between ſixty and ſeventy but few of the Horſe; there were killed and wounded about a hundred and thirty

Att. Gen. If you pleaſe to acquaint my Lords, whether any of the Rebels came and treated with you, or if you gave them any Encouragement to hope for Mercy?

Gen. *Wills.* All the Terms I gave them was, that I would ſave their Lives from the Soldiers 'till further Orders, if they ſurrender'd at Diſcretion: I deſire to explain the Meaning of ſurrendering at Diſcretion, which is, then it is in our Power to cut them all to pieces; but I would give them their Lives till further Orders; for I could have cut them to pieces immediately, after they are made Priſoners at Diſcretion, by the Rules of War; and if they did not comply, I would renew the Attack and not ſpare a Man.

L. H. Steward. You told them, that if they did not comply you would renew the Aſſault?

Gen. *Wills.* Yes, and not ſpare a Man of them.

Sir *J. Jekyll.* Did you give your Officers any Directions to give any other Terms?----Gen. *Wills.* No, I did not.

L. H. Steward. Then you gave no Directions to any other Officer to give other Terms than you yourſelf had offer'd?

Gen. *Wills.* No, I did not.

Mr. *Cowper.* Was there any other but theſe two, Colonel *Churchill* and Colonel *Cotton* ſent in by you, or by General *Carpenter*?

Gen. *Wills.* Yes, Colonel *Naſſau*, to bid our own People forbear firing.

Mr. *Cowper.* Had Colonel *Naſſau* any Authority to treat?

Gen. *Wills.* No; he went in only to bid our Troops to forbear firing, and order Colonel *Cotton* to come out with the Hoſtages.

Sir *J. Jekyll.* You ſay the Rebels deſired you to recommend them to the King's Mercy. Who made that Propoſition?

Gen. *Wills.* One *Oxbrough*.

Sir *J. Jekyll.* Had you any other Propoſition by any other?

Gen. *Wills.* Mr. *Dalziel*, Brother to my Lord *Carnwath*, for the *Scots*. I refuſed him likewiſe, and told him I wou'd treat with no Rebels, nor give them any Quarter.

Sir *J. Jekyll.* If my Lord at the Bar will ask this honourable Gentleman any Queſtion, now is the Time.

L. H. Steward. My Lord *Wintoun*, the Clerk is ſent down to you again; if you have any Queſtion he will take it.

[*The Clerk return'd with the Queſtion to my Lord High-Steward.*]

L. H. Steward. The Queſtion my Lord propoſes to General *Wills* is, Whether you, General *Wills*, gave any Summons to ſurrender before you made the firſt Attack; or if you did not make the Attack without any Summons at all?

Gen. *Wills.* When I was viewing the Town they ſhot two of my Dragoons, and I did not ſummons them.

[*Another Queſtion taken by the Clerk and brought up.*]

L. H. Steward. Another Queſtion my Lord deſires to be ask'd is, whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preſton*, provided they ſurrender'd at Diſcretion?

Gen. *Wills.* Before ever I had drawn up the Troop——

L. H. Steward. The Queſtion is, whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preſton*, provided they ſurrender'd at Diſcretion?

Gen. *Wills.* Yes, my Lords, I did hinder the Troops from falling upon them after they offered to ſurrender.

[*Another Queſtion brought up by the Clerk.*]

L. H. Steward. General *Wills*, my Lord deſires you may be asked, what you know, or have been informed of his Lordſhip's being againſt coming to *England*; or of my Lord's being againſt fighting with any of yours, or General *Carpenter*'s Troops?

Gen. *Wills.* I never knew my Lord *Wintoun*, nor ſaw him till four Days after he was taken at *Preſton*, ſo that I can ſay nothing to that I don't know any thing of.

L. *Wintoun.* I deſire General *Carpenter* may be ask'd the ſame Queſtion.

L. H. Steward. Do you know any thing, or have heard that my Lord *Wintoun* was againſt coming into *England*, or fighting the King's Forces?

Gen. *Carpenter.* My Lords, I heard that at *Jedburg* they held a Council of War, the chief Officers, *&c.* this is only Hearſay, I ſpeak not of my own Knowledge.

Sir *J. Jekyll.* For the ſake of Evidence it is incumbent on us to deſire that my Lord confines himſelf to ask the General what he knows, and not to what he heard ſaid.

Att. Gen. We have two Witneſſes more, the Colonels that were ſent into the Town by the two Generals, Colonel *Churchill* and Colonel *Cotton*.

(*Colonel* Churchill *was ſworn.*)

Mr. *Cowper.* The Queſtion propoſed is, Whether you was ſent into *Preſton*, and by whom?

Col. *Churchill.* I came up to *Preſton* on *Sunday* Morning, under General *Carpenter*'s Command, about Ten o'Clock; about One they ſent to Capitulate; about Five I was ſent in by General *Carpenter*, their Requeſt being, that they might have Time till next Day to conſider whether they ſhould ſurrender or not. My Directions were, they ſhould have that, upon Condition they ſent out Hoſtages that none of them ſhould attempt to eſcape, and that no Defence ſhould be made in the Town. The People nam'd to me by General *Carpenter* were my Lord *Derwentwater* or my Lord *Widdrington*, and my Lord *Kenmure* or *Mackintoſh* was mention'd for the *Scots*. I directed them to ſend the Hoſtages to me. They could not find my Lord *Derwentwater* nor *Widdrington*, and *Mackintoſh* was gone to Bed. A little before eight I went with them, and told them the Terms I was to deliver to them, that they were to throw up no Works to fortify themſelves, and ſhould anſwer for the People, that none of them ſhould eſcape. My Lord *Derwentwater* and *Mackintoſh* went out with me: I carried them to the two Generals there, and at Seven o'Clock next Morning they ſurrender'd themſelves.

Mr. *Cowper.* Pleaſe to give me leave to ask you, whether you had any Commiſſion from the General that ſent you into the Town, or whether you of yourſelf, without ſuch Commiſſion, gave them any Hopes of Mercy?

Col. *Churchill.* I had not any Power to do it, and was ſo far from doing it, that I don't remember a ſingle Syllable was mention'd either on our Side or theirs about it.

Mr. *Cowper.* Did you at any other Time hear any other Officers give them ſuch Aſſurance?

Col. *Churchill.* I never heard a ſingle Word like it.

Att. Gen. Who did you treat with?

Col. *Churchill.* The Body I treated with carried me to Mr. *Forſter*, and then to my Lord *Kenmure*. I deliver'd my Meſſage to Mr. *Forſter*. I did not know any *Scots* Lord but *Kenmure*.

Att. Gen. Who was preſent beſides my Lord *Kenmure?*

Col. *Churchill.* I ſaw a great many, but I did not know particularly any.

Att. Gen. The next is Colonel *Cotton*, who was ſent in by General *Wills*. We deſire Colonel *Cotton* may be ſworn.

[*He was ſworn accordingly*]

Att. Gen. We deſire to ask Colonel *Cotton*, whether he was ſent into *Preſton* by General *Wills*, and what Inſtructions were given him when he went in?

Col. *Cotton.* I was ſent into the Town by General *Wills* at their Deſire, they having Terms to offer: I told them we could give them none; they urged they had Diſputes amongſt the *Scots* and *Engliſh*, and deſired till the next Morning to reconcile them. General *Wills* ſent me again into the Town, to allow them that time, provided that the Lords would give their Words that they would throw up no Works for their Defence from that time, and do their utmoſt that none of their People ſhou'd make their Eſcape; and the Lords did give their Words; and the Lord at the Bar was preſent.

Att. Gen. I deſire you would acquaint my Lords upon what Terms they ſurrender'd.

Col. *Cotton.* I had no Power from Mr. *Wills* to promiſe them any Terms, nor I did not.

Sir *J. Jekyll.* Did you acquaint them you had no Power to offer them any Terms?---Col *Cotton.* I did.

Att. Gen. Who did you acquaint?

Col. *Cotton.* All the Lords, and the People that had any Influence over the common Men.

Sir *J. Jekyll.* Was the Noble Lord at the Bar amongſt them?

Col. *Cotton.* He was.

Sir *J. Jekyll.* Was there any Overtures made of obtaining the King's Mercy?

Col. *Cotton.* I had no ſuch Order from Mr. *Wills*, and I did not offer it neither directly or indirectly.

Att. Gen. My Lords, I think it hath been deſired to call Brigadier *Munden*, who ſpeaks only as to the Attack; and I think, my Lords, if this Evidence need to be corroborated, we ſhall deſire to call another Evidence who was with General *Wills* all the Time the Overtures paſs'd.

Sir *J. Jekyll.* My Lords, if the Lord at the Bar hath any Queſtion to ask Colonel *Cotton*, we deſire he may be indulged.

L. *Wintoun.* I would know whether they did not take Priſoners and kill them, notwithſtanding the Capitulation?

L. H. Steward. The Queſtion my Lord deſires may be asked is, Whether you did not take Priſoners and kill them, notwithſtanding the Capitulation?

Col. *Cotton.* My Lords, upon my coming out of the Town, though the Lords had engaged to prevent any of their People making their Eſcape, we were alarm'd with an Account that ſeveral were attempting it, and about ſix of thoſe who were endeavouring to eſcape were cut to Pieces. Upon this Breach of their Parole, Colonel *Churchill* and myſelf were ſent in to demand Hoſtages, and brought out Lord *Derwentwater* and Mr. *Mackintoſh*.

Att. Gen. We deſire Brigadier *Munden* may be Sworn.

[*He was accordingly call'd and ſworn.*]

Att. Gen. We deſire Brigadier *Munden* may be asked whether he was ſent with theſe two Colonels into the Town, and what Directions were given them?

L. H. Steward. You hear the Queſtion, pleaſe to give your Anſwer.

Brigadier *Munden.* I humbly apprehend I am called to give ſome Account of the Attack at *Preſton*, which I will do in as few Words as I can. I am firſt to tell your Lordſhips, after the Rebels demanded an Audience of General *Wills*, their firſt Demand was for Terms: The Anſwer they received was, that General *Wills* would not treat with Rebels, but if they ſurrendered as Priſoners at Diſcretion, they ſhould have their Lives ſpared 'till his Majeſty's Pleaſure was known. They asked if thoſe were the only Terms; it was anſwered, Yes. Afterwards this Gentleman went into the Town, who had an Hour's time allowed him to conſider of it. I remember his inſiſting upon Terms; but all the Anſwer Mr. *Wills* gave them was, If he had Inclination, he had no Power to give them any, otherwiſe than ſaving their Lives till his Majeſty's Pleaſure was further known. If they expected other Terms, they might return into the Town immediately, and he would attack them and cut them to Pieces.

After this the Gentleman went into the Town, my Lord *Derwentwater* and Mr. *Mackintosh* came out to us. Mr. *Mackintosh* and my Lord *Derwentwater* and I heard them frequently repeat their Request to the General for Terms, and I heard *Mackintosh* give a particular Account of the Bravery and Hardiness of their Troops. Mr. *Wills* told him he might have proved and tried them if he had pleased, and then it would have been seen, whether the King's Troops, or a parcel of Rebels, would have acted the braver Part. Mr. *Wills* received them with the utmost Detestation and Contempt, and gave them no hope of Mercy either directly or indirectly.

Att. Gen. Did you ever hear any other of the Officers offer them any other Terms?

Brig. *Munden.* No, I did not hear any. I heard the Instructions that were given to Colonel *Cotton* by General *Wills*, and when Mr. *Cotton* came out of the Town the third time, which was when he went to take their Parole of Honour.

Sir *J. Jekyll.* Did my Lord *Wintoun* come to give his Parole?

Brig. *Munden.* When Colonel *Cotton* came out, I very well remember he said he had received his Parole of Honour among the rest.

Sir *J. Jekyll.* If my Lord at the Bar hath any mind to ask this honourable Person, Brigadier *Munden*, any further Questions, we have done with him.

L. H. St. My Lord *Wintoun*, do you ask this Witness any Question?

L. *Wintoun.* No.

Sir *J. Jekyll.* We that are entrusted by the House of Commons have no more Evidence to offer to your Lordships.

L. H. Steward. My Lord *Wintoun*, the Gentlemen of the House of Commons have done with the Evidence they proposed to call against you; therefore it is your Lordship's time to open what Evidence you have, or if you have made any Observations on the Evidence given against you, to deliver them, or to call your own Witnesses—Take your own Method.

[*Proclamation was made for Silence as usual; and after some Pause.*]

L. H. Steward. My Lord *Wintoun*, I acquainted your Lordship that the Gentlemen of the House of Commons, who manage the Evidence to support the Impeachment, have done with giving their Evidence; they design to give no more against you; therefore this is the time that is proper for your Lordship to make your Defence; you are to do it in your own Method, either by calling your Witnesses, or making such Observations in your Defence as you think proper.

L. *Wintoun.* Please to allow me some time, for my Witnesses are not yet come. I have used all possible Endeavours to get them, please to allow me till this Day Month 'till they come up. It will signify nothing to examine any Witnesses after I am dead. I never saw my Counsel but once, that they might instruct me what I have to say. My Lords, I am informed they will be here some time next Week.

L. H. Steward. What your Lordship said is not heard.

L. *Wintoun.* I said I never spoke to any of my Counsel, and that but once I have sent to my Counsel; I never saw them.

[*Proclamation for Silence was made as usual.*]

L. H. Steward. My Lord offer what you have to say now, while the Court is in Silence.

L. *Wintoun.* My Lords, the most material of my Witnesses are not come up, they will be here some time next Week; I have not talk'd to my Counsel.

L. H. Steward. Your most material Witnesses are upon the Road, you desire some time till they come up; the effect of your Petition to the House of Lords, that is what you offer again.

L. *Wintoun.* Yes, my Lords.

Att. Gen. We think it our Duty to acquaint your Lordships, that what that noble Lord insists upon now is out of Time. If he had any Reasons to offer to defer the Trial, he knew the proper Time and Place. Our Duty is to let your Lordships know, that when the Evidence for the Prosecution is given, the Prisoner is not to have time to delay the Proceedings, not any longer time. He ought to have applied before. We must submit it to your Lordships.

Mr. *Cowper.* This Request of his Lordship, the Prisoner at the Bar, seems to concern the Methods of Justice, and is, we think, of great Consequence with respect to the Commons. My Lords, we should have been very far from pressing to bring on his Lordship's Trial sooner than might have been thought consistent with the Rules of Justice: But when we consider the Time your Lordships have allowed him upon several Applications he has made to your Lordships for that purpose; when we all know he has had Notice, ever since he was seized and made Prisoner at *Preston*, that a Defence would be necessary, and that it concerned him to provide for it; when we reflect how long it is since the Commons exhibited their Impeachment against him, it's surprizing after all to find his Lordship alledge, that he hath not had Time to bring up his Witnesses. With what View his Lordship is advised to make this Defence may be easily explained: It is, my Lords, to move the Compassion of the People, and, I fear, to traduce the Justice of your Lordships Proceedings. Surely it must be confessed, that he hath had more than Time sufficient, more than any one in the like Circumstances hath been allowed by your Lordships great Indulgence; and yet at last to have nothing to offer, but that his Witnesses are not come, without attempting to produce one single Witness to prove that he has, or expects any one Witness to appear for him.

My Lords, the stated Rules of Proceeding in Trials of this Nature ought to be ever sacred; and I don't know that any one Prisoner hath a Right to be indulged in Methods unknown to the Constitution.

My Lords, I believe, when a Prisoner impeached by the Commons puts himself upon his Defence, and is brought upon his Trial, there ought to be no Interruption or Delay whatsoever. Sure I am, it is inconsistent with the Proceedings of all other Courts of Justice.

Your Lordships, as we are informed, lately denied the Prisoner any further Time; and if it was then thought not proper to be granted, certainly now he hath put himself upon his Trial, and stands upon his Defence at your Lordships Bar, he shall not be indulged to making the same Request.

My Lords, whatever Compassion we may have for this unhappy Lord, yet the Commons, when they reflect that the Methods and Forms of Justice are essential to Justice itself, they then think themselves obliged to oppose a new Attempt, and hope the Trial shall proceed.

L. *Wintoun.* My Witnesses are not come up. They will be up about *Monday* or *Tuesday* next. I have had no longer time than since the 10th of *February* last to bring up my Witnesses, when it was very bad travelling.

[*A Motion was made to adjourn.*]

L. H. Steward. My Lord *Wintoun*, your Lordship hath heard the Commons oppose your Request: You have heard the Reasons given for such Opposition. Doth your Lordship, having heard the Reasons, yet insist upon it, or do you withdraw your Request?

L. *Wintoun.* I insist upon it, my Lords.

[*Then the House was adjourned to the Chamber of Parliament.*]

And being returned in about an Hour, and the House resumed, and Proclamation made for Silence as usual.

L. H. Steward. My Lord *Wintoun*, I am commanded by the Lords to let you know, that they have considered your Request, and that they are of Opinion it is not now consistent with the Rules of Justice to allow you further Time for sending for your Witnesses; therefore you are to proceed in your Defence. I am likewise to acquaint you, that in respect to the Lowness of your Voice, the Lords have ordered a fit Person to stand by you (after he is sworn) to report truly to their Lordships what you say during your Trial.

Is it your Lordships Pleasure that one of your Lordships Clerks be appointed to stand by and report to your Lordships?

Lords. Yes, Yes.

A Clerk was sworn to make true Report; but my Lord *Wintoun* began to speak so very low, as scarce any could hear. Whereupon,

Sir *J. Jekyll.* My Lords, I perceive it is your Lordships Pleasure to indulge the Lord at the Bar, to have a Person sworn to report truly to your Lordships what he shall say in his Defence; but it is not your Lordships Intention that the Lord at the Bar should speak so low, as it is impossible for us or any near him to hear what he says.

L. H. Steward. My Lord *Wintoun*, Speak as loud as you can, so as the Managers may hear; he is only to help your Voice, so as their Lordships may hear.

Clerk from L. Wintoun. I think it very hard, and great Injustice, that I should not be allowed Time to make my own Defence; and that my Witnesses should not come up; and that I should be tyed down to a foolish Form, which I am not accustom'd to, when I am in danger of my Life.

[*Then the House was adjourned to the Chamber of Parliament.*]

Friday, March 16. *The Second Day.*

L. H. Steward. THE House is resumed. Do your Lordships give the Judges leave to be cover'd?

Lords. Ay, ay.

Proclamation made for Silence, and another to bring forth the Prisoner, as usual.

[*The Prisoner brought to the Bar, and kneels.*]

L. H. Steward. My Lord *Wintoun*, you may rise.——My Lord *Wintoun*, you may proceed upon your Defence.

[*The Clerk ordered to report as before.*]

L. H. Steward. I again remind your Lordship, you are to speak in your Defence as loud as you can; if your Voice is not heard, he is ready to report to the Lords what you say; but you must speak as loud as you can.

Clerk from L. Wintoun. My Counsel is ready here to speak for me.

L. H. Steward. My Lord, I would not presume to make an Answer, but that it is known Law, that undoubtedly your Lordship cannot have Counsel, by the Law of the Land, to speak in your Defence, unless it be to Matter of Law; for the Law supposes every Man sufficient to answer for himself as to Matter of Fact.

Clerk from L. Wintoun. My Lords, I am not accustomed to speak on such Occasions; therefore I hope your Lordships will allow my Counsel to speak for me.

L. H. Steward. My Lord, I must acquaint you, that the Law in this Case admits of no Exception, but holds to the general Rule.

Clerk from L. Wintoun. My Lords, I don't understand the Law; I am perfectly a Stranger to the Customs of the House, therefore hope your Lordships will allow my Counsel that know them to speak for me.

L. H. Steward to the Clerk. You let your Voice fall.

Clerk from L. Wintoun. I am not accustomed to the Practice of this House; therefore I desire that your Lordships would please to allow other People to speak for me that understand them.

L. H. Steward. My Lord *Wintoun*, your Counsel are not to be allowed to speak for you, as to those Things that are Matter of Fact, in an Impeachment of High-Treason, but to what is Matter of Law; and I believe if you ask your own Counsel they will tell you, as the Law stands, they cannot be heard for you here as to Matter of Fact.

Clerk from L. Wintoun. The Counsel will inform your Lordships of the Matter of Fact, and they know how better to express it than I do.

L. H. Steward. My Lord *Wintoun*, have you any Witnesses to call in your Defence?

Clerk from L. Wintoun. I told your Lordships Yesterday, my most material Witnesses were not yet come up.

L. H. Steward. My Lord, I acquainted your Lordship Yesterday, and now would remind you of your own Petition exhibited to the House of Lords, wherein you acknowledge that a great many of your Witnesses were come up; those Witnesses were arrived, you only then pretended Four were not yet come. Doth your Lordship design to make no manner of use of those great Numbers of Witnesses that you admitted were come?

Clerk from L. Wintoun. Without those they would not be of such an Effect——They would serve for nothing without those Witnesses coming.

L. H. Steward. My Lord *Wintoun*, your Lordship will please to observe the Lords wait with great Patience, to see if your Lordship would be better advised, and go into your Defence.

Clerk from L. Wintoun. I don't really know, my Lords, what to say for it, for I don't understand the Proceedings of this House. It was always the Custom in any Court where I was, for People to be allowed to speak,

or the Counſel be allowed to ſpeak for me, for I am not accuſtomed to ſpeak any manner of way in my own Defence, therefore I hope you will allow my Counſel to ſpeak for me. My Counſel have a Point of Law to ſpeak to; they ſay ſo, but I know nothing of it.

L. H. Steward. My Lord *Wintoun*, your Counſel have had Acceſs to you; and tho' your Lordſhip can't ſpeak and argue to the Point of Law, can't your Lordſhip propoſe what the Queſtion is?

Clerk from L. Wintoun. It is impoſſible for me to do a Thing I don't underſtand; I don't know what the Point of Law is, no more than a Man that knows nothing about it.

(*When ſome laugh'd.*)

L. *Wintoun.* I am only ſpeaking in my own Defence; I don't expect to be laugh'd at.

L. H. Steward. I think his Lordſhip does obſerve well; I hope every one will forbear that.

L. H. Steward. Won't your Lordſhip be pleaſed to name what Matter the Queſtion concerns?

Clerk from L. Wintoun. It will be ſomething about the Trial; no doubt ſomething of what the common People have been ſpeaking about—It is, no doubt, in Anſwer to the Managers of the Houſe of Commons. I have not ſeen my Counſel ſince I was laſt here in the Houſe; I have been kept cloſe Priſoner all the Time, and nobody come near me; nor had I any Time to ſpeak with any Body, particularly with my Counſel; ſo that I have not had Time to be exactly informed of all the Points of Law they have to plead. The Counſel will tell themſelves what Point of Law they have to plead.

L. H. Steward. My Lord *Wintoun*, regularly you ſhould propound your own Queſtion before your Counſel ſpeak. Before it appears to be a Point of Law, it is not fit for your Counſel to be heard.

Clerk from L. Wintoun. It is impoſſible I ſhould direct a Counſel, I, that don't underſtand Law: I can't introduce a Point of Law; my Counſel will ſpeak to the Point of Law.

L. H. Steward. My Lord *Wintoun*, did not you ſpeak to your Counſel laſt Night?—*Clerk from L.* Wintoun. I could not.

L. H. Steward. Why?

Clerk from L. Wintoun. Becauſe is was late when I went from hence; and your Lordſhips know I am a cloſe Priſoner in the *Tower*; and was lock'd up and could not ſee them. I ſee nobody but the Guards.

L. H. Steward. Hath not your Lordſhip ſeveral times ſeen your Counſel, as often as you required an Order for ſo doing?

Clerk from L. Wintoun. I never ſaw my Counſel but once, before I gave in my Anſwer.

L. H. Steward. Did you deſire to ſee them oftener?

Clerk from L. Wintoun. My Lords, my Solicitor ſpoke to them; and my Witneſſes not being come up, it was needleſs for me to ſpeak to my Counſel, before that they might know what the Witneſſes had to ſay, and ſo might draw up the State of the Queſtion. I did not doubt but the Lords would have given me more Time; and therefore I was not ſo deſirous to ſee my Counſel as I would have been, if I thought I ſhould have been ſo much crampt in Time.

Mr. *Cowper.* My Lords, I had the honour to receive the Commands of the Commons, to reply to his Lordſhip's Defence, and it was reaſonable to expect that the Priſoner, having pleaded Not Guilty to the Impeachment, would have attempted to give ſome Evidence in ſupport of his Plea; but ſince it ſeems to be his Lordſhip's Reſolution not to enter into a Defence, I think it my Duty to ſay ſomething to your Lordſhips upon this unexpected Occaſion. Such is the Treaſon, and ſo full the Evidence to prove it, that I think his Lordſhip's Behaviour, unaccountable as it is, more to his Purpoſe than any other could have been. My Lords, I am very unwilling to ſpeak my own private Sentiment of his Lordſhip's preſent Conduct, although the Obſervations I could make ariſe out of his Lordſhip's Anſwer to the Impeachment: Whoever ſhall read and conſider it, will find my Lord *Wintoun* not denying, but confeſſing the ſeveral Overt-Acts of Treaſon laid to his Charge, and then drawing a falſe Concluſion; that he is Not Guilty, however, of the Treaſon whereof he is accuſed. He denies that what he did was done with a traitorous Intention, and ſays very emphatically, that the pure Streams of Loyalty, which have always run in the Blood of his Anceſtors, are derived to him uncorrupted; and thus, my Lords, a Popiſh Pretender being the Object of his Lordſhip's Loyalty, he thinks he may be guilty of the whole Impeachment without being a Traitor. This is the true ſtate of the Caſe. It ſeems to me, his Lordſhip is determined to maintain his Point; and how far he may think it proper to acknowledge your Lordſhips Juriſdiction I know not. My Lords, as to the Impeachment which the Commons with great Juſtice have exhibited againſt this Priſoner, your Lordſhips have obſerved, that the ſeveral Treaſons therein contained have been fully proved; I am unwilling, in a Caſe ſo plain, and where no Defence has been, or can be made, to waſte your Lordſhip's Time. Your Lordſhips have heard, in the Courſe of the Evidence which we have produced, that this Lord departed from his Seat of *Seaton* Houſe with about fourteen of his own Servants, free and unconſtrained; that he joined others of the Rebels at *Moffett*, at which Place his Lordſhip was pleaſed to form a Troop, which from thenceforth was called the Earl of *Wintoun*'s Troop. The Priſoner had the Command of it, and for fear his Zeal for the Pretender ſhould paſs unobſerved, his own Servants rid in his own Troop in his own Livery; and I may add, that it appears his Lordſhip's Troop was paid after the rate of Two Shillings *per Diem* each Man, by his Lordſhip's Order, and with his own Money. From the Town at *Moffett*, which I mentioned, your Lordſhips had an account of many Marches and Counter-marches; his Lordſhip and the Rebels under him ever were increaſing in their Numbers; every where declaring and proclaiming the Pretender to his Majeſty's Crown, as King of theſe Realms. And, my Lords, I may venture to ſay it appears through the whole Courſe of the Evidence, that no one was more zealous and active than the Priſoner. My Lords——

L. *Guilford.* I am very ſorry to interrupt that Gentleman, but I think it proper, before the Houſe of Commons ſum up their Evidence, to move your Lordſhips to adjourn to the Houſe of Lords.

Then the Houſe was adjourned to the Chamber of Parliament; and after about half an Hour returned, and the Houſe was reſum'd.

And a Proclamation for Silence being made as uſual,

L. H. Steward. My Lord *Wintoun*, I am order'd by their Lordſhips to acquaint you, that they are yet ready to hear any thing that you have to ſay in your Defence by way of Obſervation upon what hath been prov'd againſt you, or alledg'd againſt you, or otherwiſe; they are likewiſe ready to hear any Witneſſes you are pleaſed to call or produce; but then I am to acquaint your Lordſhip, that if you neglect this Opportunity now given you, then it is their Lordſhips Pleaſure that I ſhould ſignify to the Managers of the Houſe of Commons, that they ſhould go on to their Reply; and if ſuch Reply be made, your Lordſhip hath no further Opportunity to alledge any thing, or to prove any thing. This Notice is ordered by their Lordſhips to be given you. I am likewiſe to acquaint you, that it is their Lordſhips Opinion, as I before told you, that if you have any Queſtion of Law to be ſpoken by your Counſel, their Lordſhips cannot admit any other Form, but that you ſhould propound it to their Lordſhips yourſelf.

Clerk from L. Wintoun. I believe my Counſel, my Lords, have ſomething to ſay in Anſwer to what the Managers have ſaid. My Lords, the Gentleman who was preſent, knows they would not let me know what they had to ſay.

Clerk. He ſays I was by when his Counſel ſaid ſo.

L. H. Steward. My Lord, if your Lordſhip hath any Notes or Papers you may help your Memory by them in your Defence.——Read or look upon them.

Clerk from L. Wintoun. I ſhall read it as I can, and you will excuſe it if I don't do it right as I ſhould do.

[*Lord* Wintoun *reads, and the Clerk repeats.*]

The Counſel have a Point of Law ariſing from what hath been paſs'd in the Houſe, to ſhew that he is ſuch a Perſon as is not capable of committing the Treaſon laid in the Impeachment. I plead Not Guily, and this alledges the ſame. I ſay I am Not Guilty, and the Paper ſays it will demonſtrate I am not.

(*The Paper read again and repeated as before.*) The Counſel have a Point of Law ariſing from what hath paſſed in the Houſe, to ſhew that he is ſuch a Perſon, that is not capable of committing the Treaſon laid in the Impeachment.

Clerk from L. Wintoun. I don't underſtand Law, and how ſhould I introduce a Point of Law?

L. H. Steward. My Lord *Wintoun*, if your Lordſhip doth not proceed to make a Defence, and to call your Witneſſes, I have already acquainted you, and I believe I ſhall be excuſed for doing it a ſecond Time, that I ſhall ſignify to the Managers of the Houſe of Commons to reply, after which your Lordſhip can't have them examined.

Clerk from L. Wintoun. I heard your Lordſhip what you ſaid, but I don't underſtand what is meant by it.

L. H. Steward. They may proceed to ſay what they think proper touching that ſort of Defence your Lordſhip is making, to anſwer what they have already ſaid and proved againſt your Lordſhip; after they have ſaid and done this, the Lords won't allow you to ſpeak afterwards.

Clerk from L. Wintoun. The Counſel deſire to be heard, ſince they have written a Paper, to be heard on that Paper.

L. H. Steward. The Paper is allowed to help your own Memory, but you muſt not give in any Paper as written by your Counſel, nor mention it as ſuch.

Clerk from L. Wintoun. I deſire my Counſel may be heard on the Point of Law contained in what I call the Paper. I deſire my Counſel may be heard to the Point of Law, which I read out of the Paper. I deſire my Counſel may be heard to the Point of Law, which they urge they have to ſay.

L. H. Steward. My Lord *Wintoun*, you have by the help of a Paper propounded that which you call a Point of Law. Their Lordſhips have heard what you have propounded. I don't find any Motion is made to adjourn, to conſider whether ſuch a Point is fit for your Counſel to be heard to, that is, whether it is a Point of Law? If there be any Doubt, you will preſently ſee it by the Effect, by ſuch a Motion as I have mentioned.

[*After ſome Pauſe.*]

L. H. Steward. If your Lordſhip doth not proceed, I muſt intimate to the Managers of the Houſe of Commons that they may reply.

Clerk from L. Wintoun. My Lords, if your Lordſhips will allow my Counſel to be heard on the Point of Law I have given in.

L. H. Steward. My Lord, I think I may now preſume to tell you, that I humbly apprehend it is no Point of Law which you propoſe.

Clerk from L. Wintoun. I am not a Judge of a Point of Law, for I don't underſtand Law, nor never did.

L. H. Steward. My Lord *Wintoun*, the ſame Matter muſt not be drawn over and over again. If your Lordſhip doth not proceed to ſomething proper for your Defence, I muſt ſignify immediately to the Managers that they may reply.

Clerk from L. Wintoun. If your Lordſhips pleaſe to hear the Counſel, they will tell you what it means. The Counſel dare not ſpeak till they be deſired.

L. H. Steward. Gentlemen of the Houſe of Commons, you may reply.

Mr. *Cowper.* My Lords, I ſhall avoid, as near as I am able, repeating any Thing I have already ſaid before your Lordſhips laſt Adjournment. I was obſerving that the Behaviour of the Priſoner, my Lord *Wintoun*, throughout all his Conduct, during the whole Progreſs of the Rebellion, appeared in a quite different Light, to that in which he would now willingly appear: Your Lordſhips find him, according to the Evidence, at every falſe Alarm very inquiſitive to know the Occaſion; having aſſumed the Command of a Squadron, his Lordſhip was inſtantly at his Poſt, ready to receive and encounter his Majeſty's Forces, and the Reverend Mr. *Patten* has done Juſtice to his Lordſhip's Vigilance and Courage upon this Occaſion; but it ſeems the Alarms were both falſe: Hence we may obſerve, that Alarms may be falſe, and *Dangers may be imaginary*; which Mr. *Patten*, and Men of his Principles would do well to reflect on at leiſure. My Lords, after great Numbers of Marches and Counter-marches, during which his Majeſty's Subjects were plundered, the Public Money ſeized, and Taxes exacted from the People by Force and Violence. Your Lordſhips

Lordships have heard that the Town of *Preston* was seized by this Lord, and the Traitors, his Accomplices. At this Place ensued a terrible Slaughter of his Majesty's faithful Soldiers, Men who deserved a better Fate than to die by the Hands of such perfidious Rebels. But when the usual Bravery of the King's Troops prevailed, and there was nothing left but the undeserved Hope of Mercy, you find the Prisoner amongst the rest surrendering his Arms and his Person to the Discretion of his Majesty's Generals. The Commons cannot, my Lords, but take a particular Satisfaction in one Incident, occasion'd by this Lord's putting himself upon his Trial, which is, that it has administer'd to them a Time and an Opportunity, in the most public Manner before this August Assembly, to vindicate his Majesty's Generals from a malicious Calumny suggested even by this Lord, the Prisoner, in his Answer to the Impeachment, and not only by him, but by the rest of his Accomplices already attainted. It seems not to be accidental, that all the Lords mentioned in the Impeachment should every one of them (false as it appears to be) alledge that they surrender'd, some say upon Promises, but all agree upon Hopes given of Mercy, considering how fully it now appears, that there is not the least Colour or Shadow of Truth to support this Suggestion; it is no uncharitable Reflection to say, that their Lordships, I doubt, to supply the Mischiefs their Arms could not accomplish, were willing to assist their Party, by furnishing them with an Untruth to propagate. With what Zeal and Industry has it been accordingly propagated! I may take the Liberty, I presume, to say, with the Consent of this whole Assembly, that it appears on the Evidence to be utterly false; nay further, that the very Reverse is true, the Rebels would willingly have obtained a Promise, or even a Hope of being recommended, but the Generals rightly told them, Rebels deserved no Mercy, nor would they treat with Rebels of surrendering otherwise than at Discretion. I cannot conclude without touching shortly upon a Question which I observed his Lordship to ask, during the Course of the Evidence; I think it was proposed to Colonel *Cotton*, Whether any of *our Men*, as his Lordship was pleased to express it, were slain during the Time of the Cessation of Arms at *Preston*? Which, in fact, was true; and if it had been answer'd in the Affirmative without Explanation, I believe his Lordship would have been gratified, by furnishing his Friends with another Story to propagate, which, well improved, might have lasted a good while; but when the Witness (who, I presume, discerned the Tendency and Malignancy of the Question) gave his Answer, the Case appears this; The Rebels stipulate and agree (Hostages being delivered) that no Works shall be erected in the Town during the Suspension; that no Person then in the Town shall go out of it during the same time; in Breach of which Stipulation and Agreement, about six of the Rebels attempt, Sword in Hand, to charge through the King's Troops, in which Attempt they fell, and if the King's Troops had done less they had not done their Duty. My Lords, I thought it not improper to make some few Observations upon the Evidence; not that his Lordship's Defence has made it requisite, but to answer, according to my Power, the End of that Trust which the Commons have been pleased to repose in me.

Sir *William Thomson*. My Lords, I should think myself unworthy the Honour of being allowed any Share of your Lordships Time; but as I was entrusted by the Commons to assist the learned Gentleman who spoke last, in a Reply to such Defence as should be made by the Noble Lord at the Bar, although no Evidence has been produced by him, yet I must request your Lordships Patience to make a few Remarks upon the Nature of this Cause, as it stands before your Lordships.

The Answer of the Noble Lord not being supported by Evidence, ought to go for nothing; but since several Matters are alledged in it to mitigate, if not to justify his Proceedings, which are falsified by our Evidence, I beg leave to take some notice of it.

I must agree with the Noble Lord, that "It will be very pleasing to "that honourable Assembly who are his Accusers to have an innocent "Man acquitted, as well as a guilty one condemned." Nor can I differ with him where he asserts, "That to be taken with Persons in Arms "against the Government, is a reasonable Presumption of his Guilt, and "a very just Foundation to accuse him with the rest so taken; but that "the Circumstances of his Case appear so different from the others, as to "require your Lordships distinguishing him in Judgment." I cannot say, that any thing has been offered to your Lordships which makes room for such a Distinction.

"This Noble Lord is pleased to give an Account of what happened to "him about eight Years ago, when he endeavour'd to avoid the Suspi"cion of the Government; he mentions the ill Usage of the Militia and "the King's Troops, and several Transactions, *viz.* rifling his House, "and committing Disorders there, without telling when they happened, "or from whom; he is pleased to say that he was unfortunately driven "into the Company of some of the Persons mentioned in the Impeach"ment; that he joined them without any Intention to assist their Designs; "that he never meant to leave his own Country; that he was ignorant of "the Purposes of his Companions; that he was constrained to keep them "Company, but never join'd in any Act of Hostility, or countenanced "or abetted them therein."

My Lords, the Evidence against this Noble Lord sufficiently explains how far he abetted the Undertakings of his Companions.

It was prov'd to your Lordships, that when he first came to join the Rebels at *Moffat*, he brought fourteen of his Domestics with him, most of them well armed and accoutred; that he came with them to a Place of Rendezvous, where were assembled the Lord *Kenmure*, and about one hundred and fifty Horse; that from the Time he joined them till he was taken, he marched along with them in a Hostile Manner through all the Towns at the Head of his Troop that he had formed, and which he commanded upon all Occasions; that he had also a Squadron under his Command and Direction, to whom he gave Orders, and was very ready to have disposed them to Action, particularly on two Alarms of the King's Troops; that he assisted several Times at the proclaiming the Pretender by the Rebels in the Towns where they passed thro' with his Sword in Hand; that he was with them at those Towns where they seized the public Money, the Cannon, and other warlike Instruments; and when he came to *Preston*, that in the Preparations to resist the King's Troops he was as active as any of the rest; and particularly in the Church-yard, where the Rebels were drawn together in order to that Resistance, he had his Sword and Pistols with him, and was assisting in making the Dispositions for Engagement.

And for the Constraint that is pretended, 'tis plain, that as he came in to the Rebels in the manner I have mentioned without any Force or Compulsion whatever, so he continued all along with them, and gave them the best Assistance he could, and was far from shewing any Backwardness or Uneasiness at their Proceedings through the whole Progress of this Affair. He drank the Pretender's Health, and the other usual Healths among the Rebels, *viz.* Success to their Cause; and if he had not wish'd it, he might have left them whenever he would, if he had an Inclination so to do; he did not want an Opportunity, particularly at *Langholm*, when about five hundred Highlanders went back to *Scotland*; before they went they suffered him to come to them (though they would not any other), that he discoursed them, and came back from them, and declared it was not his Fault that they would not go along with him into *England*. My Lords, whether the whole Tenor of this Proceeding does not manifest the Intentions of this Noble Lord, and whether the Evidence of these Facts does not falsify every Allegation in his Answer, by which he would justify himself, your Lordships will easily determine.

The Noble Lord says further in his Answer, "That if he hath com"mitted any Act which by the Rigour of the Law may be construed High"Treason, he hopes the Innocence of his Heart, and his Ignorance of "the Law, will, by your Lordships Intercession, render him an Object "of his Majesty's Mercy; which, he says, at the Time of his Surren"der, he was encouraged to depend upon by his Majesty's Officers."

As to any Assurances or Encouragement to expect Mercy upon the Surrender, the direct contrary is fully made out, I dare say, to your Lordships entire Satisfaction. And for your Lordships Intercession, that is not the Consideration now before you: The Question is only, Whether the Witnesses have proved him guilty of the High-Treason of which he is accused?

I find the noble Lord cannot condescend to own the Facts he is charged with to amount to this Crime: He is pleased to say, "That he is de"scended from a noble Family, in whose Blood the Streams of Loyalty "were always pure, never corrupted or polluted with Treason or Sedi"tion; that he never degenerated from his loyal Ancestors, so as to form "or carry on any Design to subvert or alter the Constitution of this King"dom, but that he was always ready to sacrifice his Fortune, and even "his Life for its Preservation."

My Lords, I could wish, for the Sake of this unhappy Lord, the Object of your present Consideration, that it were not too evident what Constitution he meant to preserve, and for which he has ventured his Life and Fortune.

All Mankind, who will not shut their Eyes, must see that the Purpose of this Noble Lord and his Accomplices was to dethrone his most sacred Majesty, our Protestant King, whom God and the Laws have set over us, and in his Stead to set up a Popish Pretender to his Crown, bred up in Superstition, and under the Maxims of Tyranny and Arbitrary Power: The Success of this Design must necessarily have produced a most dreadful Scene of Blood and Confusion; the Life of our most gracious Sovereign, the Lives of all his Royal Family, your Lordships, and those other brave and honest *Britons* who would have stood in the Defence of the Religion, the Laws and Liberties of their Country, must have been sacrificed to the Rage and Fury of Popish Bigotry, and to the insatiable Cruelty of Jesuits and Priests, who, as we are Protestants, are our most implacable Enemies.

Instead of the Happiness we now enjoy under our most excellent Form of Government, where every thing that is dear and valuable to human Nature is protected by the Laws from the least Violence or Invasion whatever, what could this Nation expect from Popery and Arbitrary Power, but endless Miseries and Calamities, and the most abject Slavery?

My Lords, it is a melancholly Reflection, that there should be any, who pretend to the Name of *Britons*, who would engage in so groundless, so unprovok'd, and, most properly called, so unnatural a Rebellion; or that others should be so deluded or corrupted, as by their false and malicious Insinuations, and by their vile Calumnies on the best of Princes, or by their avowed Indifference towards him, to encourage that traitorous Enterprize.

All such Enemies to the Welfare and Prosperity of their Country, ought to reflect, with the utmost Shame and Confusion, on the dismal Prospect they were preparing for us by the natural Tendency of their Proceedings: And I cannot but think, that it must add to the Affliction of this unfortunate Lord who stands before this August Judicature, while he reflects on the Assurances given him of generous Compassion as far as is consistent with the Rules of Justice, while he considers of that Humanity and tender Regard expressed towards him by that great and Noble Mind, who so justly represented all your Lordships Sentiments, while he observes that Care and Concern shewn to him, that Assistance granted him towards making his Defence, and that his Judges are so many noble Peers, who can never be influenced to condemn the Innocent, and who will be governed only by full Proof and clear Conviction: Sure he must now reproach himself, when he thinks that he was about to subvert those very Laws by which even his Life, who has so transgressed, is thus protected.

My Lords, I am here led to take notice also, that his most gracious Majesty (against whom this unfortunate Lord, with his Associates, have so signally offended) hath been pleased to express his mild and gentle Disposition, even to them his most inveterate Enemies. *It was an Uneasiness to him that he could not distinguish the first Years of his Reign by the endearing Marks of Peace and Clemency; it afflicted him that the Calamities of his faithful Subjects should require indispensible Returns of Severity.*

I may presume your Lordships natural Compassion would incline you to the same merciful Dispositions; but the Commons are persuaded that your

your Lordſhips will have ſome Regard to the Lives of thoſe many brave and gallant Men, who by the baſe Methods of the Rebels were murder'd, and expir'd in their Country's Cauſe; that their Blood demands the Juſtice of that Country in whoſe Defence it was ſpilt; and the Commons are aſſured that your Lordſhips muſt think that the Public Safety alſo requires your examplary Juſtice, more eſpecially on the principal Offenders; and that 'tis the moſt effectual Method to prevent any future Inſurrections or Diſturbance of the Public Repoſe and Tranquillity of the Kingdom, and to render firm and laſting our preſent happy Eſtabliſhment.

Sir *J. Jekyll.* My Lords, the Gentlemen of the Houſe of Commons have nothing more to offer to your Lordſhips, but deſire your Lordſhips Opinion on this Evidence.

[Then the Houſe of Lords was adjourned to the Chamber of Parliament; and being returned, the Houſe reſumed, and Proclamation made for Silence as uſual.]

Then the Lord High-Steward being ſeated on the Chair, placed as before-mentioned, ſtood up uncovered, and beginning with the youngeſt Peer, ſaid,

Thomas Lord *Parker*, what ſays your Lordſhip, is *George* Earl of *Wintoun* Guilty of the High-Treaſon whereof he ſtands impeached, or not Guilty?

Then *Thomas* Lord *Parker* ſtanding up in his Place, and laying his Right Hand on his Breaſt, ſaid, Guilty upon my Honour.

In like manner, the ſeveral Lords aftermentioned, being all that were preſent, anſwered as followeth:

Richard Lord *Cobham*, Guilty upon my Honour.
Henry Lord *Carleton*, Guilty upon my Honour.
Bennet Lord *Harborough*, Guilty upon my Honour.
James Lord *Saunderſon*, Guilty upon my Honour.
Robert Lord *Bingley*, Guilty upon my Honour.
Allen Lord *Bathurſt*, Guilty upon my Honour.
Thomas Lord *Manſell*, Guilty upon my Honour.
Charles Lord *Boyle*, Guilty upon my Honour.
Simon Lord *Harcourt*, Guilty upon my Honour.
John Lord *Belhaven*, Guilty upon my Honour.
William Lord *Roſs*, Guilty upon my Honour.
John Lord *Gower*, Guilty upon my Honour.
Maurice Lord *Haverſham*, Guilty upon my Honour.
Henry Lord *Herbert*, Guilty upon my Honour.
John Lord *Aſhburnham*, Guilty upon my Honour.
Francis Lord *Guilford*, Guilty upon my Honour.
Richard Lord *Lumley*, Guilty upon my Honour.
Peregrine Lord *Oſborn*, Guilty upon my Honour.
Charles Lord *Cornwallis*, Guilty upon my Honour.
John Lord *Colepepper*, Guilty upon my Honour.
Charles Lord *Bruce*, Guilty upon my Honour.
William Lord *Brook*, Guilty upon my Honour.
James Lord *Compton*, Guilty upon my Honour.
William Lord *St. John*, Guilty upon my Honour.
Thomas Lord *Howard*, of *Effingham*, Guilty upon my Honour.
Charles Lord *Fitzwalter*, Guilty upon my Honour.
John Lord *Delawar*, Guilty upon my Honour.
Peregrine Lord *Willoughby*, of *Ereſby*, Guilty upon my Honour.
Henry Lord Viſcount *Tadcaſter*, Guilty upon my Honour.
Henry Lord Viſcount *Lonſdale*, Guilty upon my Honour.
Talbot Lord Viſcount *Longueville*, Guilty upon my Honour.
Charles Lord Viſcount *Townſhend*, Guilty upon my Honour.
Lawrence Lord Viſcount *Say* and *Seal*, Guilty upon my Honour.
George Earl of *Hallifax*, Guilty upon my Honour.
John Earl of *Briſtol*, Guilty upon my Honour.
Heneage Earl of *Aylesford*, Guilty upon my Honour.
Charles Earl of *Tankerville*, Guilty upon my Honour.
Lewis Earl of *Rockingham*, Guilty upon my Honour.
James Earl of *Carnarvon*, Guilty upon my Honour.
Thomas Earl of *Strafford*, Guilty upon my Honour.
Archibald Earl of *Ilay*, Guilty upon my Honour.
Henry Earl of *Deloraine*, Guilty upon my Honour.
Hugh Earl of *Loudon*, Guilty upon my Honour.
Thomas Earl of *Haddington*, Guilty upon my Honour.
John Earl of *Rothes*, Guilty upon my Honour.
Hugh Earl of *Cholmondeley*, Guilty upon my Honour.
Francis Earl of *Godolphin*, Guilty upon my Honour.
John Earl *Poulet*, Guilty upon my Honour.
John Earl of *Greenwich*, Guilty upon my Honour.
Henry Earl of *Grantham*, Guilty upon my Honour.
William Earl of *Jerſey*, Guilty upon my Honour.
Edward Earl of *Orford*, Guilty upon my Honour.
George Earl of *Warrington*, Guilty upon my Honour.
Richard Earl of *Scarborough*, Guilty upon my Honour.
Henry Earl of *Portland*, Guilty upon my Honour.
Robert Earl of *Holderneſs*, Guilty upon my Honour.
Henry Earl of *Rocheſter*, Guilty upon my Honour.
Daniel Earl of *Nottingham*, Guilty upon my Honour.
Charles Earl of *Radnor*, Guilty upon my Honour.
Richard Earl of *Burlington*, Guilty upon my Honour.
Arthur Earl of *Angleſey*, Guilty upon my Honour.
Edward Earl of *Clarendon*, Guilty upon my Honour.
Thomas Earl of *Stampford*, Guilty upon my Honour.
Charles Earl of *Mancheſter*, Guilty upon my Honour.
George Earl of *Northampton*, Guilty upon my Honour.
John Earl of *Leiceſter*, Guilty upon my Honour.
Scroop Earl of *Bridgwater*, Guilty upon my Honour.
Lionel Earl of *Dorſet* and *Middleſex*, Guilty upon my Honour.
Henry Earl of *Lincoln*, Guilty upon my Honour.
Thomas Earl of *Pembroke*, Guilty upon my Honour.
James Earl of *Derby*, Guilty upon my Honour.
William Marquis of *Annandale*, Guilty upon my Honour.
Thomas Duke of *Newcaſtle*, Guilty upon my Honour.
Evelin Duke of *Kingston*, Guilty upon my Honour.
Robert Duke of *Ancaſter* and *Keſteven*, Lord Great Chamberlain, Guilty upon my Honour.
Henry Duke of *Kent*, Guilty upon my Honour.
John Duke of *Roxburgh*, Guilty upon my Honour.
James Duke of *Montroſe*, Guilty upon my Honour.
John Duke of *Montagu*, Guilty upon my Honour.
John Duke of *Buckingham* and *Normandy*, Guilty upon my Honour.
John Duke of *Marlborough*, Guilty upon my Honour.
Charles Duke of *Shrewſbury*, Guilty upon my Honour.
Charles Duke of St. *Albans*, Guilty upon my Honour.
Charles Duke of *Richmond*, Guilty upon my Honour.
Charles Duke of *Somerſet*, Guilty upon my Honour.
Charles Duke of *Bolton*, Lord Chamberlain of his Majeſty's Houſhold, Guilty upon my Honour.
William Duke of *Devonſhire*, Lord Steward of his Majeſty's Houſhold, Guilty upon my Honour.
Charles Earl of *Sunderland*, Lord Privy-Seal, Guilty upon my Honour.

L. H. Steward. My Lords, I am of Opinion that *George* Earl of *Wintoun* is Guilty of the High Treaſon whereof he ſtands Impeached, upon my Honour.

Proclamation for Silence, and Proclamation to bring forth the Priſoner as uſual.

L. H. Steward. *George* Earl of *Wintoun*, the Lords have conſidered of the Charge, and the Evidence given againſt you; and likewiſe of what you have ſaid in your Defence, and of the whole Matter as it hath been before them in this Trial, and are of Opinion that your Lordſhip is Guilty, and have found your Lordſhip Guilty of the High-Treaſon whereof you ſtand Impeached.

Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This Houſe is adjourned to the Chamber of Parliament.

Then all the Lords returned in the Order before-mentioned to the Chamber of Parliament.

Monday, March 19. *The Third Day.*

PRoclamation for Silence, and Proclamation for the Priſoner to be brought to the Bar as uſual.

L. H. Steward. *George* Earl of *Wintoun*, when you was laſt at this Bar, I let your Lordſhip know that your Peers had found you guilty of the High-Treaſon whereof you ſtand impeached, that is, in the Terms of Law, convicted you of High-Treaſon. I am now to aſk your Lordſhip if you have any thing to offer why Judgment of Death ſhould not paſs upon you according to the Law?

Clerk from L. Wintoun. My Lord *Wintoun* ſaith his Counſel have a Point of Law to offer to your Lordſhips, to ſhew that he is ſuch a Perſon againſt whom, by Law, Judgment ought not to be given.

L. H. Steward. My Lord, will your Lordſhip ſtate the Point, upon which your Lordſhip is adviſed that you are not ſuch a Perſon againſt whom Judgment ought to be given?

Clerk from L. Wintoun. I don't know what your Lordſhip means.

Sir *C. Phipps.* If your Lordſhips pleaſe, we have a Point of Law humbly to offer to your Lordſhips, if——

Att. Gen. My Lords, I hear a Gentleman of the long Robe offering to ſpeak. I do humbly inſiſt on it that they are not to ſpeak, unleſs there be a Point of Law ſtated by the Priſoner, and which your Lordſhips ſhall think to be a Point of Law; we think it irregular.

Mr. *Cowper.* We apprehend the Objection to that Gentleman's being heard is ſo obvious, that we are ſurprized to find he ſhould preſume to ſpeak without your Lordſhips Direction ſo to do; he cannot but know that the Priſoner is to propound the Queſtion in Law; and if your Lordſhip ſhall conceive it to be a Point of Law proper to be argued by Counſel, your Lordſhips will direct him to ſpeak; but he ought not in any caſe to propound a Queſtion in Law; nor when a Queſtion is propounded by the Priſoner, to ſpeak to it without your Lordſhips expreſs Direction.

Lord High Steward. Sir *Conſtantine Phipps*, you know the Practice to be ſo, and the Point muſt be firſt ſtated by the Priſoner before you can ſpeak to it.

Sir *C. Phipps.* My Lords, if I had been heard but ten Words more——

Sir *W. Thomſon.* My Lords, we humbly inſiſt upon it that that Gentleman be not heard one Word more——

Lord *Ilay* moved to adjourn.

L. H. Steward. Is it your Lordſhips Pleaſure to adjourn?

Lords. Ay, ay.

L. H. Steward. This Houſe is adjourned to the Chamber of Parliament.

The Lords went in their Order to the Chamber of Parliament.

And after about half an Hour being returned,

The Houſe was reſumed, and Proclamation made for Silence as uſual.

L. H. Steward. My Lord *Wintoun*, the Lords have conſider'd of the Matter which you have moved in Arreſt of Judgment, which was to this effect,

effect, that you are not such a Person as against whom Judgment of Death for High-Treason ought to be pronounced. I am directed to acquaint you, that their Lordships are of Opinion it is Matter of Fact, and not of Law; and that the Lords think you are such a Person as against whom Judgment ought to be given in this Case. I am likewise ordered by the Lords to reprimand you, Sir *Constantine Phipps*, for having, in a Proceeding of this Nature, presumed to be so forward as to speak for the Prisoner at the Bar before a Point of Law was first stated, and you had leave to speak to it; and your Fault is certainly the greater for having presumed to do this to a Matter, which you cannot but know is Matter of Fact, and that the Law is not doubtful one way or other, the Fact being supposed. My Lord *Wintoun*, I am allowed again to ask your Lordship, if you have any thing further to alledge or move why Judgment of Death should not pass upon you according to the Law?

Clerk from L. Wintoun. My Counsel are ready to offer, in Arrest of Judgment, that the Impeachment is insufficient, for the Time of committing the Treason is not therein laid with sufficient Certainty.

L. H. Steward. I think the Matter moved by my Lord is, that his Counsel should be admitted to shew that the Impeachment is insufficient, in respect that the Time therein is not laid with sufficient Certainty. This I think is the Matter mov'd. Will your Lordships be pleased that the Counsel have Leave to speak?

L. H. Steward. Is it your Lordships pleasure that the Counsel for the Prisoner may be allowed to speak to this Point?

Lords. Ay, ay.

L. H. Steward. I ask your Lordships leave to go nearer to the Table.

[*Which being done, Proclamation for Silence was made as usual.*]

L. H. Steward. Gentlemen that are of Counsel for the Prisoner at the Bar, you have liberty to speak to the Point proposed.

Sir *Constantine Phipps.* MAY it please your Lordships, we that have the Honour to be assigned by your Lordships as Counsel in this Case, do humbly apprehend the Impeachment against the noble Lord at the Bar to be insufficient; it is so uncertain, that we (with the greatest Submission) take it no Judgment can be given upon it. My Lords, we beg leave to take Notice to your Lordships, that in Indictments in the Courts below, even for Trespasses, the Law requires the certain Day when the Offence is supposed to be committed to be alledged; and if a particular Day be not laid, the Indictment is insufficient. And if such Certainty is requisite in Offences of the most minute Nature, it is much more so in capital Crimes, and more still in Offences of the highest Nature, such as Treason, with which this noble Lord is charged.

My Lords, there be two Reasons why, in Indictments for High-Treason, a certain Day should be assign'd when the Treason was committed.

One is for the Advantage of the Prisoner; that being appriséd not only for the Facts with which he is charged, but also of the Time when those Facts are supposed to be committed, he may be the better able to make his Defence: 'Tis possible he may have Witnesses to prove he was at another Place, and in another Company, at the Time when he is accused to have committed the Treason, or may by other Circumstances make his Innocence appear.

The second Reason is for the Benefit of the Crown, that it may be known to what Time the Forfeiture shall relate; for in Treason the Forfeiture relates to the Time laid in the Indictment; and if there be no precise Time alledged in the Indictment, the Forfeiture can relate no farther than to the Judgment.

My Lords, the Forfeitures in Cases of Treason are very great, therefore we conceive, with humble Submission, that the Accusation ought to contain all the Certainty it is capable of, that the Prisoner may not, by general Allegations, be rendered incapable to defend himself in a Case which may prove so fatal to him.

Our Books, my Lords, furnish us with many Instances where Indictments have been held to be insufficient for less Faults than not specifying the Day when the Offence was committed; but in Cases so plain, I will not trouble your Lordships with citing Authorities; for I believe there is not one Gentleman of the long Robe but will agree, an Indictment for any capital Offence to be erroneous, if the Offence be not alledged to be committed upon a certain Day.

My Lords, an Attainder upon an Impeachment subjects the Offender to the same Punishment, the same Forfeitures, as an Attainder upon an Indictment; and therefore I am at a loss to find out a Reason why there should not be the same Certainty in the one as in the other: if equal Certainty be required in both, then we humbly submit to your Lordships Judgment, whether this Impeachment be not erroneous and insufficient, in that there is no particular, certain Time alledged when the Treason or the Overt-Acts were committed? The Treason alledged is conspiring and imagining the Death of the King, and the Impeachment sets forth, "That the Conspirators, (and names them) as false Traitors to his pre- "sent most sacred Majesty King *George*, the only lawful and undoubted "Sovereign of these Kingdoms, having withdrawn their Allegiance, and "cordial Love, and true and due Obedience, which they, as good and "faithful Subjects, owed to his said Majesty, did, in or about the "Months of *September*, *October*, or *November* 1715, most wickedly, ma- "liciously, falsly, and traitorously imagine and compass the Death of his "most sacred Majesty." My Lords, a Prosecution by Impeachment is a Proceeding at the Common Law, for *Lex Parliamentaria* is a Part of the Common Law; and we humbly submit it to your Lordships Consideration, whether there is not the same Certainty required in one Method of Proceeding at the Common Law, as in another?

Your Lordships observe with what Uncertainty, as to the Time the Treason is alledged. 'Tis said to be in or about the Months of *September*, *October*, or *November* 1715. Who is able to say to which of these Months, much less to what Day of either of these Months, the Forfeiture shall relate? And how is it possible for the noble Lord, the Prisoner at the Bar, to make a Defence to a Charge so general, unless he bring for Witnesses all those Persons with whom he has had any Conversation during those three Months at least?

My Lords, the Overt-Acts are alledged with the same Insufficiency and Uncertainty as the Treason itself is; for in charging the first Overt-Act, which is conspiring to levy War and to depose the King; it is said, "That "for accomplishing and executing their said traitorous Purposes, they "the said *James* Earl of *Derwentwater*, &c. did, in or about the said "Month, or some of them, and at divers other Times, and at divers other "Places within this Kingdom, wickedly and traitorously agree, confede- "rate, &c. to raise, excite, and levy, within the Counties of *Teviotdale*, "*Northumberland*, *Cumberland*, and the County-Palatine of *Chester*, and "elsewhere within this Kingdom, a most cruel, bloody, and destructive "War against his Majesty, in order to depose and murther his sacred Ma- "jesty, and to deprive him of his royal State, Crown and Dignity." My Lords, can any thing be more uncertainly alledged, than to say that the Conspirators did, in or about the said Months, or some of them, and at divers other Times, and at divers other Places within this Kingdom, confederate, &c. to levy War within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and County-Palatine of *Chester*, and elsewhere within this Kingdom?

The next Overt-Act, which is actually levying War, is not laid with greater Certainty; for the Impeachment sets forth, "That the said Earl "of *Derwentwater*, &c. their Accomplices and Confederates, *in or about* "*the Months* aforesaid, in the Counties aforesaid, *or some of them*, did ga- "ther together great Numbers of his Majesty's Subjects, and with them "did assemble in a warlike and traitorous manner, in order to raise Tu- "mults and Rebellion within this Kingdom; and having procured great "Quantities of Arms, Ammunition, and warlike Instruments, *at the* "*Times and Places aforesaid*, or *some of them*, did form and compose, or did "assist in forming and composing an Army of Men, consisting of his Ma- "jesty's liege Subjects, in order to wage War against his said Majesty, "for and in behalf, and in favour of the said Pretender to the Crown of "these Realms; and at the Time and Times, and Places aforesaid, *and* "*at divers other Times and Places* within this Kingdom, the said Conspira- "tors did levy and raise War and Rebellion against his most sacred "Majesty, &c."

The next Overt-Act is proclaiming the Pretender, which is more uncertain than any of the other; for the Impeachment sets forth, "That "the aforesaid Conspirators, *during their March and Invasion aforesaid*, in "open Defiance of his most sacred Majesty's just and undoubted Title to "the Imperial Crown of these Realms, did wickedly and traitorously "cause and procure the said Pretender to be proclaimed in the most public "and solemn manner as King of these Realms.

Here is no certain Time or Place alledged when or where the Pretender was proclaim'd, but only that it was during their March and Invasion.

The last Overt-Act seems to be laid with greater Certainty than the rest; for 'tis said, "That the Conspirators did, on or about the 9th, 10th, "11th, 12th, or 13th of *November* aforesaid, traitorously seize and posses "themselves of the Town of *Preston*, in the County Palatine of *Lancaster*, "against his Majesty, and did then and there, in a warlike and hostile "Manner, levy War, oppose, engage, and fight against his Majesty's "Forces, and did then and there cause and procure a miserable and horrid "Slaughter and Murther of many of his Majesty's faithful Subjects." Here indeed are particular Days mention'd, but then the Words *or about* leave it at large, for no Man can tell how many Days may be included in these Words *or about*. We humbly apprehend that a Charge of this high Nature ought not to be alledged with such uncertainty, and that the Impeachment is as erroneous as an Indictment drawn in this Manner would be; this being a Proceeding of the same Nature, and according to the Course of the Common Law.

My Lords, I do not pretend any great Skill in Parliamentary Proceedings, but presume to say that in my little Experience in Business in other Courts, I never saw a Charge exhibited against any one that was laid in so uncertain a manner, unless in Libels in the Ecclesiastical or Admiralty Courts, which cannot in the least influence the Case now before your Lordships; this (as I have observed) being a Proceeding according to the Course of the Common Law.

Upon the whole Matter, I humbly submit to your Lordships Judgment, whether, for the Reasons I have offer'd to your Lordships Consideration, the Impeachment is not erroneous, and whether your Lordships will think fit to proceed to Judgment against the noble Lord, the Prisoner at the Bar, upon an Impeachment so uncertain and insufficient as I humbly apprehend this to be.

Mr. *Williams.* MY Lords, I am also assign'd, by your Lordships, of Counsel for this unfortunate Lord, and humbly insist in arrest of Judgment, that there is a Defect in this Impeachment, in regard no certain Day is laid, when the Treason is charged to have been committed.

In the Impeachment 'tis said, that this noble Lord did, *in or about* the Months of *September*, *October* or *November*, 1715, together with the others in the Impeachment nam'd, traitorously compass the Death of his most sacred Majesty: That this noble Lord did, *in or about* the said Months, *or some of them*, together with the rest, agree and confederate to levy War, against his Majesty: That *in or about* the said Months, *or some of them*, this noble Lord with others did levy War, and did march through several parts of the Kingdoms, and did proclaim the Pretender to be King: And that *on or about* the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of the said *November*, the noble Lord with others did seize and posses themselves of the Town of *Preston*, and fought against his Majesty's Forces.

This is the Effect of the Impeachment.

And with great Submission I take it, that in Point of Law, the Impeachment is defective in respect of the Uncertainty of the Time when this Treason is said to have been committed.

I humbly apprehend, that the Honourable the House of Commons is the *Grand Inquest of the whole Nation*; and that their Impeachment is in Nature of an Indictment, found by that Grand Inquest: Differing from an Indictment in this Respect, that an Indictment is found by the Inquest of a *County only*; but an Impeachment by the *Grand Inquest of the whole Kingdom*.

And taking it, that Impeachments are properly to be resembled to Indictments.

Then as the omitting of the laying of a certain Day when the Treason was committed wou'd be a material Fault in the Case of an Indictment; with great Submission, it is as material a Defect in the Case of an Impeachment.

It seems plain, that in the Case of an Indictment, a certain Day ought to be laid when the Treason was committed.

It will, I believe, hardly be denied, but that in Case of an Indictment for Treason, it wou'd be ill, if 'twere laid, that the Party indicted committed the Treason *on or about* the first of *September*, 1715.

It wou'd be apparently worse, if 'twere laid in an Indictment, that the Party committed the Treason *in or about the Month of September*, 1715.

It wou'd be still worse (because more uncertain) if it were laid in an Indictment, that the Party committed the Treason *in or about* the Months of *September*, *October* or *November*, 1715.

And, with great Submission, this, as I humbly take it, is the very Case before your Lordships; I mean, taking it, that Impeachments and Indictments, as to the material Parts of them, are to be measured by the same Rules of Law, as I humbly conceive they ought to be.

That the certain Day, for the committing the Treason, ought to be laid in Case of Indictments for Treason, seems to be proved, not only from the constant Practice of laying a Day certain in all Indictments of Treason; but from the Reason of the Law, which shews it to be a *Substantial and Material* Part of the Indictment.

That the constant Practice, in Case of Indictments for Treason, is to lay the Day on which the Treason is supposed to be done, will, as I presume, be admitted.

And such constant Practice is, of itself, a strong Argument that the Law requires it.

But I humbly take it, that the Reason of the Thing argues still much stronger for me, and shews it to be an *essential* Part of the Indictment.

The Reason of mentioning a Day certain in the Indictment when the Treason is supposed to have been committed, is in some Respects even for the Benefit of the Crown itself, and in some Respects for the Advantage of the Party indicted.

It concerns the Crown, in respect of the Forfeitures accruing to the King, of the Lands of the Party indicted; for where an Attainder ensues upon an Indictment for Treason, the Lands of the Party indicted are forfeited to the Crown, not only from the Judgment, but from the Day mentioned in the Indictment when the Treason is charged to have been committed.

This is expressly said, in the Lord *Coke*'s 1 *Inst.* 13. *a. b.* 390. *b.* and the Difference there taken is, between a Writ of Appeal and an Indictment. 'Tis there said, That if a Man be indicted for a capital Offence and out-law'd upon it, the Land of the Party is forfeited from the Day laid in the Indictment, for the committing of the Treason, or other capital Crimes; but in the Case of an Outlawry upon a *Writ of Appeal*, because no Day is mentioned in the Writ, the Forfeiture is only from the Judgment.

And tho' in the Case of a Writ of Appeal, which is called in *Latin (Breve)* from its Brevity, no Day is mention'd, yet in the Declaration upon the Appeal (which resembles an Indictment) 'tis necessary not only to mention the Day, but even the Hour when the Murder or Felony was committed.

In the Case of *Wilson* against *Law*, which was adjudg'd in the Court of *King's Bench*, in the sixth Year of King *William* and Queen *Mary*, in an Appeal of Murder, an Exception was taken to the Appeal that it was too uncertain, in regard the Murder was laid to be done, *circa horam primam post meridiem*, and this Incertainty even of the Hour was much insisted upon: But this, 'tis true, was at length over-rul'd, and held that *circa horam primam*, or *inter horam primam & secundam*, was well enough.

However no one, as I humbly apprehend, ever doubted, but that laying of a certain *Day* when the Fact was committed, is necessary both in the Case of an Indictment, and in a Declaration upon an Appeal; and that as to the Land of the Party indicted, the Forfeiture relates to the Day mentioned in the Indictment.

But if the Question were ask'd in the present Case, from what Day the real Estate of this unhappy Lord should be forfeited? it wou'd, as I humbly apprehend, be difficult to answer it.

And that Difficulty arises from the Incertainty of the Impeachment, as to the Time when the Fact was committed.

If then, the laying in an Indictment the certain Day when the Treason was committed concerns the Benefit of the Crown, as it surely does;

If it entitles the King to the Forfeiture of the Lands from the Day laid in the Indictment, as from the Authorities I have mentioned it appears to do;

If this Matter concerns that great Prerogative and Flower of the Crown, and its Right to Forfeitures;

Then surely this Omission can by no means be called a slight Omission, or a Fault in Form only.

It will also have its Weight with your Lordships, That the mentioning a Day certain in the Indictment, when the Crime is laid to have been done, is likewise for the Benefit of the Party indicted. 'Tis for his Advantage to know the Time when he is charg'd to have committed the Offence, and by that he will be the better enabled to defend himself against the Accusation.

It is a known Rule in Law, that in all Cases of Indictments, (though for Misdemeanors only) they ought to be strictly certain.

This Rule holds *a fortiori* in Cases of Indictments for capital Offences;

And still, *a fortiori*, in Cases of Indictments for High-Treason, where, for Example sake, the Judgment, though just, is as terrible as can well be thought of.

My Lords, I am sensible I ought to have too great a Value for your Lordships Time, to cite any of those numerous Cases in the Law-Books, which justify that known Rule in the Law that requires Certainty in Cases of Indictments.

I shall only beg leave to mention to your Lordships one Case, which is an Authority of your Lordships, upon a Writ of Error before your Lordships, which shews how strict the Law is in the penning of Indictments for Treason; and that it requires that even what seems to be Matter of Form only in such Indictments must be complied with: It is the Case of the King against *Tucker*, which was in the sixth Year of King *William* and Queen *Mary*, and is reported in Serjeant *Levinz*, 3. *Rep.* 396. where *Tucker* was indicted for Treason, and in the Conclusion of the Indictment it was not said to be *contra allegiantiæ suæ debitum*; and upon this Indictment *Tucker* was attainted, and his Lands forfeited to the Crown, and afterwards purchas'd under the Attainder; but afterwards this Attainder was revers'd in a Writ of Error in the King's-Bench upon very great Debate, for want of those Words in the Indictment, *contra allegiantiæ suæ debitum*, and upon a Writ of Error before your Lordships the Judgment of Reversal was affirmed, by which means a Purchaser under the Attainder lost the Estate.

With Submission, this Case is much stronger than the principal Case now before your Lordships.

In that Case it might with seeming Reason be objected, that the Word (*Proditorie*) which is always in the Body of every Indictment, shews, and necessarily implies, that the Treason commit ted was against the Party's Allegiance, for else how cou'd it be *Proditorie?*

Also in that Case the Treason is set forth at large in the Indictment, together with the Overt-Act, which *demonstrates* that the doing this must be against the Party's Allegiance.

But all this would not maintain the Indictment, in regard Indictments for Treason were always laid to be against the Party's Allegiance.

And if the constant Forms of Indictments be an Argument,

'Tis as strong a one for us in the present Case; for I believe there never was an Indictment without mentioning the Day when the Fact was committed.

Neither, with Submission, is this Matter of Form only, but 'tis the substantial Part of the Indictment, in regard in this Point the King is interested in respect of the Forfeiture, and the Party in respect of his Defence.

It will, I humbly presume, hardly be expected from us, that we should cite Precedents of Impeachments, especially, if 'twere known what few Hours Notice we had of attending your Lordships in Arrest of Judgment.

However, I will beg leave to mention one Case of an Impeachment fresh in your Lordships Memory, Dr. *Sacheverell*'s Case.

Dr. *Sacheverell* was impeach'd before your Lordships by the Honourable House of Commons, for seditious Expressions in two Sermons, the one preach'd at *Derby* Assizes, and the other at St. *Paul's*, *London*; and in that Impeachment the precise Days are laid when the Doctor preach'd each of these two Sermons.

And I humbly take it, that by a like Reason a certain Day ought to be laid in the Impeachment, when this Treason was committed; and that the Authority of Dr. *Sacheverell*'s Case seems so much stronger than the present Case in question, as the Crime of Treason is higher than that of a Misdemeanour.

My Lords, I have nothing else to say on behalf of this unhappy Lord; unhappy, as being in that doubtful State of Memory, not *insanæ* enough to be within the Protection of the Law, nor at the same time *sanæ* enough to do himself in any respect the least Service whatever.

[*Here the Managers gave some Interruption to the Counsel.*]

L. H. Steward. Mr. *Williams*, I apprehend the Reason why the Managers of the House of Commons appear uneasy with you, is, that you are going into a Matter of Fact, and which you have not leave to speak to; you must therefore confine yourself to the Point of Law that was stated.

Mr. *Williams.* My Lords, I shall take up no more of your Lordships Time; but humbly hope that the Cases of Indictments are parallel with those of Impeachments;

That, as in an Indictment for Treason, the want of laying a Day when the Treason is charg'd to have been committed, is a manifest Error;

That as the constant Forms of Indictments are so;

That as the Reason of the Law requires they should be so;

So for want of this Certainty in this Impeachment, we with great Submission insist that the Impeachment is defective:

And therefore pray that the Judgment against this unfortunate Lord may be arrested.

Mr. *Walpole.* MY Lords, the Commons have attended to the Objection made by the Counsel on the Part and Behalf of the Noble Lord at the Bar, and they humbly conceive those learned Gentlemen seem to forget in what Court they are. They have taken up so much of your Lordships time in quoting of Authorities and using Arguments to shew your Lordships what would quash an Indictment in the Courts below, that they seem to forget they are now in a Court of Parliament, and on an Impeachment of the Commons of *Great-Britain*. For should the Commons admit all that they have offered, it will not follow that the Impeachment of the Commons is insufficient; and I must observe to your Lordships, that neither of the learned Gentlemen have offered to produce one Instance relating to an Impeachment, I mean, to shew that ever the Sufficiency of an Impeachment was called in question from the Generality of the Charge, or that any Instance of that Nature was offered at before. The Commons don't conceive, that if this Exception would quash an Indictment, it would therefore make this Impeachment insufficient; nor do they think it necessary, in Justice to the Noble Lord at the Bar, that a certain Day should be mentioned in the Impeachment. They don't think, from the Nature of this Crime, and the Evidence that has been given, that there can be any Hardship for want of fixing a certain Day on which the Treason was committed. What he is charged with, is being concerned in a most notorious Rebellion. The Time mentioned in the Impeachment is the Months of *September*, *October*, and *November*, and particularly the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Days of *November*. He is charged with being concerned from the Time that he left his own House, to the Time he was taken at *Preston*; and it hath been proved, I believe, in a more ample Manner than ever any Crime of the like Nature hath been. And how can this Noble Lord suffer because no particular Day is mentioned, after he continu'd in Rebellion for so many Days and Months, and marched through so many Counties? It is impossible to conceive he can suffer from any Uncertainty in the Charge, in not having a particular Day fixed.

But,

But, my Lords, the Commons think themselves sufficiently justified, and their Impeachment supported by a Precedent I have in my Hand, the Trial of my Lord *Stafford*, who was tried for High-Treason, and was executed for the same. And I observe that he had Counsel, and it appears he offer'd some Things in Arrest of Judgment; and altho' it will appear that the Time was more uncertain in that Impeachment, yet that was never attempted to be offered in Arrest of Judgment. In his Case the Words of the Articles of Impeachment are, that for divers Years last past, a damnable Contrivance and Conspiracy had been form'd and carried on, that is just as these Articles are; and when they come to the particular Charge, all that is said is, That within the Time aforesaid, *&c.* that is, some Time within divers Years last past; but this Impeachment is so far from being uncertain, that the Commons have named three Months, in which the Treason charged in the Impeachment was committed; and in the Precedent it is only said, Within some of the Years last past; so that here the Commons are sufficiently justified in the Articles exhibited by them, by the Precedent I have mentioned; and there Judgment passed, and nothing of this Nature was offered in Arrest of Judgment. I hope this will satisfy your Lordships, that this Impeachment is sufficient, notwithstanding this Objection; and I hope it will never be allowed here as a Reason, that what quashes an Indictment in the Courts below, will make insufficient an Impeachment brought by the Commons of *Great-Britain*.

Mr. Attorney-General. MY Lords, the Counsel for the Prisoner have made two Objections, as I apprehend, in Point of Law, which I would give a short Answer to, without taking notice of the other Matter which was spoke to by one of the Gentlemen, contrary to the Orders of the House.

The First Objection is, That there is no certain Day charged in the Impeachment, when the Treason was committed.

The Second is, That as to several of the Overt-Acts there is no Time mentioned at all.

I would follow the Steps of the learned Gentleman who spoke before me, and I think has given a good Answer to these Objections: I would take notice, that we are upon an Impeachment, and not upon an Indictment. The Courts below have set Forms to themselves, which have prevailed for a long Course of Time, and thereby are become the Forms by which those Courts are to govern themselves; but it never was thought, that the Forms of those Courts had any Influence on the Proceedings of Parliament. In *Richard* the Second's Time it is said in the Records of Parliament, That Proceedings in Parliament are not to be govern'd by the Form of *Westminster-Hall*.

I beg leave to take notice, in Answer to this Objection, That tho' it is the usual Form in the Courts below to alledge a certain Day on which the Crime is charged to be committed; yet at the same time they add (and at divers other Days and Times) and that Day which is laid, is only for Form sake; but that Day is not material, they are not bound to prove the Crime committed on that Day, but they may prove the Defendant Guilty at any Time, either before or after the Day laid in the Indictment. There has been produced, by the Honourable Gentleman who spoke before, a Precedent in Parliament much stronger than this Case, it is the Case of the Lord *Stafford*; there is not so much Certainty as there is in this Impeachment. Here it is said, That on or about the Months of *September*, *October*, or *November*, or on or about one of them, the Crimes charged in the Impeachment were committed; but all that is said in my Lord *Stafford*'s Case is, That there had been for many Years then last past a damnable Conspiracy carried on; and when they came to charge the noble Lord with particular Facts, there is no Time mentioned at all.

One of the Gentlemen cited another Case in Parliament, which was Dr. *Sacheverell*'s Case: There was in that Case an Exception taken to the Impeachment for Uncertainty: and it was said and argued from the Forms of the Courts in *Westminster-Hall*, that where Indictments were for Words spoke or writ, the Words must be laid as they were spoke or wrote; and the Opinion of the Judges was, that it was necessary according to the Forms of the Courts below, but it was resolved to be otherways in the Court of Parliament, and they were not bound but by their own Forms; so that upon this Head we apprehend we are clear of the Forms of Law in the Courts below, and that they are of no Use, since, if a certain Day is laid, they are not by Law bound to prove the Crime committed on that Day, but may prove it upon any other Day.

The Second Objection is, That there is no Time laid for some of the Overt-Acts.

I think there is a certain Day charged when one of them was done, the seizing of *Preston*; and in the inferior Courts it has been held, that it is not necessary there should be a Day and Place alledged for every Overt-Act.

We think this Objection has no Weight in it, and therefore would not spend more of your Lordships Time in it; we are in the Case of an Impeachment, and in the Court of Parliament. Your Lordships have already given Judgment against Six upon this Impeachment, and it is warranted by the Precedents in Parliament; therefore we insist that the Articles are good in Substance, and according to the Forms of Parliament.

Mr. *Cowper.* THE Objection, as stated by the Prisoner, and upon which his Counsel have argued, is this, That the Time of the Treason committed is not laid in the Impeachment with sufficient Certainty. The Counsel have acquainted your Lordships with the Practice of inferior Courts, and have insisted too much upon the Precedents of Trespasses and other Crimes set forth in Indictments, considering the Question arises upon the Usage and Practice of the High-Court of Parliament; and they cannot but know that the Usages of Parliaments are Part of the Laws of the Land, altho' they differ in many Instances from the Common Law, as practised in the inferior Courts, in Point of Form.

My Lords, if the Commons, in preparing Articles of Impeachment, should govern themselves by Precedents of Indictments, in my humble Opinion they would depart from the ancient, nay, the constant Usage and Practice of Parliament.

It is well known that the Form of an Impeachment has very little Resemblance to that of an Indictment: and I believe the Commons will endeavour to preserve the Difference, by adhering to their own Precedents.

One of the learned Gentlemen has said, that he had not Time to search Parliamentary Precedents: That Gentleman seldom wants time to make himself serviceable to his Clients; but when he has more leisure, I believe he will not find one Precedent, where, in the case of an Impeachment of High-Treason, there hath been a certain Day or Time laid when the Treason was committed. The Precedent that hath been mentioned of my Lord *Stafford* is directly otherwise: There your Lordships will find it laid thus, that *for many Years last past* there has been contrived and carried on by Papists a traitorous and execrable Conspiracy. And afterwards when it comes to charge the Treason and Overt-Acts, it alledges *they were done* and committed *within the Time aforesaid*. And yet we don't find any Exception was taken for want of Certainty, although not so much as a Year was laid with Certainty, within which the Treason was committed.

In the Case of my Lord *Winton* the Commons have charged, that his Lordship, together with *James* Earl of *Derwentwater*, and several others, as false Traitors to his Majesty, did, in or about the Months of *September*, *October*, or *November*, 1715, traitorously imagine and compass the Death of the King: That his Lordship and the rest, to accomplish their said traitorous Purpose, did, in or about the said Months, or some of them, conspire and agree to levy War within this Kingdom, in order to depose and murther his Majesty: That his Lordship did, within the time aforesaid, traitorously levy a War and Rebellion in the Bowels of the Kingdom; and that he, together with his Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforesaid, traitorously seize and possess themselves of the Town of *Preston*; and did then and there cause and procure a miserable and horrid Slaughter and Murther of many of his Majesty's faithful Subjects. So that, my Lords, here is a Certainty not only of the Year, but of the Months and Days; and the Treasons committed by the Prisoner are, with Submission, not only charged with Certainty as to the Point of Time, but are charged with a great deal more Certainty than was necessary, in a Case where his Lordship's Treason began at *Seaton* House, and continued from thence till the Surrender at *Preston*.

Surely there is not the least Weight in the Prisoner's Objection; for even in the Case of an Indictment, though it be necessary to lay a Day, yet it is not necessary to prove the Treason to be done upon that Day: So that even in inferior Courts it is an immaterial Form. One would think, if it be necessary to assign a Day certain, it should be necessary also to prove the Treason to be done upon that Day; but it is not requisite to prove the Treason upon the Day; therefore in inferior Jurisdictions it seems rather a Form than Substance. The Courts below have, 'tis true, their Forms, many Forms for which no Reason can be given; but I believe in Parliamentary Process, nothing is necessary that is not material.

Sir *W. Thomson.* MY Lords, we humbly apprehend that the Exception taken in Arrest of Judgment, has no Foundation in Law or Reason.

As to the Law, we must refer to the Forms of Preceedings in the Court of Parliament, which is the Law of Parliament, and which must be owned to be Part of the Law of the Land. It has been mentioned already to your Lordships, that the Precedents in Impeachments are not so nice and precise in Form as in the inferior Courts; and we presume your Lordships will be governed by the Forms of your own Court, (especially Forms that are not essential to Justice) as the Courts below are by theirs; which Courts differ one from the other in many Respects as to their Forms of Proceedings, and the Practice of each Court is esteemed as the Law of that Court.

As to the Reasons alledged to support the Exception, they will receive a plain Answer.

'Tis said, that 'tis necessary to alledge a certain Day in an Impeachment when the Fact was committed, that the Defendant may be able to make his Defence, that he may produce Witnesses to give an Account where he was at the time he is accused to have been guilty. And one of the learned Counsel was pleased to say, that this is requisite in Indictments for the smallest Offences, and ought to be much more so in capital Cases, and in Impeachments for so high a Crime as Treason. My Lords, that Gentleman knows very well, that the Day which is mention'd in an Indictment is not material to the Purpose of making a Defence as to that Time only, for that the Defendant must come Prepared to give an Account of his Innocence all the Time between the Day alledged and the Indictment found. And in this Case there is no Hardship on the Noble Lord at the Bar. Here is one of the Treasons alledged to be within the Compass of Five Days, (*viz.* the seizing of *Preston*, levying War there, and engaging the King's Troops,) if he could have given an Account of himself to have been elsewhere at those times, it might have been of Service to him: But that happened, very unfortunately for him, to be otherwise; and your Lordships have found him guilty of those Facts on or about those Five Days: Which has created a second Reason to be offered to your Lordships, that the Time alledged is not sufficiently certain (*viz.*) To what Day shall the Forfeiture of the Defendant's Estate relate? If 'tis taken the most favourably for the Defendant, the Conviction shall operate so as to make the Forfeiture only from the last of these Days, and I don't apprehend any other Inconvenience. But to infer, that for that Reason no Judgment at all shall be given upon this Conviction, where the material, the substantial Part of the Issue is found, seems not to be right Consequence.

My Lords, we conceive for these Reasons, and what has been mention'd before, this Exception has no Weight in it, and hope your Lordships will over rule it.

L. H. Steward. Gentlemen of the House of Commons, I suppose you don't oppose the Counsel's replying to you; afterwards, if you have any thing to offer you may be heard to it.

Att. Gen. My Lords, we don't object to it, if the Commons have the Liberty of speaking afterwards and closing, which they insist upon as their Right.

L. H. Steward. Gentlemen, you may reply.

Sir *C. Phipps.* Is it your Lordships Pleasure that we reply?

L. H. Steward. You may reply.

Sir *C. Phipps.* IF your Lordships please, we do not, with great Submission, apprehend they have answer'd our Objection; but before I take notice of the Answers, I beg leave to set the learned Gentleman that spoke last right in one thing, wherein he did misapprehend me: He was pleased to suggest that I said the Day laid in an Indictment was material. I don't remember I said so, for I never thought the Day so material, that there was a Necessity to prove the Treason to be committed upon that very Day; I did say there ought a certain Day to be alledged in Indictments, and that there always is; but how material that Day is, when alledged, is another Consideration; but I conceive the Day laid in an Indictment, ought to be very near the time, if not upon the very Day the Treason is supposed to be committed, for the Reasons I have before offered; and I take constant Practice to be so. I perceive all the Gentlemen who have spoke in Answer to me have been pleased to admit, that in Indictments for Treason and other capital Offences, there is a certain Day always alledged. The honourable Gentleman that spoke first, was pleased to make a Difference between an Indictment and an Impeachment: That an Impeachment is a Parliamentary Proceeding, and that the Parliament in their Proceedings are not tyed up to such strict Forms as the Courts below. I have already spoken fully to this Point, and therefore shall not trouble your Lordships with any Repetition, but submit to your Lordships Judgment, whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted, and whether by the *Lex Parlimentaria* as much Certainty is not required in one Case as in the other. The same Gentleman was pleased to observe, that the Impeachment in my Lord *Stafford*'s Case was more general than this, for there it was charged, that for many Years last past there had been a Conspiracy to alter and subvert the Government, *&c.* In Answer to which I beg leave to take Notice, that the Impeachment of that Lord begins with an Account of the Plot in general, and in that Case there is no doubt but such a general Allegation was sufficient. But whether the particular Part, which my Lord *Stafford* had in that Plot, be not more certainly alledged; I must beg leave to refer to the Trial, for I cannot take it upon my Memory to say one way or other. But whether it was so or no, I think is not material; for that honourable Person admits, that no Objection was made to that Impeachment for the Uncertainty of the Charge: If such Objection had been made and over-ruled, it would have been a full Answer to us; but since no Notice was taken of it, our Objection is as strong, and of the same Force as if that Case had never happened.

A learned Gentleman of great Eminence in the Law was pleased to observe, that frequently in Indictments for Treason, the Offence is laid to be committed, *diversis aliis diebus & vicibus*, which is true; but then in all such Cases there is a particular Day first charged in the Indictment; and I believe that learned Gentleman, or any other of the long Robe, will not say that an Indictment conceived in such general Terms, without alledging a particular Day, would be good. As to that Part of the Impeachment which relates to the taking of *Preston*, tho' that seems more certain than any other Overt-Act; yet I have shewed that the Words *or about*, leave at large, and render it uncertain.

My Lords, this is what we humbly offer by way of Reply; and humbly submit to your Lordships Judgment, whether our Objections are not good, notwithstanding what has been said in Answer to them.

Mr. *Williams.* MY Lords, I must submit it to your Lordships, whether the learned Managers have answer'd the Objection which we have humbly laid before your Lotdships in Arrest of Judgment.

The Managers are pleased to object, that we are attempting to quash an Impeachment of the Honourable House of Commons for High-Treason, and that this has not been known.

But, my Lords, with great Submission, we are not endeavouring to quash this Impeachment: We are so far from it, that we must admit that the Courts of *King's-Bench* will not quash Indictments for Treason, nor Indictments for Felony, nor even Indictments for any gross Misdemeanours, but will put the Party to plead to such Indictments; but in the present Case, where the Matter in Issue has been try'd, and the unhappy Lord is convicted; if this Impeachment be defective, as I humbly hope and insist it is, then what other Way, what other Method has this unfortunate Lord at the Bar to take Advantage of this Defect, but by offering it to your Lordships in Arrest of Judgment, which on my Lord's Behalf we now humbly do?

It seems admitted, as I apprehend, that had the present Question been upon an Indictment, instead of an Impeachment, that then the Exception might have prevailed: But the Managers are pleased to insist, that the Law and Course of Parliaments justify this Omission in Case of Impeachments; and for this an Honourable Manager has been pleased to cite the late Lord *Stafford*'s Case; and that the Impeachment of that Lord was more uncertain, as to the Time laid for the committing the Treason, than the Impeachment now before your Lordships.

My Lords, I must confess I am very unfit to answer an Objection of this Nature, and which concerns the Course of Parliaments: But wou'd beg leave, with the greatest Submission, to observe, that only one Precedent (I beg Pardon if I mistake, I mean that of the late Lord *Stafford*) has been cited against us: It must be submitted to your Lordships, how far that one single Precedent will of itself be taken as a Proof, that this is the Course and Custom of Parliamentary Impeachments, especially when it appears that the Objection now made, was not made in that Case. It must be submitted to your Lordships, whether repeated and iterated Acts are not requisite to prove this, as well as all other Customs; and that if this were *Lex & Consuetudo Parliamenti*, whether it wou'd not be an easy Matter to cite many Instances in that Behalf, and whether it is not the more necessary in this Case to cite farther Precedents, in regard the single Case of the Lord *Stafford* may seem, as to this Point, to have lost some Part of its Force, by the later Precedent of Doctor *Sacheverell*'s Case, when even in Case of a Misdemeanour, a certain Day is laid in the Impeachment when the Misdemeanour is charged to have been committed.

It has been also objected by the learned Managers, that in Indictments of High-Treason, it is usually charg'd, that the Party committed the Treason *diversis diebus & vicibus*, which is as uncertain as the present Impeachment.

My Lords, It is very true that these Words (*diversis diebus & vicibus*) are as uncertain as the Words in the present Impeachment; and that these Words are usually put into Indictments: But with Submission, it is as true, that in all Indictments for Treason, over and besides thes: Words, there is a certain Day laid when the Treason is said to be committed; and I would beg leave to know, whether, if in Case of an Indictment, the Treason were laid to be committed *diversis diebus & vicibus*, without any further Certainty as to the Day, whether this wou'd not be ill for the Uncertainty: And this Case, with Submission, seems to come nearest to the present Case; and as to the Words *diversis diebus & vicibus*, tho' they are frequently mentioned in an Indictment, yet they are only Surplusage, and the Indictment good, whether with 'em, or without 'em.

It is likewise objected, that if a certain Day for the committing this Treason had been mentioned in this Impeachment, or in an Indictment, yet it had not been material; because if the Treason had been proved to have been committed on any other Day, the Party must have been found guilty; and therefore, if the Day be immaterial, the omitting of it must be also immaterial.

My Lords, I must admit that the Day, as to the Party indicted, is not in this respect so far material, but that if it shou'd be prov'd that the Party committed the Treason on a different Day than that laid in the Indictment, yet the Party must be found guilty: And that it might put too great a difficulty on such Prosecution, to hold, that if the Treason be not proved to be committed on the precise Day laid in the Indictment, that therefore the Party, who appears still guilty of the Treason, shou'd upon the nicety of the time be found not guilty; but what I humbly insist on is, that 'tis the constant Course to mention a Day certain in the Indictment; and that the Day thus mention'd in the Indictment is, as I believe, generally the very Day on which the Treason is insisted on to be committed; and to know this, is, with Submission, of great use to the Party indicted or impeached, and may very much assist him in his Defence. And I farther humbly insist, that the mentioning of a Day certain in the Impeachment or Indictment for the committing the Treason, is manifestly for the Advantage, and the omitting it is to the Prejudice of the Crown; in regard, as between the Party impeached or indicted, and the Crown, the Forfeiture of the Land to the King shall relate to that Day which is laid in the Impeachment or Indictment.

My Lords, from hence, with the greatest Deference to your Lordships, I beg leave to infer;

That the mentioning of a Day certain in the Impeachment, is material:

That by Consequence the Omission of it is also material;

That therefore in respect of this Omission, the Impeachment is defective;

And in regard of this Defect I humbly pray that your Lordships wou'd be pleased to arrest the Judgment.

Mr. Attorney General. MY Lords, for preserving the Rights of the Commons of *Great-Britain*, I shall trouble your Lordships with a Word or two.

I think the learned Gentlemen have left it now where they left it on their first Speech: They now agree that the particular Day in an Indictment is but Form, and that the Fact may be proved any Day before or after, and so the Law is in the inferior Courts.

I only add this, that the Prisoner loses no Benefit nor gets any, by having a Day charged or omitted; for since it is of no use, he must provide for his Defence as if no Day was laid; and since it is immaterial in Indictments, it must be so in Impeachments. We are justified by the Forms and Precedents of Parliament. As to the Answer given to my Lord *Stafford*'s Case, that this Objection was not made there, but that it past *sub silentio:* If that Impeachment had not been thought good, we know he had the Assistance of learned Counsel, who were well able to advise him, and who certainly would have taken the Exception. There is no uncertainty in it that can be to the Prejudice of the Prisoner, we insist it is according to the Forms of Parliament, he has pleaded to it, and your Lordships have found him guilty.

L. H. Steward. My Lord *Wintoun*, your Counsel have been heard, hath your Lordship any thing more to offer in Arrest of Judgment?

L. *Wintoun.* If your Lordship will be pleased to ask the Counsel, they will tell you what they have to object.

L. H. Steward. My Lord, you have been told again and again, upon this Occasion, that the Point you would have your Counsel speak to must be first stated and proposed by yourself; you have had a sufficient Opportunity to inform yourself.

L. *Wintoun.* Since your Lordship won't allow my Counsel, I don't know nothing.

[*Lord* Stamford *moved to adjourn.*]

L. H. Steward. I once more acquaint your Lordship, that as your Counsel have been allowed to speak; so the Question yet is, whether you have any other Point or Matter for them to speak to; the Lords are ready to hear: Have you any thing else to propose?

L. *Wintoun.* If you will allow my Counsel to answer, he will answer.

L. H. Steward. My Lords! Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House was adjourned about three of the Clock, and about five returned again, and Proclamation was made for Silence as usual.

L. H. Steward. GEORGE Earl of *Wintoun*, I have already acquainted you, that your Peers have found you Guilty, (*i. e.*) in the Terms of the Law, convicted you of the High-Treason whereof you stand impeached.

After your Lordship has moved in Arrest of Judgment, and the Lords have disallow'd that Motion; their next Step is to proceed to Judgment.

The

The melancholy Part I am to bear in pronouncing that Judgment upon you, ſince it is his Majeſty's Pleaſure to appoint me to that Office, I dutifully ſubmit to it; far, very far, from taking any Satisfaction in it.

'Till Conviction, your Lordſhip has been ſpoke to without the leaſt Prejudice, or Suppoſition of your Guilt; but now it muſt be taken for granted, that your Lordſhip is guilty of the High-Treaſon whereof you ſtand impeached.

My Lord, this your Crime is the greateſt known to the Law of this Kingdom, or of any other Country whatſoever: And it is of the blackeſt and moſt odious Species of that Crime, a Conſpiracy and Attempt, manifeſted by an open Rebellion, to depoſe and murder that ſacred Perſon, who ſuſtains and is the Majeſty of the whole; and from whom, as from a Fountain of Warmth and Glory, are diſperſed all the Honours, all the Dignities of the State, indeed the laſting and operative Life and Vigour of the Laws, which plainly ſubſiſt by a due Adminiſtration of the executive Power.

So that attempting this precious Life, is really ſtriking at the moſt noble Part, the Seat of Life and Spring of all Motion in this Government; and may therefore properly be called a Deſign to murder, not only the King, but alſo the Body-Politic of the Kingdom.

And this is moſt evidently true in your Lordſhip's Caſe; conſidering that Succeſs in your Treaſon muſt infallibly have eſtabliſhed Popery; and that never fails to bring with it a Civil, as well as Eccleſiaſtical Tyranny; which is quite another Sort of Conſtitution than that of this Kingdom, and cannot take Place 'till the preſent is annihilated.

This your Crime (ſo I muſt now call it) is the more aggravated, in that when it proceeds ſo far, as to take Arms openly, and to make an Offenſive War againſt lawful Authority, 'tis generally (as in your Caſe) complicated with the horrid and crying Sin of murdering many, who are not only innocent but meritorious.

And if Pity be due (as I admit it is, in ſome Degree) to ſuch as ſuffer for their own Crimes; it muſt be admitted, a much greater Share of Compaſſion is owing to them, who have loſt their Lives merely by the Crimes of other Men.

As many as have ſo done in the late Rebellion, ſo many Murders have they to anſwer for who promoted it; and your Lordſhip, in examining your Conſcience, will be under a great Deluſion, if you look on thoſe who fell at *Preſton*, *Dumblain*, or elſewhere, on the Side of the Laws, and in Defence of ſettled Order and Government, as ſlain in lawful War; even judging of this Matter by the Law of Nations.

Alas! my Lord, your Crime of High-Treaſon is made yet redder, by ſhedding a great deal of the beſt Blood in the Kingdom: I include in this Expreſſion the brave Common Soldiers, as well as thoſe Gallant and Heroic Officers, who continued faithful to Death in Defence of the Laws; for ſure but little Blood can be better than that which is ſhed, while it is warm, in the Cauſe of the true Religion, and the Liberties of its native Country.

Believe it, notwithſtanding the unfair Arts and Induſtry uſed, to ſtir up a pernicious Exceſs of Commiſeration, towards ſuch as have fallen by the Sword of Juſtice, (few, if compar'd with the Numbers of good Subjects murdered from Doors and Windows at *Preſton* only) the Life of one honeſt loyal Subject is more precious in the Eye of God, and all conſidering Men, than the Lives of many Rebels and Parricides.

This puts me in mind to obſerve to your Lordſhip, that

There is another Malignity in your Lordſhip's Crime (open Rebellion), which conſiſts in this; that it is always ſure of doing Hurt to a Government in one Reſpect, though it be defeated; (I will not ſay it does ſo on the whole Matter.)

For the Offence is too notorious to be let paſs unobſerved, by any Connivance: Then is a Government reduced to this Dilemma; if it be not puniſhed, the State is endanger'd, by ſuffering Examples to appear, that it may be attack'd with Impunity; if it be puniſhed, they who are publicly or privately Favourers of the Treaſon (and perhaps ſome out of mere Folly) raiſe undeſerved Clamours of Cruelty againſt thoſe in Power; or the loweſt their Malice flies, is, to make unſeaſonable, unlimited, and injudicious Encomiums upon Mercy and Forgiveneſs (Things rightly uſed, certainly of the greateſt Excellence).

And this Proceeding, it muſt be admitted, does ſome Harm, with ſilly, undiſtinguiſhing People.

So that Rebels have the Satisfaction of thinking they hurt the Government a little, even by their Fall.

The only, but true Conſolation every wiſe Government has in ſuch a Caſe (after it has temper'd Juſtice with Mercy in ſuch Proportion as ſound Diſcretion directs, having always a Care of the Public Safety above all Things) is this;

That ſuch like Seeds or unreaſonable Diſcontents take Root on very ſhallow Soil only; and that therefore, after they have made a weak Shoot, they ſoon wither and come to nothing.

It is well your Lordſhip has given an Opportunity of doing the Government right, on the Subject of your Surrender at *Preſton*.

How confidently had it been given out by the Faction, that the Surrender was made on Aſſurances, at leaſt Hopes inſinuated of Pardon: Whereas the Truth appears to be, that Fear was the only Motive to it; the evil Day was deferred; and the Rebels rightly depended, fewer would die at laſt by the Meaſures they elected, than if they had ſtood an Aſſault: They were aw'd by the experienced Courage, Diſcipline, and Steadineſs of the King's Troops; and by the ſuperior Genius and Spirit of his Majeſty's Commanders over thoſe of the Rebels, ſo that in truth they were never flatter'd with any other Terms, than to ſurrender as Rebels and as Traitors; their Lives only to be ſpar'd till his Majeſty's Pleaſure ſhould be known.

It was indeed a Debt due to thoſe brave Commanders and Soldiers (to whom their King and Country owe more than can be well expreſſed), that their Victory ſhould be vindicated to the preſent and future Ages from untrue Detraction, and kept from being ſullied by the Tongues of Rebels and their Accomplices, when their Arms could no longer hinder it.

'Tis hard to leave this Subject without ſhortly obſerving, that this Engine which ſets the World on fire, a lying Tongue, has been of prodgious uſe to the Party of the Rebels, not only ſince and during the Rebellion, but before, while it was forming, and the Rebels preparing for it.

Falſe Facts, falſe Hopes, and falſe Characters, have been the greater half of the Scheme they ſet out with, and yet ſeem to depend upon.

It has been rightly obſerved, your Lordſhip's Anſwer does not ſo much as inſiſt, with any Clearneſs, on that, which only could excuſe your being taken in open Rebellion; That you was forc'd into it, remain'd ſo under a Force, and would have eſcaped from it, but could not.

If you had ſo inſiſted, it has been clearly prov'd, that had not been true; for your Lordſhip was active and forward in many Inſtances, and ſo conſiderable in a Military Capacity among your Fellow-Soldiers, as to command a Squadron.

Theſe and other Particulars have been obſerved by the Managers of the Houſe of Commons, and therefore I ſhall not purſue them farther;

But conclude this Introduction to the Sentence, by exhorting your Lordſhip, with perfect Charity, and much Earneſtneſs, to conſider, that now the Time is come when the Veil of Partiality ſhould be taken from your Eyes (it muſt be ſo when you come to die), and that your Lordſhip ſhould henceforward think with Clearneſs and Indifference (if poſſible), which muſt produce in you a hearty Deteſtation of the High Crime you have committed; and being a Proteſtant, be very likely to make you a ſincere Penitent, for your having engaged in a Deſign, that muſt have deſtroyed the Holy Religion you profeſs, had it taken Effect.

Nothing now remains; but that I pronounce upon you that Sentence which the Law ordains, and which ſufficiently ſhews, what Thoughts our Anceſtors had, of the Crime of which your Lordſhip is now convicted: *viz.*

" That you *George* Earl of *Wintoun* return to the Priſon of the *Tower*
" from whence you came; from thence you muſt be drawn to the
" Place of Execution; when you come there, you muſt be hanged
" by the Neck, but not till you be Dead; for you muſt be cut down
" alive, then your Bowels muſt be taken out, and burnt before your
" Face; then your Head muſt be ſever'd from your Body, and your
" Body divided into four Quarters; and theſe muſt be at the King's
" diſpoſal."

And God Almighty be merciful to your Soul!

Serjeant at Arms. O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the Lord High Steward ſtood up uncover'd, and declaring there was nothing more to be done by virtue of the preſent Commiſſion, broke the Staff, and pronounc'd it diſſolv'd: And then leaving the Chair, came down to the Woolpack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

And then the Houſe adjourn'd to the Chamber of Parliament, and the Lords and others returned in the ſame Order they came down.

The Earl of *Wintoun* was carried back to the *Tower*, from whence he afterwards made his Eſcape.

CLXXXVII. *The Trial of* Francis Francia, *a* Jew, *at the* Old-Bailey, *for* High-Treaſon, Jan. 22. 1716, 3 Geo. I.

FRANCIS FRANCIA having been formerly arraigned upon the Indictment found againſt him for *High-Treaſon*, and having pleaded *Not Guilty*, was on *Tueſday* the 22d of *January* brought to the Bar to receive his Trial.

Clerk of Arraignments. You the Priſoner at the Bar, theſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be ſworn, and before they be ſworn.

Cl. of Arr. Sir *Dennis Dutry*, Bart.

Priſoner. Are you a Freeholder in this City?---Sir *Dennis Dutry.* Yes.

Sir *J. Jekyll.* My Lord, we that are Counſel for the King, deſire, that thoſe who are called may be asked that Queſtion; Whether they have Freehold (or Copyhold) of Ten Pounds *per Annum*, or not; before they are ſworn in Chief?

Mr. Att. Gen. We ſuppoſe the Priſoner will ask that Queſtion; and therefore we deſire that it may be ask'd of every one as they come to the Book. Sir *Edward Northey.*

Mr. *Ward.* It is a Challenge on both Sides.

L. C. Baron. They ought to be ſworn whether they have a Freehold or not, if they would excuſe themſelves. Sir *Thomas Bury.*

Mr. *Hungerford.* I have nothing to offer againſt it. In caſe the King's Counſel think fit to proceed in that Method, we concur in it. I ſhould have mov'd it myſelf, if they had not.

Mr. Att. Gen. It was in the Trial of the Rebels.

Priſoner. He has had a Quarrel with me; and there was a Suit depending between us about ſeven Years ago: And I challenge him for Cauſe.

Mr. Att. Gen. He may challenge him peremptorily, if he will. But if he challenges him for Cauſe he muſt prove it.

Priſoner. Sir *Dennis* will not deny it.

L. C. Baron. If you challenge him, you muſt prove your Challenge. Do you challenge him for Cauſe, or peremptorily?

Priſoner. For Cauſe.

L. C. Baron. That which you aſſign is no Cauſe.

(Then Sir Dennis *was ſworn upon a* Voir Dire, *with reſpect to his Freehold; as all the others were, before they were either challenged, or ſworn in Chief.)*

Sir *J. Jekyll.* Sir, have you a Freehold in this City?

Sir *D. Dutry.* Yes.

Sir *J. Jekyll.* To what Value?

Sir *D. Dutry.* About Ten Pounds a Year.

Priſoner. My Lords, there has been a Suit depending between us.

Mr. Att. Gen. If they talk of a Suit, they muſt prove it by Record.

Priſoner. His Name is *Dennis*; and they have given me a Pannel with barbarous *Latin.* In my Copy of the Pannel, he is return'd by the Name *Dionyſius*; that is not the ſame Name.

Mr. *Ward.* The Priſoner obſerves, that in the Pannel he is return'd by the Name of *Dionyſius*, when his Name is *Dennis.*

Sir *J. Jekyll.* He is to have a Copy of the Pannel; but it is not to be put into *Engliſh* for him.

Mr. *Ward.* But we ſay, that is not *Latin* for *Dennis.*

Sir *J. Jekyll.* Sure no one will argue, but that *Dionyſius* is the proper *Latin* Name for *Dennis.*

L. C. Baron. You offer no Cauſe of Challenge.

Priſoner. I hope I prove his Name is return'd in the Pannel *Dionyſius.*

L. C. Baron. It is ſo; and that is *Latin* for *Dennis.*

Priſoner. No, it is not. *Dennis* is a Saint in *France*, and *Dionyſius* is a Saint in *Italy.* They are two different Names, and of different Countries.

L. C. Baron. *Dionyſius* is *Latin* for *Dennis.* If they don't challenge him peremptorily, he muſt be ſworn.

Priſoner. I alledge, that we fell out about ſeven Years ago: And that his Name is not *Dionyſius*, as it is wrote in the Pannel. And in my former Pannel he was put down *Knight*, and in this *Baronet.*

L. C. Baron. Theſe Things are nothing, except the Suit; and that you muſt prove.

Mr. *Hungerford.* As to the Diſtinction of the two Saints, I do not meddle in it. But I ſuppoſe Sir *Dennis* can tell whether he is a Knight or a Baronet. But as to the Saints, whether the Nominal ones Abroad, or the Pretended ones at Home, I let them alone.

Priſoner. You allowed this Challenge the laſt Time.

Mr. Att. Gen. You challeng'd him peremptorily.

Mr. *Ward.* He was ſtiled Knight in the laſt Pannel.

L. C. Baron. That don't appear to us. You muſt either challenge him peremptorily, or he muſt be ſworn.

Priſoner. I muſt do what you order; but I think it very hard. Then I challenge him.

Cl. of Arr. Sir *John Scott*, Knt.---*Priſoner.* I challenge him.

Cl. of Arr. Sir *Daniel Wray*, Knt.

Priſoner. I don't except againſt him.

(Then he was ſworn.)

Cl. of Arr. Sir *W. Chapman*, Knt.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Webb.---Priſoner. I challenge him.

Cl. of Arr. Robert Adams.

Priſoner. Was you upon the Grand Jury, that found the Indictment againſt me?----Mr. *Adams.* No.

Priſoner. I challenge him.

Cl. of Arr. Robert Aſhurſt.---Priſoner. I challenge him.

Cl. of Arr. Joſeph Biſhop.---Priſoner. I challenge him.

Cl. of Arr. Thomas Boucher.--Priſoner. I challenge him.

Cl. of Arr. Joſeph Brooksbank.--Priſoner. I challenge him.

Cl. of Arr. Nicholas Benoiſt.

Priſoner. I challenge him.

Cl. of Arr. John Child.

Priſoner. I challenge him.

Cl. of Arr. Joſeph Chamberlain.

(He was ſworn.

Cl. of Arr. John Coſebert.

Priſoner. He was upon the Grand Jury that found the Bill againſt me; and I challenge him for that Cauſe.

Cl. of Arr. Robert Wood.----Priſoner. I challenge him.

Cl. of Arr. Iſaac Cailovell.

Priſoner. He don't write his Name as it is in the Pannel. I could never find this Gentleman out by all the Enquiry I could make.

L. C. Baron. What is the Miſtake?

Priſoner. It is wrote in the Pannel *v* Conſonant, and he ſpells his Name with a *w.* And it is in the Pannel a ſingle *l*, and he writes it with a double *ll.*

(Then Mr. Cailovell *being ask'd, ſaid he wrote his Name with a* v *Conſonant, as in the Pannel; but with a double* ll.*)*

L. C. Baron. That don't alter the Pronunciation. It is the ſame Name.

Priſoner. I challenge him.

Cl. of Arr. Thomas Davis. *(He was ſworn.*

Cl. of Arr. John Dodſon, Eſq;----*Priſoner.* I challenge him.

Cl. of Arr. William Dewick.---Priſoner. I challenge him.

Cl. of Arr. William Dell ---Priſoner. I challenge him.

Cl. of Arr. John Davis. *(He was ſworn.*

Cl. of Arr. Joſeph Emmes. *(He was ſworn.*

Cl. of Arr. John Farr. *(He was ſworn.*

Cl. of Arr. Thomas Gouge.---Priſoner. I challenge him.

Cl. of Arr. Thomas Geering.---Priſoner. I challenge him.

Cl. of Arr. Joſeph Goddard.---Priſoner. I challenge him.

Cl. of Arr. Robert Gill.----Priſoner. I challenge him.

Cl. of Arr. Henry Greenway.

Priſoner. I challenge him for Cauſe. He is returned upon the Pannel *Greenway*, and his Name is *Greenaway:* That is a different Name.

Sir *J. Jekyll.* How are you uſually called; *Greenway*, or *Greenaway?*

Mr. *Greenaway.* I am moſt commonly called *Greenaway.*

(Then he was ſet aſide.)

Cl. of Arr. John Glaſbrook. *(He was ſworn.*

Cl. of Arr. John Goodlad.---Priſoner. I challenge him.

Cl. of Arr. John Gore.----Priſoner. I challenge him.

Cl. of Arr. Henry Ankey.---Priſoner. I challenge him.

Cl. of Arr. Lawrence Hatſell.---Priſoner. I challenge him.

Cl. of Arr. Robert Hackſhaw.---Priſoner. I challenge him.

Cl. of Arr. Benjamin Hooper.---Priſoner. I challenge him.

Cl. of Arr. Jonathan Hicks.---Priſoner. I challenge him.

Cl. of Arr. Jeremiah Jennings.---Priſoner. I challenge him.

Cl. of Arr. Thomas Jordan.---Priſoner. I challenge him.

Cl. of Arr. William Kent. *(He was ſworn.*

Cl. of Arr. Richard Levitt, Eſq;

Priſoner. I don't except to him.

Sir *J. Jekyll.* I challenge him for the King.

Cl. of Arr. James Lamb.---Priſoner. I challenge him.

Cl. of Arr. Thomas Lingard. *(He was ſworn.*

Cl. of Arr. Stephen Lee. *(He was ſworn.*

Cl. of Arr. John Lane, Eſq;---*Priſoner.* I challenge him.

Cl. of Arr. John Lane.----Priſoner. I challenge him.

Cl. of Arr. Richard Lindſey.---Priſoner. I don't except to him.

Sir *J. Jekyll.* I challenge him for the King.

Cl. of Arr. John Mahew. *(He was ſworn.*

Cl. of Arr. Henry Mallett. *(He was ſworn.*

(Then they were counted; and the Twelve ſworn were Jurors.)

Sir *Daniel Wray*, Knt.	*John Glasbrook.*
Joſeph Chamberlain,	*William Kent.*
Thomas Davis,	*Thomas Lingard.*
John Davis,	*Stephen Lee.*
Joſeph Emmes,	*John Mahew.*
John Farr.	*Henry Mallet.*

Then Proclamation was made, as is uſual in thoſe caſes.

Priſoner. I pray that *George Flint*, a Priſoner in *Newgate*, may be ſent for; and may be near me during my Trial.

L. C. Baron. What is he in *Newgate* for?---*Priſoner.* For a Fine.

L. C. Baron. Then he may be ſent for.

(Which was done accordingly.)

Cl. of Arr. Francis Francia, hold up your Hand. *(Which he did.*

Gentlemen, you that are ſworn, look upon the Priſoner, and hearken to his Cauſe.

'HE ſtands indicted by the Name of *Francis Francia*, of *London*, 'Merchant: For that he being a Subject of our moſt Serene Lord 'GEORGE King of *Great-Britain*, *France* and *Ireland*, Defender of the 'Faith, *&c.* not having the Fear of God in his Heart, nor weighing the 'Duty of his Allegiance; but being moved and ſeduced by the Inſtiga-'tion of the Devil, as a falſe Traitor againſt our ſaid Lord the King, his 'ſupreme, true, natural, lawful, and undoubted Lord; withdrawing that 'cordial Love, and true and due Obedience, Fidelity and Allegiance, 'which every Subject of our ſaid Lord the King towards him ought to 'bear; and deſigning, and traitorouſly intending, the Government of theſe 'Kingdoms, under our ſaid Lord the King duly and happily eſtabliſhed, 'to change and ſubvert; and our ſaid Lord the King from the Title, Ho-'nour, Royal Eſtate, Empire and Government of theſe Kingdoms to de-'poſe; and our ſaid Lord the King to Death and final Deſtruction to 'bring; and the Perſon in the Life of King *Jame* the Second, pretended 'to be Prince of *Wales*, and after the Death of the ſaid late King pre-'tending to be, and taking upon himſelf the Stile and Title of King of '*England*, by the Name of *James* the Third, to the Crown, Royal Eſtate, 'and Dignity of King, and to the Government of this Kingdom to ad-'vance: The firſt Day of *September*, in the Second Year of the Reign of 'our ſaid Lord the King, and at ſeveral Days and Times as well before 'as after, falſly, maliciouſly, deviliſhly, and traitorouſly did compaſs, ima-'gine and intend our ſaid Lord the King, now and then his ſupreme, 'true, natural, lawful and undoubted Lord, from the Title, Honour, 'Royal Eſtate, Empire and Government of theſe Kingdoms to depoſe, and 'to Death and to final Deſtruction to put and bring; and the ſaid Perſon, 'in the Life of the ſaid King *James* the Second, pretended to be Prince of '*Wales*, and ſince the Death of the ſaid late King pretending to be, and 'taking upon himſelf the Stile and Title of King of *England*, by the Name 'of *James* the Third, to the Crown, Royal Eſtate and Dignity of King, 'and to the Empire and Government of this Kingdom, to exalt. And 'that he the ſaid *Francia*, to accompliſh and bring about the ſaid Treaſon, 'and traitorous and deviliſh Intention, did traitorouſly meet, propoſe, con-'ſult, conſpire, and agree with divers other Traitors, to the Jurors un-'known, to raiſe Inſurrection, Rebellion and War within this Kingdom, 'againſt our ſaid Lord the King, and in Favour of the ſaid Perſon, in the 'Life of the ſaid King *James* the ſecond, pretended to be Prince of *Wales*, 'and ſince the Death of the ſaid late King taking upon himſelf the Stile 'and Title of King of *England*, by the Name of *James* the Third. And 'that he the ſaid *Francis Francia*, for the more effectual compleating and 'perfecting the ſaid Treaſon and Traitorous Intention, did propoſe, con-'ſult, conſpire and agree with divers other Traitors, to the Jurors un-'known, to require, ſollicit and procure, from divers Foreigners, and 'others, in the Kingdom of *France*, Arms, Ammunition and Money, to 'aſſiſt and help in the ſaid War. And that he the ſaid *Francis Francia* did 'traitorouſly compoſe and write, and cauſed to be compoſed and written, 'ſeveral traitorous Letters, notifying the Intentions and Reſolutions 'of him the ſaid *Francis Francia*, and the ſaid other Traitors, to move and 'levy the ſaid War; and requiring Aid in the ſaid War of the ſaid Fo-'reigners, and other Perſons then in *France.* And the ſaid Letters ſo com-'poſed and written, and cauſed to be compoſed and written, did traitorouſly 'ſend, and cauſed to be ſent to Parts beyond the Seas, to be delivered to the 'ſaid Foreigners, and other Perſons in *France*, and cauſed and procured 'them to be delivered accordingly, againſt the Duty of his Allegiance, 'againſt the Peace of our ſaid Lord the King, his Crown and Dignity, and 'againſt the Form of the Statute in that Caſe made and provided.'

Upon this Indictment he hath been Arraigned, and hath thereunto pleaded *Not Guilty:* And for his Trial hath put himſelf upon God and his Country; which Country you are. Your Charge is to enquire, whether he be guilty of this High-Treaſon whereof he ſtands indicted, or not guilty? If you find that he is guilty, you are to enquire what

Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since. If you find him *Not Guilty*, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty: If you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. *Cowper*, Jun. MAY it please your Lordship, and you Gentlemen that are sworn: The Prisoner at the Bar, *Francis Francia*, stands indicted of High-Treason; in intending to alter and subvert the Government of these Realms, happily establish'd under his Majesty King GEORGE; to depose his Majesty, to bring him to Death, and to place the *Pretender* upon his Throne.

The Indictment sets forth, that for this Purpose the Prisoner, the First of *September*, in the Second Year of the Reign of his present Majesty, and at several other Days and Times, at *London* in your County, traitorously compassed and imagined to depose and kill his most Sacred Majesty, and to place the *Pretender* on his Throne.

And that for the more effectual performing such his Intentions, he did meet, propose, consult and agree with several other Traitors, to raise Rebellion and War within this Kingdom, against his Majesty, and in favour of the *Pretender*. And that he did sollicit Men, Arms and Ammunition, from certain Foreigners and others in *France*, to assist him in that Rebellion. And that he did write, and cause to be written several Letters, intimating this Resolution, and requesting the Assistance of such Foreigners and others.

The Indictment charges further, that he wrote and composed such Letters, and caused them to be wrote and composed; and procured them to be sent and deliver'd for that Purpose. And this, Gentlemen, is laid to have been by him done, contrary to the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case provided.

Gentlemen, to this Indictment the Defendant has pleaded that he is Not Guilty. If upon calling our Evidence for the King, we shall prove this Case upon him; it will become your Duty to find him guilty of the Charge.

Sir *J. Jekyll*. MAY it please your Lordship, and you Gentlemen of the Jury, I am of Counsel with his Majesty: And, Gentlemen, it is my Part to open to you the Substance of the Charge against the Prisoner at the Bar; and the Nature of the Evidence we shall offer to prove that Charge.

The Prisoner stands indicted of the first Species of High-Treason, mentioned in that ancient Statute 25 *Edw.* III. that is, compassing and imagining the Death of the King.

The Overt-Acts alledged in the Indictment, to manifest that traitorous Design of the Prisoner, are three:

He is charged with consulting and conspiring, with other Traitors, to levy War against the King, in favour of the *Pretender* to his Majesty's Crown:

With conspiring and agreeing to sollicit and procure Assistance, from Foreigners, and others in *France*, to carry on that War:

And further, with writing traitorous etters, notifying his and his Accomplices Resolution to levy that War; and requiring the before-mentioned Assistance; and sending those Letters into foreign Parts for that Purpose.

These are undoubted Overt-Acts of the High-Treason charged upon him.

To make good this Charge, we shall shew, that about three or four Years since, there was a Correspondence begun between the Prisoner and Abbot *Butler*, an Ecclesiastic of *Cambray*. That Correspondence began on the Occasion of a Law-Suit in *England*; wherein one Mrs. *Butler*, a Relation of that Abbot was concerned; which was recommended to the Prisoner's Care. But some Time after (a Gentleman, whose Name it will be necessary to mention in the Prosecution of this Cause) Mr. *Harvey* of *Combe*, took upon him to make use of that Correspondence, in order to transmit and receive Letters to and from that Abbot; and also to the Duke *D'Aumont*, by the means of the Prisoner.

Mr. *Harvey*, for some time, made use of the Prisoner only to convey those Letters forward and backward, under the Prisoner's Cover, directed to one *D'Aulmay*, alias *Payen*; who had married a near Relation of the late Duke of *Ormond*; to be communicated by *D'Aulmay* to the Abbot, or the Duke *D'Aumont*. But it seems, the Prisoner having gained a Knowledge of the Tendency of Mr. *Harvey*'s Correspondence, (which was a treasonable one) he himself soon after came to partake of the Guilt.

As it was at first a Correspondence between the Prisoner and the Abbot, and afterwards between Mr. *Harvey* and the Abbot, under Covers; so afterwards, Mr. *Harvey* made use of the Prisoner himself, to correspond with *D'Aulmay*. And in those Letters you will find, that the Prisoner does not enter into the Correspondence as a Matter that he was transacting as only for Mr. *Harvey*, but shews a great Concern in it himself: He is importunate for Assistance to the late Rebellion from *France*; Impatient for its Coming, and Anxious for the Success.

The Evidence we shall offer to you, to shew that this Correspondence was thus carried on, will be this.

Informations being given to a Noble Lord, (then Secretary of State) of a treasonable Correspondence being carry'd on by Mr. *Harvey*, by means of the Prisoner; there was a Warrant issued to take the Prisoner, and seize his Papers. And upon the Execution of that Warrant, Letters directed to the Prisoner, and his Copy-Book of the Letters wrote by himself, and an Original Letter of Mr. *Harvey*'s, were found in the Prisoner's Custody, and will be produc'd to you; and these were own'd and admitted by the Prisoner.

The Letters themselves plainly speak the Nature and traitorous Effect of this Correspondence begun by Mr. *Harvey*, and carried on with the participation of the Prisoner. And, Gentlemen, my Lords the Judges will tell you, that it is not couching such a Correspondence in the Cant of a Law-Suit, (as in the present Case) or otherwise, that will screen an Offender from Public Justice, in case a traitorous Correspondence can be made manifest. If that would evade the Justice of the Law, it would be impossible for Traitors to be brought to Punishment. But that which puts this out of all doubt, is, that the Sense which is put on these Letters by us, and by the Indictment; that very Sense, or Construction has been put upon them by the Prisoner himself. For we shall lay before you the Examination of the Prisoner before the Secretary of State. In that he admits, that the Subject-Matter of the Letters wrote by *D'Aulmay* to him, to be communicated to Mr. *Harvey*, was the Design of the *Pretender*'s invading the Dominions of his Majesty. And those Letters being one Side of the Correspondence, (I mean that which came from Abroad) serves to evince or demonstrate the other Part or Side of the Correspondence, which came from hence.

I shall not enter into the Particulars of the Letters; or state and reason upon Matters in writing, without having them first read, whereby to lay a Foundation for observing upon them. But the Letters will be read to you: And we who are the King's Counsel, don't desire you to put any forc'd or strain'd Construction upon them. Nay, we desire you to put no other Construction upon them, than what the Prisoner himself has done already.

I shall say nothing to you, Gentlemen, to aggravate the Nature of the Offence. I rather chuse to appeal to your Judgments, than to excite your Passions.

All that is desired of you, is, to give your best Attention to the Evidence; and to do Justice, and discharge your Consciences.

Mr. Att. Gen. MAY it please your Lordships, and you the Gentlemen of this Jury; I am also of Counsel against the Prisoner at the Bar. The Indictment has been at large opened and explained by Mr. Serjeant *Jekyll*. The Prisoner is charged with High-Treason, in compassing and imagining the Death of his Majesty, in order to set the *Pretender* on the Throne. The Overt-Acts laid, are conspiring to levy that War and Rebellion that broke out lately; and in applying to *Aliens*, and others in *France*, for Men and Money for carrying it on.

It is notorious, that Preparations were making many Months for the Rebellion that broke out in *Scotland*, *September*, 1715. under the Earl of *Marr*; and in *Northumberland* in *October* after, under Mr. *Forster*; and the like were design'd at *Oxford*, *Bath*, *&c.* in *October*, 1715. And Men were listed and sent down for those Purposes; as hath appear'd on the Trials of the Persons who have suffer'd for those Treasons.

The Conspiracy was carry'd on with great Secrecy: And tho' it had been long in agitation in favour of the *Pretender*; yet was not publicly known, till his Majesty (upon the 20th of *July* 1715.) was pleased to acquaint his Parliament, that he had certain Notice of the *Pretender*'s Design to Invade this Kingdom; and that at the same time there were great Preparations here to assist that intended Invasion.

The Defendant lives in *Plow-Yard* in *Fetter-Lane*, and goes for a *Jew*. When the Duke *D'Aumont*, as Ambassador from the *French* King, in the Year 1713. was here, the Prisoner came acquainted with the Abbot *Butler*, called the *Vidame* of *Cambray*, and from that time he corresponded with him. The Abbot had a Relation of his Name, *Barbara Butler*, who had a Suit at Law depending here, which he recommended to the Care of the Prisoner; and that I believe might be the Beginning of the Correspondence between them. There is a Gentleman that has been named, Mr. *Harvey* of *Combe*; he also then contracted an Acquaintance and Familiarity with the Duke *D'Aumont*, and Abbot *Butler*, and corresponded with both. These Correspondencies first began in the Queen's Time, and appear to have been carried on with great Secrecy and Caution, which induce a Belief they were then Criminal; but I don't mention this, as if what was done in the Queen's Time would affect the Prisoner upon this Indictment, for it is laid only for Treason committed against the King. These Correspondencies were carried on, from the going away of the Duke *D'Aumont*, till the Prisoner was seized, which was occasioned in this Manner:

My Lord *Townshend*, then Secretary of State, was diligent in his Enquiries, and on the 16th of *September*, 1715. had a private Information given him, that Letters constantly came by the Post from *France*, to *Francia* and Mr. *Harvey*, from the Duke *D'Aumont*, and Abbot *Butler*, and one *Payen* alias *D'Aulmay de Coulange*; and that the Subject of the Letters related to the *Pretender*, and that intended Invasion.

His Lordship was cautious, and did not immediately seize the Prisoner, but staid the coming in of two Posts from *France*, and gave Orders for stopping all Letters directed to the Prisoner, to see what further Discovery they would make; and having received further Information by those Letters, on the 19th of *September*, 1715. his Lordship made his Warrant to *Joseph Smith*, one of the Messengers, to apprehend *Francia*, and seize his Papers. He having received the Warrant, went, together with *Wilcox* another Messenger, (who is since dead) to the Defendant's House, and there seized his Person, and at the same time his Copy-Book of Letters. And it is extraordinary to find therein entered the Copies of any Letters relating to a Matter of this Nature. When they seized that Book, he told them there was nothing in it, and that it was only his Copy-Book of his Letters to his Correspondents. They seized also several Original Letters, wrote from *France* to him by *D'Aulnay* alias *Payen*, which will be read to you. They then seized also in his Custody an Original Letter of Mr. *Harvey*'s to Abbot *Butler*, dated *January* 9, 1714. which was sent to *Francia* to be transmitted beyond Sea; but it seems *Francia* opened it out of Curiosity, or by Accident, and kept it. In it were Figures for Names and Things, which he well understood. The Prisoner was on *September* 22, 1715. examined before both Secretaries of State, and the Copy-Book of Letters was shewn him, and he owned it to be his Book, wherein he entered the Letters of his Correspondency, and that the Entries were made by himself or his Son. *D'Aulmay*'s Letters were also shewed to him, and he owned that they were those that he received, and were found in his Custody.

He at first seemed to be open and ingenuous, and the Secretaries of State then thought him to be so. He told them in particular, when the Correspondence began, how long carried on by covering Mr. *Harvey*'s Letters; and when altered, and the Correspondence carried on only by *Francia*; and that the Subject of the Letters wrote to him by *Payen*, was the Design of the *Pretender* to invade his Majesty's Dominions; and he named Persons, who were intended in them by Initial Letters of their Names

or

or Titles. That *M. H.* was Mr. *Harvey.* My *D D* the Duke of *Ormond*; *M B.* Lord *Bolinbroke*; *Dd.* the Duke *D'Aumont.* He also explained Mr. *Harvey*'s Letter and the Figures therein. That 22 was the Duke *D'Aumont*; 6 the late *French* King; 17 the *Tories*; 8 the *Pretender*; and 9 his Majesty King *George*; and signed his examination, and was sent back in the Messenger's Custody. But it appearing after, on further perusing of the Letters, that he had not been ingenuous, but had concealed a great Part of what he knew, he was further examined, and then changed his Note, and thereupon was committed to *Newgate.*

He was here twice before in Order to be tried; the first Time he was advised by his Counsel (and he was in the Right to follow it, and take all the Advantages the Law allowed him) to insist, that in the Copy of the Indictment delivered to him, there was a Mistake of an *I* for an *A*, and therefore he had not had a true Copy of his Indictment; and thereupon the Trial was put off. The next Time he came, he made use of another Privilege the Law allows him, and challenged so many of the Jurors, that there did not appear besides enough to make a Jury. There were Accidents afterwards, which occasioned the putting off the Trial twice by the King's Counsel, some of the Witnesses being abroad on his Majesty's Service.

The Indictment charges the Prisoner with compassing and imagining the Death of the King, And it is plain a Conspiracy to levy War, to dethrone or to deprive the King of his Liberty, is an Evidence of imagining his Death, for the War necessarily tends to that End. That this Transaction which he was concerned in, was a Design to have a Rebellion raised here, and to bring in the *Pretender*, we don't doubt but we shall give you Satisfaction of when we produce the Letters, and you will observe that the Prisoner hath so explained them: And if he had not, every Body must so understand them.

The Correspondence began in the Year 1713, and continued to the Time he was taken, which was on *September* 19, 1715. And so far we may read the Letters in the Queen's Time, to shew the Nature and Beginning of it. At first he carried on the Correspondence, only as a Correspondence between Mr. *Harvey* and *Butler*, by covering Mr. *Harvey*'s Letters, and having the Answers sent under Cover to him; what he wrote in the Covers, he has enter'd in his Book; for Mr. *Harvey* was cautious not to let his Letters go openly to and from him. And so for a good while Mr. *Harvey*'s Letters were brought to *Francia*, which he covered and directed to *Butler* or to *D'Aulmay*, sometimes by that Name, and sometimes by the Name of *Payen*, and sometimes by the Name of *Coulange*, which is a way used by many in *France*, to take the Name of the Place where they live instead of their Sirname. While the Correspondence was carried on by covering Letters, *Francia* in his Covers wrote those Matters that demonstrate he was privy to the Correspondence, and you will understand it by Mr. *Harvey*'s Original Letter.

Mr. *Harvey* is not before the Court, and therefore we shall not meddle with him more than is necessary, to shew that while the Correspondence was carried on under *Francia*'s Covers, *Francia* well knew the Subject Matter of the Correspondence, and many Times gave Cautions to have to do with discreet Persons, and to make use of People that do not babble.

The Correspondence was carried on thus till about *June*, 1715, and then the way of Corresponding was changed. For Mr. *Harvey* was advised to be more careful, and not to write himself; but whatever was wrote, it was agreed should be wrote to and by *Francia*. And so the Correspondence was carried on between *D'Aulmay* and him, to the Time of the Prisoner's being apprehended. We have Entries of Letters of his for a considerable Time in his Copy-Book: and it is surprising to me, and will be so to every Man, that a Man should enter Copies of Letters that carry such an Evidence of Crimes in the Writer. In one of the Letters enter'd in the Copy-Book, he writes to *D'Aulmay*, dated *April* 7, 1715, "to be cautious to avoid giving Umbrage to those in "Power; and says, when I have any thing particular to write to you, "I will do it by a strange Hand, and will sign *Jacques Chretien.* Take "notice of this, and provided you let me know you received this Letter "without its having been opened, I shall be easy."

From that Time there is no Entry of *Francia*'s Letters in the Book; but we have a Chain of Letters from that Time wrote by *D'Aulmay* to *Francia*, in Answer to Letters written by *Francia* to him, wherein *D'Aulmay* takes notice, "That *Francia* in his Letters had complained that the Invasion "was delay'd; and reproach'd those in *France* with Backwardness, Neglect "and Indolence; and the cause he knew of, would be undone for want of "Care."

In the reading the Letters, we shall first produce that of Mr. *Harvey*, dated *January* 9, $17\frac{1}{2}\frac{1}{3}$, to Abbot *Butler*; which was found in *Francia*'s Custody, with his Explanation of it; by which it will appear, he was fully acquainted with the Subject of the Correspondence while he cover'd Mr. *Harvey*'s Letters: And after that we shall produce the Letters from and to *Francia*, in the Order of Time they were written.

It is remarkable, that the Correspondence was so close, that scarce a Post passed without Letters from the one or the other.

The first of Mr. *Francia*'s Letters that we shall produce, is dated *March* $\frac{13}{14}$, $17\frac{1}{1}\frac{4}{5}$. He writes to *D'Aulmay*; "and desires to know what "was in the Story of the Marriage between the *Pretender*, and one of the "*Arch-Dutchesses.* For it is essential to the Interest of your Wife." She was a *Butler.*

D'Aulmay answers that, *March* 20, 1715, and writes, "That no "mention was made of late of the Marriage of the *Pretender*: And that he "was of Opinion, that would not be a sure Way to bring his Affairs to "a happy Issue. But that a Party-War (that is, among ourselves) would "be much more to his Advantage."

March 10. *Francia* writes, "That there was a Letter from the Duke "*D'Aumont*, which 'tis wished may succeed better than the former; "which have not been answer'd, tho' entirely for the Affairs. Besides I "am (by the way) to tell you, that Persons of 50 or 60 Thousand "Crowns a Year, can't with Prudence run the Hazard of losing such "Estates, unless more Encouragement be given them. And that the Mis-"fortunes of a certain Person are more owing to their being neglected on "your Side of the Water, than to the Party that is against him: So that "if this continue, your Wife must lose all Hopes." This demonstrates, that the Matter solicited for was Criminal, for which the Persons concerned might forfeit their Estates; and is plainly a soliciting for Succours.

April 2. 1715. *D'Aulmay*, in Answer to this, writes, "He had com-"municated the Complaints in *Francia*'s last Letter to the Duke *D'Au-"mont*; and was assured all should be mended."

March 17. $17\frac{1}{1}\frac{4}{5}$. *Francia* writes to *D'Aulmay*, "He should be glad if "he could find means to satisfy Mr. *Harvey*——That to deal with him "as has been done, is no good Policy."

April 8. 1715. *Francia* writes to *D'Aulmay*, in Answer to his of the 20th; and tells him, "He is satisfied; and consequently we are now to "expect every thing from your Side the Water."

April 18. He writes again to *D'Aulmay*, "That Affairs are here in such "a Situation, that great Precaution must be used, to avoid giving Umbrage "to those who are in Power. When I have any thing particular to write "to you, I will do it by a strange Hand, and will sign *Jacques Chretien.* "Take notice of this: And provided you let me know you received this "Letter, without its having been opened, I shall be easy."

April 24. 1715, *D'Aulmay* writes to *Francia*, "That his Letter came "safe to Hand, and bids him be easy. If Mr. *Harvey*, in these trouble-"some Times, should think fit to make use of Mr. *Chretien*, he may."

These Letters of *Francia*'s are entered in his Copy-Book: But from this Time there are no Entries in the Copy-Book: Which is not to be wondered at; but rather that they were entered so long. But we have many Original Letters from *D'Aulmay* (alias *Payen*) to *Francia*; which appear to be Answers to Letters written by himself: And by what of them is repeated in the Answers, it appears in his Letters, great Sollicitations were for the *Pretender*'s Coming, and great Uneasiness expres'd at the Delay. And therefore, to quiet the Conspirators in *England*, *D'Aulmay* gives frequent Assurances that all Things were preparing.

August 7. 1715. Which was after his Majesty had notice of the Invasion designed, and had acquainted the Parliament with it; *D'Aulmay* writes to *Francia*: "You are in the Right to inveigh against the Indolence you re-"proach us with; but be persuaded, 'tis only so in Appearance. I even "hope, that by this time you have convincing Proofs of it; and that suit-"able Returns are made to the good Dispositions on your Side: And that "at last God, blessing the Just Cause of our Friend, will let him gain his "Suit: At least, Assistance and powerful Sollicitations shall not be "wanting."

This needs no Explanation. The Suit of their Friend, appears plainly to be the Invasion of the *Pretender.*

August 10. 1715. *D'Aulmay*, under the Name of *Payen*, acquaints *Francia*, that he received his of the 5th Instant. Says he, "Pray be easy; "before it be long you will be contented. The Chief of the Name of our "Friend the Abbot, arrived here on *Tuesday*-Night in good Health. He is "very well pleased; and has Reason to be so. He is preparing to return "Home with all Expedition; and to take his Friends with him, to pass "the Vacation there. I am this Moment going to wait on him; and "design to make One in the Voyage with him, or to be with him soon after "his Departure."

August 21. *D'Aulmay* writes again to *Francia*, in Answer to two of his of the 12th and 15th instant; "Our Friend's Cause will soon be ready "(God willing) to be tried: All Preparations are making for it. The "Friend who is related to my Wife has read your two Letters, and is "mightily pleased with them."

August 24. He writes again, "pressing him not to let a Post go, with-"out letting him know all that passes relating to the Cause of our Com-"mon Friend. And he takes notice, that he had been so busy, that he "had not had time to write to *Treacher*, but would do it suddenly."

This shews the difference between *D'Aulmay*'s own Suit against *Treacher*, and the *Pretender*'s Design, which he calls the Cause of their Common Friend.

August 28. *D'Aulmay*, under the Name of *Payen*, writes to *Francia*, acknowledging the Receipt of his of the 22d Instant; and saith, "If I "could venture to acquaint you with the Particulars of all that passes on "the Affair which you know of, you would be more quiet than you ap-"pear to me to be, and would accuse us of Negligence less than you do. "I know there are favourable Moments, which 'tis dangerous to let slip. "But will you not grant too, that 'tis the Part of Prudence to foresee all "Inconveniencies; and to take proper and sufficient Measures to enable us "to surmount them all? This is what we are doing: Be satisfied of it; "and that your Friends are more earnest and ardent than ever to procure "you all the Satisfaction you can wish. Have Patience therefore yet "awhile."

September 3. *Payen* to *Francia*. "I received this instant yours of the "29th past. We have at last the Misfortune to lose the greatest of Kings. "The *German* Journey might be very proper: I wish it may be per-"form'd; the rather because for the Reasons that you know of. Our "Preparations have been a little suspended, but not at all broken; Things "going on always better and better. My (*a*) *D D* and (*b*) *M D* are in "a House within half a League of this Town, which a private Person has "lent them; where they receive all their Friends, with whom they go to "dine and sup every Day. They are both in perfect Health; and think "quite differently from what they are reported to think: That is to say, "they are what they ought to be; you may assure your Friends of "this."

September 6. *D'Aulmay* writes to *Francia*; "I have just now received "your Letter of the second Instant. I desire you to continue to write to "me directly; and if you had some trusty Hand, other than your own, "and that of your Son, you would do well to employ it. I believe also, "that a Cypher for the principal Names (which you might send me, and "a Copy whereof you might keep to make use of yourself) would be very "necessary: For I'll avow to you frankly, that this Precaution seems to "me to be very necessary."

(*a*) Duke of *Ormond.*

(*b*) Lord *Bolinbroke.*

Sept.

Sept. 14. *D'Aulnay*, under the Name of *Payen*, writes to *Francia*; "The "Contents of your laſt without a Date were very agreeable to me, as well "as to all our Friends, who give you Thanks for it. We knew already "Part of what you tell us about the Cauſe of our Friend; which will "ſoon end (pleaſe God) to his Satisfaction, or all Appearances would de- "ceive. As to my own Cauſe, I can't help telling you that my Fate is "very unhappy, to have to do with ſo diſhoneſt a Man."

Here again he diſtinguiſhes between his own Cauſe, and the Cauſe of their Friend the *Pretender*.

There cannot be any Doubt of the Subject of this Correſpondence: Every Body that hears or reads theſe Letters, muſt underſtand them to relate to the intended Invaſion; and if there were any Doubt, (as there is not) Mr. *Francia*'s Confeſſion ſufficiently explains them.

It cannot be expected we can produce Mr. *Francia*'s Letters, to which the laſt are Anſwers, they being ſent away by him to *France*; but we inſiſt that the Anſwers to them take notice of his, and of the Contents of them, with their being taken in his Cuſtody, and owned by him on his Examination, to be thoſe he received; and that he knew the Deſign of them to be, the Deſign of the *Pretender* to invade his Majeſty's Dominions, is a full and ſufficient Evidence to prove the treaſonable Correſpondence charged in the Indictment.

The Secretary of State did right in ſtopping the Letters at the *Poſt-Office*, which were directed to the Priſoner; but thoſe Letters having never been in the Priſoner's Cuſtody, we ſhall not offer them in Evidence.

In one of them *D'Aulmay* complains, that the Correſpondence was interrupted; and afterwards in another to *Francia*'s Son, he bewails his Father's Misfortunes.

It can't be pretended that *Francia* was only a Hand to convey Letters from one to another; and that the Correſpondence was only Mr. *Harvey*'s; and that *Francia* is only guilty of Miſpriſion of Treaſon, in concealing the other's Treaſon; for while he covered Mr. *Harvey*'s Letters, he alſo wrote in the Cover thoſe Things, that demonſtrate he was acquainted with the Subject of the Correſpondence, and aſſented to, and aſſiſted in the Treaſon: And the Law is plain in Caſe of High-Treaſon, that he that knoweth it before it be done, and aſſenteth to it, is *Particeps Criminis*, and guilty of the Treaſon.

What he did was not in the dark, but knowingly and openly, and he expreſſes himſelf concerned that the Buſineſs went on no better: That is making himſelf a Party and a Principal.

The Method of our Evidence will be this. Theſe Letters and Copy-Book were ſeized by the Meſſenger, who brought them to Mr. *Walpole*, Under-Secretary to my Lord *Townſhend:* They were laid before the Priſoner in the Preſence of both Secretaries of State: He owned the Book to be his Copy-Book of his Letters to his Correſpondents; and the Letters ſhewn him to be thoſe he received, and that they were taken in his Cuſtody; and that that Correſpondence continued till the Time of his being taken into Cuſtody; and that the Subject whereof was the Deſign of the *Pretender* to invade his Majeſty's Dominions. We ſhall, for the better underſtanding of them, firſt read his Confeſſion, and then the Letters; and when we have done this, we do not doubt but you will be ſatisfied, we ſhall have fully proved the Charge laid in the Indictment againſt him.

John Forteſcue Aland, *Eſq.* My Lord we will call our Witneſſes. Set up Mr. *Smith.*

[*Then* Joſeph Smith *was ſworn.*]

Mr. Sol. Gen. You was ſent, I think, as a Meſſenger to *Francia*'s Houſe: Pray give an Account of every Thing that paſſed there.

Mr. *Smith.* My Lord, I have the Honour to ſerve his Majeſty as one of his Meſſengers: I was appointed to attend the Secretaries Office that Day, being my Day of waiting, which was *September* 19, 1715. I had a Warrant delivered to me againſt Mr. *Francia*, but it being late I did not go to execute it that Night. The next Day I went to his Houſe, in *Plow-Yard*, in *Fetter-Lane*; Mr. *Wilcox*, another Meſſenger, went with me, and went into the Houſe firſt; he went up one Pair of Stairs, and I ſtaid below, and after he had been up a little Time, he called me up, and told me there was the Priſoner: He was then in Bed, and there was a Woman with him he called Wife: We told him, we had a Warrant againſt him for High-Treaſon, and bade him get up. I aſked him if he had any Cloſet? And looking about, I ſaw one by the Fire-Place: I opened it, and the firſt Thing I obſerved over-againſt the Cloſet-Door, upon a Shelf, was a Parcel of Letters lying open in *Folio*; I ſaw they were in *French*, and directed to the Priſoner, and upon the Deſk there lay a Paper-Book.

Mr. Sol. Gen. Look upon this Book; is this the Book?

Mr. *Smith.* This is the Book; it lay upon the Deſk, and I looked into it, and obſerved this Writing at the one End of it: He ſaid it was his Son's Writing, and then I ſhut it again. I open'd the Deſk, and looked over the Papers; I found there ſeveral other Papers and Letters folded up: I took them out, and laid them upon the Deſk by the others. Then I ſearch'd the other Parts of the Cloſet, and laid all the Papers by the other Letters. I deſired then to go up Stairs, and I did ſo: And a Perſon I ſaw juſt now in Court, his Son, went with me; and I ſearched the Rooms and Boxes, and found ſeveral other Papers, and brought them down into the Chamber where the Priſoner was with Mr. *Wilcox*; I put up all the Papers together, and ſaid I had taken all Things that I thought neceſſary, and deſired to be going. The Priſoner deſired to ſtay and drink ſome Coffee; we did ſo, and then brought him down to a Houſe at *Weſtminſter*. We carried the Papers to the Office, and deliver'd them to Mr. *Horatio Walpole*. When I was in the Chamber with him, he ſeemed to be under a Concern when I put up the Book; and I aſked him what that Book was? He ſaid it was the Book of his Correſpondence abroad.

Mr. Att. Gen. Is this the Book?—Mr. *Smith.* Yes.

Mr. Att. Gen. You ſay you ſaw ſeveral Letters there, did you look into them?

Mr. *Smith.* I ſaw they were directed to *Francia:* There was a Parcel lay open in *Folio*; and others that lay folded up in the Deſk.

Mr. Att. Gen. What became of the Book and Papers after you had them?

Mr. *Smith.* We went with them and the Priſoner, and deliver'd the Priſoner into a Houſe at *Weſtminſter*; and then went to the Office, and ſtaid till Mr. *Walpole* came, and then delivered the Book and Papers to him.

Mr. Att. Gen. Did you deliver any Papers to him but what were ſeized there?—Mr. *Smith.* No.

Mr. Att. Gen. What is become of Mr. *Wilcox?*

Mr. *Smith.* He is dead.

Mr. *Cowper.* What was it that the Priſoner ſaid about the Book?

Mr. *Smith.* He ſaid, that is my Copy-Book of my Correſpondence abroad, it ſignifies nothing. I afterwards obſerved ſome more Concern than ordinary in him; and he ſaid to me again, the Copy-Book of my Letters ſignifies nothing.

Mr. *Ward.* How long had you the Book and Letters in your Cuſtody?

Mr. *Smith.* I received them about Six or Seven o'Clock, and I deliver'd them the ſame Day to Mr. *Horatio Walpole.*

Mr. *Hungerford.* How can you be ſure this is the Book?

Mr. *Smith.* Becauſe I never parted with it.

Mr. *Hungerford.* Was it not out of your Poſſeſſion when you delivered it into the Office?—Mr. *Smith.* Yes, then it was.

Mr. *Hungerford.* Did you ſet any Mark upon the Book?

Mr. *Smith.* No.

Mr. *Hungerford.* Did he ſay that which was wrote in it, was wrote in it by him?—Mr. *Smith.* He ſaid, this is my Copy-Book of my Letters to my Correſpondents abroad.

Mr. *Hungerford.* But how can you be ſure this is the ſame Book?

Mr. *Smith.* I made a Remark of this * Writing, as he ſat dreſſing himſelf.

Priſoner. Who was it that carried the Book and Papers to the Office, you or *Wilcox?*—Mr. *Smith.* I myſelf.

Priſoner. I know that to be falſe. How ſoon did you go out of Town after you had lodged me?—Mr. *Smith:* In a Day or two.

Priſoner. Did you not go that Moment?

Mr. *Smith.* No; not that Day.

Priſoner. To whom did you deliver them?

Mr. *Smith.* To Mr. *Horatio Walpole.*

Priſoner. Did you take no more Books?

Mr. *Smith.* There were ſeveral Books in your Houſe, but I don't remember that I carried any of them away but this.

Mr. *Hungerford.* Did the Priſoner own to you, that the Letters wrote in that Book were wrote by him?

Mr. *Smith.* He ſaid, that is the Copy-Book of my Letters to my Correſpondents abroad.

[*Then Mr.* Horatio Walpole *was ſworn.*]

Sir *J. Jekyll.* Pray, Sir, will you give the Court and the Jury an Account of this Book and thoſe Letters; and how, and when they were brought to you?

Mr. *Walpole.* I remember the Warrant for ſeizing the Priſoner was dated the 19th of *September*, and that the Day after Mr. *Smith* and Mr. *Wilcox* came into my Room, and deliver'd to me a Copy-Book and a Parcel of Letters, which they ſaid they took at *Francia*'s Houſe. I took them and kept them by themſelves, to be produced when my Lord *Townſhend* ſhould call for them. I remember that Night Mr. *Buckley* came into my Room, and I deſir'd him to ſit down and look them over with me; and accordingly he and I look' into them. The next Day my Lord *Townſhend* ſent for the Priſoner, and I carried in the ſame Book and Letters, and laid them upon the Table, and particularly the Letters, they were laid open, and my Lord examin'd the Priſoner about them. They were wrote in *French*, and directed to the Priſoner. My Lord aſk'd him, whether he knew the Hand of thoſe Letters, and turn'd them all over, and ſhew'd him the Directions, ſaying, are theſe directed to you? He own'd it. He own'd that he received them. My Lord aſk'd him again, is this your Book? He anſwer'd, it is; ſome of the Letters are enter'd by me, and ſome by my Son.

Sir *J. Jekyll.* Were they all the ſame Letters that were brought to you by Mr. *Smith.*

Mr. *Walpole.* The ſame.

Sir *J. Jekyll.* Pray look upon this Book; is this the ſame Book?

Mr. *Walpole.* I am ſure this is the Book: This is the ſame Book that *Smith* deliver'd to me, and ſaid he took it at *Francia*'s Houſe.

[*Then ſeveral Letters were ſhewn to Mr.* Walpole.]

Mr. *Walpole.* I remember all theſe Letters to be the ſame that I received from *Smith.*

Mr. Att. Gen. After the Priſoner had been examin'd, what became of the Letters?

Mr. *Walpole.* I took them back again. I kept them under Lock and Key, till my Lord *Townſhend* had occaſion to uſe them, which was the ſame Night that my Lord examin'd the Priſoner; then I took them back, and I conſtantly kept them till I went to *Holland* for the *Dutch* Troops, and then I deliver'd them to Mr. *Buckley.*

Priſoner. And you can ſwear theſe are the ſame Letters that were deliver'd to you. By what Mark? You ſwear very home. What Mark did you put upon thoſe Letters, that you can ſwear to them?

Mr. *Ward.* Pray Sir, when they were in your Cuſtody, are you ſure they were never deliver'd out?—Mr. *Walpole.* I am ſure.

Mr. *Ward.* Do you remember one *Jones*, the Gun-maker, on the other Side the Water, when he was under Examination? Are you ſure they were not deliver'd out by Miſtake to him?

Mr. *Walpole.* I don't know that they were.

Mr. *Hungerford.* Did you put any Mark on thoſe Letters?

Mr. *Walpole.* No, I put no Mark on them.

Mr. *Hungerford.* Then how can you know them to be the ſame?

Mr. *Walpole.* I peruſ'd them ſeveral times. I remember the Hand, and Dates, and Directions.

Mr. *Hungerford.* Then probably you remember the Number too?

Mr. *Walpole.* No, I don't remember the Number.

Mr. *Ward.* Are you ſure theſe are all the Letters that were brought to you?—Mr. *Walpole.* No; there are not all the Letters.

Mr. Att. Gen. We ſhall now call Mr. *Buckley.*

[*Then Mr.* Buckley *was ſworn.*]

Mr. Att. Gen. Pray, Mr. *Buckley*, look upon this Book and theſe Letters, and acquaint the Court what you know of them.

* *George Francia*'s Name in large Church Text, at the End of the Book.

Mr. *Buckley*. My Lord, the Day the Priſoner was ſeized, I came into Mr. *Walpole*'s Room. He told me he had received that Book and thoſe Letters that were ſeized at the Priſoner's Houſe, and deſired me to ſit down and read them with him. I did ſo. Afterwards, when Mr. *Walpole* went to fetch the *Dutch* Troops, he delivered this Book and theſe Letters into my Hand. Afterwards, my Lord *Townſhend* directed me to look into them, and ſee which contain'd Paſſages moſt Criminal, and to extract ſuch Paſſages, which I did accordingly out of ſeveral of them. I will look over them again, and then I can tell you whether they are the ſame.

Priſoner. By what Mark?

Mr. *Buckley*. I can tell you by that which is ſtronger than any Mark, I copy'd Paſſages out of ſeveral of them.

(Then he look'd over the Letters one by one.)

I had every one of theſe Letters from Mr. *Walpole*, and I know it certainly; for that from every one of theſe I extracted ſome Paſſages.

Mr. *Cowper*. Was you preſent at any time when the Priſoner was examin'd?---Mr. *Buckley*. I was.

Mr. *Cowper*. Were this Book and theſe Letters produced to him at the time of his Examination?

Mr. *Buckley*. He was examined by my Lord *Townſhend* and Mr. Secretary *Stanhope*, and I was call'd in to take his Examination in Writing; accordingly I did.

Mr. *Cowper*. Were the Book and Letters at the time of his Examination produc'd to him?

Mr. *Buckley*. I can't ſay that, for I was intent on my Paper, writing the Examination, and looking upon the Priſoner, and hearing what he ſaid. When I had written down what is in my Hand, [*holding out the original*] *Examination*] I read it over to him diſtinctly and audibly; and he being ask'd whether he was willing to ſwear to it, and anſwering; Yes, I offer'd him his Oath: And I offer'd him a *New Teſtament* to ſwear on. He ſaid he could not ſwear on that Book. But he took another Book out of his Pocket, and I ſwore him on that. I asked him whether this was true? He ſaid it was. Then he ſign'd it; and afterwards my Lord *Townſhend* ſign'd it.

Mr. *Cowper*. Is the Subſcription of his Hand-writing?

Mr. *Buckley*. It is.

Priſoner. You ſay I took an Oath. On what Book was it?

Mr. *Buckley*. Indeed I don't know, I believe it was an *Hebrew* Book; Mr. Secretary *Stanhope* look'd upon it.

Mr. *Denton*. Was he examin'd at any time after?---Mr. *Buckley*. Yes.

Mr. *Denton*. Was you preſent then?---Mr. *Buckley*. No.

Mr. *Ward*. How long were they in your Cuſtody?

Mr. *Buckley*. From the time that Mr. *Walpole* went abroad, till he came back again; and then I delivered them back to him.

Mr. *Ward*. Were they in your Cuſtody when Mr. *Jones* was under Examination?

Mr. *Buckley*. I can't tell; but I never did ſhew them to him.

Mr. *Ward*. Were they not delivered out on that Occaſion?

Mr. *Buckley*. No, they were not delivered out by me.

Mr. *Ward*. You ſay you read the Examination to him. Did not he deſire to read it himſelf?

Mr. *Buckley*. I don't remember it.

Mr. *Ward*. Was he not refuſed to read it?

Mr. *Buckley*. No, upon my Soul.

Mr. *Ward*. Was you with the Priſoner in *Newgate?*

Mr. *Buckley*. I was with him at his own Deſire; otherwiſe I had not gone to him.

Mr. *Ward*. Do you remember the Days?---Mr. *Buckley*. No.

Mr. *Ward*. How often was you with him there?--Mr. *Buckley*. Twice.

Mr. *Hungerford*. Were there any Offers made by you to him?

Mr. *Buckley*. I deſire you would explain yourſelf.

Mr. *Hungerford*. Did you make him any Offers, that upon his ſigning any Paper, he ſhould have his Liberty?---Mr. *Buckley*. No.

Mr. *Hungerford*. Did you not mention to him his giving Evidence againſt any other Perſon?

Mr. *Buckley*. No, upon my Soul.

Mr. Att. Gen. Theſe Queſtions ought not to be aſked. It is an Iniquity to tamper with any Man; and therefore ſuch Queſtions ought not be put. If you have any Witneſſes, you may examine them.

Mr. *Hungerford*. Then we will examine to it.

Priſoner. Is that the Book I ſwore upon? [*ſhewing a Book he had in his Hand.*]

Mr. *Buckley*. I don't know indeed; it was ſuch a ſort of Book.

Mr. Att. Gen. I don't take that to be material, if it were the *Alcoran*. He had it in his Pocket. But it is not his Oath, but his Confeſſion that is material.

Mr. *Hungerford*. Taking the Book into his Hands. I underſtand a little *Hebrew*. This is a Book to pray by, not ſwear by. It is a Collection of ſome *Jewiſh* Prayers and Rituals; I believe taken out of *Maimonides*. You had beſt ſend it the learned *Monfalcon* in *Paris*, he is compiling ſome critical Obſervations upon the *Eaſtern* Languages.

Mr. *Ward*. Did you put any Mark on any of thoſe Letters?

Mr. *Buckley*. I did on ſome of them.

Mr. *Hungerford*. Where are the Extracts you made out of them?

Mr. *Buckley*. I have ſome of them here. [*Holding out ſome Papers.*]

Mr. *Hungerford*. What did you do with the Letters, after you had made thoſe Extracts?

Mr. Juſt. *Pratt*. He tells you that he kept them till Mr. *Walpole* came back again, and then delivered them to him.

Mr. *Buckley*. Here is my Name on ſome of them. The two initial Letters of my Name.

Priſoner. When was that Mark made upon them?

Mr. *Buckley*. I don't juſtly remember.

Priſoner. That might be done Yeſterday, or ſince they were delivered out of his Cuſtody.

Mr. *Buckley*. I did it while they were in my Poſſeſſion, and before I delivered them back again to Mr. *Walpole*.

(Then the Lord Townſhend *was ſworn.)*

Sir *J. Jekyll*. We muſt deſire your Lordſhip to inform the Court, what your Lordſhip knows in relation to the Priſoner at the Bar, as to the iſſuing out the Warrant againſt him, and what happened afterwards.

Lord *Townſhend*. My Lord, having received Information that there was a treaſonable Correſpondence carried on between the late Duke of *Ormond*, Duke *D'Aumont*, *Ceulange* and Mr. *Harvey*, in which the Priſoner was concerned, and was the Channel in which the Correſpondence was conveyed; and that the Pretence of it was a Law-Suit, but that the Deſign of it was in Favour of the Pretender; and that when they talk'd of the Party, the Pretender was meant; and that they expected him to be ſoon here. Having reaſon to rely on this Information, I drew a Warrant to ſeize the Priſoner and his Papers. I had indeed before ſent an Order to ſtop all Letters that came from *France* directed to *Francia*, by which I receiv'd a Confirmation of the Intelligence which had been before given me. Upon the iſſuing out the Warrant, the Priſoner was ſeiz'd, and his Letters were brought to Mr. *Walpole*.

The next Day I ſent for the Priſoner to be examin'd, and order'd Mr. *Walpole* to bring me the Papers, and ſent for the Priſoner in. The Letters that Mr. *Walpole* brought in, were laid open upon the Table, and the Book lay by them. I aſk'd him whether he knew the Hand, and whether thoſe Letters were not for him? He own'd the Letters, but ſaid he could not help what was in thoſe Letters, and that what others wrote to him could not make him guilty. As for what I have wrote (ſaid he) I appeal to my Book. That is my Book, I appeal to that for my Innocency. He did not appear obſtinate, and I remanded him; and at Night I ſent for him again, and Mr. Secretary *Stanhope* was with me; I had in that time look'd into more of the Letters, I ſaw ſeveral initial Letters of People's Names, I aſk'd him the meaning of them; and he gave me the Account contain'd in this * Examination. He ſeem'd in a Diſpoſition to tell me all he knew; he gave me an Account how this Correſpondence began, and was carry'd on; and then he came to explain the initial Letters that were in thoſe Letters that were taken upon him, and in ſeveral other Letters that I had intercepted. I remanded him again that Night, having taken his Examination in my Hand.

A ſecond Examination was taken upon Mr. *Harvey*'s Letter; *(which Examination and the Letter thereto annex'd was ſhewn to his Lordſhip.)*

This is the very Letter on which I examin'd him; he own'd to me how he came to ſtop the Letter, and not to forward it, and explain'd all thoſe Figures to me very diſtinctly. He proteſted that he knew no more, and made ſolemn Proteſtations that he had ſaid all he knew, and I was almoſt convinc'd he had; but in the Conſequence, I had reaſon to think he had not. But theſe two Examinations were taken before me, one I ſign'd alone, and the other Mr. Secretary *Stanhope* ſign'd with me. As to the Firſt, I believe Mr. Secretary *Stanhope* was gone out of the Room before it was ſign'd.

Sir *J. Jekyll*. I deſire to aſk your Lordſhip, whether all the Letters that were brought by Mr. *Walpole* were laid upon the Table at the time of the Priſoner's Examination?

Lord *Townſhend*. All that Mr. *Walpole* brought me were laid there, and I ſaw him take them back again.

Mr. *Ward*. I deſire to aſk your Lordſhip, whether you heard that Declaration read over to him?

Lord *Townſhend*. I dare ſay I did.

Mr. *Ward*. Did he not endeavour to excuſe himſelf from ſigning it, 'till he had read it himſelf?

Lord *Townſhend*. I don't remember that, I don't know that he made any Difficulty of ſigning it; but I am ſure it could not be becauſe he was refus'd to read it.

Priſoner. Was not there any Reluctancy in me to ſign it?

Lord *Townſhend*. What do you mean? Have not I anſwer'd that already?

Priſoner. Did not you offer me ſome Money to ſign it?

Lord *Townſhend*. I hope you can't ſay a thing of ſo much Infamy. After he had been examin'd, he complain'd to me of the Miſery he was reduc'd to, that his Wife and Family muſt ſtarve, and repreſented himſelf as if he were at a loſs for a Supper: I told him he had nothing to hope for, or any room to expect any Favour, but by making a clear Confeſſion. He went on begging, and ſaid that his Wife was ſtarving; I do not certainly know whether it was the very Night that he ſign'd his Confeſſion or not; but I am ſure it was not for that, but in pure Alms, and becauſe he begg'd ſo hard, I put my Hand in my Pocket, and gave him three, four, or five Guineas, I know not which, in charity; and it was what I never could refuſe any Man that apply'd to me in that manner, and begg'd ſo hard. He ſaid his Brother would not look upon him, becauſe he was taken up for High-Treaſon, and he deſired me to give him ſomething in Charity, which I did.

Priſoner. I deſire to ask you, whether you ever beſtow'd on any body elſe the like Charity? Pray, my Lord, name the Man under your Examination you ever gave five Guineas to before? [*At which there being a Laugh round the Court.*]

Priſoner. I muſt not be laugh'd out of my Life; you did not anſwer me.

Lord Ch. Baron. Propoſe your Queſtion to the Court?

Priſoner. I deſire to know who he ever gave five Guineas to beſides me?

Lord Ch. Baron. My Lord ſays it was out of Charity.

Priſoner. And that he never refuſed any Body under his Examination the Sum of five Guineas?

Lord Ch. Baron. He don't ſay ſo; he ſays, he never could refuſe his Charity to people that begg'd as you did.

Priſoner. I had leſs need to beg than ſome others.

Mr. *Ward*. I have but one Queſtion more to trouble your Lordſhip with, which my Inſtructions lead me to; and that is, whether at the time when this Examination was ſign'd by the Priſoner, he was not told of its being for ſome particular Purpoſe, but that it ſhould not be binding to him?

Lord *Townſhend*. He did deſire that it might not be made uſe of againſt him; I told him that depended on his Behaviour, if he was ingenuous, if he dealt frankly and fairly, and declar'd all the Truth, I would do all in my Power that he ſhould have Mercy; I don't know whether it is proper to give my Reaſons why I am convinc'd he did not deal candidly; but on the Peruſal of the Letters, I found he was not a bare Conveyor of them, or came by Chance to the Knowledge of what he explain'd in them, but that he was wrote to, as

* *Referring to the Original Examination.*

one of the Managers: On that I ſent to him again, and told him plainly, he muſt know more of it. He ſtood it out that he did not; and then I ſent him to *Newgate:* Soon after he was committed, his Wife came, as Mr. *Buckley* inform'd me, and acquainted him that ſhe was perſuaded, if ſhe could ſee her Huſband, that ſhe could prevail with him to diſcover the whole: On that I gave Directions to put him into the Meſſenger's Hands again, which was done; about a Morning or two after, one *Curtis*, who was in the ſame Meſſenger's Houſe, brought a Letter to the Office, which he had found drop'd by his Man's Bed-ſide. It was directed to his Wife, and the Subject was to bid her not afflict herſelf, for he found better Company in *Newgate* than he expected, that the better half of them were in upon the Government Account; that he had ſaid nothing of Mr. *Harvey* that could hurt him, nor could he; that the Government had nothing againſt Mr. *Harvey*, but a general Suſpicion that he was againſt the Government, which three Parts in four of the Nation were; and that he himſelf laugh'd at any thing the Government could do againſt him the Priſoner: When I found a Man write in his Stile, I could not but think he had not dealt ingenuouſly.

Mr. *Hungerford.* I would propoſe to the Judgment of the Court, whether it is proper to give Eidence of the Subſtance of a Letter without offering the Letter itſelf.

Mr. Juſt. *Pratt.* This comes in Anſwer to Mr. *Ward*'s Queſtion. He aſk'd my Lord *Townſhend*, whether there was not ſome Promiſe that this Confeſſion ſhould not be made uſe of againſt the Priſoner? His Lordſhip give this Account, and juſtifies himſelf, how he came to make uſe of it, and gives this as the Reaſon.

Mr. *Hungerford.* But to give an Account of the Subſtance of a Letter without producing it, I apprehend, is not according to the Rules of Evidence.

Sir *J. Jekyll.* If the Counſel for the Priſoner deſire the Letter to be read, it ſhall be read.

Mr. Att. Gen. Do you inſiſt upon the reading of it?

Mr. *Ward.* If you will read it in the proper time you may.

Mr. *Hungerford.* If in the Courſe of the Evidence the Letter is not read, I don't preſs it.

[*Then Mr.* Horat. Walpole *was call'd again, and the Letter was ſhew'd to him.*]

Mr. Att. Gen. Pray, Sir, will you give an Account what you know of this Letter, and how it came to your Hands?

Mr. *Walpole.* This Letter *Curtis* brought to me; and I made this * Mark on it: He told me it was found in *Francia*'s Chamber near his Bed-ſide, and this is the Letter.

Mr. *Ward.* There is nothing prov'd yet of its being the Priſoner's Hand, its being found by his Bed-ſide will not affect him.

[*Then Mr.* Buckley *was call'd again, and the Letter was ſhew'd to him.*]

Mr. Sol. Gen. Pray, look upon this Paper, and tell us whoſe Hand-writing you take it to be?

Mr. *Buckley.* I never did ſee the Priſoner write but once, and that was upon my being ſent to him to take a Confeſſion he ſeem'd unwilling to make; and then I ſat by him while he was writing.

Mr. Sol. Gen. How long did he write then?

Mr. *Buckley.* About an Hour, and I read it over.

Mr. Sol. Gen. Do you believe this to be his Hand-writing?

Mr. *Buckley.* I not only ſaw him write then, but I have read a great deal in this Book, which Mr. *Walpole* told me was taken at the Priſoner's Houſe; therefore being uſed to the writing in this Book, and to what I ſaw him write, for thoſe Reaſons, and no other, I believe this Paper to be his Writing.

Mr. *Denton.* Are not the Letters of your Name on this Letter?

Mr. *Buckley.* Yes: When Mr. *Walpole* put into my Hands all the Letters, my Lord bid me ſingle out thoſe that were fit to be extracted, and I did mark them that were extracted, and always kept them in my Hands till Mr. *Walpole* return'd, and then I delivered them to him: Thoſe Letters that I extracted, I mark'd; ſome other Letters that were intercepted by my Lord *Townſhend* I did not mark, becauſe they came to me at other times.

Mr. *Denton.* Did you mark that Letter?-------Mr. *Buckley.* Yes.

Mr. *Ward.* Can you be poſitive that it is the Priſoner's Hand?

Mr. *Buckley.* No.

Mr. *Ward.* Do you rely on the Writing in the Book?

Mr. *Buckley.* By that, and by what I did ſee him write, from thence it is that I conclude this to be his Hand.

Mr. *Hungerford.* He attempts to prove his Hand by two Inducements, one that he ſaw him write, and the other is the Book; therefore let him fix on thoſe Parts of the Book, that he takes to be the Priſoner's Hand, and to be like this Letter.

L. Ch. Baron. The Book is not material; it is enough for a Man to ſay, that he ſaw another write for an Hour together, and then that he believes this to be his Hand.

Mr. *Hungerford.* If that was the ſingle Foundation, it was ſomething; but he makes another Foundation alſo.

Mr. Juſt. *Pratt.* We are going out of the way, the Queſtion is, Whether this ſhall be read? In order to that, the Method is to prove, that the Witneſs is acquainted with the Priſoner's Hand-writing, and believes this to be his Writing. He tells you he ſaw him write for an Hour. He gives you a further Reaſon, that it is like ſome Letters in the Book. If that were laid out of the Caſe, the other would be ſufficient without it.

Mr. *Hungerford.* A Man makes two Things the Foundation of his Judgment, his ſeeing him write, and the Similitude of Hands in the Book, the moſt concluſive Evidence would be, the Similitude of the Hand in the Book, which others may judge of as well as himſelf.

L. Ch. Baron. That is no Evidence at all; Similitude of Hands is no Evidence.

Mr. *Hungerford.* I am far from thinking it is, or that there is yet any Evidence at all: Do you believe this to be his Hand, only from your having ſeen him write, or from what you have obſerv'd in the Book alſo?

Mr. *Buckley.* I ſay that from my having ſeen him write, and my having ſeen the Entries in the Book, I believe this to be his Hand.

Mr. Juſt. *Pratt.* If you had never ſeen the Book, but had ſeen him write for an Hour; could you collect from thence that this was his Hand?

Mr. *Buckley.* No, I would not affirm it.

Mr. *Hungerford.* Then it is with us; and makes it neceſſary to look into the Book.

Mr. Att. Gen. How come you to apprehend any one Part of the Book to be *Francia*'s Writing more than the other?

Mr. *Buckley.* By my Eye-ſight, and comparing it with this Letter.

Mr. Att. Gen. Is it from your Knowledge of ſeeing him write?

Mr. *Buckley.* Yes; and this Writing being like this Book.

Sir *J. Jekyll.* I deſire this Matter may be conſidered how it ſtands; my Lord *Townſhend* is examin'd touching the Confeſſion of the Priſoner, and was aſked, whether there was not Hopes of Mercy given him? My Lord ſaid there were, upon his making a frank Diſcovery; but he tells you the Priſoner was not entitled to Mercy, becauſe he had not made ſuch a Diſcovery, and then gives an Account of this Letter: I thought the Counſel for the Priſoner appeal'd to that Letter, and would have had it produced to check the Evidence given by my Lord.

Mr. Juſt. *Pratt.* Since it is gone thus far, I think it would be proper to clear this Matter.

Priſoner. I deſire to know where Mr. *Buckley* ſaw me write for an Hour together?

Mr. *Buckley.* It was in the Meſſenger's Houſe.

Mr. Juſt. *Tracy.* My Lord *Townſhend* was giving an Account in Anſwer to a Queſtion propos'd by the Priſoner's Counſel, and gave his Reaſon why he did not think the Priſoner was frank. I did not think ſo (ſays he) becauſe of a Letter which was found by his Bed-ſide. Says Mr. *Hungerford*, then that Letter ought to be produced.

Mr. *Hungerford.* If the Account is no more than that my Lord obſerved ſo upon that Letter, there is no great Harm in reading it: But I am ſtill in your Judgment, whether, when the Contents of a Letter is inſiſted upon, and repeated; that upon Memory only, the Letter itſelf ought not to be produced?

[*Then* —— Curtis *was ſworn.*]

Mr. Sol. Gen. Look upon that Letter; whoſe Hand-writing is it?

Curtis. I believe it is Mr. *Francia*'s.

Mr. Sol. Gen. Have you ſeen him write?----*Curtis.* Yes.

Mr. Sol. Gen. And do you believe it to be his Writing?---*Curtis.* Yes.

Mr. *Ward.* How long have you been acquainted with the Priſoner?

Curtis. While he was in the Meſſenger's Hands.

Mr. *Ward.* How often did you ſee him write?

Curtis. Several times

Mr. *Ward.* Was you in Cuſtody at the ſame time when he was?

Curtis. Yes.

Mr. Sol. Gen. Where did you find this Letter?

Curtis. In his Chamber, by his Bed-ſide.

Mr. *Hungerford.* I don't hear that he gives an Account, whether he is ſo well acquainted with his Writing, that he can diſtinguiſh it from any others?

Curtis. He told me it was a Letter that he had wrote to his Wife.

Mr. Att. Gen. The Letter is in *French*; we have a Tranſlation of it; we muſt deſire that the Interpreters who tranſlated it may be ſworn.

[*Then Mr.* Bowyer *and Mr.* Ozell *were both ſworn.*]

Mr. *Cowper.* Did you tranſlate the Letter?

Mr. *Bowyer.* I did, and afterwards I compared it with Mr. *Ozell.*

Mr. *Cowper.* Is that a true Tranſlation of the Original Letter?

Mr. *Bowyer.* I did make a true, genuine Tranſlation of it, allowing for the Difference of Language and Stile.

Mr. *Cowper.* Was it the beſt and moſt exact Tranſlation you was able to make?

Mr. *Bowyer.* Yes.

Mr. *Cowper.* Mr. *Ozell*, have you compared this Tranſlation with the Original?

Mr. *Ozell.* Yes; and I believe it to be a true Tranſlation.

Note. That the Original Letter was deliver'd into the Priſoner's Hand during the Time that the Tranſlation was reading; and Mr. *Flint*, who was permitted to ſtand in the Bar near the Priſoner, aſſiſted him in comparing the Original with the Tranſlation. The like Method was obſerved, when the Tranſlations of the Letters received by the Priſoner were read; and when the Letters wrote by him were read out of the Copy-Book, the Copy-Book was ſhewn to him.

[*Clerk reads.*]

'*My Dear,*

'ALL I exhort you to, is, to make yourſelf as eaſy as you can. I do the ſame, and am well, having ſlept well laſt Night; and the 'Company here is much better than I expected; they are all Tories, and 'the major Part for the Government, that is ſent hither for being ſo, 'according to their Informations. Although all ſhould fail, and my Lord '*Townſhend* ſhould do nothing, the Buſineſs will be at an End in leſs than 'a Fortnight. You know upon what Account I am here; which cannot 'diſgrace me: Be therefore comforted; and do not grieve. God will 'aſſiſt us. I neither know, nor have ſaid any thing againſt Mr. *Harvey*; 'nor can they do any thing to him, unleſs he has other Affairs which I 'know not of; therefore you may aſſure that *Frenchman*, that's falſe, for 'I know nothing againſt that Gentleman, which is not intirely regular. 'He may only be ſuſpected of being a Friend to the Pretender; but that 'was well known before; and if all who are ſo were to be puniſh'd, 'above three-fourths of the Nation would ſuffer. Therefore I laugh at 'any thing they can do to me, all my Sorrow is not to be with you; and 'I would not ſee you in this wretched Place, in which you can but 'grieve both me and yourſelf. *Adieu.*'

Mr. *Hungerford.* Pray, let me have the Letters; I have a little *French*, and I would willingly ſee how they render the Word *Tories.*

Mr. Juſt. *Pratt.* When did you find this Letter?

Curtis. Upon the 27th Day of *November.*

Mr. Sol. Gen. My Lord *Townſhend*, pray, be pleaſed to give an Account of the Occaſion that this Confeſſion was not ſign'd by both the Secretaries?

Lord *Townſhend.* I ſuppoſe Mr. Secretary *Stanhope* might be gone out of the Room.

Mr. *Hungerford.* I would not willingly trouble my Lord *Townſhend* at any other Time, and therefore would take this Opportunity: I think your Lordſhip ſaid, that the Letters that were ſtopp'd at the *Poſt-*

* *Shewing a Mark upon the Letter.*

Office

Office, were laid on the Table, with the other Letters, when the Prisoner was examined?

Lord *Townshend*. I did not say that. The Letters that were intercepted, I did first lay them before the King, and then put them into the same Hands with the other Letters.

[*Then Mr. Secretary* Stanhope *was sworn.*]

Mr. Att. Gen. Mr Secretary *Stanhope*, we must desire you to inform the Jury what you know about the Examinations of the Prisoner, and the Confession he made.

Mr. Sec. *Stanhope*. I have here two Examinations, one sign'd by my Lord *Townshend*, the 21st of *Sept.* and the other dated the 22d of *Sept.* sign'd by my Lord *Townshend* and myself. I was present at both the Examinations: There has been an Account given of the first, which is perfectly agreeable to what pass'd there, and my Name is to the second.

There is annex'd to this second, a Letter, which we take to be Mr. *Harvey*'s: I remember the Letter; the Hand is particular, and there are Figures by way of Cyphers. I remember very well this Letter. It has been before the Cabinet Council. It was shewn to Mr. *Harvey* at the Council-Table; he did not deny it, but shew'd the utmost Consternation when it was shewn to him; and desir'd that he might withdraw, and have the Liberty to speak to one particular Lord. The manner of his Behaviour was such, as to induce the Lords of the Council to be of Opinion, that he was inclin'd to confess what he knew; therefore they thought fit to let him withdraw, and go to the Messenger's House; but his Agonies were such, that he stabb'd himself that Night, or the next Morning.

I believe at twice we spent about two Hours in the Examination of the Prisoner, and these Examinations were taken from his own Mouth; and I can be positive there is not a Passage in them, that he did not repeat more than once or twice. The Reason why my Name is to one, and not to the other, may be, because the Room where he was examined was next to the Room where the Council used to meet; and I believe I might be going in and out between the two Rooms, and might not be there when he sign'd it; and therefore I might not think it proper to set my Name to what I did not see sign'd: But I saw him sign that to which my Hand is set; and I don't remember that he had any Reluctancy to sign it. I read the first Examination more than once or twice to him, and did myself examine him to all the Particulars of it.

After the first Night's Examination, it is certain he behav'd himself like a Man not worth a Groat, intimating as if he did not know how to get a Supper: He represented himself in a pitiful Condition, and it was at his going out of the Room, that my Lord put his Hand in his Pocket, and gave him something; what it was I don't know, but it was after he had sign'd his Examination; for, after it, there was a good deal of Conversation pass'd between him and me. I ask'd him several Questions, as to his being in *France*, and about the Countries he came from; and ask'd him as to several *Spanish* Letters that were in the Book, and other Things of that Nature.

Mr. *Ward*. Did he not desire to read over the Examinations before he sign'd them?

Mr. Sec. *Stanhope*. I don't remember that he did; but they were read over to him, and he was ask'd to every Particular by myself, some one Particular might slip; but I did examine him, I think, to every Particular, in order to have it alter'd, if he objected to it; and he did not express the least Reluctancy. I saw him set his Hand to one of them; as to the other, I can't say, because the Room was next to the Room where the Council was sitting, and I don't know but that I might be there.

Mr. *Ward*. Do you remember any thing particular that was said to him, that those Examinations should only be laid before his Majesty, and no other Use made of them?

Mr. Sec. *Stanhope*. I don't remember any such thing.

Sir *J. Jekyll*. If he had desired to have read these Examinations, would you have refused it?

Mr. Sec. *Stanhope*. It never was denied to any Man to read his Examination before he sign'd it, where I was present.

Sir *J. Jekyll*. Nor you would not have refus'd him, if he had desired it?

Mr. Sec. *Stanhope*. No, God forbid.

Mr. *Hungerford*. I am informed that the Prisoner wrote some Letters to my Lord *Townshend*, complaining of some other Use being made of his Examinations, than was design'd.

Mr Sec. *Stanhope*. I received some Letters from the Prisoner, but none that I thought were of any sort of avail.

Mr. *Hungerford*. Did he complain of his not being suffer'd to read them?

Mr. Sec. *Stanhope*. I don't remember it; but I am sure it was not so. If he did complain, it was without any Ground.

Which was shewn him accordingly.

Prisoner. I desire a Sight of the Original Letter, which *Curtis* said I own'd. I never wrote one Word of it; it is forged since: Any Body will say it; it is not like my Hand.

Mr. *Cowper*. Before the Examinations are read, I desire the Gentlemen of the Jury would take an Account in Writing of the initial Letters and Figures they will hear read, and then will observe who are the Persons meant and intended by them, according to the Prisoner's Explanation, when he was examin'd. Gentlemen, it is necessary you should understand, who are the Persons that are intended by the Letters and Numbers. If you take them down, all the Letters will read to the Purpose.

L. C. Baron. Gentlemen, they desire you will take Notice of the Letters and Numbers that are explain'd in this Examination, because you will the better understand the Letters that will be read to you: That is what they desire, and it will be for your Satisfaction.

The Examination upon Oath of Francis Francia, *of* London, *Merchant.*

Clerk reads. THIS Examinant saith, That about two Years ago he became acquainted with the Abbot *Butler*, otherwise call'd, the *Vidame of Cambray*, at the Time when the Duke *D'Aumont* was here; and afterwards, *viz.* soon after the Duke *D'Aumont* left *England*, this Examinant receiv'd a Letter from the said *Butler*, then in *France*, recommending to this Examinant's Care a Law-Suit, in which one *Barbara Butler*, a Kinswoman of the said Abbot's, was concerned; that this occasion'd a Correspondence between this Examinant and the said Abbot *Butler*, which, from a little before the late Queen's Death, hath lasted till within these few Days past; during which Correspondence with the said Abbot, this Examinant received from the said Abbot several Letters directed to Mr. *Edward Harvey* of *Combe*, and convey'd back several Letters from the said Mr. *Edward Harvey* to the said Abbot, which Letters to the said Abbot, from the said Mr. *Harvey*, were sometimes brought to this Examinant by the said Mr. *Harvey* himself, and at other Times sent by Mr. *Harvey* to this Examinant.

This Examinant further saith, That at such Times during the said Correspondence, as the Abbot *Butler* was at *Cambray*, the said Mr. *Harvey* usually brought or sent to this Examinant two Letters, one directed to the said Abbot at *Cambray*, and the other, either directed by Mr. *Harvey* himself, to the Duke *D'Aumont* at the *French* Court; or the said Mr. *Harvey* desired this Examinant to direct the same to the Duke *D'Aumont*, the said Mr. *Harvey* telling this Examinant, that he did not send the said Letters himself to *France* openly, because he would not expose himself to be reflected on for having Friends in *France*, not that he car'd a Pin if it were known, because we were in Peace with *France*, or Words to that Effect.

This Examinant further saith, that the Letters so delivered, or sent to him by the said *Harvey*, for the said Abbot, or for the Duke *D'Aumont*, were by this Examinant sent over to *France* under a Cover, directed to Monsieur *D'Aulmay*, alias *Payen*, at *Paris*; but about two Months ago that Method of Correspondence was changed; for the said *Payen*, instead of inclosing his Answers to the said Mr. *Harvey* in Letters or Covers directed to this Examinant, wrote only to this Examinant, but order'd him to shew to Mr. *Harvey*, or to deliver to him, what he so wrote to this Examinant, which this Examinant did accordingly.

This Examinant further saith, that whereas in some of the Letters lately written to him by Monsieur *Payen*, to be communicated to the said Mr. *Harvey*, and which were communicated to the said Mr. *Harvey* accordingly, and which being taken in this Examinant's Custody, were shewn to him; there are the Letters *M. H.* and my *D. D.* and *M. B.* which seem to be the initial Letters of Men's Names; he, this Examinant, understood that the said Letters *M. H.* stand for the aforesaid Mr. *Harvey*, and my *D. D.* for the Duke of *Ormond*, and *M. B.* for the Lord *Bolinbroke*; and this Examinant verily believes that the Subject of the said Letters written to him by *Payen* to be communicated to Mr. *Harvey* aforesaid, is the Design of the Pretender to invade his Majesty's Dominions.

Capt. Die 21. Sept. 1715.

Francis Francia.

per Townshend.

The further Examination of Francis Francia.

THIS Examinant being sworn, says, That a Letter shewn to him, and mark'd by him, which is hereto annexed, and is dated the 9th of *January*, 1714. and writ by Mr. *Edward Harvey*'s own Hand, was sent to him, this Examinant, by the said Mr. *Harvey*, under a Cover, in order to be forwarded to the Abbot *Butler* in *France*: And that this Examinant, in opening the Cover, accidentally broke the Seal of the said inclosed Letter, which made him detain the said Letter, and not forward it, lest it should be imagined that he had opened the said Letter out of a Curiosity to read it. And this Examinant further saith, that he verily believes that by No. (22) mentioned in the second Line in the said Letter, is understood the Duke *D'Aumont*; and that No. (6) mentioned in the thirteenth Line in the said Letter, and where-ever the said No. (6) is mentioned in the said Letter, he, this Examinant, verily believes it signifies and is meant to stand for the late *French* King: And that by No. (17) mentioned in the said Letter, is to be understood the Word *Tories*; and that where-ever (22) is mentioned in the said Letter, the Duke *D'Aumont* is meant. And this Examinant further saith, he verily believes that by (8) is to be understood the *Pretender*; and by (9) mentioned in the said Letter, is to be understood his Majesty; but that this Examinant doth not well know what (24000,) mentioned in the said Letter, stands for; neither can he tell what (14) stands for, mentioned in the said Letter.

Jur. 22. Die Sept. 1715. Coram nobis,

Francis Francia.

Townshend.
James Stanhope.

Sir *J. Jekyll*. Now we will read Mr. *Harvey*'s Letter.

Mr. *Ward*. You cannot read that Letter against the Prisoner.

Sir *J. Jekyll*. He hath made it Part of his Examination.

[*Clerk reads.*]

The 9th of *January*, 1715.

Dear Sir,

WITH great Satisfaction I receiv'd yours of the 12th yovr Stile, and the next time I write vnto (*a*) 22 I will be svre to write on yovr behalf, just as yov mention, and I wish it may have the Effect yov propose; but I remember very well the Advice yov formerly have given me, that your great ones are good at words and fair promises, but slow at performing, if Ever; therefore as I take yov to be my Friend, I shall lay out no more Money till I am repaid what (*b*) 22 was pleased to promise me long agoe should be rymitted me if the Fau—en had not done it, no notice I meane the 130: 4—0 so long due, itt being abovt halfe I have bin ovt of Pocket, and for my good will am sufficiantly scandalised as a friend to (*c*) 22, and Pentionar to (*d*) (6) nay and yov from tyme to tyme have assvred me it shovld be done, and still itt is the same, and so is like if you see itt not done.

Now if you please only to remind (*e*) 22 to send me a bill if he pleases for the 130: 4—I shall be obleged very mvch to yov, or otherwise I see it is lost, and yov only doe give me faire words, which realy is not like a trew Friend, for I am sure I have not, or ever will omitt any one thing

(*a*) *Duke* D'Aumont. (*b*) *Duke* D'Aumont. (*c*) *Duke* D'Aumont. (*d*) *The* French *King*. (*e*) *Duke* D'Aumont.

to ſerve (*f*) (6) (*g*) 22 nor yov pay'd or not, itt ſhall not trovble ſo I have (*b*) 22 Eſteem; wee are now in a hurrey on choſing of Parliament Men, and how thoſe things will goe, God above beſt dos knows; but this I will affirme ware thoſe that are to chvſe lefte to them ſelfes to chvſe no Money from Corte threats, nor any other indirect means vſed, all wovld be ovt of ſeght on the (*i*) 17 ſide; and as it is, I hope all will doe well if (*k*) 6 and (*l*) 22 ſticks to theire trew Friends, and on no accompt forgett them and all theire good intentions. I deſire you to lett (*m*) 22 know, if my Life lay att ſtake, I cannot get 30 ſuch Hovnds as I dare ſend to his Friend the Co—t of To—ovs he deſiers; but by *March* I hope I may, my good Friend Mr. *B—ne* that yov mention in yovr Directions, has given me two of his beſt Bitches; they are fovre Years Hunting, and they ſhall be in Whelp a're I take them: and one young one I daily will look ovt, tho' it is a Thing quite ovt of my way, *but to ſerve* (*n*) 6 *or* (*o*) 22 *I will do any thing tho' to the hazard of my Life, and all I have.*

I have got for (*p*) 22 two as fine and good Grayhovnd Bitches as can run, and as handſome; the red and white one is three years olde, the other black and white, and but two; and one Covple of Stagg-hovnds, the Bitch is entired, the other but 11 Months old, large enough, and of the Queen's Hovnds breed; I have alſo a very fine Hovnd of Blood-kind, fit for a Harbering Hovnd, and would ryn vp to any Hovnds; he is but 9 Months old, and if (*q*) 22 ſends any one over with yovr Ambaſadore all ſhall be given him, or by any Token, I will ſend them to *Dover* on notice: As to Horſes, here is a Stone-horſe I think will pleaſe; he is a Bay, with a Blace down his Face, bvt by any till liked I dare not, ſo that mvſt depend on (*r*) 22 Pleaſvre, and if any I have, or can gett, or here of, I will, and I will alſo freely ſend in my own Charge, one to helpe by as many as (*s*) 6 or (*t*) 22 ſhall pleaſe to command me; bvt this, as things

pray order things ſo as not to give offence to (*u*) 22.

now Stands, muſt be done with Cavtion; why would you mention byeing of Stvffs to (*w*) 22, he will fancy I have ſome ſelf-Intereſt in mind; I told 14 at dyner, that (*x*) 22 was his humble Servant; he aſſured me he was his real Friend, I mean (*y*) 22 and wovld write to him and wovld remind him of you, I dyne with him To-morrow; preſs (*z*) 22 to think of his Friends, it will be of Service I am ſvre to (*a*) 6 all looks well for (*b*) 8 and in my Heart I think better than ever (*c*) 9 every day loſes himſelfe, and for the 24000 it makes for (*d*) 8 and (*e*) 6. I am.

Mr. Att. Gen. We will now ſhow the Nature of this Correſpondence, by their ſending Letters to and again, and ſhew when he came into it himſelf.

Mr. *Ward.* Are you going to offer any Letters?

Mr. Att. Gen. Yes, out of his own Book.

Mr. *Ward.* We humbly ſubmit it to your Lordſhip's Judgment, whether they can offer any of theſe Letters in Evidence, the Charge of the Overt-Act is general, that he wrote ſeveral treaſonable Letters: Now a Confeſſion that there were ſeveral treaſonable Letters paſt, might ſupport that Allegation, or they may give Evidence in general, that he did write ſuch Letters. But we muſt be in your Lordſhip's Judgment, whether they can produce any particular Letters, which are every one of them Overt-Acts themſelves, and are not laid in the Indictment.

We think the Law has guarded the Life of a Man by the Stat. 25 *Edw.* III. That tho' the Intention is the Crime, yet that muſt be declared by Overt-Act or Deed, which muſt be charged in the Indictment. And the late Laws ſince the Revolution ſays nothing ſhall be given in Evidence, but what is expreſly laid in the Indictment. Now if this be allowed of under ſuch a general Charge, to prove ſuch a number of Facts, which are not charged particularly in the Indictment, then all the Security of that Law will be eluded, and a Man will be no more able to make a Defence, than if it had been laid in general, that he conſpired the Death of the King; or it had been laid, that in order thereto, he had been guilty of ſeveral treaſonable Practices.

We inſiſt that they can't under this Allegation give any Evidence but what is correſpondent to it, as any Confeſſion or Proof in general; but they can't enter into any diſtinct Overt-Act, which ought to be laid, and can't be given in Evidence unleſs expreſly laid in the Indictment. If that Act has any Meaning, it is to avoid any ſuch Artifice as this; and it obliges them that are concerned for the King, to ſpecify in the Indictment the Overt-Act they will go upon.

Mr. *Hungerford.* My Lord, I think we have an Objection to the reading theſe Letters that cannot be got over. The Law hath in all Ages guarded the Life of the Subject againſt Proſecutions for High-Treaſon, and with a great deal of Reaſon: The Offence is great; the Proſecutions ſupported with great Power and Influence, and the Conſequence great to the Party concerned; for it is not only the Loſs of his Life, but the ruin of his Family and Eſtate; his Family muſt be infamous, and his Eſtate forfeited; therefore the Law hath guarded the Life of the Subject, in a more particular manner, againſt theſe Proſecutions, than againſt any other capital Offences.

Before that happy Law, 25 *Edw.* III. the Proſecutions in Caſes of High-Treaſon were ſuch, that no Man could be ſafe againſt them. There was ſcarce any thing a Subject could do, even any thing that did but give the Umbrage of Offence, but might be drawn into the Compaſs of High-Treaſon. In Truth, the Definition or Deſcription of High-Treaſon before this Act is ſo looſe, that it gave a colour for this Proceeding. It was among other things, *Si quis aliquid egerit vel agi procuraverit ad ſeditionem domini Regis vel exercitus ſui*, &c. And in purſuance of this Notion of High-Treaſon, impriſoning an Officer of Juſtice, and Officers cheating Soldiers of their Pay, killing a Perſon going to Liſt himſelf, *&c.* were before this Act adjudged High-Treaſon. And I can ſhew that ſome of thoſe hard Caſes happen'd the Circuit before the Act. And therefore the Legiſlature thought fit to aſcertain what Offences ſhould be Treaſon for the future. And our Hiſtorians remark, that from the Time of this Law, the Sword that before hung by a ſlender Thread over the Heads of the Subjects, was then removed; and for this Reaſon likewiſe the Parliament is called *Benedictum*.

It is true, that the bare Compaſſing or imagining the Death of the King is Treaſon, and it ought to be ſo; for in that precious Life the Common Weale, the Happineſs of all the Subjects, is eminently concerned. But this Act of Parliament hath provided, that ſuch Compaſſing, *&c.* ſhall be proved by Overt-Act, that is, not by Inferences, ſtrained Conſtructions, or rhetorical Aggravations, and the like, but by plain Proof of Matter of Fact. And I am bold to ſay, the Intent of this Law was perverted for ſome Ages, by laying the Charges of High-Treaſon ſo looſe, that the Party could not tell how to apply his Defence: And of this, and other Kinds, there had been ſeveral irregular Proſecutions; ſuch as thoſe of Col. *Sidney*, my Lord *Ruſſel*, *&c.* And for theſe Reaſons the late Act for regulating Trials, *&c.* hath provided, that no Evidence of an Overt-Act, ſhall be given but what is ſpecially laid in the Indictment: And ſuch a Certainty was intended, that the Party might know certainly and exactly to what Points to apply his Defence.

If it ſhould be admitted that what is done in this Indictment is ſufficient to anſwer this Act, the Intent of it will be eluded: For the Intent is, that the Criminal ſhall know how to apply his Defence. The Offence in this Caſe is ſuppoſed to be in the Letters; muſt not therefore the Letters, or the Subſtance be ſet forth? For my Part I think they muſt, or they cannot be given in Evidence. I can produce very ancient Authorities to this purpoſe: And as to the Modern ones, beſides that in Dr *Sacheverell's* Caſe, I have one in my Eye, which is Mr. *Attorney's* own Authority (for which I ſhall always have a great Regard) in the Indictment againſt *Gregg**, which was a Proſecution of Mr. *Attorney's*; there the Letter was ſet out at length.

Mr. Att. Gen. That was not in my Time; I was not Attorney then.

Mr. *Hungerford.* I beg Mr. *Attorney's* Pardon; but he has been in and out ſo often, that I may have been eaſily led into a Miſtake.

I have another very great Authority, and that was in the Caſe of Dr. *Sacheverell:* The Queſtion was put to all the Judges for their Solution, whether in all Informations and Indictments, for Offences in Speaking and Writing, the Words ought not to be particularly mentioned? This was the Queſtion propoſed, and it was anſwered, That it ought ſo to be: Your Lordſhip's Anſwer was, That you was of the ſame Opinion with your Brethren. You, my Lord, Mr. Juſtice *Tracy*, agreed in the ſame Opinion, and ſo did the Eleven Judges then preſent; which was, that the Words ſuppoſed to be Criminal, whether written or ſpoken, muſt be expreſly ſpecified in the Indictment or Information. This I am ſure is the greateſt Authority that can be in any Caſe: It is the Authority of all the then Judges of *England*, who were but Eleven, the Lord Chief Juſtice *Holt* being then lately dead; ſo, my Lords, to juſtify this Objection, we have the Precedents on our Side, particularly of *Coleman*, *Fitzharris*, *Gregg* and *Sidney*; in all which Caſes the Papers ſuppoſed to be Criminal, or the Subſtance of them, are inſerted in the Indictment. We have the Authorities for us, Ancient and Modern, and we have the Reaſon of the Thing for us. It being the higheſt Reaſon and Juſtice, that as the Priſoner is now to have ſome Days before his Trial the Names of his Judges, *viz.* the Pannel of the Jury, ſo he ſhould be apprized of his Charge with ſo much Certainty, as to know how to apply his Defence; and we don't doubt, therefore, but we ſhall have your Lordſhip's Opinion in favour of our Objection.

Sir *J. Jekyll.* We may offer this Book and theſe Letters, notwithſtanding this Objection. Mr. *Ward* did not go ſo far as Mr. *Hungerford*, that it is neceſſary to ſet them forth *Verbatim.* As to that, I believe it was never done in any Caſe: And as to *Coleman's* Caſe, thoſe Letters are not ſet forth; but it is alledged, that they were wrote to procure the Aid and Aſſiſtance of the *French* King, as it is here ſaid, that the Priſoner's Letters were to deſire Aſſiſtance from *France* to the Rebellion here. If it be neceſſary to ſet forth the Words in the Caſe of a Miſdemeanour for a Libel in the ordinary Courts of Juſtice, it is becauſe the Libel is the Crime; but in the Caſe of a treaſonable Correſpondence it is otherwiſe; for there the Letters are not the Crime, but the Overt-Act of the Treaſon, which is the Manifeſtation of the Crime. Beſides, let it be conſi'er'd what Evidence are we going to offer; we offer the Letters ſent to him in anſwer to the Letters wrote by him, and to require us to ſet them out in the Indictment is impoſſible; when we make it Part of the Charge that the Letters were ſent to *France*, it is to mock us to call upon us to produce thoſe Letters themſelves.

Mr. *Ward* ſeemed to admit, that the Clauſe mentioned by him in the Statute 7 *Will.* was grounded upon the 25 *Edw.* III. For that old Statute doth require, that a Man be attainted by Overt-Act; and what doth 7 *Will.* do in that Caſe? No more than to make plain what the Law was before: For the Words are, that no Evidence ſhall be given of an Overt-Act that is not expreſly laid in the Indictment; and from thence the Priſoner's Counſel would infer, that no Letters ought to be given in Evidence that is not laid in the Indictment: No, the Act requires only that the Overt-Act be expreſly laid in the Indictment. Not that the Evidence ſhall be expreſly laid in the Indictment. All that the Court is to conſider as to this Matter is, whether the Overt-Act is not ſufficiently laid in the Indictment; it will not be doubted, but that writing Letters to excite Rebellion is an Overt-Act. Then the Queſtion is, whether this Indictment doth not expreſly alledge this Overt-Act. The Words in the Indictment are theſe; *Quodque prædictus Franciſcus Francia, ad dict' Prodicon' & Diabolic' & Proditor' Intencon' & propoſit' pred' ulterius perimplend' perficiend' & ad effectum redigend' poſtea ſcil' eodem primo Die Septembris, Anno ſupradicto nec non diverſis al' diebus & vicibus tam anteu quam poſtea apud London' pred' in parochia & Ward' pred' malitioſe, diabolice & proditorie compoſuit & ſcripſit & componi & ſcribi cauſavit ſeparales proditorias Epiſtolas notifican' intention' & reſolution' ipſius Franciſci Francia & pred' al' proditr'. Jur' pred'*

(*f*) *The* French *King.* (*g*) *Duke* D'Aumont. (*b*) *Duke* D'Aumont. (*i*) Tories. (*k*) *The* French *King.* (*l*) *Duke* D'Aumont. (*m*) *Duke* D'Aumont. (*n*) *The* French *King.* (*o*) *Duke* D'Aumont. (*p*) *Duke* D'Aumont. (*q*) *Duke* D'Aumont. (*r*) *Duke* D'Aumont. (*s*) French *King.* (*t*) *Duke* D'Aumont. (*u*) *Duke* D'Aumont. (*w*) *Duke* D'Aumont. (*x*) *Duke* D'Aumont. (*y*) *Duke* D'Aumont. (*z*) *Duke* D'Aumont. (*a*) *The* French *King.* (*b*) *The* Pretender. (*c*) *King* George. (*d*) *The* Pretender. (*e*) *The* French *King.*

* Jan. 19. 1708½, *at the* Old-Bailey, *when Sir* Simon Harcourt *was Attorney-General.*

adhuc ignot' ad bellum præd' contra dictum Dominum Regem nunc movend', &c. This is surely an expreſs laying the Overt-Act of which theſe Letters are the Evidence.

Trial 146. I have been looking upon the Caſe of my Lord *Preſton*; which thought it was before the Statute of 7 *Will.* yet my Lord *Preſton* was not without the Aſſiſtance of Counſel, though he was not allowed them in Court. It is there laid, that he wrote ſeveral Letters to inform the *French* King what the Forces of the Kingdom were; and the Indictment goes on to ſhew the Purport of thoſe Letters. But in that Caſe the Letters are not particularly ſet forth: And yet that was never made an Objection at his Trial, or before Judgment. In that Indictment is charged his writing Letters, and they are deſcribed, and that we have done. This we think is ſufficient, that is, that we are bound to lay the Overt-Act expreſsly, but not the Evidence of that Overt-Act.

Mr. Att. Gen. This is a ſurpriſing Objection; we admit there muſt be an Overt-Act laid in the Indictment, and that is all that the Law requires; we muſt ſet it out ſo that we may apply our Evidence to it: And the Meaning of the Statute is, that when you lay one Overt-Act, you muſt not prove another.

The Inſtance that is given by the Serjeants is very ſtrong, and every Body remembers *Coleman*'s Caſe, the writing Letters is an Overt-Act; but it is not neceſſary to ſet them out, that being the Evidence of the Overt-Act. In *Gregg*'s Caſe there was but one ſingle Letter which was ſet out, and that was ſtopp'd at the Poſt-Houſe.

In the Caſe of Libels they muſt be ſet out; and that was the Opinion of the Judges in Dr. *Sacheverell*'s Caſe in Proceedings at Law: But the Courſe of Parliament was held by the Lords to be otherwiſe. We have charged that he agreed to write Letters; that he did write them, and ſend them; and now they would have us to ſet out thoſe Letters that are ſent beyond Sea: And if that were Law, it would be impoſſible to convict any Man of a Correſpondence Abroad, becauſe theſe Letters were ſent Abroad.

If it was charged in the Indictment, that he wrote to a great Number of Men, it would not be neceſſary to ſet out the Names of thoſe Men; this is a Matter we don't need to labour much; for this laſt Statute has not alter'd the Law, as to the laying the Overt-Act, but only as to the Proof; that when you lay one Overt-Act, you can't prove another. I don't know that it could have been done before; ſo that that Act, as to this Matter, was only a Declaration of what the Law was before.

Mr. Sol. Gen. We think none of the Caſes inſtanced prove what is inſiſted upon in this Caſe. That Caſe of *Coleman* is miſtaken, for the Letters in that Caſe are not ſet forth particularly, only the Subject-Matter and Nature of them, as is here done.

They can inſtance no Caſe where the Indictment is for writing treaſonable Correſpondence, that ever they were ſet out in the Indictment; and to what a length would ſuch an Indictment be carried, if it ſhould be done in this Caſe.

Col. *Sidney*'s Caſe is againſt them; for there was a whole Volume wrote by him, and there was nothing put into the Indictment but the Subſtance of a very little Part; and that was Col. *Sidney*'s own Objection: Says he, *Am I to be found guilty for a little Part that is cull'd out of the reſt; when if the whole was put in, by comparing the whole together, it might not be poſſible to collect any Treaſon from it?*

As to Dr. *Sacheverell*'s Caſe, that is quite different from this; for that was in the Caſe of a Libel, where the Offence properly conſiſts in the Expreſſion. But even in the Caſe of Libels, I muſt beg leave to deny, that the particular Words muſt be ſet out in the Indictment; for a Libel may be ſet out in *Latin*, which is the better and ſafer way; and then if you ſet out the Subſtance, it is ſufficient. And if you may ſet it out in *Latin*, it can't be true that you are bound down to the particular Words, for *Latin* Words and the *Engliſh* Words can't be the ſame.

The Act of Treaſons ſay, No Evidence is to be given but of the Overt-Act laid in the Indictment. Now what is that Overt-Act here? It is writing Letters, which is ſpecially expreſs'd, and the Subſtance of them ſet out, which ſhews them to be treaſonable. The Inconvenience objected is nothing, unleſs it ſhall be ſuppos'd, that the Priſoner may have wrote ſo many treaſonable Letters that he can't recollect them all.

Beſides, it is to be conſidered, that all theſe Letters import a Correſpondence, and ſo are to be conſider'd as many, but as one Overt-Act, it is entire, and it is unreaſonable as well as unneceſſary, that the whole Correſpondence ſhould be ſet out. Therefore we think we have done what is ſufficient, and that they can't give one Inſtance of a Caſe where the Treaſon conſiſted in writing many Letters of Correſpondence, that the Letters themſelves were ſet out. For the Deſign of the Law before-mentioned was no more, than that it ſhould not be lawful to lay one Overt-Act, and give Evidence of another.

The Treaſon is, the Priſoner has imagin'd the Death of the King; and the Overt-Act is, he has wrote ſeveral Letters, that is expreſsly and ſpecially laid; and then to diſtinguiſh theſe Letters from all others, the Subſtance of thoſe Letters are ſet out, notifying his Intentions to raiſe a Rebellion in this Kingdom, and inciting thoſe in foreign Parts, to aid, aſſiſt, and join with him.

But this Objection may receive another Anſwer, and that is, that there are two other Overt-Acts, beſides his writing of treaſonable Letters, which are conſpiring, conſulting, and agreeing to raiſe a Rebellion and Inſurrection in this Kingdom, and ſolliciting Aid and Aſſiſtance from *France:* And theſe Letters are very good Evidence to prove thoſe Overt-Acts; for I believe it will not be denied, but that theſe Letters are Evidence of a Conſpiracy, and therefore if they could not be read in Evidence to prove the writing Letters, becauſe they are not ſet out in the Indictment, yet they may be read as Evidence to prove a Conſpiracy.

Therefore we inſiſt that we are right both in Point of Reaſon and of Precedent

Mr. *Ward.* My Lord, I beg a Word or two by way of Reply: They ſay we have not mentioned one Caſe where the Treaſon is grounded upon Letters, where they have been ſet out in the Indictment: I believe they can't ſhew one Caſe where it has been otherwiſe; we inſiſt upon the Caſe of Colonel *Sidney* and of *Fitzharris.*

Colonel *Sidney*'s Objection was, That they had not ſet forth the whole Book; but they had ſet forth entire Paragraphs, and that is what I inſiſt they ſhould have done in this Caſe.

They would have it believ'd, that the Act of Parliament, 7 *Will.* is nothing, and that the Law ſtands as it was upon 25 *Edw.* III. It was taken to be a great Point gained when that latter Act was paſs'd, and I am ſorry it is like to have ſo little Effect. But we inſiſt that what is now offer'd hath all the ill Effects that were before the making of the Act. It is not that a Man muſt be ſuppoſed to have wrote ſo many treaſonable Letters, that he can't remember them; but he don't know which of his Letters may be called ſo. And it was open'd that theſe Letters were of ſuch a Nature, that they could not be underſtood without producing them. Therefore they ought to be ſet out, that ſo a Man may know which of them to defend himſelf againſt.

There is one Caſe like this, which is the Caſe of the good Name of a Man: Every Witneſs that is produced may be examin'd to his Credit; but you will not ſuffer particular Facts to be prov'd upon him, becauſe he can't be prepar'd to maintain every Action of his Life. And that was intended in this Caſe; that a Man might be certain what he was to defend himſelf againſt, eſpecially in the Proſecutions from the Crown, which uſually come with a greater Weight than other Proſecutions. Agreeable to this have all the Precedents been when any thing have been founded upon Letters.

Mr. Attorney ſays, that the Letters are ſent into *France:* So that they can't be produced. I did not object that they ought to be produced. But they are going to produce a Copy-book to prove, that there were ſuch Letters, and by that they had the ſame Opportunity to ſet them out, as if they had the Letters themſelves.

There is no Inconvenience to the Crown by this Method, but the greateſt Inconvenience to the Subject by omitting it; for he may have all the Letters he ever wrote brought againſt him, and he muſt off-hand give an Account of them.

[Mr. *Ward, who had an Horſeneſs upon him, cloſ'd with ſaying, that his Voice fail'd him, and that he could go no farther.*]

Mr. *Hungerford.* The Gentleman who is join'd with me in the Defence of the Priſoner complains that his Voice fails him; (God be thanked) I have no Defect of that ſort, for I can ſpeak pretty audibly, but I have a greater, for I had my Inſtructions late laſt Night.

Mr. Sollicitor obſerves, that we are not entitled to have thoſe Letters ſet out either by Reaſon or by Precedent; as to the Reaſon of the Thing, I appeal to your Lordſhip, whether all the Laws relating to Trials of Treaſons, and ſome others, which are to take Effect three Years after his Majeſty's Acceſſion to the Throne, and the Death of the Pretender, have not been grounded on this great Reaſon, to guard the Subject againſt Proſecutions that have been ſometimes carried on with too much Severity. And as to what relates to the preſent Caſe, that the Overt-Act ſhould be ſo particularly laid, as to deſcribe the Offence with ſo much Certainty as to enable the Priſoner to apply his Defence.

What is the Intent of laying an Overt-Act at all, but that the Defendant may ſuit his Defence to it. If it is intended only that you ſhall not give Evidence of a different Overt-Act, as the King's Counſel would expound it, that will be of little avail to the Priſoner. It is of late grown to be the Practice to lay the Treaſon, to be in conſpiring the King's Death, and the Overt-Act, to be conſpiring to levy War, though by the way, that is making one Article of the Statute of 25 *Edw.* III. redundant and uſeleſs; for if every Intention of levying War doth imply an Intention to kill the King, there was no need of making levying of War a diſtinct Species of Treaſon at all, for at that rate it was comprehended in the former. And as to what is ſaid, that laying the Overt-Act is a ſufficient Certainty of the Charge, I think not; ſuppoſe the Overt-Act laid, be levying of War, or an Intention ſo to do; there are ſeveral Inſtances of levying War, one way may be by muſtering Men, another by ſeizing ſome of the King's Ships: Theſe are ſo different, that upon a general Charge of levying War, one perhaps may prepare to defend himſelf at Sea, and may be attack'd at Land; and ſo *vice verſa*; and by the general Charge he don't know what to defend himſelf againſt. Therefore the Intent of that Act muſt be to give a Man ſuch a Notice of the Matter laid to his Charge that he may know how to apply himſelf to his Defence.

I do not inſiſt that the Letters at large ought to be ſet out, but the Subſtance of them, or the Paragraphs in them, containing the Words ſuppoſed to be criminal, ſo that a Man may know how to apply to his Defence.

As to my Lord *Preſton*'s Caſe, though he might have Counſel to adviſe him, yet in his Time he could not (as the Judges had determin'd the Matter) have a Copy of his Indictment; ſo that he was outed of any Obſervations that could be made upon it. Therefore if that Indictment is in the ſame manner with this, it will be no Authority, for it might be irregular, as we inſiſt this is, and yet there could be no Opportunity to obſerve it ſo to be.

As to what Mr. *Sollicitor* inſiſt, that to inſert the Letters at large, would make the Indictment long and tedious: For God's ſake, my Lord, is there any Competition betwixt the Charge of two or three Skins of Pearchment, and a Man's Life?

As for the Precedents, I have here *Coleman*'s Caſe, where the Date and Subſtance of the Letter is mentioned; and in Colonel *Sidney*'s Caſe, the Title of the Book, and the Paragraphs inſiſted on are ſet out: In *Fitzharris*'s Caſe, the Letter is ſet out *Verbatim.* As to what is ſaid of Dr. *Sacheverell*'s Caſe, that it was only for a Miſdemeanour, I am bold to ſay, the Queſtion was aſk'd in general, whether in all Indictments or Informations, the Words or Writing ſuppos'd to be criminal, ſhould not be ſet out. And ſurely if in a Caſe of Miſdemeanour, where only Fine or Impriſonment is the Puniſhment, ſo much Certainty is required, much more Certainty ought to be requiſite in a Charge of High-Treaſon, where Loſs of Life, Eſtate, and Poſterity are the Conſequence of the Conviction. So that as I obſerv'd before, we have both Reaſon and Precedent with us, and they have neither of their Side, and thoſe Precedents that are of their Side, were before the late Act of Parliament.

L. C. Baron. The Objection made by the Counſel for the Priſoner is, that though here is an Overt-Act laid, yet it is not laid ſo expreſsly as it

ought to be. The Overt-Act is, That he wrote several Letters to Foreigners, to move and excite a War, and sent them to Foreigners beyond Sea for that Purpose. I think this is a sufficient Description of the Overt-Act, and that is as much as is required by the Act of Parliament. That Act says, That no Evidence shall be given of any Overt-Act, that is not expressly laid in the Indictment. None can say that here is not an Overt-Act expressly laid. If it is expressly laid, and sufficiently described, sure it is not necessary to mention all the Evidence that is to prove the Overt-Act, the Intent of the Law is no more, than that the Overt-Act should be sufficiently described and charged in the Indictment. It is here so charged and described, the Design and Intention of the Letters is set forth, and they go to prove that such Letters, manifesting such Design and Intention, were written, and that they have laid that he wrote several Letters to move this War, then they go to produce the Letters. I am of Opinion, that they need not be more particularly described, and it would be endless to set out all the Letters.

As to what Mr. *Hungerford* insisted on in Dr. *Sacheverell*'s Case (which made a great Noise formerly, and has made some Noise now) the Question there put to the Judges, was concerning Crimes and Misdemeanours, by Writing or Speaking. As the Crime of a Libel consists only in the Words, and therefore they must be laid in the Indictment, he might as well have mentioned an Action upon the Case for Words. There the Words must be expressly laid, and they must be prov'd as they are laid.

But here the Crime is compassing and imagining the Death of the King, and the writing and sending of Letters to Foreigners to excite a War is the Overt-Act, and that Act is expressly laid in this Indictment, which is sufficient, without setting forth the Words of the Letters.

If it be laid, that a Man did consult and agree to levy War, a Time and Place must be laid, but all the Times and Places when and where he met and consulted, and all the Persons Names with whom he met and consulted, need not be mentioned in the Indictment, neither need the very Words of the Consultation be set forth. Therefore I think this Overt-Act is sufficiently laid, and, as Mr. *Solicitor* observes, if there was no other Act laid, but consenting and agreeing to levy War, they might prove it by Letters, although no Letters had been mentioned; but here the Overt-Act is more particularly described, that he wrote Letters for that Purpose. Those Letters are now offer'd to be read, and I think they ought to be read.

Mr. Just. *Tracy*. I am of the same Opinion; I think they have sufficiently set out the Nature of the Overt-Act, writing Letters, praying Aid of Foreigners to assist in a Rebellion. Some of those Letters are sent by the Prisoner beyond Sea, and they can't be set out; and whatever is alledged as certainly as the Nature of the Thing will bear, is certain enough.

But it is objected, you have the Copy-Book, and you might set them out by that. But they don't go on that only, but also on several Letters wrote to and receiv'd by the Prisoner; and to set forth all those Letters in an Indictment, is against Reason. But this is not the Matter now, for Mr. *Ward*'s Objection was against reading the Letters, which were offered to prove the writing and sending the Letters as charg'd in the Indictment; but instead of shewing they are not Evidence, you have run into Exceptions against the Indictment itself; for Uncertainty is not setting out the Letters particularly, which is not the Question now.

Mr. Just. *Pratt*. I am of the same Opinion; many Things have been said of the great Care of the Laws to preserve the Life of the Subject. I hope we shall always take a due Care to put those Laws in Execution; but we must take Care of that precious Life, as Mr. *Hungerford* calls it, not to hazard it, by making it too difficult to convict any Man of such a Correspondence. And if we should make such a Construction of the Act, as they contend for, it would be impracticable to convict any Man in any Case.

The Act says, the Overt-Act shall be express'd, and is it not so here? It is writing Letters, and with an Intent to levy War against the King; so that it is mentioned that there were Letters, and the Purport of those Letters is set forth. And whatever has been said of that Case that was in the House of Lords, none of you can say, but that it is sufficient in Informations for Libels, if they are set forth in *Latin*, to set out the Substance of the Words. If a Man sets it out *Verbatim*, he is tied up to the very Words, and by a Letter or Syllable mistaken, he may be gone: Therefore the best way is to set out the Substance only. Now what would you be the better, if you had what you ask, if there are several Letters to the same purpose? It would only be setting out the same thing over and over again. This satisfies the Meaning of the Act as fully as if they had been set out at large. But to say that a Man shall be bound to set out the Letter itself, when it is gone from him, when it is gone beyond Seas, how can he come at it? If that were to be the Case, a Man might carry on a Correspondence, and you could never convict him.

I think this is sufficient to answer the Intent of the Act. They offer you Letters that correspond with the Indictment, and if they offer any that do not, they will not be proper to be read.

Att. Gen. We will read our Letters as they are in Time and shew the Nature of the Correspondence.

Mr. *Ward*. I am informed there are different Hands in that Book: Now whether your Lordships will admit them to read it under a general Proof of his owning it to be his Copy-Book, or whether you will not expect that that which is his Writing shou'd be prov'd, and what is wrote by any other, to be wrote by his Direction, or Privity; for a small Variance in the Expression may turn a Man out of his Life.

Mr. *Hungerford*. All that the Witnesses said was, that the Prisoner said it was his Copy-Book. Now whether he is to be affected by every Word in that Volume, is what we must submit to your Lordship; and whether they ought not to single out which were wrote by him, and which not; for his saying that is his Book, that is, the Volume is his, the Cover is his, and the Paper is his, but it will not imply that he is the Author of all those Letters.

Sir *J. Jekyll*. My Lord, when they objected to our reading the Copy-Book, they ought to have made all their Objections together; but this being in the Case of Life, I won't stand upon that.

It is plain, it ought to be read; for you observe the Letters, of which these are Copies, are suppos'd to be sent to *France*; and it is impossible to have them; then what Certainties have we touching these Letters? We have the taking the Book in the Custody of the Prisoner; and if there had been no more than its being found in his Custody, I apprehend we might have been let in to read them. But it goes a great way farther; for several of the Witnesses swear that he own'd it was his Copy-Book of his Letters.

Let's consider how this Evidence would have been; if it had been given to every Letter in particular. If we had produc'd one single Copy of a Letter, and he own'd that was a Copy of a Letter wrote by him; will any one doubt but that it might be read? Now the Evidence say that he own'd this to be the Copy-Book of his Letters.

Mr. Just. *Tracy*. Where the Court is in no doubt, we must not spend our Time in arguing Points that have nothing in them.

L. C. Baron. It is no matter whether any of them are of his Hand-writing or not, I think they may be read.

[*Then the Original Letters and the Translations were shewn to Mr* Bowyer, *and to Mr.* Ozell, *who prov'd them to be true Translations.*]

[*Clerk read.*] This is directed to *Francis Francia*, and dated *Paris*, *Feb.* 26, 1715.

Sir *J. Jekyll*. This is dated at *Paris*, *Feb.* 1715, but that is in our Stile 1714.

[*Clerk reads.*]

SIR,

THE base Dealings of the Sieurs *Treacher* and *Robinson* with me, made me always believe that you would not otherwise bring them to Reason, than by pressing them without Mercy. Since you have taken the Trouble to begin, be pleased to continue to the last the same Attention to my Concerns which you have had hitherto, and never consent to any Accommodation till they have remitted not only my Disbursements, as you tell me by your last of the 18th Instant, but also the whole of what may come to my Share, either in Money or Wine, supposing there remains any unsold, which I cannot believe. As for the fourth Share I have in the fifty odd Hampers, which I bought for them of my Friend, the Count *de Sillery*, if, in order to enter upon an Accommodation, you should content yourself with their consigning into the Hands of Mr. *Harvey* the 2500 and odd Livres disburs'd, be persuaded, Sir, that to get the Remainder; you'll find yourself under the Necessity to begin anew, to give yourself the same Trouble which you have taken hitherto. Therefore while you hold them, I beg the Favour of you to make an End of the Matter with them at once, and in order thereto, not to give them any Quarter. They have render'd themselves unworthy of it upon all Accounts. If in this Matter you think the Interest of the Chevalier (Sir *Thomas*) *Hanmer*, Speaker of the last Parliament, may be useful to you; he does me the Honour to be one of my Friends: Visit him from me; and I flatter myself he will readily grant you his Assistance, when you have inform'd him how the Case stands, and of the unfair Dealing of those Merchants towards me. I am so sensible of Mr. *Harvey*'s Favours, that I would do any thing to shew him my Gratitude. Acquaint me therefore with the true State of his Affair with the (*a*) *D. D.* and write to me about it in such a manner that your Letter may warrant my Speaking; after which I shall do my best to procure him the Satisfaction he desires; be pleased to assure him of it from me. I hope that e're it be long you will acquaint me with the Conclusion of my Affair; in the mean time, I still assure you that 'tis not possible for any one to be more perfectly than myself, Sir, your most humble and obedient Servant, *D'Aulmay*.

Sir *J. Jekyll*. We read this only for the sake of the Postscript, which we will read presently.

Prisoner. This is not a true Translation.

L. C. Baron. What is your Objection to the Translation?

Prisoner. There is not one Word true in it.

L. C. Baron. Who do you depend on to translate it for you?

Prisoner. Upon Mr. *Flint*.

L. C. Baron. Tell us your Objection to the Translation; tell us in any one material Part wherein the Translation don't agree with the Original.

Mr. *Flint*. One can't carry it in one's Head.

Prisoner. I hope you will not take it for a true Translation when it is false.

L. C. Baron. We shall if you don't shew wherein it is false.

Sir *J. Jekyll*. We will read the Postscript, let them shew any Mistake in that.

[*Clerk reads.*]

As I have Reasons of private Concern to know what passes in the Country you live in, you will sensibly oblige me in informing me of it now and then. Be persuaded of my Discretion, and that the State is no ways concern'd in my Curiosity; nothing raised it but the Concerns of my Wife and her Family, who is Irish.

Prisoner. That is wrong translated.

L. C. Baron. How do you translate it?

Flint. You will oblige me sensibly to inform me of the same. Be persuaded of my Discretion, and that the State has nothing in my Curiosity: The Interest of my Wife, who is Irish excites me.

Sir *J. Jekyll*. That is to the same Effect as we read it. We will now read a Letter from the Prisoner to *D'Aulmay*, out of his Copy-Book.

[Clerk reads.]

Paris. Mr. *D'Aulmay de Coulange*.

London, *March* $\frac{17}{18}$, 1714.

I Received the Honour of yours of the 26th past. I shall no ways spare the Sieur *Treacher*, but prosecute him to a final Judgment, which cannot be 'till *July*. He makes an Apothecary's Bill sets down the Wines that are sold, for the most part, at half a Crown *per* Bottle, but I shall prove him the contrary. I am very sorry this Business should go so far, but it is according to the Laws of this Country, where we have no need of Sollicitations; without which he will, within that Time, be certainly adjudged to pay. You must in the mean time transmit hither the Ori-

(*a*) *Duke* D'Aumont.

ginal

ginal Paper you have of your Partnerſhip in the Wine; and without flattering you, a Letter of Attorney; for a Letter of Order will not be ſufficient. You may leave a Blank for the Name of your Attorney, which Mr. *Harvey* ſhall cauſe to be fill'd up as he ſhall think fit: But if you come to this Town before the Trial, as you told me, you may avoid all this. I ſhall take the Care I have promiſed you without any queſtion. As for the Buſineſs of Mr. *Harvey*, with the *(a)* D. D. the Matter is, that he has diſburs'd about 200*l.* Sterling: And that altho' the *(b)* D. D. had ſent to pay him what he had advanced, it happens that the Perſon whom he intruſted with it did not do it: Therefore, if there were means to give the ſaid *(c)* D. D. to underſtand, without hinting that it comes from hence, that 'tis not juſt Mr. *Harvey* ſhould be ſo long out of Pocket, that would undoubtedly have the deſired Effect; for which I would, in particular, be very much obliged to you, *&c.* As for News from this Country, I learn ſometimes more in the *Paris Gazettee* than here, where the greateſt Part of the Houſe murmurs to ſee the *Low-Church* flouriſh. The latter are very eager for a War, but they want the Emperor and Money. *'Tis ſtrongly reported, that a Match is very forward between the Prince who is at* Lorrain, *and one of the Arch-Dutcheſſes: Let me know what's in it, ſince that's eſſential to your Wife's Intereſt.* It, as I doubt not, an Ambaſſador comes hither, I deſire you to ſend me, by one of his Domeſticks, 20 Ells of fine *Ras—de—St. Maur*, very black, and at the cheapeſt Rate, and order the Bearer to receive the Account, or acquaint me with it, that I may remit it to you. Forgive, I beſeech you, this trouble, and believe me with a great deal of Devotion.

Priſoner. He that commits a Fault in any eſſential Matter, may do ſo in the reſt. They have opened all my Letters at the Poſt, and they have made this Book for me; there is not one Word of my writing.

[*Clerk reads.*] This is directed to *Francis Francia*, and dated

Paris, March 20, 1715.

SIR,

I Reccived yeſterday the Honour of your Letter, dated the 14th Inſtant; I confeſs to you that it is a very melancholy thing for me to be obliged to give you ſo much Importunity upon the account of a Knave, from what you wrote to me in your former. I hoped a ſpeedier Concluſion of my Affair. Notwithſtanding which, you tell me we muſt ſtill wait till the Month of *July*. This is a very long Delay: But if there be an abſolute Neceſſity for it, we muſt e'en ſubmit. Be that as it will, I beg the Favour of you, Sir, not to give any Quarter to ſuch People who deſe ve none, for their Diſhoneſty which they ſhew in its full Latitude. As for the Papers I have, I ſhall ſend you ſuch as will be neceſſary for you, as ſoon as you ſhall write to me for them. But as for a Letter of Attorney, I have ſigned a general and very extenſive one, on the 7th of *Auguſt* laſt, which is as particular and as ſtrong as poſſible; there is a blank for the Name, and it was ſent to Mr. *Arthur* at *London*, by Mr. the *Chev. Cantillon* of *Paris*. The ſaid Mr. *Arthur* having made no uſe of it, you may get it out of his Hands and uſe it in your Name, or in the Name of ſuch a Perſon which you and Mr. *Harvey* ſhall think fit to pitch upon. I believe it may be ſufficient, and that the ſaid Mr. *Arthur* will make no difficulty to deliver it to you when you ſhew him this Letter. However, I would cauſe Mr. *Cantillon* to write to him if it were neceſſary.

You may aſſure Mr. *Harvey*, that I ſhall do my utmoſt to procure him Satisfaction in the Matter you write to me about, without expoſing him to any Inconveniencies. I have followed the Court too long to be ignorant how to deal with our Grandees.

Flint. It is how to deal with our Lords.

[*Clerk reads.*] I ſhall endeavour to know preciſely the time of the Departure of the Marquis d'Allegre, who is to go Ambaſſador to *London*; and I ſhall charge ſome Body in his Retinue with the 20 Ells of black *Ras de St. Maur*, which you aſk of me; if there be any thing elſe for your turn, let me know it. As you tell me you learn the News of *England* in the *Paris Gazette*; ſo I *(d)* you, *that I learn from you the Marriage of the Chevalier de St.* George *with the Arch-Dutcheſs.*

Priſoner. Is it Chevalier *de St. George* there? It is not ſo in the Original.

Cl. of Arr. It is *Ch—— de St. G——.*

Mr. Att. Gen. That is Chevalier *de St. George.*

Mr. *Ward.* That is no part of the Key that was given by the Priſoner.

Sir *J. Jekyll.* Read it as it is.

Mr. *Hungerford.* Let it be read then without a Comment.

Mr. *Ward.* I wiſh the Jury take ſufficient Notice, that ſome of theſe Letters are not wrote by the Priſoner, but only directed to him.

[Cl. reads.] *I learn from you the Marriage of the Ch—— de St. G—— with the Arch-Dutcheſs. 'Tis true, there was ſome talk of it when the Peace was made with the Emperor, but ſince that Time no mention has been made of it. That in my Opinion would be no proper way to bring his Affairs to a happy Iſſue. A Party War would beſt ſuit with his Affairs.* God is above all; but I hope ſtill, neither do I believe my Hopes altogether ill grounded. I ſhall be glad in the mean time to ſee what Turn Affairs will take before I croſs the Sea. Wherefore I ſtill deſire you to inform me. I aſſure you, Sir, that I am more than any Body elſe in the World,

Your moſt humble and
moſt obedient Servant,
D'AULMAY.

Sir *J. Jekyll.* The former Letter from *Francia* deſires to know what there is in the Report of the Marriage of the Prince at *Lorrain* with the Arch-Dutcheſs. This Letter in Anſwer ſays, it is true, there was ſome Mention of it about the time of the Peace with the Emperor; but he is of Opinion, that a Party-War would be more advantageous.

[*Clerk reads.*] *Paris*, Mr. *D'Aulmay de Coulange.*

London, March $\frac{10}{21}$. 1715.

SIR,

BY my laſt of the $\frac{7}{18}$ Inſtant, I gave you an Account of my Proceedings againſt the Sieur *Treacher*, which I again hereby confirm to you; and that I ſhall get you *(e)* between this and *July*, or he ſhall fly his Country. *Here is a Letter for Mr. le (f)* D. D. *which, 'tis wiſhed, may ſucceed better than the former, which have not been anſwered, though entirely for the Affairs: Beſides which, I muſt needs tell you by the bye, that Perſons of* 50 *or* 60 *Thouſand Crowns a Year cannot with Prudence run the hazard of loſing ſuch Eſtates, unleſs more Encouragement be given them. You will be perfectly underſtood if you ſay this to ſome Perſon familiar with that Lord, or to himſelf: And I add from myſelf, that the Misfortunes of a certain Perſon are more owing to Neglect on your ſide of the Water, than to the Party that's againſt him. So if this continues, your Wife muſt loſe all Hopes.*

Priſoner. If this had not been tranſlated wrong on purpoſe, and with deſign to take away my Life, there could not have been ſuch a Miſtake made. There is a Scratch at the bottom of the *S* to make it an *L*. It was *Ses Affaires, His Affairs*, and it is made, *Les Affaires, The Affairs.*

Whereupon the Original was ſhewn to the Interpreter, and viewed by the Court, and appeared to be a very plain *L*. and not alter'd from an *S*.

[*Clerk reads.*] This is directed to *Francis Francia*, and dated

Paris, April 2, 1715.

SIR,

I Have deliver'd to M. le (g) D. D. *the laſt Letter you directed to me for him; and when I inſinuated that there was in it a Complaint for not having receiv'd an Anſwer to the former, I was particularly aſſured, that an Anſwer had been written, and even in relation to what is due to Mr. (h) H.* That the ſame expreſs'd a Sorrow for not having clear'd with him ſooner; that ſome Miſunderſtandings had been the Occaſion of it: But that however he was deſired to mention the exact Amount of his Diſburſements, as well for the private Account, as for that of Count *de Thoulouſe*, and that the whole would be immediately put into the Hands of the Chevalier *Cantillon*, to be paid in *London* to Mr. *(i) H.* This, Sir, is what I was told Yeſterday, and which I deſire you to repeat to Mr. *(k) H.* aſſuring him, that if he thinks me proper to ſerve him in ſomething elſe, he will do me a real pleaſure in employing me.

The Marquis *d'Allegre* does not ſeem yet very forward to ſet out for *London*; therefore if you are in haſte for the black *Ras de St. Maur*, which you have wrote to me for, let me know which way you deſire I ſhould ſend it to you, and I ſhall do it immediately; you may depend upon it.

I ſhall add nothing to the laſt Letter I writ to you concerning the Rogues our Merchants; but I ſhall continue ſtill to deſire you to rid me of that Affair as ſoon as you can.

We have nothing new here; the Works of the Canal of *Mardyke* are, by Orders from Court, redoubled. I know not what Succeſs Mr. *Cadogan*'s Journey to *Vienna* has had; but we ſeem not to be very much uneaſy at it: *I have ſpoken, as you deſired me, to the Perſon for whom you ſent that Letter which you directed to me, and who has made me the faireſt Promiſes in the World*; pray acquaint me with what paſſes in relation to Mr. *Prior*, ſince his return to *London*; and believe me ſtill moſt perfectly,

SIR,

Your moſt humble,
and moſt obliged Servant,
D'AULMAY.

Paris, Mr. *D'Aulmay de Coulanges.*

London, March $\frac{17}{28}$. 1715.

I Received the Honour of yours of the 20th Inſtant: I can aſſure you had the King himſelf to do with the Sieur *Treacher*, it would not be in his Power to get him adjudged to pay before the Month of *July*, and even in caſe the ſaid (*Treacher*) do not appeal to the Chancery, which 'tis not probable he will do, becauſe in ſuch a Caſe a Merchant entirely loſes his Credit, and beſides he ſhould be obliged to depoſit 300 Pounds, for which I formerly arreſted him, which would not at all ſuit with him: Therefore, Sir, be aſſured that I ſhall do all that can be done, notwithſtanding all his Threats againſt me, for having been, ſays he, ſo bold as to ſue him. I am only ſorry, not to have begun ſooner, and to have ſhewn him any Civility. *Mr.* Harvey *and I ſhall be very much obliged to you, if you can find an opportunity to have Juſtice done him. I am perſuaded, that to deal with him in this manner is no good Policy, and if ever I have the Honour to confer with you, I ſhall convince you, how by neglects (which however are not uſual with Men of your Nation) moſt ſerious Affairs have miſerably miſcarried.* As for News, we hear nothing but an approaching War. 'Tis even pretended that the Emperor is coming again into our Meaſures, but I do not believe it: Nor do I ſee any Poſſibility of raiſing Funds for a new War, at a time when People are at their Wits ends to pay the bare Intereſts of the Debts contracted in the laſt. I am very much obliged to you for your intention to ſend 20 Ells of Cloth of St. *Maur*, by the opportunity of the Marquis *d'Allegre*, or otherwiſe by any other that may offer: I likewiſe offer you whatever there is in this Country, and if it were a thing of ſmall bulk, we have often opportunities of Friends who go over into *France*. Our Parliament will begin their Seſſion very ſoon, they meet this Day to chooſe a Speaker: We are going to ſee what will be the Upſhot of all the Threats. I kiſs your Hands, and am——

You may deſire Mr. *Cantillon* to write to Mr. *Arthur*, to deliver to Mr. *George Francia* the Letter of *Attorney* he has in his Cuſtody; for I have reaſons not to demand it myſelf of the ſaid *Arthur*.

Paris, Mr. *D'Aulmay de Coulanges.*

London, March 28th, / *April* 8th, 1715.

I Have the Honour to tell you that yours of the 2d Inſtant is come to my hands, and that I have given (*l*) Mr. *H.* an account of the Subject Matter of your Negotiation. He is as well as myſelf, the more obliged to you for it, in that we believe we ſtill have occaſion for the Continuation of your good Offices with the *(m)* D. D. *What you ſay at the end of your Letter, of your having ſpoken conformably to what I had deſired of you, is ſufficient*

(a) *Duke* D'Aumont. (b) *Duke* D'Aumont. (c) *Duke* D'Aumont. (d) *Torn in the Original.* (e) *A word is here wanting in the Original.*
(f) *Duke* D'Aumont. (g) *Duke* D'Aumont. (b) *Mr.* Harvey. (i) *Mr.* Harvey. (k) *Mr.* Harvey. (l) *Mr.* Harvey. (m) *Duke* D'Aumont.

and

and therefore every thing ought now to be expeſted from your Side of the Water, that is to ſay, Explanations, &c. I was adviſed, in order to prevent the Sieur *Treacher*'s removing the Law-Suit to Chancery himſelf, in which Caſe he would become Plaintiff, to call him before that Court, that he may anſwer the Interrogatives I ſhall put to him; which I have done, and he muſt anſwer the ſame within a Month at fartheſt, and I ſhall purſue him cloſe: 'Tis the moſt able Lawyer in this Country, who does me the Favour to give me this Advice, which will hinder him from appealing, in caſe he ſhould have a mind to it, which might have kept you in play ſeveral years.

We ſee by the King's Speech to his Parliament, that there are yet no Alliances made; and by the Addreſſes of the Lords and Commons we perceive plainly that they have an Itching towards a War; but at the ſame Time they give to underſtand, that they know not which way to go about it: and beſides the Party of the *Pacifick* is far more numerous than the others, although the others have at preſent the Majority of Votes in the Parliament; of which three Parts in four of the Houſe are highly incenſed, and yet more to ſee they pretend to impeach certain Perſons of the laſt Miniſtry, which will infallibly make a great Noiſe: and if the Whigs would follow my Advice, and I were willing to give them a good one, they ſhould lie ſtill. Mr. *Prior* is one of theſe pretended Victims; his Papers are looked over with malicious Eagerneſs; he is taxed with having received great Preſents in *France*; particularly a great Sett of Silver-gilt Plate; I believe that if it be ſo, he is ſo much the richer for it. This is all that occurs at preſent, and that I am without Reſerve.

Paris, Mr. *D'Aulmay de Coulanges.*

London, *April* $\frac{7}{18}$ 1715.

'I Am ordered to tell you from Mr. *Harvey*, that you will oblige him 'in deſiring Mr. *Le* (*a*) *D. D.* from him, to ſend hither ſomebody to 'fetch the Horſes and Dogs which he has had ſo long, or elſe to give or-'der to ſomebody to take them. Things are here in ſuch a Poſture, that 'great Caution ought to be uſed, not to give Umbrage to thoſe in Power, 'who may put a wrong Conſtruction upon the leaſt 'Trifles,' eſpecially ſince the Departure of my Lord *Bolingbroke*, who is looked upon here as innocent, and People do not ſee how he could be any ways hurt, notwithſtanding the Superiority of the Low Party in Parliament, which however is divided into two, who terribly croſs each other, one of which Parties will at laſt join with the Tories, if the latter are willing: We may draw Conſequences: The Dutcheſs of *Portſmouth*, who is at preſent here, gives a great deal of Offence, as I am informed, by pretending to prove that the late King *James* had poiſon'd his Brother *Charles*; it was not expected, that after ſo many Years Retirement into *France*, ſhe ſhould come hither to revive that vulgar Report, which at ſo critical a Time cannot be for any good Purpoſe.

I have nothing to add to the Affair of your Merchants, but what I have already acquainted you with. On the other hand, I confirm to you all that I have recommended to you to tell the Perſon I wrote to laſt. Kiſſing your Hands, I remain———

We expect here ſhortly the Marquiſs *d'Allegre*, for our Ambaſſador at your Court has orders to take a Character upon him. I hope you will find means to charge ſomebody in the Retinue of the former with the 20 Ells of *Ras de St. Maur*, and 20 Ells of *Taffety*, with blue and white Stripes, for a Woman's Summer Suit; leſs than 20 Ells would do, if it be broader than half Ell, and if it be poſſible, to ſend at the ſame Time a Scarf made of a good black Silk pinked, for a Woman of a moderate Size, and ſlender, you will oblige me, and when you ſhall acquaint me with the Price of the whole, I ſhall either pay it to the Perſon who ſhall be charged with it, or ſhall remit it at your Choice, *&c.* As for the Scarves, they are ſold ready made at the Palace—

Since what's above written, the Honour of yours of the 12th Inſtant is come to my Hands. I ſhall cauſe your Letter of Attorney to be got out of Mr. *Arthur*'s Hands. There are at preſent great Debates in the Parliament: There was a Member of the High Party, who had the boldneſs to ſuggeſt, that this preſent Parliament was illegally aſſembled, ſince the King in his Proclamation gave the People to underſtand, that it would be a great Satisfaction to him if they choſe Whigs, which he ſaid is againſt the Fundamental Laws of the Kingdom; whereupon there aroſe high Debates, and by the Majority of Votes, to the great Surprize of the Public, who expected that that Member ſhould be ſent to the Tower, it was carried by a hundred Voices, that the ſaid Proclamation ſhould be examined; which 'tis thought will cauſe great Diviſions. 'When I have any thing 'particular to impart, I ſhall do it by a ſtrange Hand, and ſubſcribe *James* '*Chretien*, which you muſt take notice of, and provided you acquaint me 'that you have received this preſent Letter without being opened, I ſhall 'be eaſy.'

Directed to *Francis Francia*, and dated,

SIR, *Paris*, *April* 24, 1715.

I Have received your two Letters of the 8th and 18th Inſtant, I am very much obliged to you for having removed to the Chancery the Law-Suit I have with *Treacher*, ſince you think it the moſt expeditious Way to make an End of it: I ſtill beg of you the Continuation of your Care, in order to compaſs the ſame; as alſo to acquaint me how that Affair ſtands at preſent. I reckon that Mr. *Arthur* has by this Time delivered to you my general Letter of Attorney, according to the Order he has for it from the Chevalier *Cantillon*, of which you will alſo be pleaſed to inform me.

The Time of the Marquiſs *d' Allegre's* Departure for *London* is not yet known here. I ſhall not then fail to deſire ſomebody in his Retinue to charge himſelf with the *Ras de St. Maur*, Luteſtring and Scarf which you have deſired of me.

'Your laſt was delivered to me very ſafe Yeſterday in the Evening: be 'eaſy as to that Matter, as well as to whatever Mr. *James Chrêtien* may 'write to me; pray deſire him when he does me the pleaſure to write to 'me, to be very particular as to Facts, and to be well informed before 'hand: in all which I rely on your Prudence. If during theſe troubleſome Times Mr. (*b*) *H.* ſhould think fit to make uſe of Mr. *J. Chrê-*'*tien*,' he may:' but his Letters ſhould be directed to myſelf, and I ſhould afterwards make what Uſe of them he ſhould think fit. Aſſure him ſtill of my Readineſs to ſerve him, and that I ſhould be very glad to give him Marks of my Gratitude, for the Trouble he takes, as well as yourſelf, in my Affair with *Treacher*.

When the Character of the Dutcheſs, who is lately gone to *London*, ſhall be well known, People will not be ſurprized at the Part ſhe actually plays there; but I hope it will produce a different Effect from what ſhe expects, and that we ſhall come at laſt to a happy Unravelling. (*c*) Mr. *le D. D.* was to ſend about a Fortnight ago one of his Men to *London*, to bring him his Horſes and Dogs. If he is not yet gone, I ſhall not fail preſſing for that Matter.

Pray let us hear from you as often as poſſible, and ſtill believe me moſt perfectly,

SIR,

Your moſt humble,
and moſt obedient Servant,
D'AULMAY.

My Lord Stairs *has not yet taken any Character.*

This is directed to *Francis Francia*, and dated,

SIR, *Paris*, *May* 1, 1715.

I Have received yours of the 25th paſt, with that of Mr. (*d*) *H.* for the (*e*) *D. D.* which I have ſent to him into the Country, where he is at preſent. At his Return, I ſhall not fail telling him what you tell me about what is due to the ſaid Mr. (*f*) *H*——, and in what Manner he deſires the ſame to be remitted to him. Aſſure him that in this, and every Thing elſe, I ſhall ever do my utmoſt to do him Service.

By your Letter of the 8th of *April* laſt, you acquainted me with the Care you had taken to remove to the Chancery my Law-Suit with *Treacher*, by which Means he would be obliged to anſwer within a Month; and therefore I hope that in a ſhort Time you will acquaint me with the Concluſion of that Affair, for which I ſhall be very much obliged to you: I little know how Juſtice is adminiſtered in ſuch a Caſe in *England*: but this I know, that in *France*, that honeſt Fellow would long before now have been brought to Reaſon; however, we muſt wait with Patience to the End.

Pray aſſure Mr. *J. Ch.* that I am, and ſhall be, very much obliged to him for what he ſhall write to me: he may likewiſe depend upon it, that I ſhall make good Uſe of it; therefore let him continue to let me hear from him the oftener he can; but above all let his News be certain, and very particular.

There's yet no Talk here of the Earl of *Stairs* being near taking his Character. I muſt alſo add, that 'tis not yet known, when the Marquiſs *d'Allegre* will ſet out, but what's believed as certain is, that they will out of hand work upon the Fortification of *Mardyke*: Draw your Conjectures upon it.

'I am very impatient to know what paſſes relating to the Proſecution 'of the late Miniſtry, particularly concerning the Duke of *Ormond*, 'whoſe Name my Wife bears, and is his near Relation, her Name is '*Butler* of *Kilcom*:' That family may not be unknown to Mr. (*g*) *H*—— however the Ch. (Sir *Thomas*) *Hanmer* knows it perfectly well.

We have at preſent no important News in this Country, unleſs it be conſiderable Bankruptcies among thoſe called *Agioteurs* (or Stock-Jobbers), of which there are daily a great Number, and ſuch a Scarcity of Money, as paſſes all that can be expreſſed. I am ſtill, SIR,

Your moſt humble,
And moſt obedient Servant.

Letter from *Francis Francia.*

Paris, Mr. *D'Aulmay de Coulanges.*

London, *May 30th*, / *June 10th*, 1715.

MY laſt to you was of the Inſtant; this is to tell you, that without Loſs of Time you muſt ſend another Letter of Attorney, with a Blank for the Name; for Mr. *Arthur*, after having kept us long at a Bay, ſaying he would look for it, now ſays it is loſt: Be that as it will, you muſt revoke that Letter of Attorney, for we are here in Danger, if *Treacher* ſhould bethink himſelf of asking by what Authority he is proſecuted, leſt, not being able to produce any Letter of Attorney, this Suit ſhould be diſmiſſed with Coſt; you therefore ſee the Conſequence: As for the reſt, the Affair is on a good Foot, and I believe he'll not ſtay till he's caſt. Yeſterday in the Evening, being the Anniverſary of the Reſtauration of King *Charles* II. there were here great Riots; nothing was heard among the People but Curſes againſt the preſent Miniſtry, and long live *James* the Third, and the Duke of *Ormond*. This being ſo public, that it cannot fail reaching your Parts, I acquaint you with it, and aſſure you, that I am, *&c.*

'Mr. *Harvey* ſalutes you, and bid me tell you, that when there is any 'Thing new, if he cannot write to you himſelf, he will cauſe the Sieur '*J. C.* to do it for him.'

This is directed to *Francia*, and dated,

SIR, *Paris*, *Auguſt* 7, 1715.

AT this very Inſtant I receive your laſt of the firſt Inſtant. I will not ceaſe returning you Thanks for the Care you are willing to take of my Affair, deſiring you ſtill to continue to the End.

'You have Reaſon to be angry at the Indolence (or Supineneſs) you 'expoſtulate about, but be perſuaded, 'tis only ſo in Appearance. I even 'hope that by this Time you have convincing Proofs of it, and that ſuitable 'Returns are made to the good Diſpoſitions; ſo that with God's 'Bleſſing upon our Friend's good Cauſe, he will at laſt caſt his Adver-'ſary, at leaſt no Succours, or powerful Sollicitations ſhall be want-'ing.' Let me hear, I beſeech you, about it as often as you can; and depend upon it, that by ſo doing you will oblige Perſons, who in a proper Time and Place will be thankful to you for it.

(*a*) *Duke* D'Aumont. (*b*) *Mr.* Harvey. (*c*) *The Duke* D'Aumont. (*d*) *Mr.* Harvey. (*e*) *The Duke* D'Aumont. (*f*) *Mr.* Harvey. (*g*) *Mr.* Harvey.

The Poſt (going off) preſſes me; therefore I conclude, aſſuring you ſtill, that no man can be more truly than I am,

SIR,

Your moſt humble, and moſt obedient Servant,

D'AULMAY.

Priſoner. That is wrong tranſlated. In the *French* it is *Gagner ſa Cauſe*, which is *gain his Suit*; and they have tranſlated it, *caſt his Adverſary*.

Mr. *Cowper.* He talks of powerful Sollicitations on our Side, that is in *France*; and what could that be to a Law-Suit here?

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *Paris, Auguſt* 10. 1715.

LAST Night I received your laſt of the fifth Inſtant; pray be eaſy, and ere it be long you'll be ſatisfied.

The Chief of the Name of our Friend the Abbot, arrived here on Tueſday *Night in good Health. He is very well pleaſed, and has Reaſon to be ſo. He prepares to return Home with all Speed, and will carry thither his Friends to ſpend the Vacation Time. This very Moment I'm going to wait upon him; I reckon to attend him in his Journey, or to be with him ſoon after his Departure.* Pray, continue informing me the oftenеſt you can of your Health, and of that of our Friends: You know how dear they are to me, and what Concern I have in them; therefore do not deny me that favour, nor that of believing me perfectly as I am,

SIR,

Your moſt humble, and moſt obedient Servant,

PAYEN.

Mr. *Cowper.* Though this Letter is ſigned *Payen*, yet it comes from *D'Aulmay*; he ſays the Chief of the Family is arrived here; that is, the Duke of *Ormond*. And that he was to retun from thence, and keep his Vacation in *England*. Hitherto the Correſpondence was with the Duke *D'Aumont*, but from this Time it is with the Duke of *Ormond*.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *Paris, Auguſt* 21. 1715.

THIS is in Anſwer to your two Letters of the 12th and 15th Inſtant. I ſhould have ſooner anſwered the firſt, had it not been delivered to me after the Departure of the laſt Poſt, *Our Friend's Law-Suit will ſhortly, God willing, be ready for Trial, every Thing is preparing for it. The Friend, my Wife's Relation, has read your two Letters, with which he is very well ſatisfied. He deſires you, as well as myſelf, to let us hear from you as often as you can.* Since his Arrival he has had two Fits of a tertian Ague, of which the Bark has rid him. He was purged Yeſterday Morning, and in the Afternoon went to take the Air, ſo that he is now in perfect Health, and in a Condition to attend his Affairs with full Liberty. I have not heard from Mr. (*a*) *H.* and I do not believe he has changed his Habitation; at leaſt it is not come to my Knowledge. The king has been indiſpoſed for ſome Days paſt, but without Appearance of any ill Conſequence. Thanks be to God, who will preſerve him to us a long Time in his Mercy.

Half a dozen Souls of *Lower Normandy*, and as many of *Mans*, muſt needs poſſeſs the Body of *Treacher*, and inſpire him with all the Chicanes he plays me. I ſhall write to him by the next Poſt, in the Stile you adviſe me, and agreeably to my own Thoughts; for I ſwear to you, there's nothing I ſhall leave undone to get my Right of ſo great a Knave; I hope you will ſecond me, and that you'll give him no Quarter. Pray acquaint me with what you have done upon this laſt Incident.

SIR, I ſalute you, and am perfectly,

Your moſt humble,

And moſt obedient Servant,

PAYEN.

Mr. *Cowper.* This explains that there was another Cauſe depending, beſides that of the Law-Suit: For he ſays, our Friend's Cauſe will ſoon be ready to be tried, all Preparations are making for it. Now there was no Cauſe depending in *France*, for this a *French* Letter from *D'Aulmay*, and it is not pretended that there was any Law-Suit depending on that Side the Water.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

Auguſt 24, 1715.

I Am very much ſurprized not to have heard from you by the Poſt that came in Yeſterday. Our Friend was at my Houſe expecting the ſame. We deſire you both, Sir, not to let one Poſt go off without writing to us, and acquainting us with what paſſes with Relation to our common Friend's Law-Suit. When you ſee Mr. (*b*) H. *aſſure him that all our Friends are perfectly well.* The King's Health grows better and better, Heaven be praiſed.

I have had ſo much Buſineſs for ſome Days paſt, that I could not write to Treacher: I would do it ſpeedily, but I ſtill deſire you not to give him any Quarter, and to believe me perfectly,

SIR,

Your moſt humble, and moſt obedient Servant,

PAYEN.

Mr. Soll. Gen. This ſhews a Diſtinction between the Cauſe of their common Friend, and the Cauſe of *Treacher*.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *Auguſt* 28, 1715.

I Received your Letter of the 22d Inſtant. Were I permitted to give you a Detail of all that paſſes concerning the Affair you know, you would be more eaſy than to me you appear to be, and charge us with leſs Negligence than you do. I know there are favourable Moments, which 'tis dangerous to let ſlip; but then will you not agree with me that 'tis Matter of Prudence to foreſee all Inconveniencies, and in order to that to take ſuch right Meaſures as to be able to ſurmount them all? This is now doing, be perſuaded of it, and that your Friends are more zealous than ever to procure you all the Satisfaction you may deſire, therefore be eaſy ſome time longer. You did me the Pleaſure to acquaint me, that on the 29th paſt, *Treacher* was adjudged to deliver to us his Account within a Fortnight, that he had ſince made a new Chicane, demanding Security for his Charges, and with the Meaſures you were pleaſed to take upon this Demand. I therefore believed that after this we might hope to ſee an End of this Affair, and that nothing now remained but to perform the Judgment or Rule of the 29th of *July*, nevertheleſs we are ſtill put off to the Month of *October*. Pray, acquaint me with the Cauſe of it.

We are here in a cruel Uncertainty about an Affair of the laſt Importance, God grant it may have a happy Iſſue. Pray, continue writing to me every Poſt, and believe that I am ever with all my Heart,

SIR,

Your moſt humble,

And moſt obedient Servant,

PAYEN.

Mr. *Denton.* This appears to be a Letter in Anſwer to *Francia*'s, wherein he complains that Things are not carried on with Vigour; I know, ſays he, there are favourable Moments that are not to be let ſlip; and then at laſt he concludes with the private Affair of *Treacher*.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *September* 3. 1715.

I Received this very Inſtant your laſt of the 29th paſt, and as the Poſt is going off, I have only Time to write an Anſwer. I did not write to you by the laſt Poſt, neither did I receive any of your Letters. I am extream ſorry for all the Trouble I give you with reſpect to the Law-Suit I have with that Rogue, I ſhall ſtill hope that thro' your Care we ſhall both be ſhortly rid of him.

We have at laſt had the Misfortune to loſe the greateſt of Kings, who, as undoubtedly you know it already, died on Sunday *laſt at a Quarter paſt Eight in the Morning, with all the Sentiments of Religion and Greatneſs that were ever obſerved in the greateſt Heroes; and indeed 'tis generally acknowledged, that he never was greater than in the laſt Moments of his Life. Monday* Morning my Lord Duke of *Orleans*, accompanied by the Princes of the Blood, and the Dukes and Peers, repaired to the Parliament, where he was declared Regent of the Kingdom with all the Authority due to that Dignity and his illuſtrious Birth. All *France* is overjoyed to be under his Government, from which they can certainly expect nothing but happy Days, ſince no Perſon in the World has more Grandeur, Equity, Penetration, and Virtues in general, than that Prince. *The Journey to* Germany *would be proper enough, and I wiſh it may be performed, the rather becauſe for the Reaſons you know; our Meaſures have been ſomewhat ſuſpended, though not in the leaſt broke, Things going on ſtill better and better; be perſuaded of it, as alſo that due Notice is taken of your good Will.* In particular (*c*) Mr. *H*—— muſt undoubtedly be where you were told, for he has not appeared here. *'Tis true my* (*d*) D. D. *and* (*e*) M. B. *are in a Houſe within a ſmall half League of this City, which a private Perſon has lent them, but they receive there all their Friends, with whom they go to dine and ſup every Day; they are both in perfect Health, and their Thoughts are very different from thoſe that are aſcribed to them, I mean that they are ſuch as they ought to be; aſſure their Friends of it.* It is not poſſible for me to ſend to you to Day what you deſire of me, 'twill be for the next Poſt. Let not one ſlip without acquainting me of your Health, for which you know I am more concerned than any Body elſe, and be perſuaded that I am, more than any Man,

SIR,

Your moſt humble,

And moſt obeydient Servant,

PAYEN.

Mr. *Cowper*, junior. This Letter gives an Account of the Death of the *French* King, and tho' Things may be ſuſpended, ſtill they will go on, and it will be for the better.

Mr. *Denton.* The next Letter is not directed to any Body, it came under a Cover which is loſt; it appears to come from *D'Aulmay*, but not to be directed.

L. C. Baron. Is this one of them that was found in his Houſe?

Mr. *Denton.* This is one of them found there, and owned by him.

[*Clerk reads.*]

SIR, *September* 6. 1715.

YOUR Letter of the ſecond Inſtant was juſt now deliver'd to me. My laſt informed you, that 'twas only on the firſt Inſtant we had the Misfortune to loſe the greateſt of Kings, but that for the Comfort of *France*, God had reſerved M. the Duke of *Orleans* for our Regent. I cannot write any thing that can be depended upon in relation to what you deſire of me by your two laſt, as ſoon as there is any thing I ſhall inform you of it. Since the Abbot *B*—— came into this Kingdom, he has been very often in the Country; he is ſtill actually there; as ſoon as he is returned I ſhall not fail ſpeaking to him according to what you write; as I have no Intimacy with any Merchant, and he muſt be one that I can depend upon to make uſe of his Direction, I cannot give it you this Day, but I hope I may by the next Poſt; *in the mean time, pray continue writing directly to me, and if you have any truſty Hand, other than your own and your Sons, it would not be amiſs to make uſe of it; I even am of Opinion, that a Key or Cypher for the principal Names which you may ſend me, and of which you ſhould keep a Copy for your own Uſe, would be neceſſary, for I will ingenuouſly own to you, that ſuch a Precaution appears to me very neceſſary.* You'll find here encloſed the Picture you have deſired of me; it being impoſſible to ſend it to you without folding, when you have received it you muſt wet a Cloth, which you'll lay on a Table, and will lay alſo the Print upon it, which will take

(*a*) *Mr.* Harvey. (*b*) *Mr.* Harvey. (*c*) *Mr.* Harvey. (*d*) *Duke of* Ormond. (*e*) *Lord* Bolingbroke.

take the Plaits away. The Post (going off) presses me, and I have but just Time to tell you that I am your most humble and most obedient servant, PAYEN.

Prisoner. My Lord, this Letter is another Hand, and there is no Direction on it.

L. C. Baron. It was found among your Papers, and you own'd it; that is proved by the Secretaries.

Prisoner. This was pretended to be stopp'd at the *Post-Office.*

L. C. Bar. No, it was found among your Letters.

Mr. Sol. Gen. The next Letter is very particular; he says the Cause of the Common Friend will be at an End in a little Time; but as to his own particular Cause, he was unhappy to have to do with so troublesome a Man.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *Sept.* 14, 1715.

I DID not write to you by the last Post, by reason I did not receive your last Letter, which by the bye is without Date, till the Day after its Departure. Nor did I receive any from you by the Post that came in Yesterday, so that you owe me Answers to my two last, which I expect with Impatience, particularly an Answer to my last, by which I sent you what you had desir'd of me. *The Contents of your last without Date has given me a great deal of Satisfaction, as well as to all our Friends, who return you Thanks for it, and have charged me to assure you of it, and desire you to continue. We knew already Part of what you write about our Friend's Cause, which with God's Blessing, will soon End to his Satisfaction, otherwise all Appearances would be very deceitful. As for my own Cause, I cannot forbear telling you, that I am very unfortunate in having to do with so dishoneſt a Man,* after having trusted my Goods with him, and loaded his Partner with Services and Civilities during his Stay here. But my Comfort is, that you will not give him a Moment's Respite, and that you will at last rid me of his unworthy Chicanes. I could have wished the Abbot had not embark'd me with such People; although I am persuaded he did not do it with any ill Intention, yet I find myself embarrass'd with those Scoundrels, whom I trusted only at his Desire.

The King went the Day before Yesterday to the Parliament to hold his Bed of Justice, where the Regency was confirm'd to the Duke of *Orleans*, with all the Authority which such a Dignity deserves. We have nothing else new at present. If any thing happens I shall not fail acquainting you with it. I am most perfectly, Sir, your most humble and most obedient Servant,

PAYEN.

As we go at this time pretty often into the Country, be not uneasy if perchance I should fail, some Post or other, answering your Letters regularly, which however will not be, except when I shall be absolutely obliged to it.

Here's a Direction which you may use for the future if you think fit. But in case you do, you must conform yourself to this Model, and mark two Strokes both before and after the Word *Paris.*

To Madam, Madam the Widow de *Beagué*, Merchant, at the *Fair Star, Rue Tirechape.* =*Paris*=

Mr. Att. Gen. The Correspondence now began to be dangerous, and therefore it was to be directed to a Woman, that there might be the less Suspicion.

[*Clerk reads.*]

This directed to *Francis Francia*, and dated,

SIR, *September* 17, 1715.

YOUR last of the 9th Instant, which I should have had on *Friday* last, was not deliver'd to me till *Sunday* in the Evening. I ascribe this Delay only to the Winds, which may have hindered the Packet-Boat from having as quick a Passage as usual. I have caused the three Letters which you have directed to me, to be put into the Post-House.

My * *D. D.* hath already shew'd me the Epitaph you have sent me, which with Gentlemen will ever pass for the Spring of *Cerberus.* I hope also that infamous Author will sooner or later be rewarded according to his Deserts. His Insolence may even be attended with some unexpected Consequences. We have, Thanks be to God, a just and equitable Regent, from whom we may hope every thing; he has already given us Proof of it, by the good Order he has settled in all Affairs, which indeed had a great Occasion for it.

You must undoubtedly have receiv'd by this time the Picture you desired of me, and I hope you will acquaint me with it by the next I shall receive from you.

All our Friends are, thank God, in perfect Health, My † *D. D.* had some Days ago a slight Fit of an Ague, which had no Consequence. *We are here, as well as you, impatient to attain the End propos'd. But we must take Patience, and be rul'd by those who are at the Helm.* I still assure you, Sir, that I am, with Sincerity, your most humble and most obedient Servant.

Mr. Sol. Gen. We shall conclude the Letters with a very particular one from *D'Aulmay*, which taxes *Francia* with Impatience, and takes notice, that Mr. *Harvey* was eager for going into *France*; but it was the Duke of *Ormond*'s particular Advice, that he should not go, because probably they might come over to him.

[*Clerk reads.*]

This is directed to *Francis Francia*, and dated,

SIR, *September* 23, 1715.

IN Answer to your last of the 16th Instant, I begin with telling you, that our Friends are much to blame to throw themselves so precipitately into Impatience, especially ‡ M. H. *to whom you shall communicate this Letter as soon as you have receiv'd it, and tell him he must by no Means think of coming hither, as by your last you acquainted me he is preparing to do. 'Tis my* ‖ D. D. *who charges me expressly with what I write to you, and who desires him to stay. He may easily guess at the Reason, which will give you to understand, that this is not a time to be impatient; but to shew more Resolution than ever.*

Perhaps some Letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the Directions I have sent you, or directly with my own.

You know perhaps by this time, that 'tis pretended that there are at *Havre-de-Grace* two Ships, on Board of which are Arms, which has alarm'd some People, but without ground: For if that News be true, they must be Arms that are sent as a Present to the King of *Persia*, as I am told; therefore this ought not to make any Body uneasy. As for the rest, Sir, let all of us recommend ourselves to God, and hope we shall soon be quiet; you at home, after your wise Government shall have dissipated all the Feuds that disturb the Tranquillity; and we by the paternal and indefatigable Care which my Lord Duke of *Orleans* takes upon him to procure us, the Repose which we have so great Occasion for, and of which we have so long been depriv'd.

You will judge of it by the List I send you of the Councils he has lately establish'd, and which are certainly made up of the most able, and most worthy Persons in the Kingdom. I expect to hear from you, and ever am, Sir, your most humble and most obedient Servant,

PAYEN.

Whereabouts are we with our honest Man? I hope you will acquaint me by your next.

Mr. *Denton.* My Lord, the time when the King was pleas'd to acquaint the Parliament with the Design of the Invasion, was the 20th of *July.*

We have a Copy of the Speech examin'd.

[*Then Mr.* Paxton *was sworn.*]

Mr. Sol. Gen. Have you examin'd this, and is it a true Copy?

Mr. *Paxton.* Yes.

Mr. Sol. Gen. Where did you examine it?

Mr. *Paxton.* At the Parliament Office.

Mr. *Hungerford.* What did you examine it by?

Mr. *Paxton.* By the Journal of the House of Lords.

Clerk reads: *Die Mercurii* 20 *Julii* 1715.

His Majesty after conferring with the Lord Chancellor, spake as follows:

My Lords and Gentlemen;

I HAVE given Direction to my Lord Chancellor to declare to you in my Name and Words, a Matter I think of the greatest Importance.

(*Then the Lord Chancellor spake as follows;*)

I have receiv'd his Majesty's Commands, to deliver to you in his Majesty's Name this his Majesty's Speech now put into my Hands by his Majesty from the Throne.

My Lords and Gentlemen,

THE Zeal you have shewn for preserving the Peace of my Kingdoms, and your Wisdom in providing so good a Law to prevent all riotous and tumultuous Proceedings, give me great Satisfaction; but I am sorry to find that such a Spirit of Rebellion has discover'd itself, as leaves no Room to doubt, but these Disorders are set on Foot and encouraged by Persons disaffected to my Government, in Expectation of being supported from Abroad.

The Preservation of our Excellent Constitution, and the Security of our Holy Religion, has been, and always shall be, my chief Care; and I cannot question, but your Concern for these invaluable Blessings is so great, as not to let them be exposed to such Attempts as I have certain Advices are preparing by the Pretender from Abroad, and carrying on at Home by a restless Party in his Favour.

Gentlemen of the House of Commons,

IN these Circumstances I think it proper to ask your Assistance, and make no doubt but you will so far consult your own Security, as not to leave the Nation under a Rebellion actually begun at Home, and threatened with an Invasion from Abroad, in a defenceless Condition; and I shall look upon the Provision you shall make for the Safety of my People, as the best Mark of your Affection to me.

Sir *J. Jekyll.* My Lord, We shall not trouble the Court nor the Jury, with reading any more Letters; I only take leave to observe shortly, upon the Letters which have been read. The Correspondence began with a Desire from *D'Aulmay* to have some Correspondence about Affairs here, because his Wife was related to the Duke of *Ormond*. *Francia* tells him, there was a Discourse about the Marriage of the Pretender with the Arch-Duchess, which, says he, is *essential to the Interest of your Wife.* *D'Aulmay* writes in Answer, *that there had been some Talk of that Marriage, but that he don't care to come into it:* He thinks *a Party War would be much better.* *Francia* writes again, *That it can't be expected that Persons of Fifty or Sixty Thousand Crowns a Year should run the hazard of losing such Estates, unless more Encouragement were given them.* And that is followed by another Letter from *Francia*, wherein he writes, *That now we are to expect every Thing from your Side the Water, that is, Explications,* &c. Then he desires him if he thinks proper, *That he would change his Name, and write by a strange Hand.*

There is this observable in these Letters, that the Prisoner plainly shews his desire that there should be an Assistance for the Pretender from *France*; and so all the Letters taken upon him fall into that Design; nay, he was anxious and impatient for the critical Minute. The Death of the *French* King is taken notice of to be a great Loss, yet he is assured that things will revive again; for that Person that succeeded in the Government had favourable Thoughts and Intentions.

The Letters that are entered in his Copy-Book speak very plainly; and, Gentlemen, what can be the purport of those Letters of the Prisoner's that are not entered, that can't be sought for any where but in those Letters, which were sent hither in Answer to them, and he is so far from pretending that these were not Letters sent in Answer to his Letters, that when he came to be examined, he told what the Design of them was; *that it was*

* *Duke of* Ormond. † *Duke of* Ormond. ‡ *Mr.* Harvey. ‖ *Duke of* Ormond.

the Deſign of the Pretender to invade his Majeſty's Dominions; and therefore it now appears plainly to you, that he did ſollicit Aid and Aſſiſtance in order to an Invaſion from Abroad, and an Inſurrection at Home, in favour of the Pretender, and in order to depoſe his Majeſty.

Mr. Att. Gen. We ſhall leave it here, and ſubmit it to your Lordſhip and the Jury, upon the Evidence we have offer'd.

Mr. *Ward.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel for the Priſoner, and what I ſhall humbly offer to your Lordſhip before we go into our Evidence, is a ſingle Point, we ſhall lay before you and inſiſt upon; a particular Circumſtance in the Indictment, which is ſuch, that conſidering the Circumſtance of my Client, it is impoſſible as the Law ſtands, that he ſhould be guilty in ſuch manner as is charged in the Indictment.

The Priſoner happens to be an Alien born, he was born at *Bourdeaux* in *France*; he came from thence into *England*, and never was Naturaliz'd. He owes therefore no natural Allegiance, nor can be guilty of any Treaſon againſt the King as his natural Liege Lord, as it's laid in this Indictment.

There is a Diſtinction of a double Allegiance, one that is due from a natural born Subject, and the other that is due from an Alien. The latter owes only a local Obedience with reſpect to his Protection, whereas the former owes it in reſpect of his Birth. This is a Diſtinction well known in *Calvin*' Caſe. It appears, that if an Indictment for Treaſon be againſt an Alien, it muſt be charged to be againſt his Allegiance in general, but not againſt his natural Allegiance. This is taken notice of in a great many Caſes. In the Reports of my Lord *Hobart*, *Vaughan*, and *Keyling*, there are ſeveral Caſes which ſhew this Diſtinction.

In my Lord Chief Juſtice *Holt*'s time, in the Trial of *Cranborn* and *Lowick*, *April* 22. 1696. an Exception was taken to the Indictment; that it was not ſaid *Contra naturalem ligeantiam*; and in that Caſe, *Calvin*'s Caſe was agreed to be Law. It was held, that in caſe of an Alien, he owed only a general Allegiance; and it was agreed, that in caſe of an Alien, it muſt not be *Contra naturalem ligeantiam*; and my Lord Chief Juſtice *Holt* ſays, if it were ſo, it would be ill. And it may be given in Evidence, that he is an Alien, in order to acquit him of a Crime, charg'd to be againſt his natural Allegiance; there is none ſuch due.

Mr. *Hungerford.* My Lord, the Objection is founded on a Fact. If the Fact is admitted, we will argue upon it; if not, we will call ſome Witneſſes to prove it.

(Then *Simon Francia* was ſworn.)

Mr. *Hungerford.* Pray, give an Account what you know of the Priſoner, what Countryman he is, and where he was born?

Simon Francia. He is my Brother, he was born in *France*, at *Bourdeaux*.

Mr. Att. Gen. Are you Elder or Younger than he?

Simon Francia. I am Four Years Elder.

Mr. Att. Gen. How then can you remember what was done when you was Four Years old?

Simon Francia. I can't remember the Day of his Birth, but I was bred up with him at *Bourdeaux*, we were all born in the ſame Houſe.

Mr. *Hungerford.* What Age was you of when you firſt remember him?

Simon Francia. I remember him when I was about Six Years old.

Mr. *Hungerford.* And you don't remember that your Father and Mother came to *England* in that time?

Simon Francia. No.

Mr. *Hungerford.* Did your Father and Mother live at *Bourdeaux* when you was about Six Years old?

Simon Francia. Yes.

(*Then* Jaques Gonſales *was ſworn on the Books of* Moſes. *And an Interpreter was ſworn, becauſe the Witneſs ſpoke* Engliſh *very imperfectly.*)

Mr. *Hungerford.* Pray, give an Account what Countryman the Priſoner is, and where he was born?

Gonſales. The Priſoner is the Son of *George Francia*, and *Mary Gonſales* my Siſter. He was born at *Bourdeaux* the 26th of *March*, *New Stile*, 1675.

Sir *J. Jekyll.* How do you know he was born there?

Gonſales. Becauſe I was preſent when he was born. My Houſe was over-againſt my Siſter's, who was the Priſoner's Mother; afterwards he was baptized in the Church of St. *Andrew*.

Mr. *Hungerford.* We have two or three Witneſſes more, his Godfather and Godmother; but I think it plainly proved by theſe Witneſſes, ſo that we need not go any further. Mr. *Attorney*, do you admit it, or ſhall we examine more Witneſſes?

Mr. Att. Gen. Prove what you can?

Mr. *Hungerford.* Then, Mr. *Attorney*, you admit what we contend for. I am ſure if he be a good *Engliſhman*, he cannot be a falſe Traitor.

Mr. Att. Gen. He ſpeaks good *Engliſh*.

(*Then* Emes Lamira *was ſworn.*)

Mr. *Hungerford.* Give an Account whether you know where the Priſoner was born?

Lamira. He was born at *Bourdeaux*, I liv'd there when he was born.

(Then *Jaques Gonſales* was called again.)

Mr. Att. Gen. How long hath the Priſoner lived in *England?*

Gonſales. I can't tell poſitively.

Mr. Att. Gen. As near as you can?

Gonſales. I can't tell, for he has liv'd at one Part of the Town, and I at the other.

(Then *Simon Francia* was called again.)

L. C. Baron. How long ago did your Brother come into *England?*

Simon Francia. He hath been here twice. He was here about Twenty Years ago, and this laſt time, he hath been here about Six or Seven Years.

L. C. Baron. How long did he ſtay when he firſt came?

Simon Francia. About Eight or Nine Years.

(Then *Cecilia Ceres* was ſworn.)

Mr. *Hungerford.* What do you know of the Priſoner? What Countryman is he?

Ceres. I went to School with him at *Bourdeaux*.

Mr. *Hungerford.* Where was he reputed to be born?

Ceres. At *Bourdeaux*, in the ſame Street where I was.

Mr. *Hungerford.* How old was he when you knew him firſt?

Ceres. We were both Children.

Mr. *Hungerford.* I think the Place of a Man's Birth can't be better proved, it is proved by ſome that were in the Room at his Birth, ſome that went to School with him, and ſome that knew him there a Child.

Mr. Att. Gen. If the Jury ſhould be ſatisfied with this Evidence, it will not acquit the Defendant, the Opinion in *Cranborn*'s Caſe being, that the Word *Naturalem* was not neceſſary to be in the Indictment; and adding an immaterial Word will not therefore make the Indictment bad. If this does not ſatisfy the Defendant's Counſel, I ſhall inſiſt that this Point be found ſpecially.

Mr. Juſt. *Pratt.* If you inſiſt that you have given a ſufficient Evidence to ſatisfy the Jury, and indeed it is a ſtrong Evidence, Mr. *Attorney* ſays, if the Evidence is to the Satisfaction of the Jury, he is willing to find it ſpecially. Therefore are you willing to leave it to the Jury on that ſingle Iſſue?

Mr. *Hungerford.* That is giving up all the reſt. I would a little enforce and apply this Evidence.

Mr. Juſt. *Pratt.* I believe, if Mr. *Attorney-General* deſires it to be found ſpecially, it was never known to be denied.

Sir *J. Jekyll.* I deſire it may be found ſpecially.

Mr. *Hungerford.* I will be bold to ſay, this Objection is in all the Authorities which we have in the Law touching this Matter, held good: A Man who is not a natural born Subject cannot owe a natural Allegiance: And it is very hard, that without offering any Reaſon, to raiſe a Doubt, but upon bare aſking to have a Matter found ſpecially, it muſt be ſo.

Mr. Att. Gen. If you have a mind to it we will debate it with you now.

Mr. *Hungerford.* With all my Heart, I am ready to ſpeak to it now.

Sir *J. Jekyll.* If we were to expect the Judgment of the Court upon it now, I would debate this Matter now, and I ſhould not doubt but to be able to ſatisfy the Court that the Indictment is well framed againſt the Priſoner, notwithſtanding he is an Alien born.

Mr. *Hungerford.* I would be glad to hear one Authority to ſupport Sir *Joſeph*'s Opinion.

Mr. *Ward.* May it pleaſe your Lordſhip I am Counſel for the Priſoner, who ſtands indicted of High-Treaſon. The Charge in the Indictment (beſides the general Charge of imagining the King's Death) are conſpiring to levy War, ſolliciting Aid from Abroad, and writing Letters for that Purpoſe into Foreign Parts.

What they have gone upon has been a long Courſe of Letters between the Priſoner and *D'Aulmay*, alias *Payen*, at *Paris*. They have produced a Copy-book of Letters, which they ſay he wrote, and have read ſome Letters out of it, which we muſt ſubmit to you, whether there is any thing contained in them that amounts to Treaſon. They have alſo produced Letters to him from *D'Aulmay*, but we muſt ſubmit that likewiſe, whether they can any ways affect him; he can anſwer only for what he wrote himſelf.

We did inſiſt upon it, that they ought not to produce any Letters that were not ſpecify'd in the Indictment; and though we are over-rul'd in that, yet your Lordſhip will be pleaſed to conſider the Priſoner under this Diſadvantage, that he ſtands indicted for writing treaſonable Letters, without one Letter ſpecify'd, or the Date, and much leſs the Subſtance of it, ſo that he can't be ſuppoſed to be ready to offer any Evidence, or to give any Anſwer, to explain all the Letters that in the Courſe of his Life he may have wrote, and perhaps ſome of them may be ſo darkly penned, as not to be capable of an Explanation on a ſudden.

It may be neceſſary alſo to ſhew your Lordſhip the Difficulties we have been under ſince we were taken up, and that will make it neceſſary to ſhew, that when we were committed, it was to a ſtrict Confinement; we were prohibited from any Body coming to us, and from Pen, Ink, and Paper; no Body had Acceſs to us, unleſs ſome Perſons from the Secretaries Office, to preſs us to ſome Diſcoveries, which we declared we could not make. We will ſhew by them that were by at thoſe Times what we were preſſed to, and that will be an Evidence of our Innocence, when we withſtood ſuch Importunities.

They have offered ſome things, which will, I hope, go a great way to ſhew that he was not guilty of Treaſon. My Client was a Stranger, born in *France*, came here to Trade, and his Buſineſs not being very ſucceſsful, he was willing to undertake ſomething of leſs Value, and ſo engag'd in ſending Letters from the Gentleman that hath been named, for the Profit of double Poſtage, which is allowed in thoſe Caſes.

It was obſerved by the King's Counſel as a very ſtrange thing, that a Man ſhould enter in his Book Letters of a treaſonable Nature; we ſay the ſame, and that is a Circumſtance to ſhew that they were not of that nature; beſides, the Entry of a Letter in a Copy-book is not like a Copy that the Law allows to be given in Evidence, that muſt be carefully examined; but in thoſe Entries of what a Man writes over to his Correſpondents, there may be Miſtakes in them, and ſuch as a Man's Life, in Caſe of High-Treaſon, may be loſt upon; therefore you can't found ſo great a Certainty upon this Book as upon the Letters themſelves or Copies examined and legally proved.

Another Circumſtance to ſhew how unlikely it was that this was a treaſonable Correſpondence, or any thing that the Priſoner was concern'd to conceal, is, that he never took care of attending at the Poſt-Office, or engaging any one to attend there, to diſpatch or take care of his Letters, but reſted at Home till the Letter-Carriers brought them about, or elſe they were left at one *Everald*'s, a Watchmaker in the *Strand*, where he had lodg'd, and they have been obſerved to lie there on a Table in a common Room for a Week together before they have been called for, or they have been ſent to him.

It has been obſerved by the King's Counſel, that towards the latter End of the Correſpondence, when he began to write more openly, that he neglected to enter his Letters in the Book; but there is no reaſon for that Surmiſe, for it appears upon one of the Letters they produced from *D'Aulmay*, that he complains he had not heard from the Priſoner in Three Months Time; and to ſuppoſe thoſe Letters which do not appear, worſe than thoſe which do, is a Preſumption, we hope, will never be admitted in a Caſe of Life.

As the Priſoner himſelf could not apply himſelf to conſider of any Account or Explanation of theſe Letters, much leſs can it be expected that we who are his Counſel can be of any Service to him in that Point, becauſe we only hear thoſe Letters read that the King's Counſel think fit to produce; there were others before and after, and thoſe we are Strangers to; whatever there may be in them that may clear up the Expreſſions in thoſe that

are produc'd by the King's Counſel, we are entirely depriv'd of the Benefit of them; for the Priſoner has not been admitted to peruſe his own Book, or to have recourſe to any of his Papers: The Power of ſeizing Papers, that may be of uſe to a Man in his Defence, ſeems to me ſomething dark; but I ſhall ſay nothing to it in this place.

We ſhall give your Lordſhip an Account of the Priſoner's Character and Circumſtances: He was under low Circumſtances, even to the pawning his Cloaths and Goods. People that are concern'd in Things of this Kind are uſually better ſupported than he ſeems to have been. And we ſhall ſhew that he has at all Times given all Inſtances and Proofs of his being quiet under the Government, and well affected to it.

Under theſe Circumſtances, if there was ſtronger Evidence than is in the Copy-Book, it would not be ſufficient. I hope, Gentlemen, you have diſtinguiſh'd between thoſe Letters in the Copy-Book and thoſe that were ſent to him, which latter, how criminal ſoever they may be, can't be made uſe of to his Prejudice.

If we prove theſe Circumſtances, which is all that can be expected from us, we hope you will not think any thing in theſe Letters a ſufficient Evidence to find him guilty of this Crime. And, Gentlemen, if any of thoſe Letters can have ſuch a Conſtruction, yet, conſidering the nature of the Copy-Book, and the manner of keeping ſuch Books (which has fallen more under your Obſervation than mine), and how void of Care he was in managing thoſe Letters that came to him, you will not think it probable that he was engag'd in a Correſpondence of ſuch a Nature; and if any thing looks that way, it may either be a Miſtake in him that entered the Copies, or might be explain'd, if we were Maſters of the reſt of the Letters, and of the Book.

Mr. *Hungerford.* My Lord, I ſhall take up but a very little of your Time till we have gone through our Evidence, and then ſhall apply myſelf to make ſome Remarks upon it. But in general, the Accuſation contained in this Indictment is, that this Man has conſpired to take away the Life of the King; the Overt-Acts laid are, that he conſpir'd to levy War, and endeavoured to engage Aſſiſtance from abroad, and wrote Letters, and ſent them to divers Perſons beyond Seas for that Purpoſe.

Gentlemen of the Jury, I am ſure you muſt obſerve, that as to a direct Proof of his intending to take away the truly precious Life of the King, there is none, but what is endeavoured to be inferr'd from theſe Letters. If there were, I am ſure I ſhould not, and, I believe, none of my Profeſſion would have ſpoke one Word for him. But all that is ſaid ariſes from himſelf. There is no Conſultation appears, but that this Man conſulted with himſelf and his Compting Houſe to take away the Life of the King. As to any of thoſe Letters, there is nothing in them that looks that Way. And as to what is contain'd in the Letters receiv'd from *France*, they cannot affect him. All that can be inferr'd from them is, that he was privy to what was contained in thoſe Letters: And if that were High-Treaſon, yet it can only amount to Miſpriſion of Treaſon in the Priſoner. You who live in this great Trading City, the moſt eminent for Trade and Commerce in the World, in which, I believe, you are very much concerned, know that a great Part of the Commerce is carried on by Letters, and all or moſt of them are entered in Books; you muſt have a due Apprehenſion of the Conſequences of ſuch a Tranſaction as this is. To have a Man living in his Houſe in Peace, under the Protection of the King's Laws, to have his Books and Papers taken from him, and thoſe Books and Papers turn'd againſt him, to the Deſtruction of him and his Family.

Mr. *Att. Gen.* I deſire you would forbear inveighing in this Manner. This is not a proper Manner of Proceeding.

Sir *J. Jekyll.* You have had an Account that an Information was given to the Secretary of State, of a treaſonable Correſpondence carried on by this Man, and here is an Harangue complaining that his Perſon and Papers are ſeized. You know if there had been an Information given to the meaneſt Officer in the Kingdom, he could not have juſtified himſelf, without doing the ſame Thing.

L. C. Baron. You are not to arraign thoſe Proceedings.

Mr. *Hungerford.* I don't doubt but that noble Lord had Grounds for what he did, but what Grounds he had doth not appear: And ſurely I have a Right to obſerve, that all the Evidence that appears againſt the Priſoner, ariſes from thoſe Letters and Books that were taken away from him.

Mr. *Att. Gen.* Pray Mr. *Hungerford* act within the Bounds of your Profeſſion.

Mr. *Hungerford.* Mr. *Attorney*, I am to be corrected by the Court, and not by you. I owe Duty to my Lords the Judges, and I ſhall always pay it.

Mr. Juſt. *Tracy.* You ought not to reflect on that Matter of ſeizing the Papers.

Mr *Hungerford.* I am not underſtood. I ſay all that is offer'd againſt him is from the Papers found in his Cuſtody.

Mr. Juſt. *Pratt.* If that was all that you had ſaid you ought not to have been interrupted; but I never knew in my Life, but what was done in this Caſe was ordinarily done in the like Caſes, and ought to be done; and you ought not to go on with Invectives to the Jury, complaining that his Papers are ſeiz'd, and then that thoſe Papers are turn'd againſt him. When a Correſpondence is carried on by Letters, ought they not to be ſeiz'd? and if they appear to be treaſonable, ought they not to be kept and made uſe of againſt him? We muſt not ſit here to hear Invectives againſt Magiſtrates of the higheſt Quality, for doing that, which if they had not done, they had failed in their Duty.

Mr. *Hungerford.* I have not ſaid any thing to impeach the Legality of what was done. All I ſaid, and do ſay, is, that the Evidence is from the Papers found in his own Cuſtody.

You have heard the Letters read, and you obſerve, that great Part of them is about Dogs and Horſes, and a Sum of 130 *l.* 4 *s.* and about a Suit that was carrying on in the Court of Chancery. As to the Book, I ſhall touch no more upon it now, but I believe we ſhall be able to offer Proof that there is not any Part of it wrote by himſelf. How that will agree with the Evidence already given, we muſt ſubmit. We ſhall likewiſe give ſome Account of ſome Diſcourſes that had been had with the Man himſelf. And, I believe, I need not obſerve to Gentlemen of your Figure and Circumſtances, that the Mr. *Harvey*, who is repreſented by the King's Counſel, to be the firſt Promoter of, and carried on this treaſonable Correſpondence, is at Liberty, even without a Trial; and what the Law hath done for him without a Trial, I hope ſhall, by your Juſtice, be done for the Priſoner, now upon his Trial, that is, that he ſhall be acquitted.

Mr. *Ward.* Though it is difficult for us to be put to explain any of thoſe Letters, yet we will call ſome Witneſſes to explain one, which mentions Perſons of 50 or 60 Thouſand Crowns a Year, and ſhew that it was meant of one that was concerned in the Revenue in *France*, and ſuffered by it.

Mr. Juſt. *Pratt.* If you are going to explain that Letter, it will be neceſſary to read it again to the Jury.

Which was done accordingly.

Mr. *Ward.* We will ſhew it was meant of one *George Francia*, who had been concern'd in the Revenue in *France*.

Simon Francia being ſworn.

Mr. *Hungerford.* Did you know *George Francia?*——*S. Francia.* Yes.

Mr. *Hungerford.* Was he concern'd in the Revenue in *France*, and had he any Loſs there?——*S. Francia.* Yes, he loſt all he had.

Mr. *Hungerford.* By what Occaſion was it?

S. Francia. I don't know.

Mr. *Hungerford.* Was it by his own Management, or depending on others?

S. Francia. I don't know, but I know he had an Eſtate and loſt it all.

Mr. *Ward.* We offer this only as a Sample for the reſt.

Mr. *Att. Gen.* What was this Man worth?

S. Francia. I computed him to be worth Eight or Ten Thouſand Pounds.

Mr. *Att. Gen.* Doth he anſwer the Deſcription in the Letter of a Perſon of Fifty or Sixty Thouſand Crowns a Year?

Sir *J. Jekyll.* Had he any Eſtate in Land?

S. Francia. No, only in Money.

Mr. *Hungerford.* Do you know of any Offers that have been made, or Threats uſed to the Priſoner?

S. Francia. I know of ſome.

Mr. *Hungerford.* By whom?

S. Francia. By Mr *Buckley*: That if he would ſwear againſt Mr. *Harvey* of *Comb*, he ſhould have a good Reward.

Mr. *Hungerford.* Do you know of any other?

S. Francia. Yes, my Lord *Townſhend* told me he had given my Brother five Guineas, and he would give him more if he would ſwear againſt Mr. *Harvey*.

Mr. *Hungerford.* Where did he tell you ſo?

S. Francia. In the Office at the Cockpit.

Mr. *Hungerford.* Do you know any thing of two Warrants that Mr. *Buckley* brought, one for his Releaſement, and the other for his Confinement?——*S. Francia.* I don't know any thing of that.

Mr. *Att. Gen.* How came this Diſcourſe between my Lord *Townſhend* and you?

S. Francia. I was ſeveral Times with him at the Office about my Brother.

Mr. *Att. Gen.* I hope it will be proper at this Time that my Lord *Townſhend* and Mr. *Buckley* may be aſked to this Matter.

Mr. Juſt. *Pratt.* I ſuppoſe you was preſent when this paſt between Mr. *Buckley* and the Priſoner?

S. Francia. It was between my Lord *Townſhend* and me, and Mr. *Buckley* and me.

Mr. Juſt. *Pratt.* Who elſe was by, beſides Mr. *Buckley* and you?

S. Francia. No Body elſe.

Mr. Juſt. *Pratt.* Who was by when that which you mention'd paſt between my Lord *Townſhend* and you?

S. Francia. No Body elſe. The firſt Time I applied to my Lord *Townſhend*, I think there was another Secretary there.

Mr. Juſt. *Pratt.* But at that Time that you ſay this Offer was made was any Body preſent?

S. Francia. Indeed I don't remember that there was.

Mr. *Cowper.* I think you ſay, the firſt Time you was with my Lord *Townſhend*, there was the other Secretary there?

S. Francia. Yes, there was?

Mr. *Cowper.* Where was this? in what Room?

S. Francia. In the Cockpit.

Mr. *Cowper.* What is your Relation to the Priſoner?

S. Francia. I am his Brother.

Mr. *Hungerford.* You ſay there was another Secretary by, was it the other Secretary of State?

S. Francia. I know not who it was, there was another Gentleman.

Mr. *Att. Gen.* He ſaid another Secretary of State.

L. C. Baron. What did my Lord *Townſhend* ſay to you?

S. Francia. He ſaid he had given my Brother five Guineas, and he would give him more if he would ſwear againſt Mr. *Harvey*.

L. C. Baron. You ſay at that Time there was another Secretary?

S. Francia. No, no, not at the Time of that Diſcourſe.

L. C. Baron. Nor there was no Body with you and Mr. *Buckley?*

S. Francia. No.

Then *Lucy White* was ſworn.

Mr. *Hungerford.* Was you by, or in hearing, when any Offers were made to the Priſoner?

White. Upon the Seventh of *September* I went to ſee the Priſoner in *Newgate*. He told me Mr. *Buckley* was to be there with him, and deſired me to conceal myſelf in the Room, that I might hear what paſt, and I did ſo. When Mr. *Buckley* came he ſpoke about one *Flint*; and afterwards Mr. *Buckley* aſked him ſeveral Queſtions about Mr. *Harvey*. He ſaid he knew nothing but that he was innocent. Mr. *Buckley* told him he muſt ſwear right or wrong for the Government; if he would not, he himſelf would ſwear High-Treaſon againſt the Priſoner; for he had taken Money of my Lord *Townſhend*, and done nothing for it.

Mr. *Hungerford.* Did you ſee any thing of two Warrants Mr. *Buckley* had at that Time?——*White.* No.

Mr. *Hungerford.* Did Mr. *Buckley* ſee you?

White. No, I concealed myſelf under the Feet of the Bed.

Mr. *Att. Gen.* You ſay this was the Seventh of *September*. What Year?

White. In the Year 1716.

Mr. *Att. Gen.* Where was he then?——*White.* In *Newgate*.

Then *Mary Meggiſon* was ſworn.

Mr. *Hungerford.* Do you know of any Offers that were made to the Priſoner, and by whom?

Meggiſon. Upon the Twenty-eighth of *September* laſt I was in Mr. *Francia*'s Room, and Mr. *Buckley* came in and told him he ſhould be tried ſuddenly, and there were a great many Witneſſes againſt him; and he would ſwear againſt him, becauſe, ſays he, you have cheated my Maſter of five Guineas, and won't ſwear againſt Mr. *Harvey*.

Mr. *Att. Gen.* Was you in the Room then?

Meggiſon. I ſat upon a little Box at the Bed's Feet, and it was ſo dark he could not ſee me.

Mr. *Att. Gen.* How came you to *Newgate?*

Meggiſon. I have been a great many Times in *Newgate*.

Mr. *Att. Gen.* You dwell there ſometimes, don't you?

Meggiſon. No, I never did.

Mr. *Att. Gen.* Are you a married Woman?

Meggiſon. Yes.

Mr. *Att. Gen.* What is your Huſband?

Meggiſon. A Dealer, but he is not in *England* now.

Priſoner. What Room was I in?

Meggiſon. A little dark Room.

Priſoner. What do they call it?——*Meggiſon.* The Lion's Den.

Priſoner. Every Body knows that Room is a dark Room, that People can't eaſily be ſeen in it.

Mr. *Hungerford.* Did you hear Mr. *Buckley* ſay any thing more?

Meggiſon. Nothing, but that he would bring my Lord *Townſhend* into Court, on purpoſe to influence the Jury by his Preſence.

Mr. *Hungerford.* As to theſe two Witneſſes, we have ſeveral to ſpeak to their Reputations; but I believe you have no doubt as to that.

Sir *J. Jekyll.* I dare ſay no one Perſon in Court believes a Word they ſay.

Then Mr. *Buckley* was called again.

Priſoner. I deſire to know whether you was not with me in the Lion's Den.

Mr. *Buckley.* My Lord, the Priſoner ſent to me by *Revell* the Turnkey, and deſired to ſpeak with me; when I came to him, he ſpoke to me firſt about *Flint*, and deſired he might be releas'd from his ſtrait Confinement; and then about his own Affairs. He thank'd me for my Humanity in coming to talk with him, ſo we parted immediately. I told my Lord *Townſhend* what had paſt; *Flint* had the Benefit of it. He had been confined cloſe, but *Francia* ſpeaking on his behalf, he was releaſed from that Confinement; and that was the Buſineſs I went about. The Room is a little dark Room, but if any Body had been at the Foot of the Bed, I believe I might have ſeen them.

L. C. Baron. Did you ſay thoſe Words?

Mr. *Buckley.* No, my Lord, it is impoſſible I ſhould.

Mr. *Hungerford.* Not impoſſible ſurely?

Mr. *Buckley.* Yes, impoſſible, I appeal to my Character: I entirely and utterly deny it. I deſire that *Revell* may be called.

Mr. *Ward.* We are now in our Evidence.

Mr. *Att. Gen.* If the Priſoner calls a Witneſs that has been called before, and he to make his Evidence entire, appeals to *Revell*, we ought to call him now, for it would have been improper before.

Mr. *Hungerford.* If it be nothing but that he was ſent for Mr. *Buckley*, there is no great Harm in it. Otherwiſe we are in the Courſe of our Evidence.

Then *Revell* was ſworn.

Mr. *Att. Gen.* Do you know the Occaſion of Mr. *Buckley*'s coming to *Francia* in *Newgate?* Give an Account of what you know of it.

Revell. My Lord, Mr. *Francia* called to me one Day, and I think it was when I was in the Chapel, and told me; I believe I can do a Piece of Service to the Government: I believe I can ſuppreſs the publiſhing of the *Shift-Shifted*, I am ſure I can: Pray, let me ſpeak with Mr. *Buckley*. Says I, if you would have me, I will go to him, and deſire him to come. When would you ſpeak with him? At any time, ſays he. Then I believe the Morning is the beſt to meet with him; and the next Morning I went to him.

Sir *J. Jekyll.* Did you tell him the Occaſion of *Francia*'s deſiring to ſpeak with him?——*Revell.* Yes.

Sir *J. Jekyll.* Was you in the Room with them?

Revell. No, but afterwards he ſaid to me, I think I have done the Government ſome Service, you don't hear it come out as it us'd to do.

Priſoner. I deſire to know whether Mr. *Buckley* was not angry with you that you did not ſtand at the Door?

Revell. He order'd me to be about the Door; but there came ſome Workmen to ſurvey the Chapel, I was obliged to go with them, and he came out and was angry that I was not there; and after that I ſtood there till they had done, but I did not hear what Diſcourſe paſt.

Then the Lord *Townſhend* ſtood up.

Lord *Townſhend.* My Lord, Mr. *Buckley* came to me, and told me of the Meſſage he had receiv'd from the Priſoner about the *Shift-Shifted*, a ſcandalous Paper that was ſent about the Kingdom. He aſk'd me if he ſhould go: I told him I thought it was right to go, but I told him he muſt be cautious, for I did not doubt but that the Priſoner was capable of that Villany I now find he is. He came back to me, and told me what he has now ſaid; and I believe it to be all that paſt between them, for I have always found him faithful and honeſt. I thought it was a Service to put a Stop to that Paper; and I did give ſome Eaſe to that Man that is named. I am amazed how there can be ſuch Villany as is in the Brother. He came to the Office two or three Times with Petitions. I never ſaid any thing more, than that it was not in my Power to do any thing; that he muſt deal ingenuouſly, tell all that he knew, and ſhew that he would ſpeak all the Truth; that that was the Way to recommend him to the King's Mercy; that I could not do any thing without it. And I believe the manner I treated Mr. *Harvey* will juſtify me, with all that know any thing of it, from the Suſpicion of ſuch Intentions againſt him. All that I did was in regard to the Priſoner's wretched Circumſtances, and before Mr. *Stanhope*; and I never deſir'd any thing of him, but to tell the Truth, and the whole Truth.

Priſoner. You told me I ſhould be hang'd, drawn, and quarter'd; and your Lordſhip told me many a time, Damn you, you Dog, now I have got Mr. *Harvey* in my Clutches, and you will let him go from me. If there was no particular Animoſity againſt me, why ſhould I be diſtinguiſhed, for none were put in Irons for treaſonable Practices, but me.

Lord *Townſhend.* I would not take up your Lordſhips' Time, but only to ſay, that the Warrant for Irons, and to be kept without Pen, Ink, and Paper, was after that Letter had been delivered to me, the Contents of which will ſufficiently juſtify the Precautions uſed in that Warrant. I was ſorry to ſee the ill Uſe he made of the Liberty that I had before given him, and I did uſe that Warrant in that manner. Treaſonable Practices were then no more bailable than Treaſon; and it's no new thing to fetter State-Priſoners under ſuch an Accuſation.

Mr. *Ward.* I beg leave to aſk your Lordſhip one Queſtion, Whether you apprehend that *Curtis* deſerved any Credit?

Lord *Townſhend.* I can ſay no more, than that he made ſome Diſcoveries, and there was no Proſecution againſt him. I knew nothing of the Man before, and I know nothing more of him now.

Mr. *Ward.* Did thoſe Informations appear to be true?

Lord *Townſhend.* A great Part did, by the Confeſſion of one of the Perſons he accuſed.

Mr. *Hungerford.* As to the two Women that were examined juſt now, there was a Remark made, that their Teſtimony was extraordinary; I have five or ſix People to ſpeak to their Reputation, if it ſticks with Mr. *Attorney*.

Mr. *Att. Gen.* Perhaps ſuch as themſelves; but however call them.

Then Mr. *Everall* was called.

Mr. *Hungerford.* What do you know of *White* or *Meggiſon?*

Everall. I know nothing of them.

Mr. *Ward.* Do you know where the Priſoner's foreign Letters uſed to be left?

Everall. His Letters always came to my Houſe.

Mr. *Ward.* Was he uſually watchful for the coming in of his Letters, as if there was any Thing of Concern in them?

Everall. No, they often uſed to lie ſome time before he called for them.

Mr. *Ward.* How long did they uſe to lie?

Everall. Sometimes three or four days.

Mr. *Ward.* Were they kept up cloſe till he called for them?

Everall. No, they lay in a public Room, ſo that any one might ſee them. (Then Mrs. *Everall* was ſworn.)

Mr. *Hungerford.* What do you know of any Letters directed for Mr. *Francia?* where were they left?

Mrs. *Everall.* They uſed to be brought to our Houſe, and they have lain two or three Days together on a public Table before they have been fetch'd away.

Mr. *Cowper.* How long ago was that?

Mrs. *Everall.* About ſeven Years ago.

Mr. *Cowper.* Have any been directed to your Houſe of late?

Mrs. *Everall.* No.

Mr. *Ward.* We ſhall now examine ſome Witneſſes to the Copy-Book, to prove that it is not of his Hand-writing; and I don't doubt but that will have its Weight.

L. C. Baron. He own'd it to be his Copy-Book of his Letters to his Correſpondents.

Mr. *Cowper.* We lay the Streſs upon this, that he ſaid it was his Copy-Book of his Letters to his Correſpondents Abroad.

Mr. *Ward.* But you know Mr. *Buckley* laid a Streſs upon its being his Hand-Writing. (Then one *Raſter* was ſworn.)

Mr. *Hungerford.* Shew him the Copy-Book: look upon it, are you acquainted with the Priſoner's Hand-Writing?

Raſter. Yes.

Mr. *Hungerford.* Is any Part of that Book his Hand-Writing?

Raſter. No, I take it to be his Son's, *George Francia*'s: The Priſoner writes a ſmaller Hand. I take no Part of it to be his Hand ſo far as I have gone.

Mr. *Hungerford.* I believe it may be of uſe for all the Witneſſes to look it over; we have four or five to this Point; and if I am rightly inſtructed, there is not one Word in that Book wrote by the Priſoner.

Mr. Juſt. *Pratt.* If it is not his Writing, whoſe do you take it to be?

Raſter. I don't take it to be his.

Mr. Juſt. *Pratt.* Whoſe do you take it to be? Are you acquainted with his Son's Hand?

Raſter. I don't know whether it is his Son's or not.

Mr. Juſt. *Pratt.* Are there any other Perſons that write for him?

Raſter. He had ſometimes.

Mr. *Att. Gen.* Here is a Letter of his own Writing; pray let him look on that, and ſee whether that is his Hand; do you believe that to be his Writing?——*Raſter.* No, I don't think it is.

Mr. *Att. Gen.* *Curtis* has prov'd that he own'd that Letter.

Priſoner. What Letter did I own?

Then *Simon Francia* was call'd again.

Mr. *Hungerford.* What do you ſay to that Book?

S. Francia. There is not one Syllable of his Writing in this Book; I have known his Hand-Writing about twenty Years.

Then *Barwell* was ſworn.

Mr. *Hungerford.* Are you acquainted with the Priſoner's Hand-Writing? Is any of that Book of his Writing?

Barwell. None of it is his Writing.

Mr. *Hungerford.* Do you know what Condition of Health he was in about the latter End of the Year 1714, and 1715?

Barwell. He was ſick.

Mr. *Hungerford.* For a Year before he was taken, what Condition was he in? Was he able to write Letters?

Barwell. He was ſick.

Mr. *Hungerford.* Did he uſe to write Letters in that Time?

Barwell. I don't know.

Mr. *Att. Gen.* Whoſe Hand do you take it to be?

Barwell. How do I know that?

Mr. *Att. Gen.* Are you acquainted with his Son's Hand?

Barwell. No, not at all.

Then *Simon Francia* was call'd again.

Mr. *Att. Gen.* You have looked on the Book; whoſe Hand-Writing do you take it to be?—— *S. Francia.* I don't know.

Mr. *Att. Gen.* Do you know his Son's Hand-Writing?

S. Francia. I never had any Correſpondence, or great Acquaintance with him.

Mr. *Att. Gen.* Did you ever ſee him write?

S. Francia. I don't remember that I did.

Mr. *Ward.* We will trouble you with but one Piece of Evidence more; we will call Dr. *Cade*, who attended him in his Sickneſs. We have offered Evidence, that no Part of that Book is his Writing; we will now offer ſome Proof that he was not capable of writing at that Time.

Then Dr. *Cade* was ſworn.

Mr. *Ward.* Pray, Doctor, did you attend the Priſoner as his Phyſician at any Time?

Dr. *Cade.* My Lord, I was ſent for to him on the ſecond Day of *November*, 1714. I attended him till the 18th of the ſame Month, and within that Time I viſited him nine Times, I found him in a great Deal of Pain, and he was lame in his Hand; ſome Time after my coming he grew better.

Mr. *Ward.* Was he confin'd to his Bed?

Dr. *Cade.* Sometimes he kept his Bed, and ſometimes he ſat up.

Mr. *Ward.* You ſay he was in Pain, and lame in his Hand; which Hand was it?

Dr. *Cade.* I don't remember which; nor do I know any Thing of him, only at that Time.

Sir *J. Jekyll.* Every one of the Letters were wrote after that Time.

Priſoner. What Condition did you leave me in?

Dr. *Cade.* In a very bad Condition.

Priſoner. Did you not hear of the Condition I was in afterwards?

Dr. *Cade.* I don't remember that I heard any thing of you after that.

Mr. *Ward.* We will call a few Witneſſes to prove what Circumſtances he was in, and that he was well affected to the Government.

Mr. *Hungerford.* By my Inſtructions he appears to be a Foreigner, and ſo diſintereſted in thoſe unfortunate Diviſions that are amongſt us: And accordingly there is nothing of *Whig* or *Tory* in his Letters.

Mr. *Att. Gen.* Don't you remember when he came to *Newgate* he wrote he liked his Company, for he found them all *Tories*.

Mr. *Hungerford.* We will ſhew you that he was zealous for the Good of the Kingdom, and was againſt all that was diſadvantageous to Trade in the late Treaty of Peace. That he never went into any public Places, except to the *Grecian* Coffee-Houſe, which is a Place ſure not tainted with Sedition.

Then Mr. *Everall* was call'd again.

Mr. *Ward.* How long have you known the Priſoner?

Everall. Several Years.

Mr. *Ward.* Has he been peaceable, and eaſy in his Converſation, with reſpect to the Government?

Everall. I remember at the proclaiming the Peace he ſaid, he thought the Nation was ruin'd, for he thought it a ſcandalous Peace.

Mr. *Att. Gen.* That is much; for you make him a *Frenchman*, ſure he might have approved it.

Mr. *Hungerford.* This is not what I have in my Brief, but perhaps he may recommend himſelf to your Eſteem by it: He doth not to mine.

My Lord, I will take up your Time only with this Remark: The great Foundation of this Evidence is the Confeſſion made by the Man himſelf. Without the Key made by him, this had been applicable to no Body. I remember Sir *Joſeph Jekyll* was pleas'd to ſay, he would not excite the Paſſions of the Jury, but rather appeal to their Judgments, ſo will I. Great Part of this Correſpondence relates to Mr. *Harvey*, and one would have thought they had ſomething extraordinary to have charged on him, conſidering the Length of his Reſtraint; but I need not obſerve to the Jury that he is at large. He was under Reſtraint, nothing could be imputed to him, and he is diſcharged.

L. C. Baron. Francia, have you any Thing more to ſay?

Priſoner. As for my Nativity I have more Witneſſes. I have more Witneſſes as to my Character. I have more Witneſſes to prove that I was a quiet Man, and never diſaffected to the Government.

Then Mr. *John Slater* was ſworn.

Mr. *Hungerford.* What do you know of the Priſoner's Behaviour?

Mr. *Slater.* I have known him about four or five Years. There being a Commiſſion of Bankruptcy againſt him, I was recommended to aſſiſt him in that Commiſſion. I did give him the beſt Aſſiſtance I could, and I ſeveral Times met him, ſometimes at the *Grecian* Coffee-Houſe, and ſometimes at my own Houſe. I took him for a *Frenchman*, he uſed very much to eſpouſe the Intereſt of the King of *France*, which I uſed to chide him for. As for Parties here, I had ſome Diſcourſe with him, and he uſed to think we were a ſtrange People to fall out among ourſelves.

Then *Thomas Richardſon* was ſworn.

Mr. *Hungerford.* What do you know of the Priſoner and his Behaviour?

Richardſon. I have known him five or ſix Years, and I believe I have taken five or ſix Pounds of his Money. When he was ſick he took a Liking to me, and would not be quiet unleſs I came often to ſee him, and I uſed often to ſit with him in an Evening and bear him Company, and it was a great Surprize to me when I heard he was taken up, for he uſed often to drink a Health to King *George*, and hoped he ſhould get up to ſee him, and hoped this would be a quiet Nation again. He was then ſo weak that he could not ſtir Hand or Foot. But he uſed to call me *Vulcan*, and bid me drink King *George*'s Health.

Mr. *Hungerford.* How long is it ſince he was ſo weak that he could not ſtir Hand or Foot?

Richardſon. About a Year and five or ſix Months. And when he got abroad I then was forced to follow him for what he owed me, and I have gone after him ſeveral Times to the *Grecian* Coffee-Houſe.

L. C. Baron. Have you any thing more to ſay?

Priſoner. No.

Mr. *Sol. Gen.* My Lord, I muſt beg Leave (by Way of Reply to what has been offered on Behalf of the Priſoner) to ſay, That this is a Cauſe of very great Concern to the King, to the Royal Family, and to the whole Kingdom in general; and I may with Juſtice affirm, that this Day one of theſe two Points muſt be determin'd; either that the Priſoner at the Bar is guilty of High-Treaſon, or that no Man can, as the Law now ſtands, be convicted of holding a foreign, traiterous Correſpondence, if this Evidence be not ſufficient; for here has been the ſtrongeſt Evidence given of ſuch a Correſpondence, as I believe ever was, or perhaps ever can be given, according to the Nature of the Thing.

The Gentlemen of the Jury will conſider the Nature of the Treaſon, as it is laid in the Indictment; it is for compaſſing and imagining the Death of the King; now, that reſts in the Imagination, and is compleat in the Mind; but there muſt be ſome open or public Act that muſt appear to you in Proof, to convince you that the Priſoner had that Imagination. There are three Overt-Acts laid in this Indictment, and we have produced Evidence ſufficient for the Proof of two of them, though if any one of them be prov'd it is enough. The firſt is, conſpiring, conſenting, and agreeing to raiſe an Inſurrection and Rebellion within this Kingdom, in Favour of the Pretender; and for conſpiring, conſenting, and agreeing to ſolicit and procure from *France*, Arms, Ammunition, Men and Money, to aid and aſſiſt in ſuch Rebellion; and the laſt is for compoſing and writing ſeveral treaſonable Letters, declaring his Intention and Reſolution to levy that War, and to raiſe that Rebellion.

The Evidence that has been given is of two Sorts; it conſiſts firſt, of Letters wrote by the Priſoner himſelf to his Correſpondents in *France*; and ſecondly, of Letters wrote to him by ſuch Correſpondents, ſignifying the Receipt of Letters wrote by the Priſoner to him, touching this traiterous Deſign. For Proof of the Letters wrote by the Priſoner, we have produced his Copy-Book of Letters, wherein they are entered, proved to be Part his own Hand-writing, and the reſt his Son's; and indeed it is a ſurprizing Thing, that that Copy-Book ſhould remain, which indeed is ſo rare a Way to perpetuate the Teſtimony of Treaſon, as I believe the like Evidence is never to be expected again; and it is abſurd to expect, when a Traitor writes in a foreign Country, that he ſhould be able to produce the Original Letters. The Proof of this Copy-Book to be his is beyond doubt; it is prov'd by his own Confeſſion, before three Witneſſes, and in very ſtrong Terms, *This*, ſays he, *is my Copy-Book of my Letters to my Correſpondents abroad.* Is it poſſible that ſtronger Evidence can be given? Nay, he goes farther, as a Noble Lord informed you; for when he was examining the Priſoner, and the Priſoner pretended that he was only a Conveyer of Letters, but did not write himſelf; ſays he, *As to what I have wrote, I appeal to my own Copy-Book of Letters.* They have brought indeed ſome Witneſſes to ſay, That they believe that the Copy-Book is not of his Hand-Writing, though they don't tell you whoſe Hand it is. But that is not material, nor of any Weight; for Copies of Letters are ſometimes enter'd by the Parties themſelves, and ſometimes by their Servants, or others whom they appoint, and that is the ſame thing; but to anſwer that fully, the Priſoner has confeſſed that Part of this Copy-Book was of his own Hand-writing, and the reſt of his Son's.

As to the other Letters from *D'Aulmay*, his *French* Correſpondent to him, which are many in Number, we have given the beſt Proof the Thing is capable of; we have produc'd the very Original Letters themſelves, directed to him, with the Poſt-Mark from *France*, found all in his Cuſtody, and confeſſed to be his Letters which he received from *France*, before three Witneſſes. This ſhews evidently that there was a traiterous Correſpondence, and is a plain Evidence, that the Priſoner ſent thoſe Letters mentioned to be received in *D'Aulmay*'s Letters to him, to which theſe were Anſwers, and the Letters exactly tally as to Dates, Circumſtances and Subject. If there had been but one of thoſe Letters ſent to the Priſoner, containing treaſonable Matter, it would have been Miſpriſion of Treaſon, if he had not diſcovered it; but his going on with the ſame treaſonable Correſpondence for Months together, and in ſo many Letters, in every one of which he charges the Priſoner with writing High-Treaſon, and he preſerving all thoſe Letters, concealing and keeping them cloſe; this is a ſtrong Evidence of his Approbation and Aſſent to that Treaſon and traiterous Correſpondence. And ſo it is in the common Caſe, if a Man meet accidentally, not knowing of the Deſign, and light into the Company of Traitors, and hear their Diſcourſe and ſay nothing, if he don't diſcover it, he is guilty of Miſpriſion of Treaſon only, as a bare Concealment; but if he comes a ſecond Time into their Company, and meet them again and hear their Conſultations, or the ſame Treaſon is propoſed and talk'd of, and he conceals it, he is guilty of High-Treaſon; becauſe it ſhews a Liking and an Approbation of their Deſign, and ſo it was reſolved in Sir *Everard Digby*'s Caſe. So here, all theſe Letters that came from *D'Aulmay*, and were kept up cloſe by the Priſoner, containing treaſonable Matter, ſhew his Approbation of the Treaſon, and are a ſtrong Evidence, that he ſent thoſe Letters to his Correſpondent *D'Aulmay*, to which theſe are Anſwers. It has been ſaid, that, admitting theſe Letters were ſent by *D'Aulmay* to the Priſoner, yet he is not anſwerable for what others write: That, ſurely, is a great Miſtake; for if what he writes be Treaſon, it is his Duty to diſcloſe it; and if he do not, but continue to receive ſuch Letters, this is a clear Proof of his traiterous Correſpondence, and by that he makes the Treaſon his own. They object farther, that the Priſoner was only a Conveyer of Mr. *Harvey*'s and the Duke *D'Aumont*'s Letters; but that this is otherwiſe, appears from the Letters themſelves, for moſt of them relate to himſelf, and are meant of himſelf, and of a Correſpondence with him; for it appears from his own Confeſſion in his Examination proved by three Witneſſes, that this *French* Correſpondence held from a little before the late Queen's Death, till a few Days before his Examination; which ſhews that the Correſpondence was his own, and carry'd on by himſelf.

In the next place we come to conſider the Expoſition and Meaning of theſe Letters, whether the Subject Matter be Treaſon or not; one of the Counſel for the Priſoner ſaid, there was nothing in them but about Dogs and Horſes; but that is a Miſtake, for thoſe were Mr. *Harvey*'s Letters, which talked ſometimes of Dogs and Horſes; but give me Leave to ſay, there ſeems even in them to be a good deal of Treaſon, intermixt with the Diſcourſe of Dogs and Horſes. Let us examine ſome of his own Letters, and ſee whether the Subject Matter be not treaſonable. It is not to be expected that Men will in theſe Caſes ſpeak out plain; no, the Treaſon is always to be dreſſed up in a Cant, and many of theſe Caſes have appeared in this Place. In my Lord *Preſton*'s Caſe, the Overt-Act charged there, was ſending treaſonable Letters to *France*, to give the Prince of that Nation an Account of our Strength and Forces here; thoſe Letters

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run all in a Sort of Cant, and it was in that Case pretended, that the Meaning was uncertain, and that no Body knew what to make of some of the Expressions in them; but notwithstanding that, both Judges and Jury took upon them to understand them, and he was found Guilty of High-Treason.

In the Letter of the 26th of *February*, *D'Aulmay* writes to the Prisoner, and desires to know some News, because the Interest of his Wife and Family, which, says he, is *Irish*, is concern'd in it, his Wife being a *Butler*, and of Kin to the Duke of *Ormond*. *Francia*, in Answer to that Letter writes him word, as for News, that he heard there was a Marriage in good forwardness between the Prince in *Lorrain* and one of the Arch-Duchesses. "Let me know, *says he*, what there is in it, since 'tis essential to the Interest of your Wife, that is to say, that *Ireland* as well as "*England* was concern'd in the Pretender's Marriage; for every one "knows who is meant by the Prince in *Lorrain*." Now see what Answer *D'Aulmay* sends back; he gives his Opinion freely, and thinks that this intended Marriage of the Chevalier *de St. George* (which by the way explains who the Prince in *Lorrain* was) with the Arch-Duchess, would not be a sure Way to bring his Affairs to an happy Issue. What was to be done then? *Why*, says he, *a Party-War would be much more to his Advantage.* Is not this easily to be understood? Is not this Party-War a Civil-War, an Insurrection, a Rebellion? *D'Aulmay* then giving his Opinion, that a Rebellion was the most eligible Way; what is the Prisoner's Answer? why he closes with the Advice, but says, *That Persons of Fifty or Sixty Thousand Crowns a Year can't with Prudence run the Hazard of losing such Estates, unless more Encouragement be given them:* What is this but soliciting Aid and Encouragement from *France*, for an Enterprize in which Men of Estates must run the Risque of losing them? It is said Persons in the Plural Number, not one single Person, though the Prisoner's Counsel endeavour'd to put such a Colour upon it; but it is plain in a Party-War many must be concern'd.

In his Letter of the 28th of *March*, after he had express'd a great deal of Uneasiness and Impatience, the Negligence and Delay of this Assistance from *France*, not usual in that Nation, after he had wrote again and again, and wonder'd the Delays were so great; at last, says he, *We are now to expect every thing from your Side the Water.* What can be the Meaning of this, but that the design'd Rebellion here was to be encourag'd from *France?* And this surely is as much as can be expected in an Affair of Treason, unless People were to write out plain, which is never to be expected, unless from Fools and Ideots, who cannot commit Treason. All *D'Aulmay*'s Letters to the Prisoner tally with those of the Prisoner's own, and pursue the same Design, tho' under a Cant which runs through most of them, as was in the Lord *Preston's* Case. In that Case there was the Cant of a Law-Suit, as in this; but my Lord Chief Justice *Holt*, and my Lord Chief Justice *Pollexfen* said, that would not acquit his Lordship of Treason, if the Jury understood them in that Sense as every Body else would. And why Words and Letters are not to be understood in Court, as every Body understands them out of Court, is a hard Matter to be explain'd.

It was indeed insisted by the Counsel for the Prisoner, that there really was a Cause recommended to the Prisoner's Care: that is very true; but then the Distinction between this private Cause, and the public Cause of the Pretender, appears from many of *D'Aulmay*'s Letters; sometimes he calls it our Cause, sometimes the Cause of our Common Friend, and in a very remarkable Letter of *D'Aulmay*'s, dated from *Paris*, 7 *August* 1715, he says, *The Prisoner was in the Right to inveigh against that Indolence he reproached them with*; *but be persuaded*, says he, *'tis only so in Appearance. I even hope, that by this Time you have convincing Proofs of it, and that we make suitable Returns to the good Disposition on your Side, and that at last, God blessing the good Cause of our Friend, will let him gain his Suit.* To explain this Letter, the Time is very material, for on the 20th of *July* before his Majesty inform'd his Parliament, that he had undoubted Intelligence of the Pretender's Design to invade these Kingdoms from Abroad. And in other Letters he distinguishes between the private Cause, and the Cause of the Pretender, and calls it my Cause. And in a Letter of the 14th of *September* 1715. *We know already*, says he, *what you tell us about the Cause of our Friend, which will soon end to his Satisfaction, or all Appearances will deceive us*; and then says, *as to my own Cause, I can't help telling you, that my Fate is very unhappy to have to do with so dishoneſt a Man*; if Treason be not meant by those Letters, what is? Let the Prisoner tell us the Meaning of them. Neither he, nor his Counsel, have offer'd at any other Interpretation, nor have offer'd to explain but one single Letter in the whole Packet; and that has been observ'd was a poor Interpretation, and contrary to the very Grammar and Sense of the Letter. But what puts this Matter beyond doubt, if there could be any, about the Meaning of these Letters, is, that he himself tells you in his Examination, in express and positive Terms, that the Subject Matter of the Letters that were to be communicated to Mr. *Harvey*, which are the Letters now produc'd in Evidence, *was the Intention of the Pretender to invade his Majesty's Dominions*; and when he himself has allow'd this, who is to gainsay it? Can you have a better Witness than himself, to the Subject of his own Letters, and to explain his own Meaning?

There have been some Reflections offer'd which by no means ought to have been, and I think were very improper on this Occasion; and it is our Duty to take notice of them when they are offer'd. It was said, by way of Reflection, that first of all, the Prisoner's Books and Papers were seized, and then they were turn'd upon him, and made use of against him, as if this was illegal, unusual, and new; when every Body knows in those Cases, there can be no other Evidence; and is the same that has been done in all Ages past, and must be done in all Ages to come. I am sure they have no Reason to charge the Government with Inclemency; there has been shewn, even in this very Case, as much Clemency and Tenderness as was possible. When the Noble Lord, my Lord *Townshend*, had the first Information of treasonable Practices against the Prisoner, he had been justified, if he had immediately sent his Warrant and sent him to *Newgate* for High-Treason; but instead of that, he was cautious, and was willing to be further inform'd before he committed him; and therefore he sends to the Post-Office and orders his Letters to be stop'd, in which he found the treasonable Correspondence confirm'd; and then he was taken into the Custody of a Messenger only, in order to be examin'd. His Lordship thereupon gave him all the Opportunities he could desire, of throwing himself at his Majesty's Feet; but he grosly prevaricated with his Lordship, as appears by that Letter wrote to his Wife; wherein he takes Notice, that in *Newgate* they were all Tories, and the Majority for the Government, *i. e.* sent thither upon that Account: "You know, "*says he*, why I am here, which can't be a Dishonour to me, be then at "ease; I have not said any thing against Mr. *Harvey*, nor nothing can "be done to him; he can only be suspected to be the Pretender's Friend."

And now give me Leave to take notice, that in this Letter he gives a further Explanation of this Business; for he says, *According to their Information*, i. e. *the Tories, though every thing should fail, my Lord* Townshend *could do nothing, for Affairs will be at an End in less than a Fortnight.* Now the Time is very material, every one knows that the Rebellion was just then breaking out; it began in *Scotland* in *September*, and in *England* in *October* following. They have call'd some Witnesses to the Prisoner's Reputation, but they have not proved any thing material on that Head, nor given a tolerable Account of him. But if they had, it would in this Case be of little or no Weight; when a thing is doubtful, Reputation may sway a little, but in Cases where the Evidence is so full and plain as in this Case, it can have no Signification or Weight. It was observ'd by us, that when the treasonable Correspondence began to be more plain and full, then the Prisoner desisted from entering his Letters in his Copy-Book; in Answer to which, it was urg'd by the Prisoner's Counsel, that it was improbable it should be so, for that the Correspondence was entirely interrupted for several Months together, because, as they insisted in one of *D'Aulmay*'s Letters, dated 17th *September*, he complains he had not heard from the Prisoner in three Months; but that is grounded on a Mistake, for the Person that uses that Expression is not *D'Aulmay*, but another Person, and it is wrote in *French* in a Postscript under *D'Aulmay*'s Letter; for in the Beginning of the Letter itself, *D'Aulmay* expresly says, he had received the Prisoner's Letter of the Ninth Instant, which shews the Correspondence continued, but was too gros to enter such Letters in his Copy-Book, or to write under the same Name; for now, he says, when he has any thing material, he would write in a strange Hand, and would sign it by the Name of *Jacques Chrétien*, and that Mr. *Harvey* might write under the same Name too; but none of these Letters appear.

Thus I hope I have answer'd every thing that has been materially objected by the Prisoner's Counsel, and if you, Gentlemen of the Jury, do believe that the Prisoner at the Bar wrote these Letters, the Copies whereof have been produced to you, and that those Letters produced from his Correspondent *D'Aulmay*, were received by the Prisoner, and that he wrote the Letters therein mentioned, and that he has therein carried on a traiterous Correspondence, you will acquit yourselves to your King and Country, and find him Guilty of the High-Treason charg'd upon him.

Mr. *Cowper*. My Lord, it may be proper on this Occasion, Mr. *Solicitor* having repeated the particular Parts of the Evidence, to take notice of some Things that have appeared in general in the Course of this Trial: We think it of Importance to the Public, that this traiterous Correspondence should appear in a proper Light, that the deluded Populace may be no longer to seek, who were the Persons that incited and fomented the late unnatural Rebellion.

The Gentlemen of the Jury will observe, that our Evidence begins with a secret Information which was given to a Noble Lord who was then Secretary of State, of a traiterous Correspondence carried on by the Prisoner and his Accomplices: That Information was not immediately or hastily relied upon, but Orders were given that all Letters, directed to *Francia* the Prisoner, should be intercepted at the Post-Office; accordingly you have heard, that several Foreign Letters from *France*, directed to the Prisoner, were stopp'd, and sent to the Secretary's Office; those Letters fully disclosing the Treason, it was thought Time to issue a Warrant, and send a Messenger to seize the Prisoner and his Papers; and it is to us wonderful, that one of the Counsel for the Prisoner should undertake to censure that Proceeding, the Neglect of which must have been censured, if it had not been done: After an Information receiv'd of so vile and dangerous a Conspiracy, confirmed and made evident by Letters intercepted, was it possible for one, entrusted in so high a Station under his Majesty, to do less than to cause the Person and Papers of the Prisoner to be secured?

You have heard, Gentlemen of the Jury, that from the Time of seizing the Letters and Copy-Book of Letters, in the Lodging and actual Custody of the Prisoner, there is a regular and certain Proof, as to the Identity of the Book and Papers produced at this Time, and given in Evidence; they were carried by the Messengers just as they were taken, to Mr. *Walpole*, who delivered them to Mr. *Buckley*; and the Witnesses all speak likewise to the Book and Papers themselves; so that there remains no manner of Dispute concerning them.

Amongst these Papers, Gentlemen, you will observe, there is one Letter that relates to Mr. *Harvey*, which is now produced because it is Evidence against the Prisoner *Francia:* He, it seems, was to manage Mr. *Harvey*'s Correspondence, and did so for a considerable Time, but at last Curiosity prevail'd; and it is very remarkable, by what Accident that Original treasonable Letter happens to appear now in this Place: It seems the Prisoner, in Breach of the Trust and Confidence which was reposed in him, and to gratify his Curiosity, opened the Letter, and finding he could not seal it up, and put it together again in that Manner, but that it might be suspected he had opened it; for that Reason he himself kept the very Original Letter under Mr. *Harvey*'s own Hand. When that Letter comes to be read, it appears to be mysterious, as to the Figures and Numbers made use of, instead of the Names of Persons, but the Prisoner's Examination explains it, which shews he was Master of the Key, and of the Secret.

This Discovery was attended with Circumstances that will have their Weight, in a Cause of this Nature: When this Letter found upon the Prisoner is produced to the Person that wrote it, before a Committee of the Lords of the Council, you have heard that he was in the utmost Disorder,

order, as indeed well he might, that he expreſs'd himſelf ready to diſcloſe all that he knew; for what Perſon being in his Condition, and ſeeing one of his own Letters, which he believed ſafe in the Hands of his Correſpondents Abroad, would not have believed the Government Maſters of the reſt; I dare ſay *Francia*'s impertinent Curioſity was then unthought of and unſuſpected. I am ſorry, Gentlemen, to mention a particular Accident, which, however, ſerves to ſhew that the Correſpondence was of a dangerous Nature, otherwiſe what Account can be given, that that Gentleman ſhould, in about twelve Hours after, make a deſperate Attempt upon himſelf?

Mr. *Hungerford*. My Lord, I apprehend that nothing of this Matter ought to be mentioned here; whatever Mr. *Harvey* was liable to, he is now at Liberty.

Mr. *Cowper*. I ſay, my Lord, it had that Conſequence, and if it had not been a Diſcovery of the utmoſt Importance, if it had not been thought very dangerous in its Conſequence to himſelf, that Attempt upon himſelf had never been made: But ſo it was, and it is ſo far material, as it was occaſioned by Part of that Correſpondence which the Priſoner was employ'd to tranſmit to the Conſpirators in *France*.

You have heard, Gentlemen, that *Francia*, when he was firſt examined, capitulated for himſelf; that he promiſed to make a full Confeſſion, and accordingly gave in a firſt, and ſecond Information, which have been read to you; and I dare ſay, when he ſigned thoſe Examinations, he really intended to ſave himſelf by a Diſcovery of his Treaſon; but when he had taken Counſel with his Party and Fellow-Priſoners in *Newgate*, you find, by his Letter to his Wife, he changed his Mind, and the Expreſſion is to this Effect, *He hopes he had ſaid nothing that could hurt either himſelf or Mr.* Harvey, *and that he laugh'd at any thing the Government could do to himſelf*.

Your Lordſhip has heard how artificially and maliciouſly it has been inſinuated, that the Noble Lord, the Secretary of State, gave ſome Hopes of Interceſſion to be made in Favour of the Priſoner; I firmly believe, no Man living that knows that Lord, but thinks he would have been better than his Word, if the Priſoner had honeſtly deſerv'd it. Whatever was ſaid upon that Occaſion, proceeded from the Priſoner's Aſſurances, that he would make a full Confeſſion, that was the Ground and Condition upon which the Priſoner was told he ſhould be recommended to Mercy. But let the World judge, whether that Noble Lord could juſtify it to the King, his Country, or to himſelf, to interpoſe in his Favour, when he came to diſcover, by a Letter under the Priſoner's own Hand, that he was reſolved to conceal all that he knew: Surely, the Condition being broke by the Criminal himſelf, it became the Duty of the Noble Lord not to intercede for an obſtinate Offender; one, that was determined to abide every Extremity, rather than do his Duty, by diſcloſing thoſe Treaſons that were latent in his Breaſt; ſo that we owe the Diſcovery which is made by the Examinations to the ſame Providence that has brought to Light the reſt of the Evidence in a ſtrange and wonderful Manner.

After ſo much Time has been ſpent, it would be tedious to obſerve the particular Paſſages of the Letters which have been given in Evidence; only this I would obſerve, that when the Rebellion was not ſo near at hand, there ſeems to be ſome little Caution uſed in penning the Letters which have been read out of the Copy-book; but as the Time grew near, the Correſpondence alſo grew more warm and open, as may be perceived by the Letters from Abroad; which is the Reaſon, Gentlemen, you find him diſcontinue entering his own Letters in his Copy-book. It has been ſaid by his Counſel, Can it be imagined that a Man would copy and enter Letters of a criminal Nature? but, Gentlemen, the Queſtion is, Whether he has done it? And you hear it proved by three Witneſſes, that he owned it to be his own Copy-book of Letters to his Correſpondents Abroad; ſo that there can remain no doubt, but that every Letter in that Book is a Copy of the Original wrote by the Priſoner: Whoever will obſerve the Time when he diſcontinues entering his Letters as formerly, which was juſt as the Rebellion was breaking out, will think it a ſtrong Evidence, if Evidence were wanting, that the Letters enter'd, contained a criminal and traiterous Correſpondence.

Had the Correſpondence been innocent, the ſame Method would have been continued; for the Rebellion had nothing to do with the ſham Law-Suit. But as the Rebellion grew nigh, it became neceſſary to be more expreſs and plain, as appears by all the Letters to *Francia* from Abroad; which is the true Reaſon he diſcontinued entering his own Letters. Can any Body that can hear or read, doubt, but that the Priſoner continued to write to his Friend *Payen?* I think there is not one Letter directed to the Priſoner that don't in the firſt Line of it acknowledge the Receipt of the Priſoner's, *Yours of ſuch and ſuch a Date I have received*; and ſome of them acknowledge the Receipt of two Letters from the Priſoner at the ſame Time, which ſhews his Diligence, and proves, that he writ oftener to his Correſpondent than his Correſpondent to him. You ſee, Gentlemen, the Letters from *D'Aulmay*, alias *Payen*, to the Priſoner make it manifeſt he went on to the laſt in the ſame traiterous Correſpondence; but it can't be expected his original Letters ſhould be produc'd. *D'Aulmay*'s Letters plainly intimate the Tenour of the Priſoner's: I will trouble you but with an Inſtance or two amongſt many that might be obſerved.

Of this kind are all thoſe Letters which diſſuaded the Priſoner from being impatient; that give him Aſſurance they are not dilatory; that promiſe him every thing will anſwer his Expectation. All theſe, and many other Expreſſions of the like kind, manifeſting that he was ſolliciting Aid from *France*, and that he did what in him lay to incite, promote, and encourage an Invaſion from Abroad, and the Rebellion at Home.

This, Gentlemen, is the Nature of the Evidence that has been laid before you: The Diſcovery was accidental, the tracing of it is ſtrange and wonderful. Deep and ſecret are the Councils of Traytors; and yet we ſee, let them be never ſo cautious, whatever Method they may take to diſguiſe their Treaſon, whatever ſubtile Inventions may be uſed to carry on their Conſpiracy, yet the ſame Providence that has placed his ſacred Majeſty upon the Throne of his Anceſtors, will continue to guard and protect him, and to baffle the Devices of his Enemies. Upon the whole Matter, we think we have fully prov'd the Treaſon and the Overt-Act laid in the Indictment. We think it may reaſonably be concluded from the Evidence, that the Priſoner has conſpired, conſulted, and agreed to raiſe and levy War within this Kingdom, to depoſe and murder the King; that he has written to and received from his Correſpondents Abroad many Letters to procure foreign Aſſiſtance for that Purpoſe; and the Court will inform you, Gentlemen, that this is Treaſon in the Priſoner at the Bar.

L. C. Baron. Gentlemen of the Jury, *Francis Francia* ſtands indicted of High-Treaſon, for compaſſing and imagining the King's Death; contriving to depoſe him from the Throne, and to advance the Pretender to the Crown. And there are laid in the Indictment ſeveral Overt-Acts; one is, that he conſulted and agreed to raiſe an Inſurrection and Rebellion againſt the King: And that for that Purpoſe he wrote Letters to divers Foreigners, to ſollicit and procure Arms, Men, and Money, and to cauſe an Invaſion; and cauſed thoſe Letters to be ſent to divers Foreigners in *France*.

This is the Subſtance of the Indictment; and to prove this, it has been ſhewn you how he was taken and ſeized. And Mr. *Smith* tells you, it was upon the Nineteenth Day of *September*, 1715, that he had a Warrant to ſeize him; That he went with another Meſſenger, ſince deceaſed, whoſe Name was *Wilcox*, and found him and a Woman in Bed. The Priſoner in a little Time got up. He tells you there was a Cloſet in the Room, the Door whereof he cauſed to be open'd, and in it, upon a Shelf, found a Parcel of Letters lying open in Folio, wrote in *French*, and a Book, that has been produced, lying upon the Deſk. He put up the Letters and the Book together; when he had ſo done, ſays the Priſoner, *What do you take that Book for? That is my Copy-Book of my Letters to my Correſpondents, and there is nothing material in that.* The Meſſenger took notice of a Sort of Writing at the End of it, that he knew it by again, and the Priſoner ſaid, *That was his Son's Writing*. It has been deduced to you, that the Book and the Letters that have been produced to you, are the ſame Book and Letters that were ſeized in the Priſoner's Houſe, and carried to my Lord *Townſhend*'s Office.

Mr. *Walpole* tells you on what Day the Warrant was granted, and that the next Day the Book and Papers were delivered to him by the Meſſenger; that he looked over them with Mr. *Buckley*, and then he carried them to my Lord *Townſhend*; and that the Priſoner owned the Letters upon his Examination before my Lord, and ſaid, *This is my Book of my Letters to my Correſpondents: ſome of them were enter'd by me, and the reſt of them by my Son.* This is prov'd to be the ſame Book; and upon Peruſal of the Letters, Mr. *Walpole* proves them to be the ſame that were brought to him by the Meſſenger.

Mr. *Buckley* ſays, that when theſe Letters were brought to the Office, he read ſeveral of them; and that when Mr. *Walpole* went to *Holland*, they were left with him, and he copied ſeveral Paſſages out of them. Mr. *Buckley* was preſent at the Priſoner's Examination, but can't ſay any thing as to the Book's being ſhewn to him, becauſe he was buſy in taking the Examination; but ſays, that *Francia*, upon his Examination, would not be ſworn upon a *New Teſtament*; but took a Book out of his Pocket, and was ſworn upon that, that his Examination was true. He ſubſcribed his Name to it, and it was read over to him. It was objected, that he was refuſed the Liberty of reading it: But there was no ſuch Thing; he might have read it, and it was read to him, and he was never refuſed to read it.

My Lord *Townſhend* informs you, that he having received an Information, that a Correſpondence was carried on between the Duke *D'Aumont*, the late Duke of *Ormond*, and Mr. *Harvey*, and that Letters paſt between them by means of the Priſoner, there were Orders ſent to the Poſt-Office, to ſtop all Letters directed to *Francia*; that the Priſoner being examined before my Lord, own'd all theſe Letters. And ſays he, *As to my own Letters, I appeal to my Book which will ſhew them*, theſe are ſo many Evidences that he owned this Book to be the Book of his Letters. *What others write to me*, ſays he, *can't affect me; but as for my own Letters I appeal to my Book.* My Lord ſays, there ſeemed to be a Diſpoſition in him to tell all he knew, and he offered to explain the Letters there produced; that at the next Time Mr. *Harvey*'s Letter was produced, and he explained the Figures in that Letter; and my Lord *Townſhend* then took him to be ſincere, but he found afterwards, that he had not diſcovered all he knew. Theſe Letters were laid upon the Table during the Time of the Examination, and were taken back again. The Priſoner aſked ſeveral Queſtions about Money being given him, and more offered to him, by my Lord *Townſhend*. My Lord gave an Account of that, and ſays, that the Priſoner pretended to be in a miſerable Condition, his Wife ſtarving, and he begg'd hard for ſomething, pretending to be miſerably poor; and as he was going away, as meer Alms, my Lord gave him three, or four, or five Guineas, not as any Encouragement to him to ſwear any Thing, but as meer Alms, becauſe he begged ſo hard, and pretended to be in ſo miſerable a Condition. Then he deſired to know, whether it was not promis'd him, that his Examination ſhould not be produced againſt him. He was told, that if he was candid there ſhould be no Advantage taken againſt him, and that my Lord would intercede on his behalf; and if he had been ſo, no doubt, my Lord would have done what he could to incline the King to be favourable to him; but after this, my Lord found he knew a great deal more than he would diſcover. His Wife came indeed to my Lord, and pretended ſhe could prevail upon him to diſcover, if ſhe might be admitted to him; but after this, when he was in *Newgate*, a Letter was found directed to his Wife, in which he ſaid, he met with good Company in *Newgate*, and hoped he had ſaid nothing againſt Mr. *Harvey* which would prejudice him; and upon this, my Lord *Townſhend* did not think him ſo ſincere as he pretended to be at firſt. Mr. *Buckley* proves that Letter to be of his Hand-Writing. In it he deſires his Wife to make herſelf eaſy, *They were all Tories that were there; he had good Company, and the Buſineſs will be at an End in a Fortnight.* What Buſineſs could he mean? Nothing but that about which the Correſpondence was, and *God will aſſiſt us; I know nothing againſt Mr.* Harvey, *he is only ſuſpected to be for the Affair, he was well known to be ſo before*; and *if all were here that are ſo, he* believed *three Parts of the Nation would be there.* So that he had a good Opinion of the Cauſe, and that it would be over in a Fortnight.

This Examination was alſo prov'd by Mr. *Stanhope*, who ſays, that the Letter of Mr. *Harvey* annexed to it, was produc'd at Council to Mr. *Harvey*; that he was in the utmoſt Confuſion, chang'd Countenance, deſired to withdraw, and to have liberty to ſpeak to a certain Lord: My Lord *Townſhend*, and Mr. *Stanhope*, both thought him in a good Diſpoſition to diſcover, but that very Night he ſtabb'd himſelf. As to the Examination, he pretended he was not ſuffer'd to read it; but Mr. *Stanhope* ſays, that every thing of Conſideration was repeated more than once or twice; and after the firſt Night's Examination, he repreſented himſelf to be in a miſerable Condition, and thereupon my Lord *Townſhend* did give him ſome Money, what it was he knows not; and this was after he had ſign'd his Examination, and ſhew'd no Reluctancy to it; and ſays, that he would not have been denied to have read it, if he had deſired it. This Examination being thus proved, it appears to have been taken as fairly and carefully in all reſpects, and with as much Kindneſs to the Priſoner as could be: Things were gone over and over again. It has been read, and there are ſome things in that explain this Correſpondence, and tell you how it was begun and carried on.

It was begun by means of a Law-Suit that was recommended to him to manage here, and that brought on the Correſpondence between him and the Abbot *Butler:* This began a little before the Queen's Death, and it continu'd till within a few Days of the Priſoner's Examination. During that Correſpondence he received ſeveral Letters from the Abbot, directed to Mr. *Harvey*, and ſeveral were conveyed to the Abbot from Mr. *Harvey*, which were ſometimes brought by Mr. *Harvey* himſelf, and ſometimes ſent by other Hands. The Priſoner alſo explains the initial Letters and Numbers in Mr. *Harvey*'s Letter, and then tells you, that he believes the Subject Matter of the Letters wrote to Mr. *Harvey*, by *Payen alias D'Aulmay*, was the Deſign of the Pretender to invade theſe Kingdoms; this he could not know, unleſs he had been privy to the Deſign. If a Man is privy to a treaſonable Deſign, and contributes to carry it on, it is not then barely a Miſpriſion: If he comes to the Knowledge of Treaſon, without being otherwiſe concern'd in it, and does not diſcover it to a Magiſtrate, this is Miſpriſion of Treaſon; but if he aſſents to the Treaſon, or acts in carrying it on, it is High-Treaſon.

In the next Examination it is, that he ſhews what the Marks in Mr. *Harvey*'s Letter ſignify: That 22 is the Duke *D'Aumont*, 6 the *French* King, 17 is the Word Tory, and believes that by 8 is to be underſtood the Pretender, and by 9 is to be underſtood his Majeſty. There are ſome Marks that he don't know, but his knowing thus far the Signification of theſe Marks, ſhews that he was privy to the Deſign.

Mr. *Harvey*'s Letter is annex'd to this Examination, and that has been read to you; there are ſome things remarkable in that Letter, though a great part of it ſeems to be about ſome Money that he wanted to be paid him; yet at the end he ſays, *Preſs* 22 *to think of his Friends*; *it will be well for* 6; *all things look well for* 8, *and in my Heart, I think better than ever*; 9, ſays he, *Every Day loſes himſelf, and for the* 24000 *that makes for* 8 *and* 6, that is, for the Pretender and the *French* King. He ſays, that opening the Cover the Letter ſtuck to the Seal, and that was the reaſon that he kept it by him, and did not ſend it forward. If this Man had not been for carrying on the Deſign, it had been his Duty to have carried this Letter to the Secretary of State, he ought to have diſcover'd it to a Magiſtrate; but inſtead of that, he owns, that he has ſince written other Letters that have been read to you.

At the beginning of the Correſpondence *D'Aulmay* deſires to have ſome News, and *Francia* tells him, there was a Diſcourſe of a Marriage in Forwardneſs between the Prince at *Lorrain* and the Arch-Dutcheſs. "Let "me know, *ſays he*, what is in it, for it is for the Intereſt of your Wife, "for he had married a Wife whoſe Name was *Butler*. *D'Aulmay* writes "word again, As for the Marriage of the *C——r St. G——e*;" but it is in Anſwer to the former Letter, and it is known that he was called by the Name of the Chevalier *St. George*; ſo that it muſt be the ſame Perſon. He ſays, there had been ſome talk of that Marriage, but no mention had been made of it lately, *I am of Opinion*, ſays he, *that it will not be a ſure way to bring his Affairs to a happy Iſſue*; *a Party-War would be of more Advantage: Francia* writes again to *D'Aulmay*, and complains, that *ſome Letters had not been anſwer'd, tho' entirely for the Affair.* And what that Affair is, muſt be left to you to judge. *Beſides*, ſays he, *I muſt tell you, that Perſons of Fifty or Sixty Thouſand Crowns a Year won't run the Hazard of loſing ſuch Eſtates, unleſs more Encouragement is given them*; *you will be underſtood if you mention it to that Lord. And I muſt add, that the Misfortune of a certain Perſon is more owing to your Delays on the other Side the Water, than to the Party that is againſt him.* They would have you think, that by Perſons of Fifty or Sixty Thouſand Crowns a Year, was meant a Perſon in *France*, that had ſuffered by being concerned in the Revenues; but it is plain, it is meant of Perſons here, that would not Hazard their Eſtates: And he adds, *You will be underſtood if you mention this to Duke* D'Aumont.

There are other Letters from the Priſoner; in one he tells *D'Aulmay*, He would adviſe them to ſatisfy Mr. *Harvey*, *I am perſuaded to deal with him as has been done is no good Policy*; *and if ever I have the Honour to talk face to face with you, I will ſhew you clearly, how unhappily, through Negligences, very important Affairs have miſcarried*; this muſt be the Affair of the Pretender, and not of the Law-Suit: The Affair that concerned Mr. *Harvey*, for Mr. *Harvey* had nothing to do with the Law-Suit, but by his Letter ſhews himſelf to be concerned for what makes for 8 and 6, that is for the Pretender and *French* King.

There is another Letter from *Francia*, wherein he writes, *What you tell me at the End of your Letter, of your having ſpoken in the manner I deſir'd you, is ſufficient, and conſequently we are now to expect every Thing from your Side of the Water, that is to ſay, Explications*, &c. I muſt leave it to you to conſider what he meant by that.

In another Letter he ſays, *I am order'd to tell you, on the part of Mr.* Harvey, *that you will do him a Pleaſure in deſiring the Duke* D'Aumont, *in his Name, to ſend hither ſome Perſons to fetch the Horſes and Dogs he has had ſo long, or elſe to ſend Orders to ſome Body to take them: Affairs are here in ſuch a Situation, that great Precautions muſt be uſed to avoid giving Umbrage to thoſe who are in Power. When I have any thing particular to write to you, I will do it by a ſtrange Hand, and will ſign* Jacques Chrêtien. *Take Notice of this, and provided you let me know you received this Letter, without its having been opened, I ſhall be eaſy.* There then began to be more Difficulty, and therefore the Correſpondence muſt be carried on in that Name, and in a ſtrange Hand.

In another Letter he writes, *Mr.* Harvey *gives his Service to you, and bid me tell you, when any thing new offers, if he cannot write himſelf, he will get* J. C. *to write for him.* That muſt be *Jacques Chrêtien.*

Then there are other Letters from *D'Aulmay* to *Francia*, which were found in the Priſoner's Cuſtody; and ſeveral of them import his having received Letters from *Francia*. In one of them *D'Aulmay* ſays, *You are in the right to inveigh againſt the Indolence you reproach us with*; *but be perſuaded, 'tis only ſo in Appearance. I even hope, that by this Time you have convincing Proofs of it, and that ſuitable Returns are made to the good Diſpoſitions of your ſide.* This grew near the Time of the Rebellion. This Letter was dated the 7th of *Auguſt*, and the Rebellion broke out in *October*. He goes on, *And that at laſt, God bleſſing the juſt Cauſe of our Friend, will let him gain his Suit*; *at leaſt, Aſſiſtance and powerful Sollicitations ſhall not be wanting.*

There are other Letters which ſhew he knew the Deſign, and was privy to it; *Our Friend's Cauſe will ſoon be ready, God willing, to be tried.* That could not be the Law-Suit depending on this ſide the Water; for that Letter was wrote from *France*; and he ſays, *All Preparations are making for it. The Friend who is related to my Wife*, that is, the Duke of *Ormond, has read your two Letters, and is mightily pleas'd with them.* Which implies, that he had wrote Letters, though they are not entered in the Copy-Book.

Then he writes upon the 24th of *Auguſt*, under the Name of *Payen*; *I am very much aſtoniſh'd I did not hear from you by the Poſt which arriv'd Yeſterday. Our Friend was at my Houſe expecting it. We both of us deſire you not to let one Poſt go without writing to us, and letting us know all that paſſes relating to the Cauſe of our Common Friend.* That can't be the Cauſe of *Butler*'s or *D'Aulmay*'s Friend that was depending here. There are ſeveral other Letters which have been read to you, which mention both thoſe Cauſes, and ſhew that he made a Diſtinction between them.

On the 14th of *September*, ſays *D'Aulmay*, *The Contents of your laſt without a Date were very agreeable to me, as well as to all our Friends, who give you Thanks for it, and have order'd me to tell you ſo, and to deſire you to continue. We know already Part of what you tell us about the Cauſe of our Friend, which will ſoon end (pleaſe God) to his Satisfaction, or all Appearances would deceive us. As to my own Cauſe, I can't help telling you, that my Fate is very unhappy to have to do with ſo diſhoneſt a Man.*

I think this is the Subſtance of moſt of the Letters that have been read to you, which relate to his Correſpondence, in endeavouring to procure the Pretender to make an Invaſion here.

Upon theſe Letters it has been obſerv'd, that the Cauſe of the Pretender is one, and the Cauſe of the Law-Suit is another; but in all theſe Letters there is plain Mention made of the Pretender; adviſing how to bring it on, and giving Intelligence about it. And theſe Letters being in the Priſoner's Cuſtody, and written to him, and having ſuch Treaſon in them as is mentioned; and he keeping theſe Letters by him, is a great Evidence that he aſſented to the Tranſaction, and to the endeavouring to bring the Pretender over, and to contrive, as well as he could, to carry on the Affair. If he had receiv'd but one Letter, and did not deſign to promote the Cauſe, he ſhould have carried it to the Secretary of State, and then he had done his Duty. But to receive ſo many Letters, and to keep them ſo long, is an Evidence that he aſſented to the Matter, and that he did write ſuch Letters as are mentioned to be received from him.

On the Behalf of the Defendant, there was an Objection made by his Counſel, that the Defendant is an Alien born; and that is an Objection to the Indictment. He is indicted as a natural-born Subject, and they have examined ſeveral Witneſſes to prove him an Alien. The Proof is ſtrong, and you will find him an Alien, and ſo that Matter muſt be left ſpecially for the Judgment of the Court, and you muſt find the other Fact: And if you believe that he did promote the Invaſion, or conceal and aſſent to that Deſign, that is, a conſpiring the Death of the King, then he will be guilty of the Treaſon charg'd in the Indictment.

It has been objected, that in one of the Letters, the Perſon who wrote thoſe Letters complains, that he had not heard of the Priſoner in three Months; but that is a Miſtake, for that was in a Poſtſcript wrote by another Perſon, and in a different Hand; for the very ſame Letter ſhews, that there were Letters received from him within that Time.

They ſay, there is no direct Proof that he intended the Life of the King; but if he kept a Correſpondence, and promoted the intended Invaſion, that is in Law conſpiring the Death of the King.

They have produced ſome People who have given an extraordinary ſort of Evidence, of what Mr. *Buckley* and my Lord *Townſhend* ſhould ſay about this Matter, as if they promiſed him great Things, if he would ſwear againſt Mr. *Harvey*. *Simon Francia* ſaid, that Mr. *Buckley* told him, if his Brother would ſwear againſt Mr. *Harvey*, he ſhould have a good Reward; and that my Lord *Townſhend* ſaid, he had given him Five Guineas, and he ſhould have more.

Lucy White ſaid, that ſhe was in *Newgate*, and *Francia* deſir'd her to conceal herſelf when Mr. *Buckley* came: That Mr. *Buckley* told him, he muſt ſwear right or wrong for the Government; and if he did not ſwear againſt Mr. *Harvey*, Mr. *Buckley* would charge him with High-Treaſon, for he had cheated my Lord *Townſhend* of his Money, and done nothing for it.

Mary Meggiſon ſwears, that Mr. *Buckley* ſhould ſay, he would ſwear againſt him, becauſe he had cheated my Lord *Townſhend* of Five Guineas, and would not ſwear againſt Mr. *Harvey*.

Mr. *Buckley* was called again, and he denies it: He ſays there was no ſuch Thing. And it ſeems improbable that a Man of his Credit ſhould talk thus to the Priſoner; therefore the Credit of Mr. *Buckley* muſt be left to you, againſt the Credit of thoſe two Women. He tells you, that *Francia* ſent to him, to deſire to ſpeak with him, not about Mr. *Harvey*, but on Behalf of one *Flint*, who is a Priſoner in *Newgate*, and was concern'd

concern'd in writing the *Shift-Shifted*; and *Francia* ſent a Meſſage to Mr. *Buckley*, that he could do a Service in ſuppreſſing it. Mr. *Buckley* went to him, and he deſired ſome Favour on Behalf of *Flint*, which was granted: And Mr. *Buckley* denies he had any Diſcourſe with the Priſoner about Mr. *Harvey*.

Revell was called, and he proves, that *Francia* ſent him to Mr. *Buckley*, to deſire he might ſpeak to him. That he order'd *Revell* to ſtand at the Door, and he did ſo, but did not hear what they ſaid.

My Lord *Townſhend* tells you, that Mr. *Buckley* gave him an Account, that *Francia* had ſent to him, for the Purpoſe which he mentioned before: That my Lord ordered him to go: That he went accordingly, and he gave my Lord an Account what he had done about the Matter, and *Flint* had ſome Favour ſhewn him.

As to *Simon Francia*, my Lord ſays, he was ſeveral Times with him, but my Lord never propoſed any Reward for Swearing againſt Mr. *Harvey*; but told him, his Brother muſt deal openly, and tell all he knew, and that was the way to recommend himſelf to Favour.

As to the two Women, their Credit muſt be left in Oppoſition to my Lord *Townſhend* and Mr. *Buckley*, which of them you will believe, for they deny what the others have ſworn.

Then they call another Witneſs *Everall:* he tells you, that the Priſoner's Foreign Letters were brought to his Houſe; that they lay in an open Window, and ſometimes remained there ſome Days, and any Body might ſee them; and from thence they infer, that they muſt be of no great Conſequence: But how can you infer that? Who can tell by the Superſcription of a Letter who it comes from, or what are the Contents of it? But theſe People can't ſay that theſe were all the Letters that were ſent to him.

There is an Objection made to the Book; a Witneſs ſays, he has looked upon it, and that none of the Book ſeems to be of his Handwriting; he ſays, *Francia* writes a fuller Hand. *Simon Francia* has look'd upon it, and ſays, not a Syllable is of his Writing; and others tell you, they believe it is not his Hand, and that he was three Months lame of a Rheumatiſm. As for that, it is not material whoſe Writing it is, if it contains the Copies of his Letters, and he has own'd before three Witneſſes, that it is the Copy-Book of his Letters.

Dr. *Cade* tells you he was ill, and thence they infer, that it is not probable that he ſhould write Letters ſo conſtantly as he did. He tells you, that from the Second of *November* 1714, to the Eighteenth of the ſame Month, he was in pain in one of his Hands, but does not know which of them, nor whether he was able to write: But this was before this Correſpondence by Letters that have been read to you began.

Then they call ſome Witneſſes to his Reputation: One tells you, that in Diſcourſe with him about the late Peace, he ſaid, it would ruin the Nation; that ſort of Evidence is of no Signification. Mr. *Slater* has known him four or five Years; there was a Commiſſion of Bankruptcy againſt him, on which Occaſion he became acquainted with him. He ſays, he always ſeemed to eſpouſe the Intereſt of the King of *France*, but he always laugh'd at our Parties among ourſelves. Thoſe that were for the Intereſt of *France*, would of Conſequence laugh at our Diviſions.

Richardſon ſays, that he uſed to go to the Priſoner often in his Sickneſs, and knows no harm of him? That *Francia* liked him, and called him *Vulcan*, and bid him drink King *George*'s Health, and drank it himſelf.

This is the Subſtance of the Evidence that has been given on both Sides: Now, if you believe theſe Letters were wrote to him and by him, and that they contain a Correſpondence of a treaſonable Nature, inciting or encouraging any Perſons to levy War againſt the King, or any thing which ſhews that he was privy and aſſenting to it, then he is guilty of High-Treaſon. If you don't believe thoſe Letters were his, or that they don't amount to ſuch a Correſpondence, then you muſt acquit him.

If you find him Guilty, then you muſt alſo find that he was born in *France*, and is an Alien.

Then the Jury withdrew to conſider of their Verdict; and when they return'd into Court, were called over, and anſwered to their Names.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?
Jury. Yes.
Cl. of Arr. Who ſhall ſay for you?
Jury. Our Foreman.
Cl. of Arr. Francis Francia, Hold up thy Hand.
Which he did.
Look upon the Priſoner, how ſay you? Is he Guilty of the High-Treaſon whereof he ſtands Indicted, or Not Guilty?
Foreman. Not Guilty.

Whereupon the Priſoner was diſcharged.

CLXXXVIII. *Proceedings againſt* Robert *Earl of* Oxford, *before the Houſe of Lords, upon an Impeachment for* High-Treaſon, *and other* High Crimes, *and* Miſdemeanours, *June* 24, 1717. 3 Geo. I.

THE Earl of *Oxford* having been impeached by the Houſe of Commons, and being confin'd near two Years in the *Tower*, without being brought to a Trial, preſented a Petition to the Houſe of Lords, ſetting forth his long Confinement, ſubmitting his Caſe to their Lordſhips Conſideration, and praying that his Impriſonment might not be indefinite.

Upon this Petition ſome of the Lords urged, That the Impeachment was *ipſo facto* deſtroyed and determin'd, ſince he was not brought to Trial the ſame Seſſion in which he was impeach'd, and that the Prorogation was an actual *Superſedeas* to the whole Proceedings; however, the Vote of the Houſe paſs'd to the contrary, and the Earl of *Nottingham*, who had inſiſted ſtrenuouſly upon it, enter'd his Proteſtation againſt it.

This being over-ruled, the Duke of *Buckingham* moved to appoint a ſhort Day for the Earl's Trial, which after ſome Debates was fix'd for the 13th of *June*, and afterwards at the Deſire of the Houſe of Commons was deferr'd till *Monday* the 24th, on which Day the Lords came from their Houſe at twelve o' the Clock in their Robes, and went into the Court in *Weſtminſter-Hall*, in their uſual Order.

The Lords being ſeated in their Places, (and the Commons in a Committee of the whole Houſe being in their Seats, and the Managers for the Houſe being alſo in Places appointed for them;)

The Houſe was reſumed.

Then Proclamation was made as follows, *viz.*

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King doth ſtrictly charge and command all Manner of Perſons to keep Silence, on Pain of Impriſonment.

Then the Commiſſion for appointing a Lord High-Steward was (after three Reverences made in coming up from the Clerk's Table) preſented to the Lord High-Steward ſitting upon the Wool-ſack, by the Clerk of the Crown in Chancery on his Knee; and the ſame being brought to the Table, Proclamation was again made for keeping Silence.

William Lord Cowper.

L. H. Steward. My Lords, his Majeſty's Commiſſion is about to be read; your Lordſhips are deſired to attend to it in the uſual Manner, and all others are likewiſe to ſtand up uncovered while the Commiſſion is reading.

Then the ſaid Commiſſion was read (all the Lords and others ſtanding up uncovered) as follows.

GEORGIUS R.

GEorgius, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Prædilecto & Fideli Conſiliario Noſtro Willielmo Domino Cowper, Cancellario noſtro Magnæ Britanniæ, Salutem. Cum Robertus Comes de Oxon' & Comes Mortimer, coram Nobis in Parliamento per Milites, Cives & Burgenſes in Parliamento noſtro Aſſemblat' de alta Proditione & aliis Atrociſſimis Criminibus & Offenſis per ipſum Robertum Comitem Oxon' & Comitem Mortimer commiſſ' & perpetrat' in nomine ipſorum Militum Civium & Burgenſium & nomine omnium Communium Regni noſtri Magnæ Britanniæ Impetit' & Accuſat' exiſtit. Nos Conſiderantes quod Juſtitia eſt Virtus Excellens & Altiſſimo Complacens, volenteſq; quod prædictus Robertus Comes de Oxon' & Comes Mortimer de & pro proditione & aliis Criminibus & Offenſis unde ipſe ut præfertur Impetitus & Accuſatus exiſtit coram Nobis in præſenti Parliamento noſtro, ſecundum Legem & Conſuetudinem hujus Regni noſtri Magnæ Britanniæ, & ſecundum Conſuetud. Parliamenti audiatur, examinetur, ſententietur & adjudicetur, cæteraq; omnia quæ in hac parte pertinent debito modo exerceantur & exequantur; ac pro eo quod Proceres & Magnates in præſenti Parliamento noſtro Aſſemblat' Nobis humilime ſupplicaverunt ut Seneſcallum Magnæ Britanniæ pro hac Vice Conſtituere dignaremur: Nos de Fidelitate, Prudentiâ, providâ Circumſpectione & Induſtriâ Veſtris plurimum Confidentes, Ordinavimus & Conſtituimus Vos ex hac Cauſa Seneſcallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' hac vice Gerend' Occupand' & Exercend' & ideo vobis Mandamus quod circa præmiſſa diligenter Intendatis & omnia quæ in hac parte ad Officium Seneſcalli Magnæ Britanniæ pertinent & requiruntur hac vice faciatis, exerceatis & exequamini cum effectu. In cujus rei Teſtimonium has Literas noſtras fieri fecimus Patentes, Teſte meipſo apud Weſt' Viceſimo Quarto Die Junii, Anno Regni noſtri Tertio.

Per ipſum Regem propriâ Manu Signat'

Wrighte.

Then the Herald and Black-Rod, making three Reverences as they came up, preſented, kneeling, the Staff to the Lord High-Steward; who thereupon ſtanding up, made a Reverence to the Lords; and then, being attended by the Herald, Black-Rod, and Purſe-Bearer carrying the Purſe,

Purſe, proceeded to the Chair placed on the ſecond Step of the Throne.

Who having again made a Reverence to the Lords, he ſeated himſelf in the ſaid Chair, and gave the Staff to the Black-Rod on his Right-Hand, and the Purſe-Bearer ſtanding on his Left.

Serj. at Arms. O Yes, *&c.* (as before.)

Lord High-Steward. Make Proclamation for the Lieutenant of the *Tower* of *London* to bring the Priſoner to the Bar.

Serj. at Arms. O Yes, O Yes, O Yes! Lieutenant of the *Tower* of *London*, bring forth your Priſoner to the Bar, according to the Order of the Houſe of Lords to you directed.

Then the Earl of *Oxford* came to the Bar, and kneeled for ſome time.

L. H. Steward. Your Lordſhip may riſe.

Then the Earl of *Oxford* roſe up.

Serj. at Arms. O Yes, *&c.* (as before.)

L. H. Steward. Clerk, read the Articles of Impeachment.

The Clerk read the Arricles, as followeth.

ARTICLES *of* Impeachment *of High-Treaſon, and other High Crimes and Miſdemeanours, againſt* Robert *Earl of* Oxford *and Earl* Mortimer.

WHEREAS many ſolemn Treaties and Alliances have been formerly entered into between the Crown of *England*, and other Princes and Potentates of *Europe*, for their mutual Safety, and from the Conſiderations of the common Danger, which threaten'd all *Chriſtendom*, from the immoderate Growth of the Power of *France*. And whereas the preventing the Monarchy of *Spain* from coming into the Hands of the Houſe of *Bourbon*, has for many Years been a fundamental Principle and Maxim of Union among the Allies, in order to preſerve a juſt Ballance of Power in *Europe*: And to that End, as the Deſigns of *France* on the Monarchy of *Spain* have from Time to Time appear'd, new Treaties and expreſs Stipulations have been enter'd into amongſt the Allies, to ſtrengthen themſelves againſt that approaching Danger: And, on this Foundation, a Treaty for an intended Partition, whereby a ſmall Part only of the Dominions of the Crown of *Spain* was allotted to the Houſe of *Bourbon*, was condemned by the Wiſdom of Parliament, as being highly prejudicial, and fatal in its Conſequences to *England*, and the Peace of *Europe*: And whereas the Duke of *Anjou*, Grandſon to the King of *France*, on the Demiſe of *Charles* the Second, King of *Spain*, took Poſſeſſion of the entire Monarchy of *Spain*, whereby the Ballance of Power, the Proteſtant Religion, and the Liberties of *Europe* were threaten'd with immediate Danger; whereupon *Leopold*, then Emperor of *Germany*, his late Majeſty King *William* the Third, of ever-glorious Memory, and the States-General of the *United Provinces*, finding at that moſt critical Juncture, that a ſtrict Conjunction and Alliance between themſelves was become neceſſary, for repelling the Greatneſs of the Common Danger, from ſo great an Acceſſion of Power to the then common Enemy, did, in the Year of our Lord one Thouſand Seven hundred and One, make, form, and conclude a new Treaty and Alliance, whereby it was agreed, That there ſhall be and continue between the ſaid Confederates, his ſacred Imperial Majeſty, his ſacred Royal Majeſty of *Great Britain*, and the Lords the States-General of the *United Provinces*, a conſtant, perpetual, and inviolable Friendſhip and Correſpondence, and that each Party ſhall be obliged to promote the Advantages of the other, and prevent all Inconveniencies and Dangers that might happen to them, as far as lies in their Power: That the ſaid Allies, deſiring nothing more earneſtly than the Peace and general Quiet of all *Europe*, have adjudged that nothing can be more effectual for the Eſtabliſhment thereof, than the procuring an equitable and reaſonable Satisfaction to his Imperial Majeſty for his Pretenſion to the *Spaniſh* Succeſſion, and that the King of *Great Britain* and the States-General may obtain a particular and ſufficient Security for their Kingdoms, Provinces and Dominions, and for the Navigation and Commerce of their Subjects: That the ſaid Confederates therefore ſhall, in the firſt Place, endeavour, by amicable Means, to obtain the ſaid Satisfaction; but if, contrary to their Expectation and Wiſhes, the ſame is not had, the ſaid Confederates do engage and promiſe to one another, that they will aſſiſt each other with all their Forces according to a Specification to be agreed upon in a peculiar Convention for that Purpoſe: That the Confederates in order to the procuring the Satisfaction and Security aforeſaid, ſhall, amongſt other Things, uſe their utmoſt Endeavours to recover the Provinces of the *Spaniſh Low-Countries*, that they may be a Fence and Rampart, commonly called a Barrier, ſeparating and dividing *France* from the *United Provinces*, for the Security of the States-General, as they have ſerv'd in all Times, till of late that the moſt Chriſtian King has ſeiz'd them by his Forces; as likewiſe the Dutchy of *Milan*, with its Dependencies, as a Fief of the Empire, and contributing to the Security of his Imperial Majeſty's hereditary Dominions; beſides the Kingdoms of *Naples* and *Sicily*, and the Lands and Iſlands upon the Coaſt of *Tuſcany*, in the *Mediterranean*, that belonged to the *Spaniſh* Dominions, and may ſerve to the ſame Purpoſe, and will alſo be of Advantage to the Navigation and Commerce of the Subjects of the King of *Great Britain*, and of the *United Provinces*: That in Caſe the Confederates ſhall be forced to enter into a War, for obtaining the Satisfaction aforeſaid for his Imperial Majeſty, and the Security of his Majeſty of *Great Britain*, and the States-General, they ſhall communicate their Deſigns to one another, as well in Relation to the Actions of the War, as all other Things wherein the common Cauſe is concerned: That it ſhall not be permitted to either Party, when the War is once begun, to treat of Peace with the Enemy, unleſs jointly, and by a Communication of Counſels; and no Peace ſhall be made, unleſs an equitable and reaſonable Satisfaction for his Imperial Majeſty and the particular Security of the Kingdoms, Provinces, Dominions, Navigations and Commerce for his Majeſty of *Great Britain*, and the States-General, be firſt obtained; and unleſs Care be taken, by fitting Security, that the Kingdoms of *France* and *Spain* ſhall never come and be united under the ſame Government, nor that one and the ſame Perſon ſhall be King of both Kingdoms; and particularly that the *French* ſhall never get into the Poſſeſſion of the *Spaniſh Indies*, neither ſhall they be permitted to ſail thither on the Account of Traffick, directly or indirectly, or any Pretence whatſoever; And laſtly, unleſs full Liberty be granted unto the Subjects of the King of *Great Britain*, and the States-General, to exerciſe and enjoy all the ſame Privileges, Rights, Immunities, and Franchiſes of Commerce by Sea and Land in *Spain*, the *Mediterranean*, and all Lands and Places which the King of *Spain* laſt deceaſed did poſſeſs at the Time of his Death, as well in *Europe* as elſewhere, which they uſed and enjoyed, or which the Subjects of both, or either of them, by any Right acquired by Treaties, Agreements, Cuſtoms, or any other Way whatſoever, might have uſed and enjoyed before the Death of the late King of *Spain*: That at the ſaid Time that the ſaid Agreement or Peace ſhall be made, the Confederates ſhall agree amongſt themſelves about all the Things that they ſhall think neceſſary for maintaining the Navigation and Commerce of the Subjects of his Majeſty of *Great Britain*, and the States-General, in the Lands and Dominions they may acquire, and that were poſſeſſed by the late deceaſed King of *Spain*, and alſo in what Manner the States-General may be ſecured by the aforeſaid Fence or Barrier. And whereas his ſaid late Majeſty King *William*, and the States-General, ſeriouſly conſidering that *France* was then become ſo formidable from the Acceſſion of *Spain* to the Duke of *Anjou*, that, in the Opinion of all the World, *Europe* was in Danger of loſing her Liberty, and undergoing the heavy Yoke of Univerſal Monarchy, and that the ſureſt Means of effecting that Deſign, were to divide the King of *Great Britain* from the States-General, for which Purpoſe all imaginable Efforts would be made; they therefore thought it neceſſary to unite in the ſtricteſt Manner that was poſſible, and to that End a Defenſive Treaty and Alliance was concluded and entered into between them, in or about the Month of *November*, One Thouſand Seven Hundred and One, wherein it was, among other Things, agreed, That in caſe the ſaid High Allies ſhould be jointly engaged in War, by Reaſon of this Defenſive Alliance before-mentioned in the fifth Article, or on any other Account, there ſhall be an Offenſive, and Defenſive, and perpetual Alliance between them, againſt thoſe with whom the War ſhall be, and all their Forces ſhall be employed by Sea and Land, and they ſhall act in Conjunction or ſeparately, as it ſhall be agreed between them. That ſince, in the Alliance with the Emperor made in *September* laſt, particular Care was taken of the Recovery of the *Spaniſh Low-Countries*, out of the Hands of the moſt Chriſtian King, the ſaid Confederates expreſly engage to aid one another with all their Forces for the Recovery of the ſame. And in regard the principal Intereſt of the ſaid Confederates conſiſts in the Preſervation of the Liberties of *Europe*, the before-mentioned Treaty with the Emperor ſhall be faithfully and ſincerely executed, and both Sides ſhall guaranty the ſame, and uſe their Endeavours to confirm and render it more ſtrong from Time to Time: That in making Peace, particular Care ſhall be taken of the Commerce and Traffick of both Nations, as alſo for their Security, as well in regard to the *Low-Countries*, as the Countries adjacent: That when the War is begun, the Confederates ſhall act in concert, according to the ſeventh and eighth Articles of the Treaty of the Third of *March*, in the Year of our Lord One Thouſand Six Hundred Seventy-Seven-Eight, between *England* and *Holland*, which is hereby renewed and confirmed; and no Peace, nor Truce, or Suſpenſion of Arms, ſhall be negotiated or made, but according to the ninth and tenth Articles of that Treaty; by which it was agreed, that when the two Allies come once to an open War, it ſhall be lawful for neither of them afterwards to come to any Ceſſation of Arms with him who ſhall be declar'd and proclaim'd an Enemy, without it be done conjointly, and with common Conſent: That no Negotiation of Peace ſhall be ſet on Foot by one of the Allies, without the Concurrence of the other: That each Ally ſhall continually, and from Time to Time, impart to the other every thing that paſſes in the ſaid Negotiation, and ſhall ſtipulate with the common Enemy for the ſame Rights, Immunities, Exemptions and Prerogatives for his Ally as he does for himſelf, if ſo be the ſaid Allies do not agree to the contrary. And whereas the *French* King having got Poſſeſſion of a great Part of the *Spaniſh* Dominions, exerciſed an abſolute Authority over that Monarchy, having ſeized *Milan* and the *Spaniſh Low-Countries* by his Armies, and made himſelf Maſter of *Cadiz*, of the Entrance into the *Mediterranean*, and of the Ports of the *Spaniſh Weſt-Indies* by his Fleets, every where deſigning to invade the Liberties of *Europe*, and to obſtruct the Freedom of Navigation and Commerce; and inſtead of giving the Satisfaction that ought juſtly to be expected, had proceeded to further Violences, and had taken on him to declare the pretended Prince of *Wales* King of *England*, *Scotland*, and *Ireland*, and had alſo influenced *Spain* to concur in the ſame Affront; her late Majeſty Queen *Anne* taking notice, that ſhe found herſelf obliged, for maintaining the Public Faith, or vindicating the Honour of the Crown, and to prevent the Miſchiefs which all *Europe* was threaten'd with, to declare War againſt *France* and *Spain*; did according, in the Month of *May*, One Thouſand Seven Hundred and Two, in the moſt public and ſolemn Manner, declare War againſt *France* and *Spain*; and in the ſaid Declaration, placing her entire Confidence in the Help of Almighty God, in ſo juſt and neceſſary an Undertaking, declared, That ſhe would, in Conjunction with her Allies, vigorouſly proſecute the ſame both by Sea and Land, being aſſured of the ready Concurrence of her Subjects, in a Cauſe they had ſo openly and heartily eſpouſed. And his Imperial Majeſty and their High Mightineſſes, purſuant to the Treaties afore-mentioned reſpectively, in or about the ſaid Month of *May*, One Thouſand Seven Hundred and Two, did likewiſe declare War againſt *France* and *Spain*. And whereas the Kings of *Portugal* and *Pruſſia*, the Electors of *Hanover*, *Saxony*, *Treves*, *Mentz*, Palatine of the *Rhine*, the Duke of *Savoy*, the Prince of *Heſſe*, the Dukes of *Wolfembuttle*, *Mecklenburg*, and *Wirtemburg*, the Circles of *Suabia* and *Franconia*, and of the *Upper Rhine*, the Biſhops of *Munſter* and *Conſtance*, and other Princes and Powers, being invited by the ſaid Grand Alliance, and relying on the Faith thereof, did afterwards become Parties to the ſaid Confederate War againſt *France* and *Spain*; and in the Treaty entered into in or about the Month of *May*, One Thouſand Seven Hundred and Three, between his Imperial Majeſty, the Queen of *Great Britain*, the States-General, and the King of *Portugal*, it is amongſt other things, expreſly ſtipulated, that

no Peace nor Truce shall be made, but by the mutual Consent of all the Confederates; nor shall any at any Time be made, while the second Grandson of the most Christian King by the Dauphin, or any other Prince of the Line of *France* continues in *Spain*, nor unless the Crown of *Portugal* shall fully possess and enjoy all the Lands, Kingdoms, Isles, Castles, Cities, Towns, &c. with their Territories and Dependencies in *Spain*, or elsewhere, which it now possesses. And in the Treaty of *Nordlingen*, ratify'd by her late Majesty, it is, amongst other Things, expressly agreed, that it shall not be allow'd to make particular Treaties, but the Peace shall be jointly treated of, and shall not be concluded without obtaining, as far as is possible, the Re-union of the Lands belonging to the Circles, and until at least the Security of the associated Circles be absolutely provided for in the best Manner that is possible, and better than it has formerly been. And whereas to give the greatest Strength that was possible to the Union, so necessary to both Nations, her late Majesty and the States by a Treaty in the Month of *June*, One Thousand Seven Hundred and Three, renewed and confirmed all Treaties and Alliances then subsisting between them; and therein it is, amongst other Things, expressly and particularly stipulated, that as the said most serene Queen, and the Lords the States-General are now in War with *France* and *Spain*, and are reciprocally bound to assist each other, and mutually to defend, maintain, and preserve their Countries and Subjects in their Possessions, Immunities, and Liberties, as well of Navigation and Commerce, as other Rights whatsoever by Sea and Land, against and in Opposition to all Kings, Princes, and States, and particularly against *France* and *Spain*, to the end a just and reasonable Peace may the better be obtained, that may establish the Repose and Tranquillity of *Europe*, it is agreed between the most Serene Queen of *Great Britain*, and the said Lords the States-General, that neither of the said Allies shall make a Suspension of Arms, or a Peace with *France* or *Spain*, or any other King, Prince, or State, who shall molest or attack either of the said Allies, but in Conjunction and by common Consent. And whereas the said War was for several Years carry'd on with Vigour and Unanimity by her Majesty and her Allies, at a vast Expence both of Blood and Treasure; for the Support of which, on the Part of *England*, many Millions have been granted by Parliament, who, on many Occasions since, continued not only to express their Sense of the Justice and Necessity of the War, but did frequently give their humble Advice to the Throne, that no Peace could be Safe, Honourable, or Lasting, so long as the Kingdom of *Spain* and the *West-Indies* continued in the Possession of any Branch of the House of *Bourbon*. And whereas it pleased Almighty God to grant to the Confederate Arms, under the Command of their Great and Victorious General the Duke of *Marlborough*, such unparallel'd Successes as exceeded even their own Hopes and the Fears of the Enemy; and by the many signal Victories of *Schellenberg*, *Hochstet*, *Audenarde*, and *Ramellies*, as well as by the Conquests of the Electorates of *Bavaria* and *Cologn*, and the Reduction of the *Spanish Netherlands*, and many other great Advantages both by Sea and Land; and by the Wisdom and Unanimity of their Counsels, the Glory of the Confederate Arms, and the Reputation of *Great Britain* in particular, was rais'd to an higher Pitch than in any former Age. And whereas her late Majesty, in Conjunction with her Allies, wisely foreseeing, that whenever the Enemy should be brought to make Overtures of Peace, the surest Way to put an End to the War, and prevent *France* from putting in Practice her usual Intrigues, was, by previously insisting on such Conditions from *France*, that nothing might remain to be done in a General Assembly, but to give them the Form of a Treaty; and for these Reasons, a Preliminary Treaty was concluded on, and was afterwards sign'd by the Plenipotentiaries of his Imperial Majesty, of her late Majesty the Queen of *Great Britain*, and of the Lords the States-General of the United Provinces, and afterwards ratified by their Principals; wherein the Interests of the several Allies were adjusted, in order to a General Treaty of Peace with *France*: And therein the Restitution of the *Spanish* Monarchy to the House of *Austria*, being one of the chief Causes for carrying on the War, is laid down as an immutable Foundation among the Allies. And whereas in the Year of our Lord One Thousand Seven Hundred and Nine, the King of *France* having first signify'd his Consent to the Restitution of the *Spanish* Monarchy to the House of *Austria*, sent his Ministers to the *Hague* to treat with the Ministers of the Principal Allies on a General Peace; and in the Conferences held thereupon, the Interests of all the Allies, as adjusted in the said Preliminaries, were positively and expressly agreed to by the Ministers of *France*, and particularly that of the Restitution of the entire *Spanish* Monarchy to the House of *Austria*; and the said Negotiation was afterwards broke, on no other Dispute but on the Thirty-seventh Article of the Preliminary Treaty, concerning the Time and Manner of evacuating *Spain*. And whereas the Conferences being resumed at *Gertruydenberg*, in the Year of our Lord One Thousand Seven Hundred and Ten, the said Thirty-seventh Article became the only Subject of the Negotiation which was there set on foot, for the finding out some Equivalent by which the same Security might be given to the Allies, as they had by the Thirty-seventh Article of the said Preliminaries; and tho' it was unquestionable, that before any Negotiation was begun, that while the Preliminaries were treating, that by those Preliminaries themselves, that before the last Negotiation was resumed, and all the while it lasted, the Restitution of *Spain* and the *Indies* was laid down as a firm and immoveable Foundation of the Negotiation, and no Question remain'd concerning it with the Ministers of the Allies or those of *France*, but touching the Security for its Execution: And tho' all reasonable and prudent Overtures were made by the Allies for settling an Equivalent, yet the Conferences were broke off by *France* without any Satisfaction therein. And whereas the sincere Intentions of all the Allies to have settled the Peace of *Europe* on solid and equitable Foundations were notorious and incontestable, and the Rupture of the said Negotiations could only be imputed to the Enemy; her sacred Majesty, in Conjunction with her Allies, renew'd their Resolutions to continue and push the War with Vigour, and to make all possible Efforts, as the only Means left to force a good and general Peace. And her Majesty in her Speech from the Throne on the Fifteenth of *November* One Thousand Seven Hundred and Nine, taking notice of the Endeavours of the Enemy during the said Negotiations, to amuse and create Jealousies among the Allies, declared her Resentment thereat, and earnestly recommended the carrying on the War, and a vigorous Prosecution of the Advantages obtained, that she might put the last Hand to that great Work of reducing the exorbitant and oppressive Power which had so long threatened the Liberties of *Europe*. And it having pleased Almighty God, after the said Preliminary Treaty, to bless the Confederate Army, under the Command of their consummate General the Duke of *Marlborough*, with new and signal Conquests, the Reduction of *Tournay*, the Victory of *Tasnieres*, the taking of *Mons* and *Douay*, *Bethune*, *St. Venant* and *Aire*, and the Penetrating the Lines near the *Scarpe*. And whereas, from the prosperous Condition of the Affairs of the Allies, and the Wisdom, Firmness, and Unanimity of their Counsels, nothing remained, in all human Appearance, but that they should reap the Fruits of all their Victories in a speedy, just, honourable and lasting Peace; and on the other hand, nothing was left to raise the Hopes of the Enemy, whereby to defeat that happy Prospect, but the Success of their secret Endeavours to disunite the Confederacy. And whereas *Robert* Earl of *Oxford* and Earl *Mortimer*, with other evil-minded Persons, Enemies to the true Interests of their own Country, as well as to the common Liberties and Welfare of *Europe*, having by many wicked Arts and base Insinuations obtain'd Access to her late Majesty Queen *Anne*, and in or about the Months of *July* or *August* One Thousand Seven Hundred and Ten, being admitted into her Councils, and into Places of the highest Trust, and to make way for their wicked Enterprizes, did, by their evil Counsel and Advice, prevail on her Majesty to dissolve a Parliament which had given the most unquestionable Proofs of their great Wisdom, and of their true Zeal for the common Cause; for which, as well as for the many Marks of Duty and Affection given to her, her Majesty return'd her hearty Thanks, and express'd her great Satisfaction. And whereas the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others his Accomplices, had form'd a treacherous Correspondence with the Emissaries of *France*, by means whereof certain Propositions were transmitted from *France* to *England*, sign'd by Monsieur *de Torcy*, Secretary of the King of *France*, in the Month of *April* One Thousand Seven Hundred and Eleven, to be the Basis of the Treaty of a General Peace; which Propositions, tho' her Majesty was prevail'd on by the false Counsels of the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, to receive as a sufficient Foundation of a Treaty of a General Peace, and as such to communicate them to the Grand Pensionary and the Ministers of *Holland*, her Majesty however was graciously pleased at the same Time to declare to them her Pleasure by her Secretary of State, that being resolv'd in making Peace as in making War, to act in perfect Concert with the States, she would not lose a Moment in transmitting a Paper of that Importance; and that tho' the Propositions were general, and contain'd an Air of Complaisance to her Majesty, and the contrary towards the States; yet that could have no ill Consequences, as long as her Majesty and the States understood one another, and acted with as little Reserve as became two Powers so nearly ally'd in Interest; and that the Pensionary should be assured, that that Rule should be inviolably kept on her Part. Which gracious Declaration of her Majesty, as well as the said Propositions, being maturely consider'd by the Grand Pensionary and the Ministers of *Holland*, an Answer was return'd from them to her Majesty, full of Duty and Thankfulness for the obliging Manner in which she was pleas'd to communicate the said Propositions, and with the utmost Assurances of mutual Confidence, so necessary to prevent the Designs of the Enemy; but more particularly that the States desired, equally with *Great Britain*, to have a general, definitive, and lasting Peace, and declar'd that they were ready to join in all the most proper Measures to procure it; that the Propositions were yet too general, and that the States desire, as *Great Britain* did, that *France* would explain herself more particularly upon the Points therein contain'd, and impart a Plan which she thinks the most proper to secure the Interest of the Allies, and settle the Repose of *Europe*, after which a more particular Negotiation might be enter'd into. Notwithstanding all which Premises,

ARTICLE I.

He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, having no Regard to the Honour or Safety of her late Majesty or her Kingdoms, or to the many solemn Engagements she was then under to the old and faithful Allies of this Nation, or to the common Liberties of *Europe*; but, being devoted to the Interest and Service of the *French* King, the common Enemy; and being then Lord High-Treasurer of *Great Britain*, and one of her Majesty's most Honourable Privy Council, contrary to his Oath, and in Violation of his Duty and Trust, and in Defiance of the Tenour of the several Treaties afore-mention'd, or some of them, as well as of the frequent Advices of Parliament, and the many Declarations of her Majesty from the Throne; but more particularly in Defiance of the solemn and mutual Assurances which had been so lately renew'd between her Majesty and the States, to act in perfect Concert with them in making Peace as in making War, did on or about the Months of *July* or *August*, in the Year of our Lord One Thousand Seven Hundred and Eleven, maliciously and wickedly form a most treacherous and pernicious Contrivance and Confederacy with other evil-dispos'd Persons, then also of her Majesty's Privy-Council, to set on Foot a private, separate, dishonourable, and destructive Negotiation of Peace between *Great Britain* and *France*, without any Communication thereof to her Majesty's Allies, according to their several Treaties; and was not only wanting in his Duty and Trust to her Majesty, by not opposing, and, as far as was in his Power, by not advising her Majesty against going into any private separate Negotiation with *France*; but in Execution of his Purposes aforesaid, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did advise her late Majesty to send *Matthew Prior*, Esq; directly to the Court of *France*, to make Propositions of Peace, without communicating the same to her Majesty's Allies. And accordingly the said *Matthew Prior*, by the Advice, and with the Privity of him the said Earl of *Oxford* and Earl *Mortimer*, and other false and evil Counsellors, in or about the Months of *July* or *August*, in the Year of our Lord One Thousand Seven Hundred and Eleven, was sent in a

clandeſtine Manner from *England* to *France*, and did communicate the ſaid Propoſitions of Peace to the Miniſters of *France*, in which the particular Intereſts of *Great Britain*, as well as the common Intereſt of *Europe*, were ſhamefully betray'd: And in Manifeſtation of his ſaid Deſign to exclude her Majeſty's Allies from their juſt Share in the ſaid Negotiation, an expreſs Article was inſerted in the ſaid Propoſitions, by the Privity and Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, that the Secret ſhould be inviolably kept till allow'd to be divulged by the mutual Conſent of both Parties; although the *French* King had in the Propoſitions ſigned by Monſieur *de Torcy*, and tranſmitted in the Month of *April* preceding, offer'd to treat with the Plenipotentiaries of *England* and *Holland* alone, or jointly with thoſe of the Allies, at the Choice of *England*. By which treacherous and dangerous Advice he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only contrive and ſet on Foot a Negotiation of Peace more advantageous to *France* than even *France* itſelf had aſk'd; but thereby did put it into the Power of the common Enemy to create incurable Jealouſies and Diſcords between her Majeſty and her faithful Allies, and to deſtroy that Confidence which had ſo long and ſo ſucceſsfully been cultivated between them, and which was ſo neceſſary for their common Safety.

ARTICLE II.

That the *French* King laying hold of the ſaid treacherous Overture, ſet on foot in Manner aforeſaid, did in or about the Months of *Auguſt* or *September*, in the Year of our Lord One Thouſand Seven Hundred and Eleven, ſend over Monſieur *Meſnager* into *England* to carry on a clandeſtine and ſeparate Negotiation of Peace; which being made known to him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, he did afterwards in the ſaid Month of *September* One Thouſand Seven Hundred and Eleven, ſecretly and unlawfully, without any Colour of Authority, meet, confer, and treat with the ſaid Sieur *Meſnager* on the Negotiations of Peace between *Great Britain* and *France*; and therein he did adviſe and promote the making a private and ſeparate Treaty or Agreement between the ſaid Crowns; which ſaid Treaty or Agreement was afterwards, with the Privity, Conſent, and Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, agreed, concluded on, and ſign'd by the ſaid Sieur *Meſnager* on the Part of *France*, and by the Earl of *Dartmouth* and *Henry St. John*, Eſq; two of her Majeſty's Principal Secretaries of State, in behalf of her late Majeſty, by virtue only of her Majeſty's Sign Manual under the Signet, and without the leaſt Knowledge or Participation of the Allies. In which Treaty the immediate Intereſts even of *Great Britain* are given up to *France*, and the Duke of *Anjou* is admitted to be King of *Spain*; an expreſs Stipulation being therein made with the Sieur *Meſnager* in the Name, and (as is therein alledged) purſuant to Powers from King *Philip* as King of *Spain*: Whereby he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only aſſume to himſelf Regal Power, in taking upon him to meet and treat with the Enemy without any Authority or Powers from her Majeſty; but did what in him lay to ſubvert the ancient and eſtabliſh'd Conſtitution of the Government of theſe Kingdoms, by introducing illegal and dangerous Methods of tranſacting the moſt important Affairs of the State; and by which private and ſeparate Treaty, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did what in him lay to diſſolve and cancel the many ſolemn Treaties her Majeſty then ſtood engaged in to her good and antient Allies, and whereby her Majeſty, even before any thing was finally ſettled for the Safety or Advantage of her Kingdoms, was brought to this fatal Dilemma; either to ſubmit to the Dictates of *France* in the Progreſs of the ſaid Negotiation, or, ſo notorious a Breach of National Faith being divulged by the Enemy, from thence to loſe all future Confidence of her good Allies.

ARTICLE III.

That the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, the better to diſguiſe and carry on the aforeſaid private, ſeparate, and dangerous Negotiation, did, together with other evil-diſpos'd Perſons, then in high Truſt under her Majeſty, contrive and adviſe the preparing and forming a Set of General Preliminaries, intituled, *Preliminary Articles on the Part of* France *to come to a General Peace*; and that the ſame ſhould be ſign'd by the Sieur *Meſnager* only. And the ſame being ſo prepar'd and ſign'd by the ſaid Sieur *Meſnager*, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did, contrary to his Duty and Truſt, impiouſly adviſe her Sacred Majeſty that the ſame ſhould be, and accordingly they were receiv'd by her Majeſty, and communicated to the Miniſters of the Allies then reſiding in *England*, as the Ground of a General Negotiation of Peace; and as if the ſame were the only Tranſactions that had been on this Subject between *Great Britain* and *France*. And to this end, the private Treaty, ſign'd as aforeſaid by the Earl of *Dartmouth* and Mr. *St. John* on the Part of *England*, and by the ſaid Sieur *Meſnager* on the Part of *France*, was by the evil Advice and Contrivance of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, wilfully and induſtriouſly conceal'd not only from all the Allies, but even from her Majeſty's Council and her Parliament. And he did further adviſe her Majeſty not only to accept the ſaid General Preliminaries, but in her Name, and by her Authority, to communicate the ſame to the States-General, as a ſufficient Foundation whereupon to open the Conferences of Peace with *France*. And the more effectually to cover from the States-General the pernicious Steps which his evil Influence had engag'd her Majeſty in with the common Enemy; certain Inſtructions were prepar'd, and, by his Counſel and Advice, were ſign'd by her Majeſty, and delivered to the Earl of *Strafford*, her Ambaſſador to the States-General: wherein the ſaid Earl of *Strafford* is directed to repreſent to the Penſionary of *Holland*, and to ſuch others as ſhall be appointed to confer with him, that when her Majeſty had receiv'd in *May* laſt, by his Excellency's Diſpatches, an Account of the Senſe which thoſe among them, who were at that Time in the Secret, had of the Overtures made by *France* for ſetting a general Negotiation of Peace again on Foot, and of the Anſwer which it was deſir'd might be return'd to the Propoſitions ſigned by Monſieur *de Torcy*; her Majeſty did immediately acquaint the Enemy, that their Offers were thought by her and by the States-General neither particular nor full enough; and therefore that her Majeſty did inſiſt, that they ſhould form a diſtinct Project of ſuch a Peace as they were willing to conclude. Whereas no ſuch Inſtances had been made to the Enemy on her Majeſty's Behalf; but on the contrary, notwithſtanding her Majeſty had declar'd that the Propoſitions of Monſieur *de Torcy* were thought by her and the States-General neither particular nor full enough, yet without any further Explication from the Enemy, her Majeſty was prevail'd on, in manner aforeſaid, to ſend over Propoſitions to *France* as general and enſnaring, and in all reſpects as deſtructive to the Intereſts of *Great Britain* and her Allies, as the Propoſitions of Monſieur *de Torcy*. And the ſaid General Preliminaries, communicated to the States in manner aforeſaid, were calculated only to amuſe and deceive them into a General Negotiation with *France*. And in the Particulars aboveſaid, as well as in the ſeveral others, the ſaid Inſtructions contain'd Matters either falſe or groſsly prevaricating and evaſive. By which moſt wicked Counſels of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, that unqueſtionable Truth and Sacredneſs which by the Laws of Nations ought to accompany and conſtitute the Inſtructions of Public Ambaſſadors to Princes in Friendſhip and Confederacy againſt the common Enemy, was moſt vilely proſtituted to the moſt dangerous Purpoſes, to deceive and miſlead her Majeſty's good Allies, in Matters of the greateſt Importance to their own Intereſts and the Intereſts of theſe Kingdoms; the Honour of her Majeſty's ſacred Perſon, and of the Imperial Crown of theſe Realms, which had been raiſed to the higheſt Pitch of Glory abroad, and had been juſtly held in Veneration with her good Allies, was ſcandalouſly debaſed and betrayed; and the Royal Hand, by the wicked Arts of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, was made the Inſtrument to advance the Intereſt of the common Enemy.

ARTICLE IV.

That whereas the Earl of *Strafford*, purſuant to the ſaid Inſtructions, had communicated the Preliminaries ſigned by Monſieur *Meſnager* only to the States-General, who being juſtly alarmed at the preſſing Inſtances made on the Part of her Majeſty, that Conferences ſhould be opened on Propoſitions as general and uncertain as thoſe ſo lately offer'd by *France*, and ſigned by Monſieur *de Torcy*; and their High Mightineſſes having been unſucceſsful in their Remonſtrances to the Earl of *Strafford* againſt opening the Conferences upon the ſaid Propoſitions, did ſend over Monſieur *Buys* their Ambaſſador to repreſent to her Majeſty, as well the Hazard of meeting the Miniſters of *France* before the eſſential Articles were firſt ſettled by ſpecial Preliminaries, or at leaſt explained by *France*, and made ſpecific; as likewiſe the Advantages to the Enemy, who being but one Body, were influenced by one Council, and directed by one Power; whereas the Confederates conſiſted of ſeveral Powers, whoſe Intereſts are not only diſtinct, but in many Caſes contrary to each other; whereby the *French* would have a fair Opportunity to divide the Allies, when it would be impoſſible for them to break in upon *France*; and further to repreſent, that the Propoſitions themſelves were in ſome Inſtances very prejudicial, particularly in the Articles of Commerce, *Dunkirk*, and the Union of the Crowns of *France* and *Spain*. All which Repreſentations of the ſaid Monſieur *Buys*, by the evil Influence of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, were render'd ineffectual: but in order to prevail upon the States-General to open the Conferences upon the ſaid General Preliminaries, by the Management and Contrivance of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, an Occaſion was taken to declare to Monſieur *Buys*, at a Committee of Council, in her Majeſty's Name, her conſtant Affection and good Diſpoſition to their State, and to the promoting their Intereſt, and to treat with their High Mightineſſes with a perfect Confidence and Harmony: And at the ſame time he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did then falſely and maliciouſly declare, or was privy to adviſing and conſenting, that it ſhould be, and ſo it was declared, in her Majeſty's Name, that ſhe had made no ſeparate Treaty with *France*, nor would ever make any before ſhe had fully complied with all Engagements to her Allies, and that each of them ſhould have Opportunity to make good their Pretenſions.

By which falſe, ſcandalous, and diſhonourable Aſſurances, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only highly diſhonour her Majeſty, by whoſe Privity the ſaid ſeparate Treaty with *France* had been before that Time concluded and ſigned; but their High Mightineſſes, the good Friends and antient Allies of her Majeſty, were groſsly abuſed, and thereby induced to enter into a Negotiation with *France*, ſo dangerous in itſelf, and ſo fatal in its Conſequences.

ARTICLE V.

That her ſacred Majeſty Queen *Anne* having in due Form of Law, and under her Great Seal, conſtituted the Right Reverend *John* Lord Biſhop of *Briſtol*, and the Earl of *Strafford*, her Plenipotentiaries, with full Powers to meet, treat, and conclude with the Plenipotentiaries of the Confederates, and thoſe whom the *French* King ſhall on his Part depute for that Purpoſe, the Conditions of a good and general Peace, that ſhall be ſafe, honourable, and, as far as is poſſible, agreeable to the reaſonable Demands of all Parties; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* not contenting himſelf to abuſe the Royal Authority, to the Deluſion of the States-General, the neareſt Allies of the Queen, but intending the Univerſal Prejudice of his Imperial Majeſty, and all the Allies of theſe Kingdoms; and thereby the more ſucceſsfully to carry on the Meaſures of *France*, wherein he was then engaged, contrived and prepared Inſtructions, or was privy to, conſenting and adviſing the ſame, for her Majeſty's ſaid Plenipotentiaries, which ſhe was prevailed upon by the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*'s evil Counſel to ſign, and the ſame were delivered to the ſaid Plenipotentiaries; wherein among other Things they are inſtructed to the Effect following, *viz.* If it ſhall be thought proper to begin by the Diſpoſition of the *Spaniſh* Monarchy, you are to inſiſt that the Security and reaſonable Satisfaction which the Allies expect, and which his moſt Chriſtian Majeſty has promiſed, cannot be obtained, if *Spain* and the *Weſt-Indies* be allotted to any Branch of the Houſe of *Bourbon*: Whereas the ſaid *Robert* Earl of *Oxford* and

and Earl *Mortimer* had at that Time privately and treacherouſly negotiated and agreed with the Miniſters of *France*, that *Spain* and the *Weſt-Indies* ſhould remain in a Branch of the Houſe of *Bourbon*; and had prevailed on her ſacred Majeſty to be Party to the ſaid private Treaty, wherein the ſame is neceſſarily implied. And the ſaid Plenipotentiaries are further inſtructed, in caſe the Enemy ſhould object, as the Imperial Miniſters had done, that the ſecond Article of the ſeven ſigned by the Sieur *Meſnager* implies, that the Duke of *Anjou* ſhall continue on the Throne of *Spain*; you are to inſiſt, that thoſe Articles, as far as they extend, are indeed binding to *France*, but that they lay neither us nor our Allies under any poſitive Obligation; whereby the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* baſely entered into a Confederacy and Colluſion even with the Miniſters of the Enemy, and prevailed on her Majeſty to give her Royal Conſent thereto, the more effectually to impoſe on his Imperial Majeſty and all the Allies, and to conceal the ſaid ſecret Negotiations, and the ſeparate Treaty that had then been agreed on between *Great Britain* and *France*. And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, not only in the Particulars before-mentioned, but in many others contained in the ſaid Inſtructions, has brought a laſting Reproach on the Crown of theſe Realms, and groſly violated the many Treaties wherein her ſacred Majeſty was then engaged to her Allies, to act in perfect Concert with them throughout the Negotiations of Peace.

ARTICLE VI.

That the Conferences of Peace being opened between the Plenipotentiaries of the Allies, and thoſe of the Enemy, for the negotiating a general Peace upon the mutual and moſt ſolemn Engagements amongſt the Allies, not only to act in perfect Confidence with each other, but to promote their comon Intereſt, and to obtain from the Enemy all juſt and reaſonable Satisfaction; and a ſpecific Explanation of the General Preliminaries having been given by the Enemy at *Utrecht*, whereon the Allies delivered their reſpective Demands; by the Artifices of *France*, and the ſecret Encouragement and Concurrence of the Miniſters of *Great Britain*, the Progreſs of the ſaid public Negotiation was delayed and kept in Suſpence, under Pretence of the Enemy's refuſing to give their Anſwer in Writing: During which Time, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* again aſſuming to himſelf Regal Power in Derogation of the Royal Authority, to treat of Peace with *France*, which was then delegated under the Great Seal of *Great Britain* to her Majeſty's Plenipotentiaries at *Utrecht*, and for the promoting the Deſigns of the Enemy to the apparent Deſtruction of the common Cauſe of her Majeſty and her Allies, contrary to the known Laws and Conſtitution of this Kingdom, in direct Violation of the ſeveral Alliances her Majeſty then ſtood engaged in, and in Oppoſition to the many Aſſurances given by her Majeſty to act in Concert with her Allies, and in Defiance of the expreſs Inſtructions given to her ſaid Plenipotentiaries, was not only wanting in his Duty to her Majeſty, as far as in him lay to have put an end to, and prevented any further private and unlawful Negotiations with *France*, but did, with others his Accomplices, adviſe, concur, continue, and promote a private, ſeparate, and unjuſtifiable Negotiation of Peace with *France*, directly from *England* to *France*, without any Communication thereof to the Allies; and in ſuch private Negotiations did concert with the Miniſters of the Enemy Terms of Peace highly prejudicial to the Intereſt of her Majeſty and her Kingdoms, and of all her Allies, and whereby the good Effects of the ſaid General Negotiations were entirely defeated.

ARTICLE VII.

That her ſacred Majeſty Queen *Anne* having been prevailed on by the falſe Counſels of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* to accept of a Treaty with *France*, on the Suppoſition that the *Spaniſh* Monarchy ſhould continue in the Poſſeſſion of a Branch of the Houſe of *Bourbon*; and it being acknowledged even by the *French* King in the General Preliminaries ſigned by Monſieur *Meſnager*, that the Exceſs of Power from the Re-union of the Crowns of *France* and *Spain* would be contrary to the good and general Repoſe of *Europe*: He the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having nothing ſo much in view as the aggrandizing the common Enemy, yet always intending to cover the Iniquity of his Heart under ſpecious Pretences and falſe Appearances, did wickedly and treacherouſly adviſe and carry on a private and ſeparate Negotiation with *France*, on the Subject of a Renunciation of his Right to the Kingdom of *France* by the Duke of *Anjou*, and that ſuch Renunciation ſhould be the Security againſt the Re-union of the two Kingdoms. And by the Influence of his evil Counſels her Majeſty was prevailed on to accept and finally to conclude and ratify a Treaty of Peace with *France*, wherein the ſaid Renunciation is taken as a ſufficient Expedient to prevent the Miſchiefs that threaten'd all *Europe*, in caſe the Crowns of *France* and *Spain* ſhould be united upon the Head of one and the ſame Perſon; although he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* well knew, that a Memorial had been, during the ſaid ſeparate Negotiation, tranſmitted by Monſieur *de Torcy*, Secretary of State and Miniſter to the *French* King, to one of her Majeſty's Principal Secretaries of State; whereby it was declared, that the ſaid Renunciation would be null and invalid by the Fundamental Laws of *France*, which Laws were looked upon as the Work of him who had eſtabliſhed all Monarchies, and which he only could aboliſh; and that no Renunciation thereof could deſtroy it: And if the King of *Spain* ſhould renounce, they would deceive themſelves that ſhould receive it as a ſufficient Expedient to prevent the Miſchiefs propoſed to be avoided. By which falſe and treacherous Counſels, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did not only betray the Intereſts of the common Cauſe into the Hand of the moſt formidable Enemy, but wilfully and maliciouſly abuſed the Power and Influence which he had obtained with her Majeſty, ſo far as to engage her ſacred Majeſty, and the Honour of the Imperial Crown of theſe Kingdoms, to become Party with *France* in ſo fatal a Deceit.

ARTICLE VIII.

That her late Majeſty Queen *Anne* having on the Seventh Day of *December*, in the Year of our Lord One Thouſand Seven Hundred and Eleven, earneſtly recommended it from the Throne, that Proviſion might be made for an early Campaign, in order to carry on the War with Vigour, and as the beſt Way to render the Treaty of Peace effectual; in order to which, vaſt Supplies were granted, and Magazines provided at a great Expence for an early Campaign; and in purſuance thereof, her Majeſty having ſent her Generals, *Lumley* and *Cadogan*, to give early Aſſurances to her Allies of her ſincere Intentions, and likewiſe expreſly inſtructed her General, the Duke of *Ormond*, not only to renew the ſame Aſſurances and declare her Reſolutions of puſhing on the War with the utmoſt Vigour, but to concert with the Generals of the Allies the proper Meaſures for entering on Action; and the Confederate Army, which at that Time was the fineſt and ſtrongeſt that had been in the Service during the whole Courſe of the War, and provided with all Neceſſaries to act with Vigour, having march'd, according to the Reſolution taken in Concert with her Majeſty's General, almoſt up to the Enemy, with a great Superiority both as to the Number and Goodneſs of Troops, and animated with a noble Courage and Zeal to acquit themſelves bravely; ſo that in all human Appearance, and with the Divine Aſſiſtance, which had appeared ſo viſibly for them on many other Occaſions, they would have been able, either by Battle or Siege, to have gained great Advantages over the Enemy, to have better'd the Affairs of the Allies, and to have facilitated the Negotiations of Peace: And the Miniſters of *France* have frequently and earneſtly repreſented to the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others his Accomplices, during their ſecret Negotiations, their juſt Apprehenſions from the Bravery and good Diſpoſition of the Confederate Army; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being truly informed of the ſure Proſpect, which, by the Bleſſing of God, the Army of the Confederates then had, of gaining new Conqueſts over the Army of *France*, and whereby they would have been enabled to have forced Terms of Peace, ſafe, honourable, and laſting: In order to diſappoint thoſe comfortable Expectations of the Allies, and to give Succeſs to his ſecret Negotiations with the Miniſters of *France*, was privy to, conſenting and adviſing, together with other falſe and evil Counſellors, and together with them did adviſe and conſent, that an Order ſhould be ſent in her Majeſty's Name, to the Duke of *Ormond* in *Flanders*, to avoid engaging in any Siege, or hazarding a Battle till further Orders; although nothing had then been ſettled in the ſaid private Negotiations for the Intereſt and Security of *Great Britain*; and although *Philip* King of *Spain* at that Time had not conſented to the Renunciation of his Right to the Crown of *France*. And not contenting himſelf with having obtained that fatal Step, ſo highly advantageous to the Cauſe of *France*, but being wickedly determined to do all that in him lay to diſſolve the whole Confederacy, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, with others, was privy to, and did conſent and adviſe, that Orders ſhould be ſent to the Biſhop of *Briſtol*, one of her Majeſty's Plenipotentiaries then at *Utrecht*, to take the firſt ſolemn Opportunity to declare to the *Dutch* Miniſters, that her Majeſty looked on herſelf from their Conduct to be then under no Obligation whatſoever to them: Which two Declarations giving juſt Alarms to all the Allies, they repreſented to the Biſhop of *Briſtol* their general Diſſatisfaction, and the inexpreſſible Conſternation they were all in; that theſe Proceedings were the unavoidable Ruin of *Europe*: They urged Religion, Liberty, and the Faith of Treaties, to ſhew the Enormity of this Uſage; and the States expreſſed their Uneaſineſs on no account ſo much, as that they could not come to the Knowledge of their own Lot. Which Repreſentations the Biſhop of *Briſtol* did, at the Inſtance of the Allies, ſignify to one of her Majeſty's Principal Secretaries of State; but their High Mightineſſes finding that all Applications to the Miniſters of *Great Britain*, and in particular to the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, were of no avail againſt *France*, and for the Intereſt of the common Cauſe, thought it neceſſary, in a manner the moſt moving and reſpectful, to addreſs directly to her Majeſty by a Letter of the Fifth of *June*, One Thouſand Seven Hundred and Twelve; therein expreſſing their great Surprize and Affliction at the two Declarations aforementioned; and finding it difficult to conceive how ſuch Declarations, ſo prejudicial to the common Cauſe, given ſo ſuddenly without their Knowledge, and undoubtedly too without the Knowledge of the other Allies, could agree and conſiſt with the Nature of an Alliance, and with thoſe Aſſurances and Engagements her Majeſty had ſo lately made; and not knowing how to reconcile it with the great Goodneſs and Kindneſs which her Majeſty had always honoured them with, and not being able to conceive how ſuch a ſudden Change could happen with reſpect to them, having carefully examined their own Conduct, and finding nothing therein that could have given Ground to her Majeſty's Diſſatisfaction; and having repreſented the viſible and immediate fatal Conſequences of the ſaid two Orders, not only to the common Intereſt of her Majeſty and the States, but to the whole Confederacy and to the Proteſtant Religion; they beſeeched her Majeſty, with all the Reſpect, and all the Earneſtneſs they were capable of, that ſhe would not perſiſt in the Declarations made by the Biſhop of *Briſtol*, and would be pleaſed to revoke the Orders given to the Duke of *Ormond*; and would authorize him to act according to Occurrences, and as the Exigency of the War, and the Advancement of the common Cauſe ſhould require. Notwithſtanding which, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being acquainted with the ſaid Repreſentations of the States, was not only wanting in his Duty to her Majeſty, and to his Oath, and the great Truſt repoſed in him, in not adviſing, as he ought to have done, her ſacred Majeſty to have hearkened to the ſaid ſeveral Inſtances made to her; but perſiſting in his deſperate and deſtructive Meaſures for the Advancement of the Intereſt of the common Enemy, did afterwards adviſe her Majeſty to diſregard and reject the ſame; and did countenance, encourage, adviſe, and promote the ſaid private, ſeparate, and wicked Negotiations with *France*, without any Participation of the Allies, contrary to all her Majeſty's Engagements, and to the apparent Ruin of the common Cauſe. By which ſeveral wicked and perfidious Counſels, the Progreſs of the victorious Arms of the Confederates were ſtopped, and an Opportunity loſt for conquering the Enemy, the moſt favourable, in the Opinion of all the General Officers and the Quarter-Maſters of the Allies, who were ſent out to view

the *French* Camp, and whereby all Hopes of Confidence between her Majesty and her Allies was entirely destroyed, and the *French* King made absolute Master of the Negotiations of Peace, and the Affairs of *Europe* given into his Hands.

ARTICLE IX.

That to impose upon the Allies the fatal Necessity of submitting to the Terms of *France*, and in order thereto to leave the whole Confederate Army at the Mercy of the common Enemy, he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, was privy and consenting to a secret and separate Concert with the Ministers of *France*, without the Knowledge of the Allies, for the separating the Troops in her Majesty's Pay from the rest of the Confederate Army: For the effecting whereof, instead of preventing as far as in him lay so fatal a Step, he was not only wanting to advise against so unwarrantable a Proceeding, but did consent to and advise her Majesty, that the Duke of *Ormond*, and all the Troops then in her Majesty's Pay, or such of them as would obey his Orders, should separate themselves from the Army of the Confederates: And having Notice that the Generals of the Auxiliaries, paid by her Majesty, whose Honour and Consciences would not permit them to abandon the Confederates, and leave them as a Sacrifice to *France*, but for the Sake of the common Interest of *Europe*, and according to the true End and Design of their Conventions, did refuse to withdraw with the Duke of *Ormond*, without particular Orders from their respective Masters; he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, being then Lord High-Treasurer of *Great-Britain*, and one of her Majesty's most Honourable Privy Council, in Violation of his Oath, and the Duty and Trust reposed in him, did take upon himself an arbitrary and illegal Power, to refuse and put a Stop to the Pay and Subsidies due on account of the said foreign Troops, although they were entitled thereto by the Conventions entered into with her sacred Majesty, and by express Provision made by Act of Parliament for the Payment of the same. By which fatal Separation, which pursuant to his evil Counsels was afterwards made, great Numbers of the Confederate Troops, who had before, on many Occasions, signaliz'd themselves in the Defence of the Cause of *Europe*, soon afterwards, at the unfortunate Action of *Denain*, fell as Sacrifices to the Fury and Revenge of *France*; the Siege of *Landrecy* was raised, the important Towns and Fortresses of *Quesnoy*, *Bouchain*, and *Douay* were retaken by the *French* Army: and not only the Fortune of the War, but the Fate of *Europe* decided in Favour of *France*.

ARTICLE X.

That in further Execution of his pernicious Designs to compleat the Destruction of the common Cause of *Europe*, and to render it impracticable for her Majesty to resume the War against *France*, in Conjunction with her Allies, or to recover the Union with her Majesty's old and faithful Allies, so necessary to the Preservation of these Kingdoms; he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treasurer of *Great Britain*, did carry on and concert with the Ministers of *France*, a private and separate Negotiation for a general Suspension by Sea and Land, between *Great Britain* and *France*; and to that End among others, did advise her Majesty to send over *Henry* Viscount *Bolingbroke*, one of her principal Secretaries of State, to the Court of *France*, with Powers to settle the said Suspension. In pursuance of which, a destructive Treaty of Suspension was made in *France*, on the Nineteenth of *August*, N. S. One Thousand Seven Hundred and Twelve, by the said *Henry* Viscount *Bolingbroke*, on the Part of her said Majesty, for four Months, without the Knowledge or any Participation of the Allies; and before any Terms of Peace were settled with the Enemy, either for *Great Britain* or the Allies. By which evil Counsels, the express Terms of several of the afore-mentioned Treaties were expressly contravened and broken, the good Friends and antient Allies of her Majesty and these Kingdoms were totally deprived of the just Assistance to which they were thereby entitled, and were left exposed to the Insults of the common Enemy; and the sacred Ties of Union and Friendship between her Majesty and her Allies being cut asunder, her Majesty's Person and Government, the Safety of her Kingdoms, and of the Protestant Succession to the Crown of these Realms, were left exposed to the Enterprizes of her most formidable Enemy.

ARTICLE XI.

That whereas the States-General of the *United Provinces* were, in or about the Months of *September* or *October*, in the Year of our Lord One Thousand Seven Hundred and Twelve, in Possession of the strong and important Town and Fortress of *Tournay*: And whereas the *French* King had, during the Course of the said private, separate, and traitorous Negotiation between him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, and the Ministers of *France*, signified his Consent to the Ministers of *Great Britain*, that the said Town and Fortress of *Tournay* should remain to the said States-General as Part of their Barrier: And whereas her Majesty, in her Instructions of *December* the Twenty-third, One Thousand Seven Hundred and Eleven, to her Plenipotentiaries, at *Utracht*, had expressly directed them to insist with the Plenipotentiaries of *France*, in the General Congress, that towards forming a sufficient Barrier for the States-General, *Tournay* should remain to their High Mightinesses; and did afterwards declare herself conformably thereunto, in her Speech to both Houses of Parliament, on the Sixth of *June*, One Thousand Seven Hundred and Twelve, in which she communicated to them the Terms whereon a Peace might be made. And whereas for several Years before, and till the said Months of *September* and *October*, in the Year of our Lord One Thousand Seven Hundred and Eleven, there was open War between her late Majesty and the *French* King; and the said War continuing for all the said Time, and afterwards, the said *French* King and his Subjects were Enemies to her Majesty: He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treasurer of *Great Britain*, and a Subject of her Majesty's, not considering the Duty of his Allegiance, but having altogether withdrawn the cordial Love, and true and due Obedience, which every true and faithful Subject owed to her said Majesty; and designing to give Aid and Succour, and to adhere to the said *French* King, did in or about the Months of *September* or *October*, One Thousand Seven Hundred and Twelve, during the said War, falsly, maliciously, wickedly, and traitorously aid, help, and assist, and adhere to the *French* King, then an Enemy to her late Majesty: And in Execution and Performance of his aiding, assisting, and adhering, maliciously, falsly, and traitorously did counsel and advise the said Enemy, in what Manner and by what Methods the said important Town and Fortress of *Tournay*, then in the Possession of the States-General, might be gained from them to the *French* King, contrary to the Duty of his Allegiance, and the Laws and Statutes of this Realm.

ARTICLE XII.

That whereas her late Majesty Queen *Anne*, not only in pursuance of the Treaties she stood engaged in to her good Allies, and in particular to his Imperial Majesty, for the Recovery of the Monarchy of *Spain* to the House of *Austria*, thereby to preserve a due Ballance of Power in *Europe*, but also from her just Resentment against the Duke of *Anjou*, who then stil'd himself King of *Spain*, and who, in Defiance of her Majesty's Title to the Crown, acknowledged the Pretender as King of *Great Britain*; and on these just Foundations her Majesty had, in Vindication of the Honour of the Crown, and in Justice to her People, at a vast Expence of Blood and Treasure, and on the earnest and repeated Advices of her Parliament, prosecuted a vigorous War against the Duke of *Anjou*: And whereas, in the Years of our Lord One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, and One Thousand Seven Hundred and Twelve, the said open, bloody, and expensive War was carried on between her said late Majesty Queen *Anne* and the said Duke of *Anjou*, and during all the Time aforesaid, the said War did continue, and for all that time the said Duke of *Anjou*, and the Subjects of *Spain* adhering to him, were Enemies of her late Majesty: He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treasurer of *Great Britain*, and one of her Majesty's Privy-Council, and a Subject of her said Majesty, not considering the Duty of his Allegiance, but having withdrawn his true Obedience from her said late Majesty, did at several Times, in the said Years of our Lord, One Thousand Seven Hundred and Ten, One Thousand Seven Hundred and Eleven, and One Thousand Seven Hundred and Twelve, falsly, maliciously, wickedly, and traitorously aid, help, assist, and adhere to the said Duke of *Anjou*, then an Enemy to her said late Majesty; and in the Execution and Performance of his said aiding, helping, assisting and adhering, and in Confederacy and Combination with the then Enemies of her late Majesty, and with divers other wicked and evil-disposed Persons, did, at several times, in the Years aforesaid, advise and counsel the Enemies of her late Majesty, and in such counselling and advising, did concert with them, and did promote the yielding and giving up *Spain* and the *West-Indies*, or some Part thereof, to the said Duke of *Anjou*, then in Enmity with her Majesty, against the Duty of his Allegiance, and the Laws and Statutes of this Realm.

ARTICLE. XIII.

That whereas the Riches, Power, and Strength of these Kingdoms depend entirely on the flourishing Condition of Trade and Navigation, and her late Majesty Queen *Anne* having due Regard thereto, as well as to the just Expectations of her People, after the vast Expences they had so cheerfully undergone in Support of the War, did, on the first Opening the Conferences for a General Peace, declare from the Throne to both Houses of Parliament, on the Seventh of *December* One Thousand Seven Hundred and Eleven, that she would endeavour, that after a War which had cost so much Blood and Treasure, the Nation might find their Interest in Trade and Commerce improved and enlarged by a Peace: And on the Sixth of *June* One Thousand Seven Hundred and Twelve, when she was pleased to communicate the Terms on which a General Peace might be made, did declare, that nothing had mov'd her Majesty from steadily pursuing the true Interest of her own Kingdoms, and that the Terms of Peace obtained for her own Subjects were such, as she had Reason to expect would make her People some Amends for the great and unequal Burden which they had laid under through the whole Course of the War; and hoped that none of the Confederates would envy her Share in the Glory and Advantage of the Peace; and afterwards declared to both Houses of Parliament her Satisfaction in the near View she had of a Peace; since it would, in some Measure, recompense her Subjects for the vast Expence: And after the Conclusion of the Treaty of Peace and Commerce with *France*, did declare from the Throne, on the Ninth of *April* One Thousand Seven Hundred and Thirteen, that the many Advantages she had obtained for her Subjects, had occasioned much Opposition and long Delays to the Peace; but it afforded her great Satisfaction, that her People will have it in their Power, by degrees, to repair what they had suffered during so long and burthensome a War. Whereupon both Houses of Parliament did from Time to Time express their grateful Acknowledgments to her Majesty for her great Care and Concern for the Welfare of her People. And whereas at the setting on Foot, and the Progress of the said private, separate, and pernicious Negotiations between the Ministers of *Great Britain* and *France*, it was laid down as a Principle, on the Part of *Great Britain*, never to be departed from, that *France* should consent to adjust the Interests of *Great Britain* in the first Place, that the Ministers of *Great Britain* might thereby be enabled to engage the Queen to make the Conclusion of the General Peace easy to *France*; and on this plausible Pretence it was insisted on by the Ministers of *Great Britain*, to remit the Discussion of the particular Interests of the Allies to General Conferences; and throughout the whole Course of the said separate Negotiation, all imaginable Concessions were not only made by the Ministers of *Great Britain* for a real Advantage of the Interests of *France* against the Allies, but all Measures were entered into and concerted between them, that even the Ministers of *France* could dictate, in order to strengthen their Hands, and

to enable them to impose the Terms of a General Peace: He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, having nothing in view through the whole Course of the said Negotiation, wherein he was wickedly and principally engaged in Concert with *France*, but the final Destruction of his Country; and to that end the sacrificing the Commerce of *Great Britain* to the Aggrandisement of *France*, was not only wanting in his Duty to her Majesty in not insisting on in all Events, and not procuring, in the first Place, the most certain and strict Securities imaginable for the Safety and Advantage of the Commerce of these Kingdoms; but did advise her late Majesty, that in the Proposition sent by his Privity and Advice, by Mr. *Prior* to *France*, and also in the said private and separate Treaty, signed on the Seven-and-Twentieth of *September*, One Thousand Seven Hundred and Eleven, wherein the Preliminary Demands for *Great Britain*, more particularly were intended to be adjusted with *France*, the Demands for *Great Britain*, in point of Commerce, should not only be made in loose, general, and insufficient Terms, but that the Liberty of Fishing, and Drying of Fish on *Newfoundland*, should be expresly given up to *France*, tho' the Restitution of that small part of the Island, which *France* had taken during the War, was therein referred to be discuss'd to General Conferences. And having, by his wicked Artifices, engaged her Majesty in the said private Treaty with *France*, without any Security for the Commerce of *Great Britain*, he did artfully and cunningly contrive with the Ministers of *France* to keep in Suspence all Matters that concerned the Commerce of *Great Britain*, until, by means of his wicked and pernicious Counsels aforemention'd, *France* was become Masters of the Negotiations, and the chief Advantages for the Commerce of *Great Britain* by that means remaining unsettled: And the Ministers of *France* afterwards disputing the most essential Articles which had been in agitation, and in particular that fundamental Principle of treating and being treated as *Gens Amicissima*, and endeavouring to elude what had been agreed on in the said private and separate Negotiation, for the supposed Advantage of *Great Britain*; he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, under pretence of removing a Difficulty then depending, by an Expedient advantageous to *Great Britain*, did treacherously advise the ninth Article of the Treaty of Commerce with *France*, a Bill for the rendering whereof effectual was afterwards rejected by the House of Commons, as highly prejudicial and destructive to the Commerce of these Kingdoms: But yet for the sake of gaining that destructive Article for *Great Britain*, as if the same had been advantageous, he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, in Defiance of the express Provision of an Act of Parliament, as well as in Contempt of the frequent and earnest Representations of the Merchants of *Great Britain*, and of the Commissioners for Trade and Plantations, did advise her Majesty finally to agree with *France*, that the Subjects of *France* should have liberty of Fishing and drying Fish on *Newfoundland*; and did also advise her Majesty to make a Cession to *France* of the Isle of *Cape Breton*, with liberty to fortify the same, altho' the Isle of *Cape Breton* was part of the antient Territories of the Crown of *Great Britain*; and her Majesty had declared from the Throne, that *France* had consented to make an absolute Cession of *Nova Scotia*, or *Acadia*, whereof *Cape Breton* is part, to her Majesty. And the said *Robert* Earl of *Oxford* and Earl *Mortimer*, intending in all Events to secure to *France* the Advantages relating to the Fishery of *Newfoundland* and to *Cape Breton*, did, in Conjunction with the Ministers of *France*, advise her Majesty to consent, that the same should be made an Article in the Treaty of Peace between *Great Britain* and *France*: whereas the only Advantages in Trade, pretended to be stipulated for *Great Britain*, being inserted in the Treaty of Commerce, were to depend on certain Conditions to be made good by Act of Parliament; and pursuant to, and by the Influence of the said evil Counsel of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, her sacred Majesty was advised to ratify the said Article in the said Treaty of Peace and the said Treaty of Commerce. By means of which pernicious Counsels, the good Intentions of her sacred Majesty to have obtained for her People advantageous Terms of Commerce were entirely frustrated, the Trade and Manufactures of *Great Britain*, as far as in him lay, rendered precarious, and at the Mercy of the Enemy, and that beneficial Branch of Trade, always esteemed the great Support of the Naval Power, and the chief Nursery of the Seamen of *Great Britain*, yielded up to the Subjects of *France*: and the only Pretence for the avowed and notorious Violation of Treaties, and the carrying on the Measures of *France*, *viz.* the adjusting first the Interests of *Great Britain*, through the whole Course of the said private and separate Negotiations, terminated at last in the Sacrifice of the Commerce of *Great Britain* to *France*, without the least Shadow of Advantage in Trade procured for these Kingdoms.

ARTICLE XIV.

That he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did, in concert with other evil and false Counsellors, even without any Application from his Royal Highness the Duke of *Savoy*, and after the *French* King had, in the Course of the said private and separate Negotiations, consented that the Kingdom of *Sicily* should remain to the House of *Austria*, form a Project and Design to dispose of the Kingdom of *Sicily* to the Duke of *Savoy* from the House of *Austria*: And to effect that his unjust, dishonourable, and pernicious Project, he did advise her Majesty to give Instructions, among other things, to *Henry* Viscount *Bolingbroke*, then appointed her Ambassador to *France*, to demand in her Majesty's Name, of the *French* King, the Kingdom of *Sicily* for his said Royal Highness. And a Treaty of Peace being afterwards made between the *French* King, his Royal Highness, and the Duke of *Anjou*, wherein a Cession is made to his Royal Highness of the Kingdom of *Sicily*, without any Concurrence or Participation of his Imperial Majesty; he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did basely and scandalously advise her sacred Majesty to consent to the same, by an Article inserted in the Treaty of Peace between her Majesty and the *French* King. And afterwards, by his Privity and Advice, her Majesty was prevailed on to assist his Royal Highness against the Emperor then in Alliance with her Majesty, with a part of her Royal Fleet at her own Expence, in order to put him in Possession of the said Kingdom of *Sicily*. Whereby the greatest Injustice was done to his Imperial Majesty, in direct Violation of the Grand Alliance, and contrary to her Majesty's frequent Declarations from the Throne, and her plain and full Instructions to her Plenipotentiaries at *Utrecht*, for obtaining his just and reasonable Satisfaction; and whereby National Faith, and the Honour of the Crown, was vilely betray'd, and the Naval Power of these Kingdoms, and the Supplies granted by Parliament for reducing the common Enemy, were perfidiously employ'd against the great and faithful Allies of this Kingdom.

ARTICLE XV.

That whereas the Dignity and Support of the Imperial Crown of these Realms has in all Ages greatly depended on the Wisdom and Truth of the Communications made from the Throne, especially in Parliament, as the sure and only means whereby the Kings and Queens of this Realm can receive the sincere and faithful Advice of their People in Matters of the highest Importance, and which by the Fundamental Laws and Constitution of this Government ought to be inviolably observ'd as the sacred Band of the Duty and Affection of Subjects to their Sovereign. And whereas by the most antient and known Laws of this Kingdom it is indispensably incumbent on the great Officers of State that surround the Throne, to maintain as far as in them lies the Sacredness of the Royal Word on all Occasions; it being most apparent that the greatest Dishonour to the Throne, and the greatest Danger to these Kingdoms must inevitably ensue, whenever that Fountain of Truth by wicked Counsels shall be in any degree corrupted, and thereby lose its just Influence and necessary Authority. And whereas the Power of making Peace and War, one of the antient, undoubted, and most important Prerogatives of the Crown, has been always exercis'd by the Sovereigns of these Realms, with the strictest Regard to the Honour of the Crown and the Welfare of the People; and for that end they have in great Wisdom in all Ages taken the Advice of Parliament on such weighty Occasions. And whereas her late Majesty Queen *Anne* declared from the Throne her gracious Intentions to communicate the Terms of Peace to her Parliament, for their deliberate and serious Advice therein, wisely foreseeing that the Safety of her Person and Government, of the Protestant Succession to the Crown, which she had nearest her Heart, and of the Protestant Religion, and of the Liberties of *Europe*, did inevitably depend on the happy Conclusion of the said Negotiations: He the said *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High-Treasurer of *Great Britain*, having taken on himself throughout the said Negotiations a most arbitrary and unwarrantable Authority, and the chief Direction and Influence to her Majesty's Councils; and most wickedly designing to prostitute the Honour of the Crown, and the Dignity of Parliaments, and not only totally to deprive her Majesty of the wholesome and necessary Advice of her Parliament in so great a Conjuncture, but by misrepresenting the most essential Parts of the Negotiations of Peace, to obtain the Sanction of Parliament to his traiterous Proceedings, and thereby fatally to deceive her Majesty, her Allies, her Parliament, and her People; he the said *Robert* Earl of *Oxford* and Earl *Mortimer* was not only wanting in the Discharge of that Duty to his Sovereign which became his High Station, by not advising against, and as far as in him lay in all Events by not preventing even any Intimation from the Throne to the Parliament, which was not conformable to the exactest Truth and Impartiality; but taking Advantage of his ready Access to her Majesty, and his exorbitant Influence on her Councils, did prepare, form, and concert, together with other false and evil Counsellors, several Speeches and Declarations to be made by her Majesty from the Throne to her Parliament, on the Subject of the said Negotiations of Peace, and did advise her Majesty to make the same to her Parliament: And particularly, by means of his false and evil Counsels, her Majesty did, amongst other things, on the seventh of *December*, One Thousand Seven Hundred and Eleven, declare from the Throne in the Words, or to the Effect following: *That notwithstanding the Arts of those who delight in War, both Place and Time are appointed for opening the Treaty of a General Peace. Our Allies, especially the States-General, whose Interest I look upon as inseparable from my own, have by their ready Concurrence express'd their Confidence in me:* Whereas it was then notorious to all *Europe*, and the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others his Accomplices, well knew, that the principal Allies of her Majesty, and particularly the States-General, then had in the strongest and most pressing manner represented not only to her Majesty's Ministers in *Holland*, but afterwards by a Minister of their own directly to her Majesty, the Insecurity and Danger to the Common Cause, by entering into general Negotiations with *France* on the Propositions signed by Monsieur *Mesnager*; and also their firm Opinion of the fatal Consequences that might ensue thereon: And although they had still great Apprehensions concerning the Method of opening the Conferences, and the Consequences that might happen thereupon; yet being wrought on by the Menaces and other extraordinary Methods used with them by her Majesty's Ministers, and relying on the solemn Assurances and Declarations of her Majesty to support the Interest and Concern of their State, and to act in perfect Confidence and Harmony with them; they did at last, with the greatest Reluctance, consent to enter upon a General Negotiation of Peace with *France*. And in the same Speech her Majesty was prevail'd on by the evil Counsels of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, to declare in the Words, or to the Effect following: *That the Princes and States which have been engaged with us in this War, being by Treaties entitled to have their several Interests secured at a Peace; I will not only do my utmost to procure every one of them all reasonable Satisfaction, but I shall also unite with them in the strictest Engagements for continuing the Alliance, in order to render the General Peace secure and lasting.* And in her Message of the Seventeenth of *January* following, her Majesty again expresses the Care she intended to take of all her Allies, and of the strict Union in which she proposed to join with them: Whereas by the evil Influence of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, her Majesty was not only induced to enter into a private Negotiation with *France*, exclusive of her Allies; but the same was in like manner carried on by him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others. And the several Interests which the Allies were entitled to by their Treaties, were not only not secured to them by the Peace, nor any reasonable Satisfaction given to them, but the main Interests of her principal Allies, especially of his Imperial Majesty, were by the wicked Practices of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, given up to *France*; and no Engagements were obtained for continuing the Alliance, in order to render

render the general Peace ſecure and laſting. And her Majeſty having on many former Occaſions expreſs'd her Reſolutions never to make Peace with *France* and *Spain*, ſo long as *Spain* and the *Weſt-Indies* remain'd in the Houſe of *Bourbon*; ſhe was prevail'd upon by the Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, to declare herſelf, in anſwer to an Addreſs of the Houſe of Peers, the Eleventh of *December*, One Thouſand Seven Hundred and Eleven, to the Effect following, viz. *I ſhould be ſorry any one could think I would not do my utmoſt to recover* Spain *and the* Indies *from the Houſe of* Bourbon. Whereas it is moſt manifeſt, that the leaving the Kingdom of *Spain* and the *Indies* in the Houſe of *Bourbon*, was the Foundation of the private and ſeparate Treaty between *Great Britain* and *France*, which had been before that Time ſigned even with her Majeſty's Conſent; and the ſame fundamental Reſolution was immutably obſerved between them to the Concluſion of the Peace. And her Majeſty having frequently declared from the Throne, that her Reſolutions in entering into the ſaid Negotiations were to obtain a general, good, and laſting Peace, and the Plenipotentiaries at *Utrecht* being inſtructed to treat with *France* conformably to that End, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, in order to remove the juſt Suſpicions which had been conceived of his private and ſeparate Negotiations with *France*, did adviſe her Majeſty to make this further Declaration in her ſaid Meſſage of the Seventeenth Day of *January*, That the World will now ſee how groundleſs thoſe Reports are which have been ſpread abroad by Men of evil Intentions to ſerve the worſt Deſigns; as if a ſeparate Peace had been treated, for which there has not been the leaſt Colour given: Whereas a private and ſeparate Negotiation had been carried on for five Months together between *Great Britain* and *France*; and during that Time private Propoſitions had been ſent from *England*, and a private Treaty with a Miniſter of *France* ſigned, even by her Majeſty's Privity, excluſive of all the Allies, before the ſaid Declaration made by her Majeſty: And private and ſeparate Meaſures were thenceforth carried on by the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and his Accomplices, on Behalf of her Majeſty, with the Miniſters of *France*, even to the Concluſion of the Peace with *France*. Her Majeſty was further prevailed on by the wicked Advice of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, in her Speech of *June* the Sixth, One Thouſand Seven Hundred and Twelve, to declare, that to prevent the Union of the two Crowns, ſhe would not be content with what was Speculative, but inſiſted upon ſomething Solid: And in the ſame Speech to the Effect following, *videlicet*, The Nature of the Propoſal for a Renunciation is ſuch, that it executes itſelf, and *France* and *Spain* are thereby more effectually divided than ever: Whereas the Miniſters of *France* had before that Time aſſured the Miniſters of her Majeſty, that to accept of the Expedient propoſed on her Majeſty's Behalf, would be to build on a ſappy Foundation; and that the Renunciation would be null and void by the fundamental Laws of *France*; and that they would deceive themſelves who accepted it as an Expedient to prevent the Union of the two Crowns. And not only in the Particulars beforementioned, but in many others contained in the ſaid ſeveral Speeches and Meſſages made and ſent to her Parliament, even while the ſaid Negotiations of Peace with *France* were depending, the moſt eſſential Points relating to Peace and Commerce, and which concerned the Intereſt, as well of the Allies as of *Great Britain*, were groſly miſrepreſented. By all which wicked, treacherous, and unexampled evil Counſels, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt baſely, ungratefully, and ſcandalouſly abuſe the Favour of his Royal Miſtreſs, and by means of her Authority did miſlead her Parliament into groundleſs and fatal Reſolutions; and thereby not only prevented the juſt Advice of the Parliament to her Majeſty in that critical Juncture, but obtained the Approbation of Parliament to his myſterious and dangerous Practices; and did not only deprive her Majeſty of the Confidence and Affection of her Allies, but expoſed her Majeſty and her People to the Contempt of the common Enemy.

ARTICLE XVI.

That whereas the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* having on all Occaſions uſed his utmoſt Endeavours to ſubvert the antient eſtabliſhed Conſtitution of Parliaments, the great and only Security of the Prerogative of the Crown, and of the Rights, Liberties and Properties of the People, and being moſt wickedly determined at one fatal Blow as far as in him lay to deſtroy the Freedom and Independency of the Houſe of Lords, the great Ornament and neareſt Support of the Imperial Crown of theſe Realms, and falſly intending to diſguiſe his miſchievous Purpoſes under a pretended Zeal for the Prerogative of the Crown; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, on or about the Months of *December* or *January*, One Thouſand Seven Hundred and Eleven, whilſt the Houſe of Lords were under an Adjournment, and had Reaſon to expect that on their next Meeting Matters of the higheſt Importance would be communicated to them from the Throne, they having ſome few Days before given their humble Opinion and Advice to her Majeſty, that no Peace could be ſafe or honourable to *Great Britain* or *Europe*, if *Spain* and the *Weſt Indies* were to be allotted to any Branch of the Houſe of *Bourbon*; being then Lord High-Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council, and aſſuming to himſelf an arbitrary Direction and Controul in her Majeſty's Councils, contrary to his Duty and his Oath, and in Violation of the great Truſt repoſed in him, and with an immediate Purpoſe to render ineffectual the many earneſt Repreſentations of her Majeſty's Allies againſt the ſaid Negotiations of Peace, as well as to prevent the good Effects of the ſaid Advice of the Houſe of Lords; and in order to obtain ſuch further Reſolutions of that Houſe of Parliament on the important Subject of the Negotiations of Peace, as might ſhelter and promote his ſecret and unwarrantable Proceedings, together with other falſe and evil Counſellors, did adviſe her Majeſty to make and create Twelve Peers of this Realm, and Lords of Parliament; and purſuant to his deſtructive Counſels Letters Patents did forthwith paſs, and Writs iſſued, whereby twelve Peers were made and created; and did likewiſe adviſe her Majeſty immediately to call and ſummon them to Parliament; which being done accordingly, they took their Seats in the Houſe of Lords on or about the Second of *January*, One Thouſand Seven Hundred and Eleven, to which Day the Houſe then ſtood adjourned. Whereby the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt highly abuſe the Influence he then had with her Majeſty, and prevailed on her to exerciſe in the moſt unprecedented and dangerous Manner that valuable and undoubted Prerogative, which the Wiſdom of the Laws and Conſtitution of this Kingdom hath entruſted with the Crown for the rewarding ſignal Virtue and diſtinguiſh'd Merit. By which deſperate Advice he did not only, as far as in him lay, deprive her Majeſty of the Continuance of thoſe ſeaſonable and wholeſome Counſels in that critical Juncture, but wickedly perverted the true and only End of that great and uſeful Prerogative to the Diſhonour of the Crown, and the irreparable Miſchief to the Conſtitution of Parliaments. All which Crimes and Miſdemeanours were committed and done by him the ſaid Earl againſt our late Sovereign Lady the Queen, her Crown and Dignity, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him the ſaid Earl, and he the ſaid Earl of *Oxford* and Earl *Mortimer* was Lord High-Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council, during the Time that all and every the Crimes before ſet forth were done and committed. For which Matters and Things, the Knights, Citizens, and Burgeſſes of the Houſe of Commons in Parliament aſſembled, do, in the Name of themſelves and of all the Commons of *Great Britain*, impeach the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* of High-Treaſon, and other High Crimes and Miſdemeanours in the ſaid Articles contained. And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any time hereafter, any other Accuſations or Impeachment againſt the ſaid Earl, and alſo of replying to the Anſwers which the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall make to the Premiſes, or any of them, or any Impeachment or Accuſation that ſhall be by them exhibited, according to the Courſe and Proceedings of Parliament, do pray that the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* be put to anſwer all and every the Premiſes; and that ſuch Proceedings, Examinations, Trials and Judgments may be upon them, and every of them had and uſed, as ſhall be agreeable to Law and Juſtice. And they do further pray and demand, that the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* may be ſequeſtred from Parliament, and forthwith committed to ſafe Cuſtody.

After theſe Articles were deliver'd and debated upon, a Motion was made, that the Earl of *Oxford* might be committed to ſafe Cuſtody, when his Lordſhip ſpoke to this Effect.

My Lord,

IT is a very great Misfortune for any Man to fall under the Diſpleaſure of ſo great and ſo powerful a Body as the Commons of Great Britain; *and this Misfortune is the heavier upon me, becauſe I had the Honour to be placed at the Head of the late Miniſtry, and muſt now, it ſeems, be made accountable for all the Meaſures that were then purſued: But on the other Hand, 'tis a very great Comfort to me under this Misfortune, that I have the Honour to be a Member of this auguſt Aſſembly: An Aſſembly which always ſquares their Proceedings and Judgments by the Rules of Honour, Juſtice and Equity; and is not to be biaſs'd by a Spirit of Party.*

My Lord, I could ſay a great deal to clear myſelf of the Charge which is brought againſt me: But as I now labour under an Indiſpoſition of Body, beſides the Fatigue of this long Sitting, I ſhall contract what I have to ſay within a very narrow Compaſs. This whole Accuſation may, it ſeems, be reduced to the Negotiation and Concluſion of the Peace. That the Nation wanted a Peace, nobody will deny; and I hope it will be as eaſily made out, that the Conditions of this Peace are as good as could be expected, conſidering the Circumſtances wherein it was made, and the Backwardneſs and Reluctancy which ſome of the Allies ſhew'd to come into the Queen's Meaſures. This is certain, that this Peace, as bad as it is now repreſented, was approved by two ſucceſſive Parliaments. It is indeed ſuggeſted againſt this Peace, that it was a ſeparate one; but I hope, my Lord, it will be made appear, that it was general; and that 'twas France, *and not* Great Britain, *that made the firſt Steps towards a Negotiation. And, my Lord, I will be bold to ſay, that during my whole Adminiſtration, the Sovereign upon the Throne was loved at Home, and feared Abroad.*

As to the Buſineſs of Tournay, *which is made a capital Charge, I can ſafely aver, that I had no manner of Share in it; and that the ſame was wholly tranſacted by that unfortunate Nobleman who thought fit to ſtep aſide: But I dare ſay in his Behalf, that if this Charge could be proved, it would not amount to Treaſon. For my own part, as I always acted by the immediate Directions and Commands of the late Queen, and never offended againſt any known Law, I am juſtify'd in my own Conſcience, and unconcern'd for the Life of an inſignificant old Man. But I cannot, without the higheſt Ingratitude, be unconcern'd for the beſt of Queens: A Queen who heap'd upon me Honours and Preferments, tho' I never aſk'd for them; and therefore I think myſelf under an Obligation to vindicate her Memory, and the Meaſures ſhe purſued, to my dying Breath. My Lord, If Miniſters of State, acting by the immediate Commands of their Sovereign, are afterwards to be made accountable for their Proceedings, it may one Day or other be the Caſe of all the Members of this auguſt Aſſembly: I don't doubt, therefore, that out of Regard to yourſelves, your Lordſhips will give me an equitable Hearing; and I hope that, in the Proſecution of this Enquiry, it will appear, that I have merited not only the Indulgence, but likewiſe the Favour of the Government. My Lord, I am now to take my Leave of your Lordſhip, and of this honourable Houſe, perhaps for ever! I ſhall lay down my Life with Pleaſure, in a Cauſe favour'd by my late dear Royal Miſtreſs. And when I conſider that I am to be judged by the Juſtice, Honour and Virtue of my Peers, I ſhall acquieſce, and retire with great Content: And, my Lords, God's Will be done.*

Further Articles *of Impeachment of High Crimes and Miſdemeanours, againſt* Robert *Earl of* Oxford *and Earl* Mortimer.

ARTICLE I.

THAT whereas in or about the Month of *January*, in the Year One Thouſand Seven Hundred Ten-Eleven, a dangerous and deſtructive Expedition had been projected and ſet on Foot, under Pretence of making a Conqueſt on the Poſſeſſions of the *French* King in *North America*, but with a real Deſign to promote his Intereſts, by weakening the Confederate Army in *Flanders*, and diſſipating the Naval Force of this Kingdom, as well as for the Sake of the private Intereſts and corrupt Gain of the Promoters of the ſaid Expedition, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*,

timer, being then one of her late Majesty's Privy Council, and one of the Commissioners of her Majesty's Treasury, was not only wanting in his Duty to her late Majesty, by wilfully and industriously absenting from the Meetings of other Persons then in high Trust under her Majesty, wherein the said Expedition was concerted, and by not advising her Majesty against, and doing what in him lay to have prevented the putting the same in Execution, but did, contrary to his Oath, and the high Trust then reposed in him, advise her Majesty to consent to the making an Expedition for the conquering *Canada* and the City of *Quebech* on the River of St. *Laurence* in *North America*; and in Execution of his said evil Counsels, he did further advise her Majesty to give Orders for detaching several Battalions of the Forces then in the Service of her Majesty, in Conjunction with her Allies in *Flanders*, and to send the same with a large Squadron of Men of War on the said Enterprize; although the said *Robert* Earl of *Oxford* and Earl *Mortimer* well knew, that the said Project or Expedition having been frequently deliberated on and maturely considered, a short Time before, in a Committee of Council, was then laid aside as dangerous and impracticable. And a Demand being made at the Treasury on or about the Months of *May* or *June*, One Thousand Seven Hundred and Eleven, for the Sum of Twenty-eight Thousand Pounds or thereabouts, on Pretence of Arms and Merchandize said to be sent on the said Expedition to *Canada*, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* being then Lord High Treasurer of *Great Britain*, and one of her Majesty's Privy Council, tho' he well knew, or had Reason to suspect, that the same was an unjust and exorbitant Demand, and a great Abuse on her Majesty and the Public, and such as ought not to have been complied with, was not only wanting in his Duty to her Majesty, in not giving his humble Advice against the said Demand, or at least in not representing to her Majesty the Grounds of such his Suspicion, but did, contrary to his Oath and his Duty, advise her Majesty, that the said Sums should be issued and paid; and did accordingly countersign a Warrant to the Paymaster of her Majesty's Forces for the Payment of the same, pursuant to which the same was issued and received. And in further Violation of his Oath, his Duty, and Trust, and with the most corrupt Design to prevent the Justice due to her Majesty and the Nation, he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, being then Lord High Treasurer of *Great Britain*, and exercising a most unexampled arbitrary Power, not only in her Majesty's private Councils, but extending his evil Influences to the great Council of the Nation; after the said Expedition had proved unsuccessful, and it had been discover'd to him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, that the Nation had been cheated of above Twenty Thousand Pounds on that Account, did most ungratefully and corruptly employ his wicked Arts, and the Credit which he had gained by his many false and crafty Insinuations and Practices, to keep the House of Commons from examining that Affair. And in or about the Month of *August*, One Thousand Seven Hundred and Fourteen, in a Letter or Memorial under his Hand to her late Majesty, he did presume, not only to insinuate the ill Opinion he therein pretended always to have had of the said Expedition, but did declare the Suspicions he had of the great Injury and Abuse done to her Majesty and the Public, in the Demand of the said Twenty-eight Thousand Pounds, even at the Time when the same was made, and that the Public had been cheated of above Twenty Thousand Pounds on that Account; and in the said Memorial did presume further to declare to her Majesty, that he was forced to use all his Skill and Credit to keep the House of Commons from examining that Affair in the last Parliament; thereby vainly, but most wickedly, recommending himself to the Continuance of her Majesty's Favour, by the Success of his most profligate Measures. By all which unparallel'd Corruptions and most dangerous Counsels and Practices of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, the good and faithful Allies of her Majesty were deprived of the Aid of her Majesty's Troops, to which they were entitled by their Conventions, and the Confederate Army in *Flanders* was greatly diminished, to the apparent Advantage of the common Enemy: The Public Money, granted by Parliament for reducing the Power of *France*, and which was expressly appropriated for other special Services, was arbitrarily and illegally misapplied and embezzled, and an heavy Debt incurr'd on the Nation, not only sitting the Parliament, but even in Contempt and Defiance of a Representation made by the House of Commons to the Throne, even whilst the said Expedition was concerting; and whereby the highest Injustice was done, in suppressing an Enquiry so just to her Majesty and her People, and a lasting Reproach and Scandal brought on that House of Commons, of which he boasts, as having been wrought on by his corrupt Influence not to examine into so high and so scandalous an Abuse.

ARTICLE II.

That the said *Robert* Earl of *Oxford* and Earl *Mortimer*, not contented with the high Employments and Places of Honour and Profit bestowed on him by her late Majesty, nor with the large and excessive Gains by him made by the Incomes and Profits of the said Employments, on or about the Month of *October*, One Thousand Seven Hundred and Eleven, whilst the Nation was engaged in a most expensive War against *France* and *Spain*, for preserving the Liberties of *Europe*, and greatly exhausted with the Supplies and Taxes for carrying on the same, and was under such heavy Debts as were impossible to be satisfied, without the utmost Frugality or laying grievous Taxes upon the Commons of *Great Britain*: Contrary to his Oath and his high Trust, and making a most dishonourable and ungrateful Use of the ready Access he had to her late Majesty, did prevail on and advise her Majesty to sign a Warrant to himself, being then Lord High-Treasurer of *Great Britain*, for the Issuing and Payment of the Sum of Thirteen Thousand Pounds to *John Drummond*, Esq; or his Assigns, for such special Services relating to the War, as her Majesty had directed: And the said *Robert* Earl of *Oxford* and Earl *Mortimer*, on or about the Twenty-fourth Day of *November* following, in pursuance of the said Warrant under her Majesty's Sign Manual, did sign a Warrant for the Payment of the said Thirteen Thousand Pounds for such special Services of the War, as her Majesty had directed; although no special Services had been, or were at any Time afterwards directed by her Majesty, to which the said Monies were to be applied. And the said *Robert* Earl of *Oxford* and Earl *Mortimer*, having privately desired Leave of the said *Drummond* to strike some Tin-Tallies in his the said *Drummond*'s Name, he did, pursuant thereto, direct that Orders amounting to the Sum of Thirteen Thousand Pounds should be charged in the Register of the Exchequer on the Monies arising by Sale of Tin, in the Name of the said *John Drummond*; and tho' the same were accordingly struck in the Name of the said *Drummond*, in or about the Month of *November*, One Thousand Seven Hundred and Eleven, they were not deliver'd out to the said *Drummond*, but were kept in the Treasury Chamber, or else were in the Power or Custody of the Earl, till about the End of *January* following, when the said *Drummond* having occasion, as the said *Robert* Earl of *Oxford* and Earl *Mortimer* well knew, to go into *Holland*, at the Desire and Request of the said Earl, he indorsed his Name on the said Orders, and the same were left, by his Privity, Direction, or Consent, in the Hands of Mr. *John Taylor*, a Clerk of the Treasury; and the said *Robert* Earl of *Oxford* and Earl *Mortimer* having afterwards got Possession of the said Orders, did in or about the Month of *June*, One Thousand Seven Hundred and Twelve, send an Order in Writing to the said Mr. *Taylor* to deliver the said Tallies to a Servant of the said Earl, which was done accordingly, the said Indorsements not being at that Time fill'd up: And the said *Robert* Earl of *Oxford* and Earl *Mortimer*, having by these corrupt and scandalous Methods got the said Tallies and Orders into his own Hands, did afterwards fill up Assignments of the said Orders for Twelve Thousand Pounds, Part of the said Thirteen Thousand Pounds, to himself, and the remaining Part to such other Persons as he thought fit; and did afterwards in or about the Months of *August*, *October*, and *November*, One Thousand Seven Hundred and Thirteen, at several Times, dispose of the said Orders and Tallies to his own private Use and Advantage. And to cover the said scandalous Embezzlements, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did afterwards, as he pretends, advise and prevail on her Majesty, on or about the Fourteenth of *December*, One Thousand Seven Hundred and Thirteen, to sign a Warrant prepared by himself, wherein after the Recitals of his own good, faithful, and acceptable Services, which had tended to the Quiet, Safety, and Prosperity of her Majesty and her Realms, though accompanied with great Difficulties on himself, and Hazards to him and his Family; and that her Majesty was resolved to bestow upon him a Sum of ready Money: But the said Earl representing to her Majesty, that the Arrears then due to her Servants and Tradesmen were very great and pressing, her Majesty did therefore agree and determine that he should have, to his own Use, the said several Sums, amounting to Thirteen Thousand Pounds, comprized in the Orders aforesaid: It was directed that the said *John Drummond* should assign the said Orders, and the whole Right and Benefit thereof to the said Earl and his Assigns; although the said Earl had privately and clandestinely procured from the said *Drummond* an Assignment of the said Orders near two Years before the said Warrant, and had fraudulently and corruptly disposed and converted them to his own Use, without her Majesty's Privity or Consent, some time before her Majesty was prevailed on to sign the said Warrant. And though the last-mentioned Warrant, if any such there be, was not communicated to the said *Drummond* by the said Earl during her Majesty's Life, nor was the same countersigned nor entered in the Treasury, yet he the said *Robert* Earl of *Oxford* and Earl *Mortimer*, even after his said Corruption had been discovered in Parliament, did presume, without the Privity of the said *Drummond*, to send the said Warrant to the Commissioners of his Majesty's Treasury, desiring that the same might then have been entered in the Treasury; but the same was with great Honour and Justice refused to be so entered. By which most vile and scandalous Corruption, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* was guilty of the most notorious Breach of his Oath and Trust, as Lord High-Treasurer of *Great Britain*, of the highest Abuse of her Majesty's Goodness, and Embezzlement of her Treasure; and of the greatest Injustice and Oppression of other of her Majesty's Subjects.

ARTICLE III.

That whereas by the established and known Laws of this Kingdom, the Allowances or Appointments for the Maintenance and Support of Ambassadors, Envoys, Plenipotentiaries, and other public Ministers of the Crown in foreign Courts, ought to be ascertained in due Form of Law, as well in Honour as in Justice to the Imperial Crown of these Realms: And whereas the said *Robert* Earl of *Oxford* and Earl *Mortimer*, in or about the Month of *July* or *August*, One Thousand Seven Hundred and Twelve, sent *Matthew Prior*, Esq; an Instrument and Creature of his own, into *France*, for the carrying on his separate and dangerous Negotiations; and did afterwards in the Month of *November*, One Thousand Seven Hundred and Twelve, by his evil Counsels prevail on her late Majesty, without the Privity of, or any Communication with her Allies, to send the said *Matthew Prior* as her Majesty's Plenipotentiary to the *French* King, with Instructions to treat and conclude Matters of the highest Importance, relating to the general Negotiations of Peace: But the same was a treacherous and wicked Contrivance of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, for the more effectually carrying on and promoting his private, separate, and dangerous Practices with the Ministers of *France*, and the Enemies of her Majesty and her Kingdoms; he the said *Robert* Earl of *Oxford* and Earl *Mortimer* not regarding his Oath, or his high Trust, or the Laws of the Kingdom, did most corruptly and scandalously combine with the said *Matthew Prior* for the defrauding her Majesty of very great Sums, under the Colour of his said Employments in *France*; and to that End the said Earl did contrive that the said *Matthew Prior* should be sent into *France*, with the Character aforesaid, but without any settled Appointments or Allowances: But in the Stead and Lieu thereof, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* did give the said *Matthew Prior* an unlimited Credit, and did promise to answer and pay such Bills as the said *Prior* should draw on him during his Residence in *France*; pursuant to which Contrivance and corrupt Agreement he the said *Matthew Prior* did, between the Twenty-seventh of *August*, in the Year One Thousand Seven Hundred and Twelve, New Stile, and the Tenth of *July*, One Thousand Seven Hundred and Fourteen, or thereabouts, at several Times draw Bills of Exchange, to the Amount of Twelve Thousand Three Hundred and Sixty Pounds, or thereabouts, on him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, which he being then Lord High Treasurer of *Great Britain*, did advise and prevail upon her Majesty, to sign Warrants for the Payment of, and did countersign the same, altho' the said *Prior* was no way intitled to any such Allowances by Reason of

of his said Employment, and the same greatly exceeded the Allowance even of an Ambassador of the Crown of *Great Britain*. And the said *Robert* Earl of *Oxford* and Earl *Mortimer* did, in the Years One Thousand Seven Hundred and Twelve, One Thousand Seven Hundred and Thirteen, and One Thousand Seven Hundred and Fourteen, without any Colour or Authority, but for the further promoting his corrupt and wicked Purposes, prevail on and advise her Majesty to sign Warrants, which were countersign'd by himself, for the Payment of the Sum of Five Thousand Five Hundred and Sixty Pounds, or thereabouts, to the Use of *Thomas Harley*, Esq; a near Relation and Emissary of him the said *Robert* Earl of *Oxford* and Earl *Mortimer*, out of the Monies appropriated to the Use of her Majesty's Civil List: And did in like manner, at several Times in the Years aforesaid, most illegally, fraudulently, and corruptly issue, or direct or advise the Direction and Payment of other large Sums of Money, to other Persons out of her Majesty's Treasury: By which most illegal and scandalous Management he the said *Robert* Earl of *Oxford* and Earl *Mortimer* has introduced a Practice highly prejudicial to, and utterly inconsistent with the Constitution of this Kingdom, and of the most pernicious Consequence, by opening a Way for the most dangerous Corruptions; and was not only guilty of a notorious Breach of his Oath, but enter'd into the most base and scandalous Combination with the Persons above-mentioned, and others, under the Pretence and Colour of promoting her Majesty's Service, to defraud her Majesty of the Public Money, which he was entrusted with the Management of for the Support of the Honour and Dignity of the Crown.

ARTICLE IV.

That whereas the Revenues arising to the Crown from the hereditary Excise and Post-Office, or some Parts thereof, were, by virtue of Letters Patents of the late King *James* the Second, charged with and made liable to certain Annuities or yearly Sums, in Trust for, or to the Use of *Mary*, the Consort of the said King *James* the Second, but the said Revenues were afterwards, by several Acts of Parliament, granted and settled for the Support of the Royal Household, and of the Honour and Dignity of the Crown; or for other public Uses, without any saving or exception of the said Letters Patents: And whereas by an Act made in the Twelfth Year of her late Majesty's Reign, the Sum of Five Hundred Thousand Pounds was granted to her late Majesty for the Discharge of divers Arrears of Salaries, Diet-Monies, and other Allowances, and sundry Debts for Pre-emptions, Provisions and other Causes, which had been then incurr'd and grown due to her late Majesty's Servants, Tradesmen and others, and were occasion'd by several extraordinary Expences since the Act for the better Support of her Majesty's Household, and of the Honour and Dignity of the Crown. And the said Sum of Five Hundred Thousand Pounds was expressly appropriated to the Uses afore-mentioned, in Aid of the said Revenues or Branches which were appointed for the Support of her Majesty's Household, and of the Honour and Dignity of the Crown. And whereas by an Act made in the Thirteenth and Fourteenth Years of his late Majesty King *William* the Third, it was Enacted, that for preventing traiterous Correspondence between his Majesty's Subjects and the pretended Prince of *Wales*, or his Adherents, that if any of the Subjects of the Crown of *England*, from and after the first Day of *March*, One Thousand Seven Hundred and One, should within this Realm, or without, hold, entertain, or keep any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said pretended Prince of *Wales*, or with any Person or Persons employed by him, knowing such Persons to be so employed, or should by Bills of Exchange, or otherwise, remit or pay any Sum or Sums of Money for the Use or Service of the said pretended Prince of *Wales*, knowing such Money to be for such Use or Service, such Person so offending being lawfully convicted, should be taken, deem'd, and adjudg'd to be guilty of High-Treason, and shall suffer and forfeit as in Cases of High-Treason. He the said *Robert* Earl of *Oxford* and Earl *Mortimer* having, by the means of the said *Matthew Prior*, held a private and unlawful Correspondence with the said Consort of the late King *James* the Second, then residing in *France*, and being determin'd secretly to promote, as far as in him lay, the Interest of the Pretender, but yet contriving to avoid the said Penalty of High-Treason: And the said Consort of his late Majesty King *James* the Second having empower'd Abbot *Gaultier* (a Popish Priest and busy Emissary between *Great Britain* and *France*, during the said private and separate Negotiations of Peace, and who was particularly entrusted as the common Agent between the Ministers of *Great Britain* and *France*, in transacting the most secret Affairs relating to the Pretender) to concert with the said *Robert* Earl of *Oxford* and Earl *Mortimer* the settling the Payment and Remittance of a very great yearly Sum out of her Majesty's Treasure into *France*, under Colour and Pretence of the said Letters Patents; and the said *Robert* Earl of *Oxford* and Earl *Mortimer* having held frequent clandestine Conferences with the said Abbot *Gaultier*, on the Subject aforesaid, and having, by his evil Counsels, sacrificed to *France* the common Interests of *Europe*; and being resolv'd that the first Fruits of the Peace with *France* should be an Offering made, by his immediate Procurement, to the nearest and most avowed Adherent to the Pretender, tho' at the great Expence of the Honour and Safety of her Majesty and her People, did, soon after the Conclusion of the Peace with *France*, agree and undertake to procure the Payment of the yearly Sum of Forty-seven Thousand Pounds and upwards, to or to the Use of the said Consort, during her Life; and in execution of his said Purpose did afterwards, on or about the 23d of *December*, One Thousand Seven Hundred and Thirteen, being then Lord High-Treasurer of *Great Britain*, and of her Majesty's Privy Council, advise her late Majesty to sign a Warrant to himself, in the Words or to the Effect following, *viz.* Anne R. *Whereas our late Royal Father King* James *the Second, by Letters Patents under his Great Seal, bearing Date on or about the* 28*th Day of* August, *One Thousand Six Hundred and Eighty-five, did Grant unto* Lawrence *Earl of* Rochester, Henry *Earl of* Peterborough, Sidney *Lord* Godolphin, Robert Worden, *Esq; and Sir* Edward Herbert, *Kt. (who are all since deceas'd) divers Annuities, or yearly Sums, amounting to Thirty-seven thousand three hundred and twenty-eight Pounds Thirteen Shillings and Seven Pence, to hold to them and their Heirs, during the Life of his then Royal Consort* Mary, *now Queen Dowager, in Trust for her; and by other Letters Patents, bearing Date on or about the* 3*d of* December, *One Thousand Six Hundred and Eighty-six, did also grant unto the said Queen a farther Pension or yearly Sum of Ten Thousand Pounds to hold during her natural Life, all which were made payable in such a manner as in the said several Letters Patents is more fully express. Our Will and Pleasure now is, and we do hereby Direct, Authorize and Command, that you cause Payment to be made to the Heirs of such of the said Trustees as was the longest Liver, of so much as since the* 24*th Day of* March *last*, 1713, *is incurred or grown due on the said Annuities or yearly Sums, amounting to Thirty-seven thousand three hundred twenty-eight Pounds, Thirteen Shillings and Seven Pence, and to the said Queen Dowager or her Assigns, of so much as since the said* 25*th Day of* March *last, is incurred or grown due on the said Annuity of Ten thousand Pounds, according to the Purport of the several Grants or Letters Patents above recited, as also of what shall hereafter become due and payable upon the said several Annuities, Quarterly, during the Life of the said Queen Dowager; and for so doing, this shall be your Warrant. Given at our Court at* Windsor-Castle, *the Twenty-third Day of* December, *One Thousand Seven Hundred and Thirteen, in the Twelfth Year of our Reign.* And did afterwards, on or about the Twenty-fourth of *December* following, sign a Warrant to the Auditor of the Receipt of her Majesty's Exchequer, requiring him to make and pass Debentures for paying to such Person or Persons as is, are, or shall be authorized to receive the same, the Sum of nine thousand three hundred thirty-two Pounds, three Shillings and four Pence three Farthings, for one Quarter, incurred upon the said several yearly Sums therein mentioned, from *Lady-Day* One Thousand Seven Hundred and Thirteen, to *Midsummer* following, and appointed the same to be satisfied out of the Sum of five hundred thousand Pounds, appropriated by an Act passed the then last Session of Parliament, for or towards Payment of such Debts and Arrears as were therein mentioned. And another Warrant to the said Auditor to make and pass Debentures for paying to the said Queen, or to her Treasurer or Receiver, the Sum of two thousand five hundred Pounds for one Quarter, incurr'd on the said Pension of ten thousand Pounds *per Ann.* from *Lady-Day*, One Thousand Seven Hundred and Thirteen, to *Midsummer* then last past, and appointed the same to be satisfied out of the Sum of five hundred thousand Pounds, appropriated by an Act passed the then last Session of Parliament, for or towards Payment of such Debts and Arrears as were therein mentioned. And the said *Robert* Earl of *Oxford* and Earl *Mortimer*, on or about the twentieth of *July*, One Thousand Seven Hundred and Fourteen, being then Lord High Treasurer of *Great Britain*, and of her Majesty's Privy Council, having corruptly and deceitfully, in further Violation of his Oath, and his high Trust, advised her late Majesty to sign a Warrant, directing the Payment of one thousand Pound Sterling to *Daniel Arthur*, Esq; for Monies expended by him for her Majesty's special Service, and the same being accordingly issued and received by him the said *Arthur* out of her Majesty's Treasure, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* being then Lord High-Treasurer of *Great Britain*, did give private Direction to the said *Arthur* to pay the said Sum of one thousand Pounds to the said Abbot *Gaultier*, or to his Use, pursuant to which Direction the said *Arthur* did pay or cause to be paid the said Sum of one thousand Pounds to the said Abbot *Gaultier*, or to his Use; whereby the said *Robert* Earl of *Oxford* and Earl *Mortimer* did most wickedly betray the Honour of her late Majesty, and the Imperial Crown of these Realms, in advising her, under Colour of the said Letters Patents, and without the Advice of her Council or her Parliament, to direct the issuing of the Revenue, provided by Parliament for the Support of the Honour and Dignity of the Crown, to the Use and Benefit of the open and avowed Adherent of the Pretender; and did not only defraud her Majesty of the said Sum of one thousand Pounds, but did most arbitrarily, illegally, and corruptly advise the Embezzlement and Misapplication of so much of the said Sum of five hundred thousand Pounds, in Contempt and Defiance of the express Appropriation of an Act of Parliament.

ARTICLE V.

That whereas by the antient and undoubted Laws of this Kingdom, no Person, being a natural-born Subject of this Realm, or within any of the Dominions thereunto belonging, and having committed and being under the Guilt of High-Treason, ought to be receiv'd within this Kingdom, as a public Minister, or with any Character from any Foreign Prince, State, or Potentate. And whereas some time in the Year One Thousand Seven Hundred and Thirteen, one *Patrick Lilesh*, stiling himself, and commonly known by the Name of Sir *Patrick Lawless*, an *Irish* Papist (who had served with the late King *James* the Second in the War in *Ireland*, against his late Majesty King *William* the Third of ever glorious Memory, had follow'd the said King *James* into *France*, and continu'd in the most open and avowed manner in his Interests and Service, and in Rebellion against his said Majesty King *William*, and had bore high Commission against, and had been in open Arms against her late Majesty Queen *Anne* in the late War in *Spain*) did come into this Kingdom, and pretended to have and did take on himself the Character of a Minister sent from King *Philip* of *Spain*, to her late Majesty, to treat of Matters of the greatest Importance to the Honour and Safety of her Majesty and her Kingdoms; and having given notice of the same to *Robert* Earl of *Oxford* and Earl *Mortimer*, then Lord High Treasurer of *Great Britain*, and of her Majesty's Privy Council, and who then assumed to himself the supreme Direction in her Majesty's Councils; he the said *Robert* Earl of *Oxford* and Earl *Mortimer* was not only wanting in his Duty to her Majesty, in not advising her Majesty against receiving and admitting the said *Lilesh* alias *Lawless* in the Quality aforesaid, but did, together with other false and evil Counsellors, advise her Majesty to receive and admit him as a Minister from his said Catholic Majesty; and the said Earl did presume frequently to meet, confer and negotiate the most important Affairs of the Nation with the said *Lilesh* alias *Lawless* in the Quality aforesaid. And the better to conceal his said illegal and dangerous Measures from her said Majesty, he the said *Robert* Earl of *Oxford* and Earl *Mortimer* was privy to, consenting, and advising that the said *Lilesh* alias *Lawless* should be introduced to her said Majesty, and should be received and treated by her Minister, under the false and disguised Name of *Don Carlo Moro*. And the House of Lords, some time in the Month of *April*, One Thousand Seven Hundred and Fourteen, having notice of the said dangerous Attempt of the said *Lilesh* alias *Lawless*, on or about the Ninth of the said Month, made an humble Address to her Majesty, that she would be graciously pleased to issue her Royal Proclamation, commanding all proper Officers and Magistrates to make diligent Search for, and to apprehend

prehend all Popiſh Prieſts, and to put the Laws in Execution againſt them; and likewiſe to enquire after and apprehend all ſuch Perſons as have ſerv'd in Arms againſt her Majeſty, or their late Majeſties King *William* and Queen *Mary*, and who were then within the Kingdom, contrary to Law, to the End that they might be brought to Juſtice. To which her Majeſty was graciouſly pleas'd to return an Anſwer to the Effect following, *viz.* That ſhe would give Orders purſuant thereto, and a Proclamation did accordingly iſſue. And on the ſaid Ninth Day of *April*, the Houſe of Lords (having under their Conſideration what further Security could be provided for ſtrengthening the Proteſtant Succeſſion in the Houſe of *Hanover*) came to the following Reſolution, viz. *That no Perſon, being a Natural-born Subject of* Great Britain, *or within any of the Dominions thereunto belonging, and who having traitorouſly ſerv'd againſt her Majeſty, ought to be receiv'd as a public Miniſter, or with any Character within this Kingdom:* Notwithſtanding which, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, having no regard to the Safety of her Majeſty's Perſon, or to the Security of the Proteſtant Succeſſion; and ſetting himſelf in utter Defiance not only of the ſaid Advice and Reſolution of the Houſe of Lords, but of her Majeſty's Aſſurances to that Houſe of Parliament, and of her Royal Authority and Command, by her Proclamation under the Great Seal: Inſtead of doing what in him lay to have apprehended and brought, or cauſing the ſaid *Lileſh* aliàs *Lawleſs* to be brought to Juſtice, did afterwards, on or about the Fifteenth Day of *March*, One Thouſand Seven Hundred and Fourteen, moſt wickedly and traitorouſly adviſe her Majeſty to ſign a Warrant, directing the Payment of one thouſand Pounds Sterling to *Daniel Arthur*, Eſq; for ſpecial Services, which being accordingly iſſued and received by the ſaid *Arthur*, he the ſaid Earl did privately and corruptly direct the ſaid *Arthur* to pay the ſame, and accordingly the ſaid one thouſand Pounds was paid to the Uſe of the ſaid *Lileſh* aliàs *Lawleſs*: And the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did at other Times, in a fictitious and ſcandalous manner, direct the Payment of other conſiderable Sums of Money, out of her Majeſty's Treaſure, to the ſaid *Lileſh* aliàs *Lawleſs*, which were accordingly paid to him; altho' it was notorious, that the ſaid *Lileſh* aliàs *Lawleſs* had not only traitorouſly ſerv'd in Arms againſt her Majeſty, but had been the Miniſter or Agent of the Pretender at the Court of *Madrid*; and was under ſtrong Suſpicions of being ſent into *England*, tho' under the Pretences aforeſaid, ſecretly to promote the Intereſt of the Pretender in theſe Kingdoms. By all which corrupt and evil Counſels, he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* did moſt baſely and ungratefully expoſe the Perſon of her Sacred Majeſty, did what in him lay to enervate and render ineffectual the Advice of Parliament, and her Majeſty's moſt ſolemn Declarations, in a Matter of the neareſt Concern to her Majeſty and Kingdoms, and by countenancing, in the moſt corrupt and ſcandalous manner, the ſecret Emiſſaries of the Pretender, did greatly encourage his open Adherents, to the apparent Danger of the Proteſtant Succeſſion to the Imperial Crown of theſe Realms.

ARTICLE VI.

That whereas her late Majeſty Queen *Anne*, after ſeveral unſucceſsful Attempts, in Conjunction with her Allies, to eſtabliſh his preſent Imperial Majeſty on the Throne of *Spain*, being inform'd, that the People of *Catalonia* were inclin'd to caſt off the Yoke impos'd upon them by the *French*, and to return to the Obedience of the Houſe of *Auſtria*; and her Majeſty being deſirous to maintain and improve that good Diſpoſition in them, and to induce them to put the ſame ſpeedily in Execution, did ſend *Milford Crow*, Eſq; to them, with neceſſary Powers and Inſtructions to carry on ſo great a Work, for the Advantage of her Service, and the Good of the Common Cauſe; and to that End to treat with the *Catalans*, or any other People of *Spain*, about their coming into the Intereſt of King *Charles* the Third, his preſent Imperial Majeſty, and joining with her Majeſty and her Allies againſt the Common Enemy; and her Majeſty, after her gracious Aſſurances to aſſiſt them with Men and Money, was pleaſed to authorize her ſaid Miniſter to give them her utmoſt Aſſurances, to procure the Eſtabliſhment of all ſuch Rights and Immunities as they had formerly enjoy'd under the Houſe of *Auſtria*; and that for their further Satisfaction, ſhe had ſent for Powers from King *Charles* the Third, for confirming the ſame, and was willing to become Guarantee that it ſhould be done: Nevertheleſs on this expreſs Condition, that they ſhould receive the ſaid King *Charles* as lawful King of *Spain*, and utterly renounce the Houſe of *Bourbon*. And, together with the ſaid Inſtructions, her Majeſty was pleaſed to ſign and cauſe to be deliver'd to her ſaid Miniſter, Credential Letters to the Nobility, Magiſtrates, and all other Officers Civil and Military of *Catalonia*, deſiring them to depend on the Promiſes he ſhould make them in her Name. And in her Majeſty's Inſtructions to the Earl of *Peterborow* and Sir *Cloudeſly Shovel*, in or about the Month of *May*, One Thouſand Seven Hundred and Five, they are ordered to uſe their utmoſt Endeavours to induce the *Catalans* to join with them in their Undertaking, and to aſſure them of her late Majeſty's Support, and to promiſe them, in the Queen's Name, that ſhe would ſecure them a Confirmation of their Rights and Privileges from the King of *Spain*, that they might be ſettled on a laſting Foundation to them and their Poſterity. And in caſe Perſuaſions ſhould not prevail, and the *Catalans* ſhould not make a ſuitable Return to thoſe kind Offers, they were ordered to annoy their Towns on the Coaſts of *Spain*, and to reduce them by Force. And, in Conformity to theſe Inſtructions, a *Manifeſto*, or Declaration was prepared, by the Privity and Advice of *Robert* Earl of *Oxford* and Earl *Mortimer*, then one of her Majeſty's Principal Secretaries of State, and deliver'd to the ſaid Earl of *Peterborow*, full, on the one Hand, of the Aſſurances aforementioned, and on the other Hand, of Menaces to them, in caſe they declined her Majeſty's Overtures, which *Manifeſto* was afterwards publiſhed by him the ſaid Earl of *Peterborow*, in *Catalonia*: And whereas the Nobility, Clergy, and the whole Principality of *Catalonia*, and the Inhabitants of the Iſle of *Majorca*, relying on the Faith of thoſe Royal Aſſurances, did utterly abandon the Houſe of *Bourbon*, and acknowledged King *Charles* the Third, his preſent Imperial Majeſty, for their lawful Sovereign, and did join their Arms with thoſe of her Majeſty and her Allies, againſt the Duke of *Anjou*; and it having pleaſed Almighty God ſo far to bleſs her Majeſty's pious and generous Undertaking, as by moſt ſignal Succeſſes, in a ſhort Time, to deliver the Principality of *Catalonia* from the heavy Yoke of *French* Bondage; and great Supplies having been granted by Parliament, for the reducing the whole Kingdom of *Spain* to the Obedience of the Houſe of *Auſtria*; the Arms of her Majeſty and her Allies were attended with vaſt Succeſſes, having twice entered the Capital City of that Kingdom, and obtained many other ſignal Conqueſts, to the great Advantage of the Common Cauſe: And thro' the whole Progreſs thereof, the Bravery and Firmneſs of the *Catalans* being always remarkable, thereby, as well as from the repeated Aſſurances given to them from Time to Time, in her Majeſty's Name, by every General and Miniſter ſent from *Great Britain* to *Spain*, the Hearts of that brave People were united under the ſtrongeſt Tyes of Affection and Gratitude to her Majeſty; and they were juſtly held in the ſtricteſt Dependance on the Continuance of her Royal Protection; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, being an Enemy to the Common Liberty of *Europe*, and having traitorouſly enter'd into Conſpiracies for ſubjecting the whole *Spaniſh* Monarchy to the Houſe of *Bourbon*, and deſigning moſt maliciouſly the utter Ruin and Deſtruction of the antient Rights, Liberties and Privileges of the *Catalans*, who had made ſo glorious a Stand for the Preſervation of them, did, together with other falſe and evil Counſellors, form a moſt diſhonourable, wicked, and cruel Contrivance, not only for abandoning the *Catalans* to the Fury and Revenge of the Duke of *Anjou* and his Adherents, but for the final Extirpation of all their Rights, Liberties, and Privileges. And in Execution of that his Intention, during the private, ſeparate, and pernicious Negotiation of Peace, which was carry'd on between him and the Miniſters of *France*, and before any Negotiation of Peace was ſet on Foot, in due Form of Law, between the Crowns of *Great Britain* and *Spain*, did adviſe her Majeſty to give Directions to the Lord *Lexington*, her Ambaſſador to the Court of *Spain*, to acknowledge the Duke of *Anjou* King of *Spain*, but was greatly wanting in his Duty to her Majeſty, in not adviſing her to give Inſtructions to her ſaid Miniſter, at the ſame Time, peremptorily and abſolutely to inſiſt on the ſecuring the *Catalans* Liberties at the Concluſion of the Peace. And altho' the private, ſeparate, and treacherous Practices of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, and others, in Combination with the Miniſters of *France*, did afterwards, on or about the Fourteenth of *March* One Thouſand Seven Hundred and Thirteen, neceſſitate his preſent Imperial Majeſty to conclude a Treaty for the evacuating *Catalonia*, (whereof her Majeſty was Guarantee) without any expreſs and poſitive Stipulation for the *Catalans* Liberties, (his Imperial Majeſty relying, in that reſpect, on her Majeſty's Declaration, to interpoſe for them in the moſt effectual manner, and on the Promiſes of the *French* King to join his Endeavours for the ſame Purpoſe.) And altho' her ſacred Majeſty did, both before and after, frequently declare by her Miniſters in *Spain*, that ſhe thought herſelf under the ſtrongeſt Tyes of Honour and Conſcience, not to abandon a People whom the Neceſſities of the War had obliged her to draw into her Intereſt. And tho' the *French* King did not join his Endeavours for the Purpoſes aforeſaid; he the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, together with other falſe and wicked Counſellors, having from Time to Time amuſed and deceived the diſtreſs'd *Catalans*, with groundleſs Hopes of her Majeſty's effectual Interpoſitions in their Favour, thereby engaging them in a more obſtinate Defence of their Territories againſt the Duke of *Anjou*, was not only highly wanting in his Duty to her Majeſty, by not doing what in him lay, as a faithful Miniſter, to have prevented the Concluſion of the Treaty of Peace with *Spain*, till juſt and honourable Conditions were ſecured for the *Catalans*, but did falſly, maliciouſly, and treacherouſly adviſe her Majeſty to conclude a Peace with the King of *Spain*, without any Security for the antient and juſt Rights, Liberties and Privileges of that brave, but unhappy Nation. And did further adviſe her Majeſty to ſend Sir *James Wiſhart*, her Admiral, with a large Squadron of Men of War, at a great Expence, to favour the ſaid King of *Spain* in the Siege of *Barcelona*, the Capital City of *Catalonia*, and with expreſs Inſtructions, that in caſe the Inhabitants of *Majorca* ſhould refuſe the Terms that ſhould be offer'd them by the Duke of *Anjou*, to employ his Squadron in countenancing and aſſiſting all Attempts that ſhould be made for reducing them to a due Obedience. By which moſt vile and deteſtable Counſels, her ſacred Majeſty, contrary to her moſt pious Intentions, the Faith of Nations, and the Duties of Religion, and Humanity itſelf, and contrary to her ſolemn and repeated Aſſurances, was prevailed on to abandon a diſtreſſed People, drawn in, and engaged by her own Invitation, into an open War with the Duke of *Anjou*, for the Preſervation of the Liberties of *Europe*, and the Commerce of *Great Britain*. And the Perſons, Eſtates, Dignities, Rights, Liberties and Privileges of the *Catalans* were given up as a Sacrifice to the implacable Reſentment of their enraged and powerful Enemy; and the Honour of the *Britiſh* Nation, always renown'd for the Love of Liberty, and for giving Protection to the Aſſerters of it, was moſt baſely proſtituted; and a free and generous People, the faithful and uſeful Allies of this Kingdom, were betray'd, in the moſt unparallel'd manner, into irrevocable Slavery: And, in Conſequence of which moſt diſhonourable and perfidious Counſels, the moſt execrable Hoſtilities, Burnings and Plunderings were committed upon them, throughout their whole Province, without ſparing the Effuſion of innocent Blood, and without the Diſtinction of Age or Sex; and that unfortunate People were afterwards forc'd to undergo the utmoſt Miſeries of a Siege in their Capital City of *Barcelona*; during which great Multitudes of them periſhed by Famine and the Sword, many of them have ſince been executed: And great Numbers of the Nobility of *Catalonia*, who for their Conſtancy and Bravery, in Defence of their Liberties, and for their Services in Conjunction with her Majeſty and her Allies, had, in all Honour, Juſtice and Conſcience, the higheſt Claim to her Majeſty's Protection, are now diſperſed in Dungeons, throughout the *Spaniſh* Dominions; and not only the *Catalan* Liberties extirpated, but by thoſe wicked Counſels of him the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer*, *Catalonia* itſelf is almoſt become deſolate.

All which Crimes and Miſdemeanours were committed and done by him the ſaid Earl againſt our late Sovereign Lady the Queen, her Crown and Dignity, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him the ſaid Earl.

And he the ſaid *Robert* Earl of *Oxford*, and Earl *Mortimer* was either Commiſſioner of the Treaſury, or Lord High Treaſurer of *Great Britain*, and one of her Majeſty's Privy Council, during the Time that all and every the Crimes before ſet forth were done and committed.

For which Matters and Things, the Knights, Citizens and Burgeſſes of the Houſe of Commons in Parliament aſſembled, do, in the Name of themſelves,

ſelves, and of all the Commons of *Great Britain*, further impeach the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* of other High Crimes and Miſdemeanours in the ſaid Articles contained. And the ſaid Commons by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any Time hereafter any other Accuſations or Impeachments againſt the ſaid Earl, and alſo of replying to the Anſwers which the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall make to the Premiſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited, according to the Courſe and Proceedings of Parliament, do pray, that the ſaid *Robert* Earl of *Oxford* and Earl *Mortimer* be put to anſwer all and every the Premiſes; and that ſuch Proceedings, Examinations, Trials and Judgments may be upon them, and every of them had and uſed, as ſhall be agreeable to Law and Juſtice.

L. H. Steward. Read the Anſwer to the Impeachment.

The Clerk reads the Anſwer.

The ANSWER *of* Robert *Earl of* Oxford *and Earl* Mortimer, *to the Articles exhibited by the Knights, Citizens and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of* Great Britain, *in Maintainance of their Impeachment againſt him for High-Treaſon, and other High Crimes and Miſdemeanours, ſuppoſed to have been by him committed.*

THE ſaid Earl, ſaving to himſelf all Advantages of Exception to the ſaid Articles, and of not being prejudiced by any Words, or want of Form in this his Anſwer; and alſo ſaving to himſelf all Rights and Privileges belonging to him as one of the Peers of this Realm, for Anſwer to the ſaid Articles ſaith: He admits many *ſolemn Treaties and Alliances have been formerly entered into, between the Crown of* England *and other Princes and Potentates of* Europe, *for their mutual Security, and to prevent the immoderate Growth of the Power of* France, *which might prove dangerous to the neighbouring Princes and States*; and that therefore it was laid down as a fundamental Principle and Maxim of Union amongſt the Allies, *That* France *and* Spain *ſhould never come and be united under the ſame Government, and that one and the ſame Perſon ſhould not be King of both thoſe Kindoms*; and he apprehends, that the principal View and Aim of the Allies was to ſettle and maintain an equal Balance of Power in *Europe*; and, ſince the Conjunction of *Spain* to the Dominions of *France* might poſſibly enſue from the Duke of *Anjou*'s being poſſeſſed of that Crown, the diſpoſſeſſing him was deſir'd, as the moſt likely Means to prevent that Conjunction; and for the ſame Reaſon the Union of *Spain* with the *Empire* muſt have been equally fatal, and the Prevention of it equally the Deſign of the Alliance; nor could the Continuance of *Spain* in the Houſe of *Bourbon* be in any Reſpect prejudicial to the Allies, if the Union of that Crown with *France* could be prevented. As new Dangers of ſuch Union have been apprehended, new Treaties and Stipulations have been entered into among the Allies to obviate ſuch Dangers, and particularly the Treaty for an intended Partition ſeems to have been concluded upon that View; and though he acknowleges the Wiſdom of Parliament in condemning that Treaty, as prejudicial and fatal in its Conſequences to *England*, and the Peace of *Europe*, yet, he preſumes, it was not condemn'd, becauſe Part of the Dominions of the Crown of *Spain* were thereby allotted to the Houſe of *Bourbon*; but becauſe ſuch conſiderable Parts of thoſe Dominions, as the Kingdoms of *Naples* and *Sicily*, the Province of *Guipuſcoa* and other Territories were allotted to that Branch of the Houſe of *Bourbon*, to whom the Crown of *France* was to deſcend, which might have been a great and dangerous Addition to the then formidable Strength of that Crown; and becauſe it was made againſt the repeated Remonſtrances of *Charles* the Second, then King of *Spain*, who declared by his Ambaſſador, *That ſuch Partition-Treaty could have no other Effect, than to force* Spain *to throw itſelf into the Arms of* France, *to prevent the diſmembring of the* Spaniſh *Monarchy*. And, that it had this Conſequence, appear'd upon the Death of that Prince, who ſeems to have been induced by that Conſideration to bequeath the entire Monarchy of *Spain* to the Duke of *Anjou*, a younger Branch of the Houſe of *Bourbon*; who accordingly, upon the Demiſe of the ſaid King *Charles* the Second, took Poſſeſſion of the Monarchy of *Spain*. But this Acceſſion of the Duke of *Anjou* to the Crown of *Spain* did not produce the Alliance, in the Article mentioned, between *Leopold*, then Emperor of *Germany*, his late Majeſty King *William* the Third of ever-glorious Memory, and the States-General, as immediately neceſſary at that Juncture: For King *William*, as well as the States-General, acknowledged the Duke of *Anjou* as King of *Spain*; thereby allowing, that the Duke of *Anjou*'s Enjoyment of the Monarchy of *Spain*, while he was but a younger Branch of the Houſe of *Bourbon*, was not deſtructive of the Liberties of *Europe*, or the Preſervation of a due Balance of Power. And afterwards, when the *French* King had ſeiz'd the *Spaniſh Netherlands*, King *William*, by Advice of Parliament, came into the Aſſiſtance of the States, as an Auxiliary only, by ſending, upon their Requeſt, Ten Thouſand Men, which *England* was obliged by Treaties to furniſh, in Caſe the States were attacked; after which, many Conferences paſſed at the *Hague* betwixt the Miniſters of *England* and the States, and thoſe of *France*, in order to find out ſome Expedient, by which, upon a reaſonable Diviſion of the Dominions of *Spain*, a new War might be prevented; and the States, in the Courſe of thoſe Conferences, often aſſerted, *That, though they had acknowledged* Philip *King of* Spain, *yet ſuch an Acknowledgment was not contrary to the Demand of a reaſonable Satisfaction to be given to the Emperor for his Pretenſions to the* Spaniſh *Succeſſion*; which was, in Effect, to declare, *that the Satisfaction demanded for the Emperor was ſuch, as would leave King* Philip *in Poſſeſſion of* Spain. But thoſe Conferences broke off, about *Auguſt*, One Thouſand Seven Hundred and One, without Effect; and in *September* following, King *William* entered into the Grand Alliance with the Emperor, and the States-General; whereby it was agreed, *That, in the firſt Place, Endeavours ſhould be uſed by amicable Means to obtain the Satisfaction deſired for the Emperor*, who probably, at that Time, would have accepted a very eaſy Compoſition for his Pretenſions: But when the *French* King acknowledged the *Pretender* as King of *England* (which not long after happened), his Majeſty King *William*, and the Parliament of *England*, juſtly provoked by this Affront, reſolv'd to enter into the War which had been begun by the Emperor alone, in *Italy*, the Year before; and the late Queen mentions this Indignity, as the chief Motive of her engaging in it, as appears by her Declaration of War againſt *France* and *Spain* in *May*, One Thouſand Seven Hundered and Two. The ſaid Earl admits the ſeveral Treaties ſet forth in the Preamble to the ſaid Articles, and that ſuch Advice was given by Parliament, and ſuch Speeches were made from the Throne, as in the ſaid Preamble are mentioned; but, for more Certainty, begs leave to refer himſelf to the very Treaties, Addreſſes of Parliament and Speeches, when they ſhall be produced: And he humbly hopes your Lordſhips will allow him to obſerve, that thoſe Treaties manifeſtly ſhew, that the Deſign of the Allies, in endeavouring the Recovery of *Spain* from the Houſe of *Bourbon*, was to prevent the Union of thoſe two Potent Kingdoms in one and the ſame Perſon. In the Grand Alliance in One Thouſand Seven Hundred and One, the avow'd Ends are, the procuring an equitable and reaſonable Satisfaction to his Imperial Majeſty for his Pretenſions to the *Spaniſh* Succeſſion, the Security of the Dominions of the King of *Great Britain*, and States-General, with the Navigation and Commerce of their Subjects, and the preventing the Union of *France* and *Spain* under the ſame Government. And the Territories and Provinces, pointed out in the Fifth Article, were the fartheſt Views of that Alliance; whereby it was thought, his Imperial Majeſty would receive the utmoſt Satisfaction, which he could reaſonably demand, for his Pretenſion to the *Spaniſh* Succeſſion. No mention is made of the Recovery of the whole Monarchy of *Spain* to the Houſe of *Auſtria*, either in the Grand Alliance, or in the Defenſive one made the ſame Year between his Majeſty King *William* and the States-General: And when, in the Treaty between the Emperor, the Queen of *Great Britain*, and the States-General, on the one Part, and the King of *Portugal* on the other, about *May*, One Thouſand Seven Hundred and Three, it was concerted to place Arch-duke *Charles* the preſent Emperor, upon the Throne of *Spain*, he was then but a younger Branch of the Houſe of *Auſtria*; and there is great Reaſon to believe that the Queen, as well as other Princes of *Europe*, and in particular the King of *Portugal*, did not think a Treaty to procure the Crown of *Spain* for the Arch-duke, when a younger Branch of the Houſe of *Auſtria*, did lay an Obligation of procuring that Monarchy for him, when he became firſt of that Houſe, and was elected Emperor; ſince the Imperial and Hereditary Dominions, join'd to the whole *Spaniſh* Monarchy, would have given ſuch an Exceſs of Power to one Prince, as would have been formidable to *Europe*, and a Means to deſtroy that Balance of Power which her Majeſty in all her Treaties had conſtantly labour'd to preſerve: And it is a known and an allow'd Rule by the Law of Nations, in Reference to Leagues between Princes, that if there happens a material Change in what was the principal Ground and Cauſe of the Treaty, the Obligation thereof ceaſes. If therefore, in the Preliminary Articles in One Thouſand Seven Hundred and Nine, and afterwards in the Conferences at *Gertruydenberg*, a Ceſſion of the *Spaniſh* Monarchy to King *Charles* the Third, who was then younger Brother to the Emperor, was thought reaſonable to be inſiſted on; yet the ſaid Earl humbly ſubmits to your Lordſhips great Judgment, whether there was equal Reaſon for inſiſting on ſuch Ceſſion, when King *Charles* the Third was become Head of that Houſe, and had Poſſeſſion of the Empire and all the hereditary Countries of *Auſtria*, as a Condition, without which no Peace ſhould be made. The States-General were ſo far from admitting, or yielding that the Monarchy of *Spain* ſhould in all Events be given to the Houſe of *Auſtria*, that he, the ſaid Earl, hath heard, they refus'd to admit it to be inſerted as a Condition of their Barrier-Treaty, when propoſed by her Majeſty's Ambaſſador at the *Hague*, and choſe rather to put a Stop to the Proceedings of that Treaty, and hazard the Advantages they thereby expected, than comply with that Propoſal. The Advice of Parliament is of great Weight, to which her late Majeſty always gave, and he the ſaid Earl always paid, a juſt Regard; and he doubts not but the Houſe of Peers had proper Inducements when they gave their Advice to the Throne, *That no Peace could be ſafe, honourable, or laſting, ſo long as the Kingdom of* Spain *and the* Weſt-Indies *continued, in the Poſſeſſion of any Branch of the Houſe of* Bourbon. But, if he may be permitted to offer his humble Conjecture concerning the Motives of that Advice, he conceiveth it might proceed from an Apprehenſion of a future Union of thoſe two Crowns as likely to enſue, in Caſe *Spain* ſhould continue in the Poſſeſſion of any who might become Heir to the Crown of *France*, and that even the Conjunction of the Empire and *Spain* would be leſs dangerous than ſuch a Union. But when her Majeſty communicated to her Parliament, the Sixth of *June* One Thouſand Seven Hundred and Twelve, the Terms upon which a Peace might be made, and thereby informed them, *That* France *had been brought to offer, that the Duke of* Anjou *ſhould, for himſelf and his Deſcendants, renounce for ever all Claim to the Crown of* France; *and at the ſame time the Succeſſion of the Crown of* France *was to be declared, after the Death of the then Dauphin and his Sons, to be in the Duke of* Berry *and his Sons, in the Duke of* Orleans *and his Sons, and ſo on to the reſt of the Houſe of* Bourbon; *and that the Succeſſion to* Spain *and the* Weſt-Indies, *after the Duke of* Anjou *and his Children, was to deſcend to ſuch a Prince as ſhould be agreed upon at a Treaty of Peace, for ever excluding the reſt of the Houſe of* Bourbon; both Houſes of Parliament, by their reſpective Addreſſes to her Majeſty, in the ſame Month, expreſſed their entire Satisfaction: And as the Houſe of Commons deſired her Majeſty *to proceed in the Negotiations then depending for obtaining a ſpeedy Peace*; ſo the Houſe of Lords aſſured her Majeſty, *That they entirely relied on her Majeſty's Wiſdom to finiſh that great and good Work*. And after her Majeſty had concluded a Peace on thoſe Terms, both Houſes of Parliament ſeverally congratulated her Majeſty on the Concluſion of the Peace; and alſo join'd in an Addreſs of the Twenty-ſecond of *April*, One Thouſand Seven Hundred and Fourteen, expreſſing their *juſt Senſe of her Majeſty's Goodneſs to her People in delivering them, by a ſafe, honourable, and advantageous Peace with* France *and* Spain, *from the heavy Burthen of a conſuming Land-War, unequally carried on, and become at laſt impracticable*. He the ſaid Earl acknowledges, that her Majeſty was pleaſed about *Auguſt*, One Thouſand Seven Hundred and Ten, to re-admit him, among others, to a Place in her Council, and to require his Service in Offices of Truſt; to which he ſubmitted purely in Obedience to her Majeſty's Commands, with great Reluctance, from the Proſpect of the Difficulties with which he was likely to ſtruggle. But as he never aſk'd any Employment, nor us'd any wicked Arts, or baſe Inſinuations, to obtain the ſame from her

her Majeſty; ſo in all Employments, with which her Majeſty was pleaſed to honour him, he ſincerely endeavoured to diſcharge his Duty with the utmoſt Integrity, having always, with the trueſt Zeal, deſired and endeavoured, as far as he could, to promote the Honour and Service of her Majeſty, whoſe Aim he knew to be the Welfare of her Kingdoms, in the firſt Place, and, as far as ſhe judg'd it conſiſtent with that, the common Good of her Allies. In or about the Month of *September*, One Thouſand Seven Hundred and Ten, her Majeſty (whoſe undoubted Prerogative it was) thought fit to diſſolve the Parliament then in being, and to call a new One. In the Year One Thouſand Seven Hundred and Eleven, Propoſitions were made by *France* to her Majeſty for a Peace, without the Contrivance or previous Knowledge of the ſaid Earl: Her Majeſty, out of her Affection for her People, having it much at her Heart to eſtabliſh Peace in her own Days, expreſſed her Concern for the Diſappointment of former Negotiations, and her earneſt Deſire to put a ſpeedy End to the War, and to the Effuſion of Chriſtian Blood, and to eaſe her Subjects from the heavy Burthen of their Taxes. The ſaid Earl doth acknowledge, that he thought a Peace was very much for the Intereſt and Advantage of *Great Britain:* And, in his humble Opinion, the moſt favourable Juncture for obtaining advantageous Terms of Peace, was immediately after the ſignal Victories gained by her Majeſty's Arms, in the Year One Thouſand Seven Hundred and Six. For, after the Reduction of the Dominions of the Electors of *Bavaria* and *Cologne*, with other important Conqueſts in *Germany*; after the entire Deſtruction of Three great Armies of *France*, in *Flanders*, *Spain*, and *Piedmont*; after the Allies had recovered the *Spaniſh Netherlands*, *Milan*, and other Territories in *Italy*; it might have been hoped, from the great Diſtreſs in which the Enemy then was, a juſt and reaſonable Peace would have been obtained; ſince ſo much was at that time gained from the Enemy, and ſo much more in all Probability would have been yielded by them, as would have fully anſwered the Ends of the Grand Alliance. Peace was at that Time ſought by the Enemy; and the ſaid Earl, who had the Honour to be one of the Principal Secretaries of State, owns he then adviſed the accepting of it. And he humbly begs leave to obſerve, that the War had been continued upon ſo unequal a Foot, that the Burthen of it annually encreaſed, and, at the Time when theſe Propoſals were made by *France*, was become almoſt inſupportable. It had indeed been ſtipulated by the Grand Alliance, that the Allies ſhould aſſiſt one another with all their Forces, according to a Specification to be agreed on in a particular Convention for that Purpoſe: But it doth not appear any ſuch Convention was made, otherwiſe than as the Houſe of Commons were inform'd by one of the Principal Secretaries of State to his late Majeſty King *William*, that by the Proportions adjuſted with the States, *England* was to furniſh two Parts of five by Land, and the States the other three; and *England* was to furniſh five Parts of eight by Sea, and the States the other three: But the States not always allowing themſelves to be under an Obligation to furniſh ſuch Proportions, gave Occaſion to *England*'s bearing an unequal Part in the War, with reſpect to the Allies. The States had that prudent Regard to the frugal ordering of their Affairs, that they frequently inſiſted they ought not to be preſſed beyond their Ability, and made themſelves the ſole Judges of what came within the Compaſs of it, and by that means avoided the ſupplying any Quota, or Proportion, which they thought improper for them to furniſh. In the mean Time the Charge of the War was greatly increaſed upon the Subjects of *Great Britain:* In the Year One Thouſand Seven Hundred and Two, it was under Four Millions; from thence it gradually increaſed till the Year One Thouſand Seven Hundred and Six, the Charge of which Year amounted to above Five Millions and an Half; and ſtill advancing, till the Year One Thouſand Seven Hundred and Eleven, it was then grown to near Seven Millions; and, at the ſame time, there was a Debt contracted, not provided for by Parliament, amounting to Seven or Eight Millions; the very Intereſt of which, and other Debts, wherein the Nation was involved, amounted to Three Millions *per Annum*; and the Revenues of *Great Britain* were under ſuch Anticipations, that it was found difficult to raiſe above Two Millions and an Half for the growing Service, to be paid within the Compaſs of the Year. So that, when the Duties and Difficulties upon Trade, and the Continuance of the Taxes upon Land, which had lain ſo heavy above Twenty Years, are conſider'd, the ſaid Earl believes it could not be thought for the public Intereſt to prolong the War, without an abſolute Neceſſity. During this Time the States had managed with ſo good Œconomy, that the ſaid Earl hath not heard of any additional Duty laid by them upon Trade, from the Year One Thouſand Seven Hundred and Two, to the Year One Thouſand Seven Hundred and Eleven. And what Acquiſitions were made upon the Continent, during the Continuance of the War, tho' at the Expence of *Britiſh* Blood and Treaſure, accrued to the Share of the Allies; and the *Dutch*, being under no Prohibition of Commerce with *France*, had a further Advantage of the *Britiſh* Merchants, in reſpect to a free Trade. Altho' the Princes of the Empire were engag'd by previous Treaties to furniſh their Quota's to the Common Cauſe, yet when they were often preſſed to do it, they alledg'd in Excuſe, *That thoſe Troops which they were obliged to furniſh at their own Expence, were in the Pay of the Crown of* Great Britain. The Emperor left it to her Majeſty to provide for thoſe Troops, which by the *Portugal* Treaty, in the Year One Thouſand Seven Hundred and Three, he was to furniſh. The King of *Portugal* not only neglected the Proportion of Twelve Thouſand Foot and Three Thouſand Horſe, which by the ſaid Treaty he was to provide at his own Expence, but even refuſed to permit the Eleven Thouſand Foot and Two Thouſand Horſe, for which he had a Subſidy from her Majeſty, to be paid by Muſters, according to an Article of that Treaty; and, when preſſed to furniſh his full Number of Troops, alledged his Inability, for want of that Part of the Subſidies which the States ought to have paid him: So that almoſt the whole Charge of the War in *Spain* was left upon her Majeſty; the States having ſent few or no Troops thither, after the Battle of *Almanza*; and all the other Allies being likewiſe defective in their Proportions. This was the Condition of Affairs, with reſpect to the Charge of the War; nor did there appear, from the then Situation of Affairs, any more promiſing Proſpect, with regard to the Event: For, although it had pleaſed God to bleſs her Majeſty's Arms with wonderful Succeſs, at which the ſaid Earl moſt ſincerely rejoic'd; yet it did not appear, that after the Year One Thouſand Seven Hundred and Six, our Succeſſes in other Parts had countervailed our Loſſes in *Spain*; for after two great Battles, wherein we had been there defeated, after our Forces had been twice obliged to retire from *Madrid*, and after the taking the *Britiſh* Troops at *Bribuega*, the Recovery of *Spain* (which was the main Article that retarded the Concluſion of the Peace at *Gertruydenberg*) ſeemed almoſt deſperate, eſpecially ſince the *French* in the Year 1711, by their plentiful Vintages and Harveſts, had well nigh recovered the Effects of the Famine; and ſince ſome of the Allies at the ſame Time made preſſing Inſtances for recalling Part of their Troops, as they had done frequently during the Courſe of the War; from whence it appears how juſt the Grounds were, upon which both Houſes of Parliament repreſented to her Majeſty, *That the War had been unequally carried on, and was at laſt become impracticable.* And the ſaid Earl humbly hopes, he ſhall not be thought to have deſigned any Diſſervice to his Country, if, in ſuch a Condition of Affairs, he did not diſſuade her Majeſty from hearkening to the Overtures of Peace made to her from *France*; or if, during the Negotiations, he endeavoured, by Correſponding, with her Majeſty's Knowledge and Approbation, in any Courts concern'd therein, to rectify any Miſtakes, or contribute in any Meaſure towards the Concluſion of a general Peace. But the ſaid Earl believes, that, in all the Negotiations towards ſuch Peace, the Allies had ſuch Knowledge and Communication of all Meaſures therein taken by her Majeſty, as the Treaties her Majeſty was engaged in required: That the Propoſitions tranſmitted from *France* about *April* 1711, were immediately communicated to the Penſionary and Miniſters of *Holland:* That her Majeſty did at the ſame Time aſſure them of her Reſolution to act in Concert with them, in making Peace as in making War. That when the States had expreſſed their Deſires to be equal with thoſe of *Great Britain* for a general and laſting Peace, and had declared, that they were ready to join in proper Meaſures to procure it, and deſired *France* might explain itſelf more particularly upon the Points contained in thoſe Propoſitions; her Majeſty endeavour'd to obtain ſuch Explanations, and afterwards communicated them to the States: And if her Majeſty thought it not expedient to proceed in the Method of a Preliminary Treaty, which had prov'd ſo ineffectual in the Year 1709 and 1710, but thought it might be ſufficient, upon Articles ſign'd by a Miniſter of *France*, by his Sovereign's Command, to open Conferences for a Peace; the ſaid Earl humbly hopes, that this Proceeding will appear to be ſo far from being an unreaſonable Deviation from the Methods of former Tranſactions in that kind, that it will be juſtified by many Precedents of ſuch Treaties. The ſaid Earl can affirm, that, during the whole Negotiation, ſo far as he was concern'd, he acted with a ſincere Intention to obtain a general Peace for the Welfare and Honour of her Majeſty and her Kingdoms, and ſuch as might give reaſonable Satisfaction to her Allies, and anſwer all the Obligations her Majeſty was under, by any Treaties with any of the Confederates; and is not conſcious to himſelf that he hath, in any reſpect, tranſgreſſed that Duty, which, as a Privy Counſellor, or Officer of State, he did owe to her Majeſty, or to the Public. He is not inſenſible that many of the Articles, wherewith he ſtands charged, are complicated with ſuch Circumſtances, Aggravations and Inferences, as may render it difficult for him to acknowledge ſome Facts alledged, without acknowledging, or ſeeming at leaſt to acknowledge, thoſe Circumſtances or Inferences. And, as he is not conſcious to himſelf of being guilty of any Crime he ſtands charged with, ſo he takes it to be agreeable to the common Courſe of Proceedings of this Nature, and to your Lordſhips Juſtice, that he ſhould not admit any Circumſtances which may tend to the Accuſation of himſelf. He therefore begs leave that he may be allowed to diſtinguiſh between the Acts themſelves, and the Inferences drawn from them; and that wherever he acknowledges any Fact, he may not be underſtood to acknowledge thoſe Conſequences which are in the Articles deduced from it, unleſs it ſhall appear that that Conſequence was the Aim and Deſign of the ſaid Earl, or is the neceſſary Reſult of any Act he hath done.

In anſwer to the Firſt Article, the ſaid Earl ſaith, that he always had the greateſt Regard to the Honour and Safety of her late Majeſty and her Kingdoms, to all the Engagements ſhe was under to the Allies of this Nation, and to the common Liberties of *Europe*; that he never was devoted to the Intereſt or Service of the *French* King; that he is not conſcious to himſelf of having acted, whilſt he had the Honour to be her late Majeſty's *High Treaſurer*, or one of her moſt Honourable Privy Council, contrary to his Oath, or in Violation of his Duty and Truſt, or with Diſregard to, much leſs Defiance of any Treaties in the ſaid Article mentioned, the Advices of Parliament, her Majeſty's Declarations from the Throne, or any mutual Aſſurances which had been made or renewed between her Majeſty and the States to act in perfect Concert with each other in making Peace as in making War: And he utterly denies, that in or about the Months of *July* or *Auguſt* One Thouſand Seven Hundred and Eleven, or at any other Time, he did form any Contrivance or Confederacy to ſet on Foot a private, ſeparate, diſhonourable or deſtructive Negotiation of Peace between *Great Britain* and *France*; nor doth he know of any ſuch Contrivance or Confederacy formed by any of her Majeſty's Privy Council, or that ſuch Negotiation was at any time ſet on Foot. But the ſaid Earl ſaith, he doth believe, that about the Month of *April* One Thouſand Seven Hundred and Eleven, her late Majeſty did receive from *France* ſome Propoſals, in order to ſet on Foot a Treaty for a general Peace, ſigned by Monſieur *de Torcy*, Secretary of State to the moſt Chriſtian King, which, as he believes, were immediately communicated by her Ambaſſador in *Holland* to the States-General: Whereupon, as he has been informed, they thanked her Majeſty for her Confidence in them, declared themſelves to be weary of the War, and ready to join in any Meaſures her Majeſty ſhould think proper for obtaining a good Peace, and that they hoped her Majeſty would bring the *French* to explain more particularly the ſeveral Points contained in the above-mentioned Propoſals, or to that Effect; and that after ſuch Requeſt her Majeſty ſent *Matthew Prior*, Eſq; to the Court of *France*, in order to obtain as full and ample an Explanation as he could of the firſt general Offers: But the ſaid Earl denies that he did adviſe her Majeſty to ſend the ſaid Mr. *Prior* to the Court of *France*, to make Propoſitions of Peace, without communicating the ſame to her Allies; or that the ſaid Mr. *Prior* did, by his Advice or Privity, communicate

municate any Propoſitions to the Miniſters of *France*, wherein the Intereſts of *Great Britain*, or the common Intereſt of *Europe* were betrayed; nor doth the ſaid Earl know, that the ſaid Mr. *Prior* had any Power to communicate Propoſitions to the Miniſters of *France*, which betray'd either the Intereſts of *Great Britain*, or the common Intereſt of *Europe*. Therefore the ſaid Earl inſiſts, that there is no Ground to charge him with the treacherous or pernicious Contrivances in this Article mentioned. And if any Article was inſerted in any Propoſitions to be communicated by the ſaid Mr. *Prior*, that the Secret ſhould be inviolably kept till allowed to be divulged by the mutual Conſent of both Parties; yet the ſaid Earl denies that ſuch Article was inſerted by his Advice; and if any ſuch there was, he cannot however believe it was deſigned to exclude her Majeſty's Allies from their juſt Share in the ſaid Negotiations, and hopes he may be allowed to obſerve, that in caſe any Inſtructions were given for not divulging Propoſitions which concerned *Great Britain* in particular, the ſame were far from manifeſting ſuch Deſign as is before-mentioned, ſince it is well known to be the undoubted Right of every Member of a Confederacy to demand particular Advantages for themſelves, not inconſiſtent with their Alliances, and which are not to take place but on the Concluſion of a General Peace: And it has been uſual for thoſe to whom the firſt Overtures of Peace are made, to make Demands for themſelves in the firſt place; as the States particularly did in the Negociations at the *Hague* in the Year One Thouſand Seven Hundred and Nine, and at *Gertruydenberg* in the Year One Thouſand Seven Hundred and Ten. And though he apprehends that an Agreement not to divulge the Propoſitions without the mutual Conſent of both Parties, could not be to the Prejudice of the Allies; yet he believes, that in order to prevent any unreaſonable Jealouſies among them, even thoſe Propoſitions which related to *Great Britain* in particular, were communicated to them; and that it will likewiſe appear, that the Propoſitions ſigned by Monſieur *de Torcy*, and tranſmitted in the Month of *April* One Thouſand Seven Hundred and Eleven, in the ſaid Articles mentioned, whereby it is ſaid, the *French* King offered to treat with the Plenipotentiaries of *England* or *Holland* alone, or jointly with thoſe of the Allies, at the Choice of *England*, were Propoſals relating only to the manner of Treating, when the Conferences ſhould be opened; and that her Majeſty was ſo far from taking upon her to treat ſingly for the Allies, that ſhe choſe to have all the Parties admitted to the Congreſs, where they might have an Opportunity of treating and adjuſting their reſpective Intereſts; that being, in her Opinion, the faireſt Method of proceeding, moſt advantageous to the Confederates, and moſt likely to prevent Jealouſies and Diſcords among them. And the ſaid Earl ſaith, that he doth not know that any Negotiation of Peace was contriv'd or ſet on Foot by any Perſons employ'd in her Majeſty's Service, which was in any Reſpect more advantageous to *France* than *France* had aſked, or which had a Tendency to give the Enemy a Power to create Miſunderſtandings between her Majeſty and her Allies, or to deſtroy the Confidence between them.

In anſwer to the Second Article, the ſaid Earl ſaith, that he believes Monſieur *Meſnager*, a Subject of the *French* King, did ſome time in the Year One Thouſand Seven Hundred and Eleven, with her Majeſty's leave, come into the Kingdom of *Great Britain*, and bring with him a Letter from the ſaid *French* King to her late Majeſty, acknowledging her Majeſty Queen of *Great Britain*, and likewiſe expreſſing a Deſire to re-eſtabliſh Peace with her, and that he was furniſhed with full Powers from the ſaid *French* King for that Purpoſe. The ſaid Earl further ſaith, that it hath been the uſual and allowed Practice in moſt Nations, eſpecially in *England*, for Privy Counſellors by verbal Orders from the Sovereign to confer within the Realm with Miniſters of foreign Princes, and he conceives ſuch Practice to be agreeable to the Laws of this Realm: And that full Powers are uſually granted to Miniſters who are ſent abroad, for the Juſtification of Perſons with whom they ſhall treat, rather than to juſtify ſuch Miniſters themſelves. And the ſaid Earl denies, that he did in the Month of *September*, One Thouſand Seven Hundred and Eleven, or at any other time, ſecretly and unlawfully, or without Authority, confer or treat with the ſaid Sieur *Meſnager* on the Negotiations of Peace between *Great Britain* and *France*, or that he did adviſe or promote the making a private and ſeparate Treaty or Agreement between the ſaid Crowns: But he hath been informed, and doth believe, that there was a Paper, ſtiled, *The Anſwer of* France *to the Preliminary Demands of* Great Britain *more particularly*, ſigned by Monſieur *Meſnager* only, to which was ſubjoined a Declaration of the Queen's Acceptance of thoſe Preliminary Articles, as Conditions his moſt Chriſtian Majeſty conſented to grant, which were to be reduced into the uſual Form of Treaties, and explained after the moſt clear and moſt intelligible manner, to the common Satisfaction of *Great Britain* and *France*, and this only in caſe of a general Peace: And this Declaration, or ſome other Declaration to the like Effect, he believes might be ſigned by the Lord *Dartmouth* and Mr. Secretary *St. John*, as in the ſaid Article is ſet forth. But the ſaid Earl muſt crave leave to ſubmit it to the Judgment of your Lordſhips, whether a Paper of that ſort (if any ſuch there was) containing Offers from *France*, which were not to take effect but in caſe of a general Peace, can be called a ſeparate Treaty. He believes the Allies had early Knowledge and Participation of the ſaid Propoſals from the Miniſters of *Great Britain*; but denies that the Intereſts of *Great Britain* were thereby given up to *France*, or the Duke of *Anjou* admitted to be King of *Spain*; ſince in the Declaration annexed to the ſaid Propoſals, he believes it is expreſſed, that her Majeſty might in Juſtice expect the Securities and Advantages mentioned in thoſe Propoſals, what Prince ſoever he ſhould be to whom the Monarchy of *Spain* ſhould be allotted; and the ſaid Earl, recollecting as well as he can what were her Majeſty's Views at that time, is perſuaded that her Majeſty had then a Proſpect, that the Monarchy of *Spain* would fall to the Share of another Prince. The ſaid Earl denies, that by his Privity, Conſent, or Advice, any private or ſeparate Treaty or Agreement, whereby the Intereſts of *Great Britain* were given up to *France*, or the Duke of *Anjou* was admitted to be King of *Spain*, was agreed, concluded, and ſigned by the Sieur *Meſnager* on the part of *France*, and by the Lord *Dartmouth* and *Henry St. John*, or either of them, in Behalf of her late Majeſty; much leſs did the ſaid Earl, at any Time, aſſume to himſelf Regal Power, or take upon him to meet and treat with the Enemy without Authority from her Majeſty, or do any thing to ſubvert the antient and eſtabliſhed Conſtitution of the Government of theſe Kingdoms, or introduce any illegal or dangerous Methods of tranſacting the Affairs of State. And the ſaid Earl further ſaith, that he did never aim at, or endeavour, by any ſeparate Treaty, to diſſolve or cancel any of thoſe ſolemn Treaties, in which her Majeſty ſtood engaged to her Allies, nor was he privy to any Treaty, whereby the Queen was brought under a Dilemma, either to ſubmit to the Dictates of *France* in the Progreſs of this Negotiation, or to loſe the Confidence of her Allies.

In anſwer to the Third Article, the ſaid Earl denies, that to diſguiſe, or carry on any private, ſeparate, or dangerous Negotiations, he did contrive or adviſe the preparing and forming the Set of General Preliminaries in the Article mentioned, intitled, Preliminary Articles on the Part of *France*, to come to a general Peace; or any other Set of general Preliminaries of like Nature; or that the ſame ſhould be ſigned by the Sieur *Meſnager*; or that he did adviſe her ſacred Majeſty, that the ſame ſhould be received by her Majeſty: But the ſaid Earl hath been informed, that certain Articles, called Preliminary Articles on the Part of *France*, to come to a general Peace, ſigned by the Sieur *Meſnager* only, were received by her Majeſty, and believes the ſame might be communicated to the Miniſters of the Allies then reſiding in *England*, as a Ground whereon the Confederates might treat or negotiate concerning a general Peace; but whether the ſame were communicated as the only Tranſactions that had been on that Subject, between *Great Britain* and *France*, the ſaid Earl knows not: But ſince it is termed impious Advice, and contrary to the Duty and Truſt of a Miniſter of State of *Great Britain*, to adviſe the receiving ſuch Articles; the ſaid Earl, from his Concern for the Honour of her late Majeſty's Adminiſtration, and the future Welfare of theſe Kingdoms, doth ſubmit, Whether it is criminal for ſuch Miniſter to adviſe the receiving Articles from a Miniſter of a Prince in War, containing Propoſals for giving reaſonable Satisfaction to *Great Britain* and all her Allies, and which being ſigned by the Miniſter of that Prince only, were not intended to bind any other. And ſince Preliminary Articles are no eſſential Step towards a general Negotiation, (there being, as he believes, but few Inſtances where any Matters of Importance have been ſettled before the opening of general Conferences), the ſaid Earl doth not conceive, That if any Miniſter of State had adviſed her Majeſty to accept the Preliminaries or Offers from *France*, ſaid to be ſigned by Monſieur *Meſnager* the Twenty-ſeventh Day of *September*, One Thouſand Seven Hundred and Eleven, as the Foundation of a Treaty, he had thereby offended againſt any known Law, ſince the Proceedings upon ſuch Preliminaries could not be more unſafe than proceeding without any at all. The ſaid Earl denies, that any Treaty, ſigned by the Earl of *Dartmouth* or Mr. *St. John*, or either of them, on the Part of *England*, and the Sieur *Meſnager* on the Part of *France* (if any ſuch there be) was induſtriouſly concealed from the Allies, her Majeſty's Council, or Parliament, by his Advice or Contrivance; or that he diſſuaded her Majeſty from laying any ſuch Treaty before her Allies, her Council or Parliament; or that he adviſed her Majeſty to receive the ſaid general Preliminaries, or to communicate the ſame in her Name, or by her Authority, to the States-General, as a ſufficient Foundation whereon to open the Conferences of Peace with *France*. The ſaid Earl hath been informed, and doth believe, that there were certain Inſtructions prepared and ſigned by her Majeſty, and delivered to the Earl of *Strafford*, her Majeſty's Ambaſſador to the States-General, wherein the ſaid Ambaſſador might be directed to repreſent to the Penſionary of *Holland*, and ſuch others as ſhould be appointed to confer with him, in ſuch manner as is ſet forth in this Article, or to the like Effect; but he denies, that the ſaid Inſtructions were prepared, ſigned, or delivered by his Advice: Nevertheleſs the ſaid Earl believes, the ſaid Inſtructions were well warranted by the Truth of ſuch Facts, as in the ſaid Article are ſet forth to be contained in thoſe Inſtructions, ſince the ſaid Earl hath had credible Information, that after her Majeſty had received an Account of the Senſe of ſome Perſons in *Holland*, concerning the Overtures made by *France*, for the ſetting a general Negotiation of Peace on Foot, very preſſing Inſtances were made on her Majeſty's Behalf, with the Enemy, to explain the firſt Offers made by Monſieur *de Torcy* more particularly, and to form a diſtinct Project of ſuch a Peace as they were willing to conclude; and that ſuch Inſtances had Effect, will appear from the Preliminaries ſaid to be ſigned by Monſieur *Meſnager*, *September* the Twenty-ſeventh, One Thouſand Seven Hundred and Eleven, wherein ſeveral Explications are made, and many Particulars of Moment are contained, which were not in the Propoſitions of Monſieur *de Torcy*: Wherefore the ſaid Earl apprehends, that the Propoſitions ſaid in this Article to be ſent over to *France*, (if any ſuch were ſent) were not ſo general as the Propoſitions of Monſieur *de Torcy*, nor in any reſpect enſnaring, or deſtructive to the Intereſts of *Great Britain* or the Allies: But yet the ſaid Earl believes that her Majeſty, at the ſame Time ſhe did communicate the ſaid Preliminaries to the States-General, did likewiſe order her Ambaſſador to acquaint them, that ſhe judged thoſe Articles did not contain ſuch particular Conceſſions as *France* would probably be obliged to make in the Courſe of the Negotiations, or to that Effect. If therefore her Majeſty did, for the Good and Eaſe of her People, endeavour to prevail with her Allies to enter into a Negotiation of Peace, and did communicate the ſaid Preliminaries to them, with that View, the ſaid Earl cannot be induced to believe, that the ſaid general Preliminaries, communicated to the States by her Majeſty in manner aforeſaid, were calculated to amuſe and deceive them; nor doth the ſaid Earl know or believe, that her Majeſty's Inſtructions to her ſaid Ambaſſador, either in the Particulars aboveſaid, or in any other, contained Matters falſe, prevaricating, or evaſive.

And the ſaid Earl muſt take the Liberty to affirm, that in the late Negotiations of Peace, as well as in all other public Tranſactions of State, as far as he was concerned, he acted with the higheſt Regard to the Honour of her Majeſty, and with the utmoſt Zeal for the Welfare both of

of her and her People, and is not conſcious to himſelf that he ever gave any Counſels, whereby the Truth and Sacredneſs which ought to conſtitute and accompany the Inſtructions of public Ambaſſadors to Princes in Friendſhip and Confederacy, againſt the common Enemy, were in any wiſe proſtituted, or the Honour of her Majeſty and of the Imperial Crown of theſe Realms in any ſort debaſed or betrayed: And he humbly hopes no Inſtance can be given, wherein the Royal Hand of her late Majeſty was made the Inſtrument to advance the Intereſt of the common Enemy.

In anſwer to the Fourth Article, the ſaid Earl doth not remember what Repreſentations were made by Monſieur *Buys* to her Majeſty in relation to the Propoſitions in the ſaid Article mentioned, but ſaith, That if any Repreſentations were made, the ſame were not rendered ineffectual by any Influence of the ſaid Earl: And the ſaid Earl doth admit, that at a Committee of Council there might be made ſome Declaration in her Majeſty's Name to Monſieur *Buys* to the Effect in the ſaid Article mentioned; but doth not admit that any ſuch Declaration was made by him the ſaid Earl, or by his Management or Contrivance. And the ſaid Earl believes, that what was ſo declared to the ſaid Monſieur *Buys*, was agreeable to Truth, and to the real Sentiments and Intentions of her Majeſty; nor doth he know wherein the ſaid Articles, ſigned by Monſieur *Meſnager*, and accepted by the Lord *Dartmouth* and Mr. *St. John*, if any ſuch were then ſigned, were inconſiſtent with ſuch Declaration, or how her Majeſty was thereby diſhonoured, or her Allies abuſed, or that any Negotiation entered into with *France* was either dangerous in itſelf, or fatal in its Conſequences.

In anſwer to the Fifth Article, the ſaid Earl admits, that her ſacred Majeſty Queen *Anne* did in due Form of Law, and under her Great Seal, conſtitute the Right Reverend *John* Lord Biſhop of *Briſtol*, and the Earl of *Strafford* her Plenipotentiaries, with full Powers to meet, treat and conclude with the Plenipotentiaries of the Confederates, and thoſe whom the *French* King ſhould on his Part depute for that Purpoſe, the Conditions of a good and general Peace, that ſhould be ſafe, honourable, and, as far as was poſſible, agreeable to the reaſonable Demands of all Parties, and believes Inſtructions were prepared and delivered to them, wherein they were inſtructed, among other Things, to the Effect in the ſaid Article ſet forth; and is firmly perſuaded, that when the ſaid Plenipotentiaries were ſo inſtructed to inſiſt, that *Spain* and the *Weſt-Indies* ſhould not be allotted to the Houſe of *Bourbon*, no Treaty had been negotiated and agreed, that *Spain* and the *Weſt-Indies* ſhould remain in a Branch of that Houſe: And he has Reaſon to believe, that at the Time when the ſaid Inſtructions were given to her Majeſty's ſaid Plenipotentiaries, there was juſt Ground to believe, that King *Philip* would be induced to abandon *Spain* and the *Weſt-Indies*, and content himſelf with the Dominions of *Savoy* and the Kingdom of *Sicily*: And he believes he may ſo far depend on his Memory, as to ſay, that he heard the late Queen declare, ſhe believ'd the Proſpect King *Philip* had of ſucceeding to the Crown of *France*, would be an Inducement to him to be eaſy with that Allotment. And it ſeemed probable, that the Addition of the Dominions of *Savoy* to the Crown of *France*, in Caſe King *Philip* ſhould ſucceed to it, would be eſteemed by the *French* Court as a Thing more to be deſired by them, than that *Spain* and the *Indies* ſhould remain in the Poſſeſſion of a younger Prince of the Houſe of *Bourbon*, under the Condition of his renouncing the Right he would have to the Crown of *France*, if the eldeſt Branch ſhould fail. Theſe ſeem to him to have been her Majeſty's Views at the Time when the ſaid Inſtructions were given to the Biſhop of *Briſtol* and the Earl of *Strafford*; and he therefore believes, that whoever contrived or prepared the ſame, did prepare them conformable to her Majeſty's real Sentiments, and was far from any Thought or Deſign to abuſe the Royal Authority, delude the States-General, prejudice his Imperial Majeſty, or any of the Allies, or to carry on the Meaſures of *France*: And if King *Philip* afterwards, upon Information that the then *Dauphin* was likely to live, or at the preſſing Inſtances of the *Spaniards*, and Influence of *Spaniſh* Counſels, or upon any other Motives, refuſed to accept of *Savoy* and *Sicily*, and choſe rather to renounce the *French* Monarchy; he thinks no Perſon who acts in the Service of the Crown can be ſafe, if it may be charged on him as a Crime, that he adviſed Inſtructions, which by intervening Circumſtances afterwards became improper. But he the ſaid Earl doth not admit, that he contrived or prepared the ſaid Inſtructions, or was conſenting or adviſing to the contriving or preparing of them, or prevailed on her Majeſty to ſign them; much leſs that he abuſed the Royal Authority, to the Deluſion of the States-General, or intended the Prejudice of his Imperial Majeſty or any of the Allies, or was engaged to carry on the Meaſures of *France*, or had, when the ſaid Inſtructions were prepared, negotiated or agreed with the Miniſters of *France*, that *Spain* and the *Weſt-Indies* ſhould remain in a Branch of the Houſe of *Bourbon*, or had prevailed on her Majeſty to be Party to any private Treaty, wherein the ſame is neceſſarily implied. If the Plenipotentiaries were inſtructed, in Caſe the Enemy ſhould object, that the Second Article of the Seven, ſigned by Monſieur *Meſnager*, implied the Duke of *Anjou* ſhould continue on the Throne of *Spain*, to inſiſt that thoſe Articles were binding to *France*, but laid neither the Queen nor her Allies under any Obligation, the ſaid Earl doth not apprehend how an Inſtruction to her Majeſty's Plenipotentiaries, to make a juſt Anſwer to a falſe Inference, that might happen to be drawn by the Enemy from the Words of ſuch an Article, can be interpreted an entering into a Confederacy or Colluſion with the Miniſters of the Enemy; or that her Majeſty's Conſent to ſuch Inſtructions could imply any Deſign to impoſe on his Imperial Majeſty or the Allies, or to conceal any Negotiations between *Great Britain* and *France*. But the ſaid Earl is confident it will not appear by any of his Actions, on the ſtricteſt Scrutiny, that he ever entered into any Confederacy or Colluſion with the Miniſters of the Enemy, or prevailed on the Queen to give her Conſent thereto, or had any Deſigns to impoſe upon his Imperial Majeſty, or any of the Allies, or ever was privy to any ſecret Negotiations or ſeparate Treaty between *Great Britain* and *France*, whereby either in the before-mentioned, or in any other Particulars, any Reproach could be brought on the Crown of theſe Realms; or any Treaties wherein her Majeſty was engaged to her Allies were violated.

In anſwer to the Sixth Article, the ſaid Earl doth admit, That after the Conferences of Peace between the Plenipotentiaries of the Allies, and thoſe of the Enemy, for negotiating a general Peace, were opened, wherein he is perſuaded her Majeſty and her Miniſters did act in perfect Confidence with the Allies, in order to promote their common Intereſt, and to obtain from the Enemy all juſt and reaſonable Satisfaction; the Progreſs of the ſaid Negotiation was delayed by Debates, concerning the Enemy's Refuſal to give their Anſwer in Writing to the Demands of the Allies; but he doth not know that any of the Miniſters of *Great Britain* did, by any Encouragement or Concurrence, contribute thereunto: And if, during that Time, her Majeſty thought fit to authorize any of her Miniſters to write or negotiate upon any particular Points relating to the Peace, directly from *England* to *France*, in order to facilitate the general Negotiations of Peace, which he the ſaid Earl doth not admit to have been done by his Privity; yet he the ſaid Earl doth not apprehend, that by the Conſtitution of the Kingdom, or any Law in being, the Queen was debarr'd from doing ſo; or that by conſtituting the ſaid Plenipotentiaries, ſhe had ſo far delegated to them her Royal Authority, as to be diſabled, without revoking their Commiſſion, to treat or negotiate any Matters conducing to that End, in ſuch other Manner as ſhe ſhould think fit. The ſaid Earl ſaith, that he did not adviſe, contrive, or promote any private, ſeparate, or unjuſtifiable Negotiation with *France*, nor doth he know any Negotiation relating to the Peace was carried on without Communication thereof to the Allies. And the ſaid Earl denies that he ever aſſumed Regal Authority, or that he treated of Peace with *France* in any manner that could be liable to ſuch Imputation, or did promote the Deſign of the Enemy to the Deſtruction of the Common Cauſe of her Majeſty, or of her Allies, contrary to the Laws or Conſtitution of this Kingdom, or in Violation of any of the Alliances her Majeſty ſtood engaged in, or of the Aſſurances given by her Majeſty, or of her Inſtructions to her Plenipotentiaries; or that any Terms of Peace were by him at any Time concerted, prejudicial to the Intereſt of her Majeſty, or her Kingdoms, or Allies, or whereby the good Effects of the general Negotiation were defeated.

In anſwer to the Seventh Article, the ſaid Earl ſaith, That he never adviſed her late Majeſty to accept of a Treaty with *France*, on a Suppoſition that the *Spaniſh* Monarchy ſhould continue in the Poſſeſſion of a Branch of the Houſe of *Bourbon*; nor did he adviſe or carry on any private or ſeparate Negotiation with *France*, on the Subject of a Renunciation to be made by the Duke of *Anjou*, of the Right he might have to the Kingdom of *France*, and that ſuch Renunciation ſhould be the Security againſt the Reunion of the Two Kingdoms: Or that by his Counſels her Majeſty was prevailed on to accept, and finally to conclude and ratify a Treaty of Peace with *France*, wherein the ſaid Renunciation is taken as a ſufficient Expedient to prevent the Miſchiefs that threatened all *Europe*, in caſe the Crowns of *France* and *Spain* ſhould be united upon the Head of one and the ſame Perſon: Nor doth he know, that during the ſaid Negotiation, any ſuch Memorial, as in the ſaid Article is ſet forth, was tranſmitted by the ſaid Monſieur *de Torcy* to any of her Majeſty's Principal Secretaries of State: But he the ſaid Earl doth freely acknowledge, that if he had been called upon to give his Opinion concerning the leaving of *Spain* and the *Weſt-Indies* in the Poſſeſſion of a Branch of the Houſe of *Bourbon*, and accepting the Renunciation of his Right to the Kingdom of *France* by the Duke of *Anjou*, he doth not at preſent ſee any Reaſon why he might not have been of Opinion for leaving *Spain* and the *Weſt-Indies* to the preſent Poſſeſſor, and accepting the Renunciation, rather than have continued the War, ſo burthenſome to the People, and ſo impracticable upon the Foot on which it then ſtood, eſpecially ſince all Endeavours to remove him by Treaties or Force had ſo long proved ineffectual. And in caſe any ſuch Memorial as is ſet forth in the ſaid Article, was ſent by any Miniſter of *France* to the Secretary of the late Queen, he ſhould look upon the ſame as a Proof of the Earneſtneſs of the Court of *France* to avoid ſuch Renunciation, which might more effectually prevent all Poſſibility of annexing the Crown of *Spain* to that of *France*. But whatever Inducements might be for ſuch a Memorial (if any ſuch was tranſmitted) the ſaid Earl doth affirm, that he never gave any Counſels by which the Intereſt of the Common Cauſe could be betray'd into the Hands of the Enemy; nor doth he think it was poſſible by any Power and Influence, to engage her Majeſty to become Party with *France* in any Deceit; but whatever Credit he at any time had by her Favour, he always uſed it with the utmoſt Sincerity for her Service, and the Good of her People.

In anſwer to the Eighth Article, the ſaid Earl believes, That her late Majeſty Queen *Anne* did, on the Seventh Day of *December*, in the Year of our Lord One Thouſand Seven Hundred and Eleven, recommend it from the Throne, that Proviſion might be made for an early Campaign, in order to carry on the War with Vigour, and as the beſt Way to render the Treaty of Peace effectual; and he doth believe, that in order thereto Supplies were granted, and Magazines provided at a great Expence for an early Campaign, and that in purſuance thereof her Majeſty might ſend ſome General Officers to explain her Intentions to her Allies; and likewiſe inſtructed her General the Duke of *Ormond* to declare her Reſolutions of carrying on the War, and to concert with the Generals of the Allies the proper Meaſures for entering upon Action: And he doth believe, that the Confederate Army was provided with all Neceſſaries: But whether the ſaid Army had approached, or how near they had approached to the Enemy; whether they had any, or what Superiority, as to the Number of Troops; or what Likelihood there was, that they would have been able, either by Battle or Siege, to have better'd the Affairs of the Allies, or to have facilitated the Negotiations of Peace, the ſaid Earl is not able to ſay: But it muſt be obvious to every one, that any Miſcarriage or Diſaſter on the Part of the Allies, at ſuch a Juncture, muſt have been fatal to them: And though the Divine Aſſiſtance had been very remarkable in the many Victories her Majeſty's Forces had obtained, yet her Majeſty's

Piety was ſo great, that it is not likely ſhe ſhould, without the greateſt Neceſſity, have been willing to have tempted that Providence which had been ſo ſignal in her Favour, by hazarding the Blood of her Subjects at a Time when ſhe had ſo near a Proſpect of the Concluſion of a Peace: And the ſaid Earl believes it might be owing to this Piety of the Queen, and her Knowledge of ſome important Matters then depending, that Directions were ſent to the Duke of *Ormond* (if any ſuch were ſent) to avoid engaging in any Siege, or hazarding any Battle till further Orders; which he ſuppoſeth her Majeſty might do upon any Cauſes ſhe thought proper, as well as the Deputies of the States, who, as the ſaid Earl hath been informed, have often refuſed to engage in Siege or Battle, upon ſuch Ground as they alone thought fit, when their own Generals, and the Generals of the other Allies, were of Opinion they had a viſible Advantage of the Enemy, and might engage in ſuch Siege or Battle with great Probability of Succeſs. But he doth affirm that the Miniſters of *France* never repreſented to him or to any others, as far as he knows, during any Negotiation, any Apprehenſions they had from the Bravery and good Diſpoſition of the Confederate Army; nor was he ever informed of any ſure Proſpect which it is alledged the Army of the Confederates then had of gaining new Conqueſts over the Army of *France*, or whereby they would have been enabled to have forced any better Terms of Peace than there was at that Time Likelihood of: But on the contrary he has been informed, that the Forces of *France* were ſuperior in Number to thoſe of the Confederates, eſpecially in Horſe. However the ſaid Earl doth not admit, that he did adviſe or conſent that any Order ſhould be diſpatched in her Majeſty's Name to the Duke of *Ormond* to the afore-mentioned Effect; nor had he any View or Deſign to diſappoint the Expectations of the Allies, or to give Succeſs to any ſecret Negotiations with the Miniſters of *France*. The ſaid Earl likewiſe denies, that he did conſent or adviſe that Orders ſhould be ſent to the Biſhop of *Briſtol*, one of her Majeſty's Plenipotentiaries then at *Utrecht*, to declare to the *Dutch* Miniſters, that her Majeſty looked on herſelf, from their Conduct, to be then under no Obligation whatſoever to them. He doth not know what Alarm the Allies might take, or what Repreſentations they made to the Biſhop of *Briſtol* of their Diſſatisfaction or Conſternation, but doubts not the ſaid Biſhop would readily repreſent what they deſired, tho' ſuch Repreſentation made his Lordſhip (if any ſuch there was), fell not under the Knowledge of the ſaid Earl, nor doth he admit that any Application of that kind was made to him. And in caſe the States-General made ſuch Addreſs directly to her Majeſty, by a Letter of the Fifth Day of *June*, as in the ſaid Article is ſet forth, he the ſaid Earl not being acquainted therewith, could neither adviſe her Majeſty to hearken to the Inſtances therein made, nor to diſregard or reject the ſame. He ſaith, he never entered into Meaſures for the Advancement of the Intereſt of the common Enemy, or countenanced, encouraged, adviſed, or promoted any Negotiations with *France*, without Participation of the Allies, or contrary to her Majeſty's Engagement, or to the Ruin of the Common Cauſe; nor is he conſcious to himſelf, that he ever gave any Counſels, by which the Progreſs of the victorious Arms of the Confederates was ſtopped, or any Opportunity loſt for conquering the Enemy, or which had any Tendency to deſtroy the Confidence between her Majeſty and her Allies, or make the *French* King Maſter of the Negotiations of Peace, or which could put the Affairs of *Europe* into his Hands.

In anſwer to the ninth Article, the ſaid Earl denies he was privy or conſenting to any Concert with the Miniſters of *France* for the ſeparating the Troops in her Majeſty's Pay from the reſt of the Confederate Army; and not being privy to any ſuch Concert, he hopes it will not be imputed to him as any want of Duty, that he did not adviſe againſt ſuch a Proceeding. He denies alſo, that he ever entertained the leaſt Deſign of impoſing upon the Allies any Neceſſity of ſubmitting to the Terms of *France*, or of leaving the Confederate Army to the Mercy of the Enemy, or that he did conſent or adviſe her Majeſty that the Duke of *Ormond* and the Troops in her Majeſty's Pay, or ſuch of them as would obey his Orders, ſhould ſeparate themſelves from the Army of the Confederates. The ſaid Earl hath been informed, and believes it to be true, that the Imperial General, and ſome other Generals, did propoſe to the Duke of *Ormond* in *June* or *July*, in the Year One Thouſand Seven Hundred and Twelve, to decamp from the Ground where they lay, and to proceed towards *Landrecy*, in order to form the Siege of that Place, and that the Duke of *Ormond* thought it not proper to conſent thereto, and gave Notice to the ſaid Generals, that if they decamped they muſt not expect him to follow them. And the ſaid Earl believes, Inſtances may be given where Generals of other Potentates in the Alliance have refuſed to comply with what has been propoſed to them by her late Majeſty's General. The ſaid Earl hath likewiſe heard, that, notwithſtanding ſuch Notice from the Duke of *Ormond*, the ſaid Generals ſeparated themſelves and their Forces from the ſaid Duke, and marched towards *Landrecy* without him, and that the ſaid Duke continued for ſome Time in his former Camp after ſuch Separation: And that the Generals of the Auxiliary Troops paid by her Majeſty, although required by the ſaid Duke of *Ormond*, under whoſe Command they then were, to continue with him, and to obey his Orders, refuſed ſo to do. He the ſaid Earl ſuppoſes it might proceed from her Majeſty's Reſentment of that Inſtance of Diſobedience in the Auxiliary Troops to the Commands of her General, that ſhe did not think fit immediately to pay the Arrears of thoſe Forces which had ſo obſtinately withdrawn themſelves from her General, and marched without him towards *Landrecy*, as not apprehending herſelf obliged by any Conventions, or the Proviſion of any Act of Parliament, ſo to do. But whatever might be the Cauſes or Occaſions of her Majeſty's Reſentment, the ſaid Earl ſaith, that he being in the Office of High-Treaſurer under her Majeſty, could not, by the Duty of his Place, iſſue out any Monies without a proper Warrant or Authority from her Majeſty; and denies that he ever received any Warrant or Authority from her Majeſty for iſſuing any Sum or Sums of Money for, or towards the Pay or Subſidies on account of the ſaid Foreign Troops who had ſo ſeparated, without which the iſſuing or directing any Monies for the Payment of them had been a Violation of his Duty. And the ſaid Earl denies, that he did at any Time refuſe or put a Stop to any ſuch Pay or Subſidies; but on the contrary, when the Miniſters of the Princes to whom thoſe Forces belonged did apply for the Payment of the ſaid Troops, the ſaid Earl deſired them to make Application to her Majeſty for the neceſſary Warrants in order thereunto. And as the ſaid Earl had no Notice of any Separation intended between her Majeſty's Forces and thoſe of the Allies before the ſame was made; ſo he abſolutely denies, that by his Advice or Counſel, or with his Privacy, any ſuch Separation was made: And humbly apprehends that he ought not in Juſtice to be charged with any Conſequences of it. He believes, that the Forces of ſome of the Allies were engaged in the unfortunate Action of *Denain*, and that the Siege of *Landrecy* was raiſed, and the Towns of *Queſnoy*, *Bouchain*, and *Doway* were ſome Time after retaken by the *French* Army: But whether thoſe Diſaſters might not have been prevented by a Compliance with the Meaſures her Majeſty had taken for the common Good, the ſaid Earl ſubmits to your Lordſhips.

In anſwer to the Tenth Article, the ſaid Earl denies that he did carry on, or concert with the Miniſters of *France*, a private or ſeparate Negotiation for a general Suſpenſion by Sea and Land between *Great Britain* and *France*; or that he did adviſe her Majeſty to ſend over *Henry* Viſcount *Bolingbroke* to the Court of *France*; with Powers to ſettle ſuch Suſpenſion; but hath been informed, and believes it may be true, that about the Nineteenth of *Auguſt*, One Thouſand Seven Hundred and Twelve, *N.S.* a Suſpenſion of Arms was agreed on in *France* by the ſaid Viſcount *Bolingbroke* on her Majeſty's Part for four Months; but whether ſuch Agreement was made without the Knowledge or Participation of her Majeſty's Allies, or how far the Terms of Peace were then ſettled with *France*, either for *Great Britain*, or the Allies, the ſaid Earl is not able to ſet forth: But from the Information he hath received of that Affair, believes it will appear, that the ſaid Suſpenſion was a Continuation only of a former Agreement for a Ceſſation of Arms, which had been not only communicated to the Allies, but into which they had been invited; and believes her Majeſty might be induced to deſire ſuch Ceſſation, as was uſual amongſt Princes and States in War during Negotiations of Peace, by which Means the *Britiſh* Merchants enjoy'd a free Trade, and had an Opportunity of carrying the Merchandizes of other Countries to ſeveral Parts of *Europe*, as the *Dutch* had done during the War; and therefore the ſaid Earl doth not conceive that her Majeſty, by the ſaid Suſpenſion, did in the leaſt intend the Violation of any Treaties between her and her Allies, or to deprive them of any Aſſiſtance to which they were entitled, or expoſe them to the Inſults of the common Enemy: nor doth he diſcern how theſe Conſequences could enſue, without the Default of the Allies themſelves; much leſs how the Ties of Union and Friendſhip between her Majeſty and them were cut aſunder, or her Majeſty's Perſon or Government, or the Safety of her Kingdoms, or the Proteſtant Succeſſion, were expoſed thereby. But the ſaid Earl aſſures himſelf, that he ſhall never ſtand chargeable with any Conſequences of ſuch Suſpenſion, which he never adviſed; nor did he the ſaid Earl ever entertain the leaſt Thought or Deſign of occaſioning the Deſtruction of the Common Cauſe of *Europe*, or hindering her Majeſty from reſuming the War againſt *France*, in Conjunction with her Allies, if it had been ſo thought fit, or of weakening the Union between her Majeſty and them.

In anſwer to the Eleventh Article, the ſaid Earl ſaith, he believes it to be true, that in or about the Months of *September* or *October* One Thouſand Seven Hundred and Twelve, the States-General were in Poſſeſſion of the Town and Fortreſs of *Tournay*; and that her Majeſty, in her Inſtructions of *December* the Twenty-third, One Thouſand Seven Hundred and Eleven, to her Plenipotentiaries at *Utrecht*, did direct them to inſiſt with the Plenipotentiaries of *France*, in the general Congreſs, that towards forming a Barrier for the States-General, *Tournay* ſhall remain to the States; and doth believe the *French* King did at one Time incline thereto: But doth not know that her Majeſty in her Speech, in the ſaid Article mentioned, did declare herſelf as in the ſaid Article is ſet forth. The ſaid Earl admits, that until and after the Months of *September* and *October* One Thouſand Seven Hundred and Eleven there was open War between her late Majeſty and the *French* King; and that during ſuch War, the *French* King and his Subjects were Enemies to the late Queen: But the ſaid Earl hath been informed, and believes, that full Powers were given by her Majeſty, and the States-General of the United Provinces, to their reſpective Miniſters, and by the *French* King to his Miniſters, to negotiate and treat of Peace between her Majeſty and the States-General, and ſaid *French* King; upon which Negotiations a Peace was afterwards concluded between them; during which Negotiations he hath heard, that the *French* King did inſiſt upon the yielding up the Town and Fort of *Tournay* by the States to him; and the ſaid States-General deſired her Majeſty's Interpoſition with the *French* King on their Behalf; and that at ſuch Requeſt her Majeſty interpoſed her beſt Offices on Behalf of the States-General, and did at laſt prevail, that the ſaid Town and Fortreſs of *Tournay* ſhould be, and he believes the ſame is continued to the States-General, as Part of their Barrier. But the ſaid Earl abſolutely denies that he did deſign to give Aid or Succour, or to adhere to the *French* King; or that he did in or about the Month of *October* One Thouſand Seven Hundred and Twelve, or at any other Time, during the ſaid War, aid, help or aſſiſt, or adhere to the ſaid *French* King; or, that he did ever counſel or adviſe the ſaid Enemy in what Manner, or by what Methods the ſaid Town and Fortreſs of *Tournay*, or either of them, might be gained from the States-General to the *French* King, in Manner and Form as in the ſaid Article is charged. On the contrary, he the ſaid Earl did uſe his beſt Offices to preſerve the ſaid Town and Fortreſs of *Tournay* to the States-General. But the ſaid Earl ſaith, that during the Negotiations of the late Peace, he had the Honour to be one of her Majeſty's Privy-Council; and whatſoever Counſel or Advice he gave, relating to any Terms of the ſaid Peace, he acted therein as a Privy-Counſellor and Miniſter of State, and no otherwiſe: And doth inſiſt, that for any Privy-Counſellor and Miniſter of State, during the Negotiations of Peace, to adviſe or negotiate, concerning the yielding or giving up any Town, Province or Dominion, upon Concluſion of the Peace, as Part of the Terms and Conditions of ſuch Peace, is not High-Treaſon by any

any Law of this Realm; and that ſuch Conſtruction might hereafter deprive the Crown of the Advice and Aſſiſtance of ſeveral Members of the Privy-Council, in Matters of the greateſt Importance, by deterring them from giving ſuch Advice as, by their Oaths, and the Duty of their Place, they are obliged to do; would overthrow all means of reſtoring Amity between Princes, and render the Law, in caſe of High-Treaſon, uncertain, which by reaſon of its being the moſt penal, ought to be moſt plain; and would be highly dangerous and deſtructive to the Lives and Liberties of the Subject.

In anſwer to the Twelfth Article, the ſaid Earl (not admitting that her late Majeſty Queen *Anne* ſtood engaged by Treaties in manner as in the ſaid Article is alledged, but referring himſelf to the Treaties, when they ſhall be produced) for anſwer, denies, that he did in any of the Years One Thouſand Seven Hundred and Ten, One Thouſand Seven Hundred and Eleven, One Thouſand Seven Hundred and Twelve, or at at any other time, aid, help, aſſiſt, or adhere to the Duke of *Anjou*, in the ſaid Article named, or adviſe or counſel any of the Enemies of her ſaid late Majeſty, or concert with any of them, or promote the yielding or giving up of *Spain* and the *Weſt-Indies*, or any Part thereof, to the ſaid Duke of *Anjou*, in Manner and Form as in the ſaid Article is alledged. And the ſaid Earl ſaith, as in his Anſwer to the Eleventh Article he hath already ſaid, that during the Negotiations of the late Peace, he had the Honour to be one of her ſaid late Majeſty's Privy-Council, and whatever Counſel or Advice he gave, relating to any Terms of the ſaid Peace, he acted therein as a Privy-Counſellor and Miniſter of State, and no otherwiſe; and inſiſts as in his Anſwer to the Eleventh Article he has inſiſted.

In anſwer to the Thirteenth Article, the ſaid Earl admits, that the flouriſhing Condition of Trade and Navigation contributes much to the Riches, Power and Strength of theſe Kingdoms; and believes, that her late Majeſty had a juſt Regard thereto, and a ſincere Deſire to obtain ſome Advantages therein for her People; and did make the ſeveral Declarations from the Throne ſet forth in this Article: And that both Houſes of Parliament did, from time to time, expreſs their grateful Acknowledgements to her Majeſty, for her great Care and Concern for the Welfare of her People; and believes her Majeſty might think it reaſonable, conſidering the Share and Burthen ſhe and her People had ſuſtained in the War, that *France* ſhould, in the firſt Place, adjuſt the Intereſts of *Great Britain*, which were to be ſecured on the Concluſion of a general Peace: But the ſaid Earl doth not know or believe that at the ſetting on foot, or in the Progreſs of any Negotiation between the Miniſters of *Great Britain* and *France*, it was laid down as a Principle that *France* ſhould in the firſt place conſent to adjuſt the Intereſts of *Great Britain*, to the Intent that the Miniſters of *Great Britain* might thereby be enabled to engage the Queen to make the Concluſion of the Peace eaſy to *France*; nor doth he know that any Conceſſions were made by the Miniſters of *Great Britain*, with Intent to promote the Intereſts of *France* againſt the Allies; or that any Meaſures were entered into or concerted between them, in order to ſtrengthen the Hands of the *French*, or to enable them to impoſe the Terms of a general Peace. And the ſaid Earl doth abſolutely deny that he was engaged, in Concert with *France*, in any Negotiation deſtructive to his Country, or that he ever had the leaſt Imagination or Thought tending that way, or to the ſacrificing the Commerce of *Great Britain* to the Aggrandiſement of *France*: But on the contrary, he hath always had the moſt real and ſincere Deſires to ſecure and advance the Commerce of *Great Britain*, and to preſerve his Country, in whoſe Service he hath been always ready to ſacrifice himſelf, and every private Intereſt whatſoever. And the ſaid Earl is not conſcious to himſelf of any want of Duty, either in not inſiſting upon, or not procuring the moſt certain Securities that could be obtained for the Safety and Advantage of the Commerce of theſe Kingdoms. And the ſaid Earl doth not admit, that he did adviſe her late Majeſty, that any Propoſition ſhould be ſent by Mr. *Prior* to *France*; or that any private or ſeparate Treaty, or the Preliminary Articles, which are ſaid to be ſigned the Twenty-ſeventh Day of *September* One Thouſand Seven Hundred and Eleven, ſhould be ſigned. But the ſaid Earl hath been informed and believes, that in a Paper intitled, *The Anſwer of* France *to the Demands of* Great Britain *more particularly*, it is ſaid, *that the entire Reſtitution of* Newfoundland, *and of the Bay and Streights of* Hudſon, *was demanded for the* Engliſh: And that the *French* King's Anſwer was, *That the Diſcuſſion of that Article ſhould be referred to the general Conferences of the Peace, provided the Liberty of fiſhing and drying of Codfiſh upon the Iſle of* Newfoundland *ſhould be reſerved to the* French. And the ſaid Earl conceives that Paper was not concluſive, but was to be the Subject of future Conferences, wherein the whole Matter might be entirely conſidered; and conſequently that the entering into Conferences on that Paper, was not the yielding to the *French* the Liberty of fiſhing and drying Fiſh on *Newfoundland*, which they inſiſted on. And the ſaid Earl denies, that he adviſed the Demands for *Great Britain*, in Point of Commerce, ſhould be made in looſe, general, or inſufficient Terms; or that he adviſed the Liberties inſiſted on by the *French* ſhould be given up to *France*, as in the ſaid Article is alledged: And he believes that when it is conſidered what Advantages were likely to enſue to the Commerce of *Great Britain* by the *Aſſiento* Contract, and the Liberty of Trading to the *Spaniſh Weſt-Indies* by the Ceſſion of *Acadia*, the Bay and Streights of *Hudſon*, the Iſland of St. *Chriſtopher*, *Newfoundland*, the Iſland of St. *Peter*, with other adjacent Iſlands; by the Demolition of *Dunkirk*, and the Ceſſion of *Port-Mahon* and *Gibraltar*, it will not be thought the Commerce of *Great Britain* was neglected by her Majeſty, in the late Treaties of Peace. And as the ſaid Earl doth not know that *France* was at any time Maſter of the Negotiations, ſo he denies that he did engage her Majeſty in any private Treaties with *France*, without Security for the Commerce of *Great Britain*; or that he did contrive, with any of the Miniſters of *France*, to keep in Suſpenſe any Matter that concerned the ſaid Commerce, or that he was any ways inſtrumental to the preventing any Advantages of the ſaid Commerce from being ſettled, or that he endeavoured to elude any thing that had been agreed on in any Negotiations for the Benefit of *Great Britain*. And although the ſaid Earl doth not admit, that he adviſed the Ninth Article of the Treaty of Commerce with *France*, yet he begs leave to obſerve, that nothing is poſitively ſtipulated in that Article, but the whole is conditional, and left to be determined by the Wiſdom of Parliament; and hopes it will never be thought an Act of Treachery, to refer any Article of any Treaty to the Judgment and Conſideration of Parliament, whatever Judgment the Parliament ſhall think fit to make thereon. And the ſaid Earl denies, that he adviſed her Majeſty to agree with *France*, that the Subjects of *France* ſhould have Liberty of fiſhing, and drying Fiſh on *Newfoundland*: But the ſaid Earl believes, that what her late Majeſty agreed with *France*, relating thereto, will not ſeem unreaſonable, if it be conſidered, that the *French* long ago claim'd a Right to, and were in Poſſeſſion of great Part of *Newfoundland*; and that they were allowed to continue in Poſſeſſion thereof by the Crown of *England*, in a Treaty made at *Whitehall*, in the Year One Thouſand Six Hundred and Eighty-ſix; and in another Treaty made at *Ryſwick*, in the Year One Thouſand Six Hundred and Ninety-ſeven. And the ſaid Earl doth not know that ſuch Agreement of her Majeſty is contrary to the expreſs Proviſion of any Act of Parliament, ſince he preſumes the Act made in the Tenth and Eleventh Years of the Reign of King *William* the Third, intitled, *An Act to encourage the Trade to Newfoundland*, cannot reaſonably be intended, or conſtrued to extend, to any Part of the Iſland, other than what was at the time of making that Act in the Poſſeſſion of the *Engliſh*. And the ſaid Earl is informed, that at that Time the Part of *Newfoundland*, where the Subjects of *France* are, by the Treaty of *Utrecht*, allowed the Liberty of Fiſhing, and drying Fiſh, was not in the Poſſeſſion of the *Engliſh*. The ſaid Earl denies, that he adviſed her Majeſty to make a Ceſſion to *France* of the Iſle of *Cape Breton*; or that he adviſed her Majeſty to conſent, that what is agreed in the Treaty of *Utrecht*, concerning the Fiſhery of *Newfoundland*, or *Cape Breton*, ſhould be made an Article of that Treaty: However, the ſaid Earl doth not know that *Cape Breton* was Part of the Territories of the Crown of *Great Britain*; nor doth he apprehend, that her Majeſty, who in her Speech from the Throne declared, that *France* had conſented to make an abſolute Ceſſion of *Annapolis*, with the reſt of *Nova Scotia*, or *Acadia*, ſhould be underſtood to ſpeak of *Cape Breton*, which is no Part of that Continent, but an Iſland diſtinct from it. The ſaid Earl further ſaith, he conceives, that the only Advantages in Trade, ſtipulated for *Great Britain*, did not depend on Conditions to be made good by Act of Parliament: On the contrary, he doubts not to make it appear, that many Advantages in Trade were ſtipulated for *Great Britain*, in the late Treaties of Peace and Commerce, which have been enjoyed by the Subjects of *Great Britain*, ſince the Concluſion of the ſaid Treaties, notwithſtanding the Parliament hath not thought fit to make any Act to enforce the Ninth Article of the Treaty of Commerce with *France*. And the ſaid Earl denies, that by his Counſels, the good Intentions of her ſacred Majeſty, to have obtained for her People advantageous Terms of Commerce, were fruſtated, or the Trade or Manufactures of *Great Britain* render'd precarious, or at the Mercy of the Enemy; or any beneficial Branch of Trade yielded up to the Subjects of *France*. And as the ſaid Earl diſowns the being concerned in any Violation of Treaties, or in carrying on the Meaſures of *France*, or in any Negotiation which could terminate in the Sacrifice of the Commerce of *Great Britain* to *France*; ſo he obſerves, with great Satisfaction, the flouriſhing Condition of the Trade and Navigation of theſe Kingdoms, ſince the Concluſion, and by Means of the late Peace, in the great Encreaſe of the Number and Tonnage of Shipping, of the Exportation of the Woollen Manufactures, the Fiſh, and other Produce of this Kingdom; in Conſequence whereof, the Cuſtoms have been greatly advanced, near three Millions of Gold and Silver hath been coined, and the Exchange has been all along in the Favour of *England*, to and from all Parts of *Europe*.

In anſwer to the Fourteenth Article, the ſaid Earl doth not admit that he formed any Project, or Deſign, for diſpoſing the Kingdom of *Sicily* to the Duke of *Savoy*, from the Houſe of *Auſtria*; or that he did adviſe her Majeſty to give any ſuch Inſtructions to *Henry* Viſcount *Bolingbroke*, as in the ſaid Article mentioned, or to conſent to any Treaty wherein a Ceſſion is made of the ſaid Kingdom to his Royal Highneſs without any Concurrence or Participation of his Imperial Majeſty; nor doth he admit that her Majeſty was prevailed on, by his Advice, to aſſiſt his ſaid Royal Highneſs with her Fleet, againſt the Emperor, in order to obtain the Poſſeſſion of that Kingdom. But in Juſtification of her Majeſty's Proceedings, in relation to the ſaid Kingdom, the ſaid Earl doth beg leave to obſerve, that by the Grand Alliance it was agreed, among other Things, that the Confederates ſhould uſe their utmoſt Endeavours to recover the Kingdom of *Sicily* out of the Hands of the Enemy; and that the principal Ends for endeavouring the Recovery of *Sicily* were, that his Imperial Majeſty might have a reaſonable Satisfaction for his Pretenſion to the *Spaniſh* Monarchy; and that the Trade and Navigation of the Subjects of *Great Britain* and *Holland* might thereby be better ſecured. Since therefore the Empire, and Hereditary Countries of *Auſtria*, were now fallen to *Charles* the Third, who at the Time of that Treaty was a younger Branch of that Houſe: Since ſeveral Towns in the *French Flanders*, which were not in the Poſſeſſion of King *Charles* the Second, at the Time of his Death, together with *Spaniſh Flanders*, *Milan* and *Naples*, might ſeem a reaſonable Satisfaction for his Imperial Majeſty's Pretenſions to the *Spaniſh* Succeſſion: And ſince the Trade and Navigation of the Subjects of *Great Britain* and *Holland* would be as effectually ſecured, by the Diſpoſition of the Kingdom of *Sicily* to the Duke of *Savoy*, as if the ſaid Kingdom had fallen to the Share of the Emperor: And greater Difficulties would be likely to ariſe, in obtaining the Diſpoſition thereof to the Houſe of *Auſtria*, than to that Duke, in as much as King *Philip* might be more eaſily induced to yield it to the Duke of *Savoy*, than to ſo potent a Prince as the Emperor; and there were Grounds to believe that all, or moſt of the Princes and States of *Italy*, were ſo apprehenſive of the growing Power of the Houſe of *Auſtria* in *Italy*, that they would ſuffer any Extremities, rather than ſubmit that *Sicily*, together with *Milan* and *Naples*, ſhould be in the Hands of the Emperor, the ſaid Earl doth not diſcern how any Project to diſpoſe the ſaid Kingdom to that Duke could be

be thought unjuſt, diſhonourable, or pernicious, or an Act of Injuſtice to his Imperial Majeſty, or Violation of the Grand Alliance: Nor doth the ſaid Earl remember, in what reſpect it was contradictory to any Declaration of her Majeſty, or the Inſtructions ſhe had given her Plenipotentiaries: And in caſe her Majeſty thought fit, afterwards, to employ any Part of her Fleet to aſſiſt that Duke, her good and faithful Ally, to take Poſſeſſion of that Kingdom from the Enemy, in Conſideration of the ſaid Duke's ſteady Adherence to the Confederacy, and great Sufferings by ſuch Adherence; he the ſaid Earl is not able to diſcover why ſuch Aſſiſtance might not be given to the ſaid Duke, as well as to any other of her Allies whatſoever. And ſince it is allowed by this Article, that the then Duke of *Savoy* never made any Application, in order to obtain the ſaid Kingdom for himſelf, it ſeems an Evidence at leaſt, that the Perſon or Perſons who adviſed the late Queen to agree to ſuch Allotment, did not act upon any private Intereſt, or had any other View than the Preſervation of a Balance of Power in *Europe*, and the Security of the Trade and Navigation of the Subjects of *Great Britain* and *Holland*; and cannot reaſonably be thought, upon a fair and candid Interpretation, to have been guilty of betraying the National Faith, or Honour of the Crown, or employing the Naval Power of theſe Kingdoms, or the Supplies granted by Parliament, againſt an Ally of this Kingdom.

In anſwer to the Fifteenth Article, the ſaid Earl ſaith, he is and always was of Opinion, that the Word of the Sovereign is ſacred, and that all Communications from the Throne to Parliament ought to be true, and that it becomes all Miniſters of State, as far as in them lies, to maintain the Honour of the Crown, in ſuch Caſes, with the utmoſt Exactneſs; nor doth the ſaid Earl know that he hath, at any Time, been defective in his Duty, in this Particular, or ever took upon himſelf any arbitrary or unwarrantable Authority, much leſs the chief Direction and Influence in her Majeſty's Councils: Nor did he ever proſtitute the Honour of the Crown or Dignity of Parliament, by miſrepreſenting any Part of the late Negotiations of Peace, to deceive either her Majeſty, her Allies, her Parliament, or her People; nor did ever prepare, form, or concert, or adviſe her Majeſty to make any Speech or Declaration from the Throne to her Parliament, that was not conformable to Truth. He believes her Majeſty might make ſeveral Speeches from the Throne to her Parliament, at the ſeveral Times in the ſaid Article mentioned, to which the ſaid Earl refers; and particularly, that her Majeſty did on the Seventh of *December*, One Thouſand Seven Hundred and Eleven, declare, that her Allies, eſpecially the States-General, had, by their ready Compliance for opening a Treaty of a general Peace, expreſſed their Confidence in her; but the ſaid Earl not admitting there were ſuch Repreſentations as ſuggeſted in this Article, begs leave, in Vindication of the Honour of his Royal Miſtreſs, who was a Princeſs of ſtrict Piety and Truth, to obſerve, that the States-General ſent over Monſieur *Buys* to her Majeſty, with Letters full of Aſſurances of their Reſpect for her Perſon, and their Reſolutions not to ſeparate themſelves from her; and likewiſe ſignified by him to her Miniſters, their Readineſs to concur with her Majeſty. And the ſaid Monſieur *Buys*, immediately upon his Arrival at *London*, delivered Paſſports for the *French* Miniſters to come to *Utrecht*; and at a Meeting of ſeveral Lords of the Council, ſhewed his Approbation of ſending circular Letters to invite the reſt of the Allies to the general Congreſs: And the ſaid Monſieur *Buys* exhibited full Powers for preparing and ſigning a new Treaty, whereby her Majeſty and the States ſhould be mutually engaged to each other in making War and Peace, to guarantee the Peace when made, and to invite the reſt of the Allies into ſuch Guarantee; all which Matters and Tranſactions being previous to the Seventh of *December*, One Thouſand Seven Hundred and Eleven, her Majeſty might juſtly regard the aforeſaid authentic Acts and Aſſurances, as greater Proofs of the Confidence the States had in her, and of their Readineſs to concur with her, than any Repreſentations or Reports before that Time; and that the ſaid Declaration of her Majeſty from the Throne was founded upon the ſtricteſt Truth. And the ſaid Earl believes, that every one who impartially conſiders the Steps taken in the late Negotiations of Peace, the Length of the Treaty, the ſeveral Letters from one of her Majeſty's Principal Secretaries of State to her Plenipotentiary at *Utrecht*, the Ratification of the Engagement ſigned by her Miniſters and Monſieur *Buys*, the Eighteenth of *December* One Thouſand Seven Hundred and Eleven, and her exhorting the States to ratify the ſame; her preſſing Inſtances to the Princes and States of the Empire, and the many other Acts which were done by her Majeſty's Orders during that Tranſaction, for the Service and Satisfaction of her Allies, will readily acknowledge, that her Majeſty did her utmoſt to procure for her Allies, and in particular for his Imperial Majeſty, all reaſonable Satisfaction; and to unite with them in the ſtricteſt Engagements to render the Peace ſecure and laſting, agreeable to her Speech of the ſaid Seventh Day of *December*, and her Meſſage of the Seventeenth of *January* following, in this Article mention'd: And if by any extraordinary Demand or groundleſs Jealouſies of any of the Allies, or other Accidents, her Majeſty was not able to obtain for them all the Advantages ſhe deſired, this will not derogate from the Truth and Sincerity of her Majeſty's Expreſſions. And it is evident her Majeſty did procure them ſo great Satisfaction, that the Allies did all ſign the Peace at the ſame Time with her Majeſty, excepting only the Emperor; and even his Intereſts were ſo far adjuſted, that what remained in diſpute was not thought ſufficient to delay ſo great and good a Work: And it is well known the Emperors of *Germany* have frequently declined ſigning their Treaties of Peace at the ſame Time with their Allies. But that her Majeſty was induced by any Influence of the ſaid Earl to enter into any Negotiation with *France*, excluſive of her Allies; or that the ſaid Earl carried on any ſuch Negotiation; or that the Intereſt of the ſaid Allies, or in particular of the Emperor, were, by any Practices of his, given up to *France*, he utterly denies. And when it is conſidered, that much *Britiſh* Blood and Treaſure had been ſpent to recover *Spain* and the *Weſt-Indies* from the Houſe of *Bourbon*, that an expenſive War had for many Years continued, which her Majeſty ſtill ſupplied with new Recruits and redoubled Expence; that her Armies and thoſe of the Allies, had been beaten in *Spain*; that Prince *Eugene* had declared, that Forty Thouſand Men, and Four Millions of Crowns *per Annum* would be neceſſary for carrying on that War, and that his Maſter could ſupply no more than a Fourth Part of that Charge; that it was found by long Experience, how averſe the People of *Spain* in general were to ſubmit themſelves to the Houſe of *Auſtria*; that Her Majeſty diſcerned the Charge of renewing the War in *Spain* would be a Burthen too great for her Subjects, and that there was little Probability of its being ſucceſsful: that the hereditary Countries were then, by the Death of the Emperor *Joſeph*, fallen to King *Charles*, who was ſoon after choſen Emperor (by which Event the Intereſt of the Princes and States of *Europe* were changed;) it cannot be doubted but that her late Majeſty had, at the Time when ſhe made the aforeſaid Declaration, done her utmoſt to recover *Spain* and the *Weſt-Indies* by Force of Arms: And the moſt ſhe could do afterwards was by way of Negotiation, wherein ſhe inſiſted with that Earneſtneſs on King *Philip*'s quitting *Spain*, that *France* complied with her Majeſty's Propoſals: But when King *Philip* could not be prevailed on to give up *Spain*, her Majeſty thought his Renunciation of the Crown of *France*, as Circumſtances then ſtood, the moſt practicable, if not the only Method left to prevent the Union of thoſe two Monarchies. But the ſaid Earl doth not think it probable, that the leaving *Spain* and the *Weſt-Indies* to the Houſe of *Bourbon*, was the Foundation of the Preliminary Articles ſigned by Monſieur *Meſnager*, and of the Declaration annexed, which had been ſigned by the Lord *Dartmouth* and Mr. *St. John*, with her Majeſty's Conſent (and which the ſaid Earl ſuppoſes is what is called the private Treaty in this Article), ſince he believes it was then thought more likely that the Crown of *Spain* might fall to ſome other Prince. And the ſaid Earl doth not obſerve, how her Majeſty can be charged with uttering any Falſity in her Meſſage of the Seventeenth Day of *January*, wherein ſhe takes notice how groundleſs the Reports were that had been ſpread of a ſeparate Peace being treated, for which Report there was not then, nor at any other Time, the leaſt Foundation; ſince only ſome few Points were adjuſted, relating to the particular Intereſts of her own Kingdoms, and even thoſe were to have no Effect but upon the Concluſion of a general Peace, and were likewiſe, before ſuch Concluſion, communicated to the Allies. And the ſaid Earl denies, that thenceforth, or at any Time, there were carried on, by him, any ſeparate Meaſures with the Miniſters of *France*; nor doth he conceive, that the Propoſal about the Renunciation was merely ſpeculative, but that it was of ſuch a Nature as would execute itſelf, and keep the Crowns of *France* and *Spain* more effectually divided than ever; if it be conſidered, that it did not conſiſt only in a Renunciation to be made by *Philip*, then in Poſſeſſion of the Crown of *Spain*, of his contingent Right to that of *France*; but that there was a Title to the Crown of *France* thereby given to the Duke of *Orleans*, and after him to the reſt of the Princes of the Houſe of *Bourbon*, who could not be preſumed to want the Will, nor would be likely to want the Power, to take Poſſeſſion of the Crown of *France*, by virtue of ſuch Title, in Oppoſition to a Prince at ſuch a Diſtance, and who had ſolemnly renounced all his Pretenſions to it. Nor can the ſaid Earl think, the Declaration of any Miniſter of *France*, againſt ſuch Expedient (if any ſuch were made) a ſufficient Ground for her Majeſty to decline it. The ſaid Earl therefore muſt beg leave to repeat, that he is not able to diſcover, from any Thing that appears in thoſe Speeches, that in the Particulars afore-mentioned, or any other, the eſſential Points relating to Peace and Commerce, or which concerned the Intereſts, as well of the Allies as of *Great Britain*, were miſrepreſented by her Majeſty; nor doth he know or believe, that any Inſtance can be given wherein he abuſed the Favour of his Royal Miſtreſs, to whom he did always bear and pay the moſt ſincere Veneration and Duty; or wherein he did miſlead her Parliament into any groundleſs or fatal Reſolution, or prevented their Advice to her Majeſty, or obtained their Approbation to any dangerous Practices, or whereby her Majeſty could be ever deprived of the Confidence of her Allies, or expoſed to Contempt.

In anſwer to the Sixteenth Article, the ſaid Earl doth inſiſt, that by the Laws and Conſtitution of this Realm, it is the undoubted Right and Prerogative of the Sovereign, who is the Fountain of Honour, to create Peers of this Realm, as well in time of Parliament, as when there is no Parliament ſitting or in being; and that the Exerciſe of this Branch of the Prerogative is declared, in the Form or Preamble of all Patents of Honour, to proceed *ex mero motu*, as an Act of mere Grace and Favour; and that ſuch Acts are not done, as many other Acts of a public Nature are, by and with the Advice of the Privy-Council; or, as Acts of Pardon uſually run, upon a favourable Repreſentation of ſeveral Circumſtances, or upon Reports from the Attorney-General, or other Officers, that ſuch Acts are lawful or expedient, or for the Safety or Advantage of the Crown; but flows entirely from the beneficent and gracious Diſpoſition of the Sovereign. He farther ſays, that neither the Warrants for Patents of Honour, the Bills or other Ingroſſments of ſuch Patents, are at any time communicated to the Council, or the Treaſury, as ſeveral other Patents are; and therefore the ſaid Earl, either as High-Treaſurer or Privy-Counſellor, could not have any Knowledge of the ſame: Nevertheleſs, if her late Sacred Majeſty had thought fit to acquaint him with her moſt gracious Intentions of creating any Number of Peers of this Realm, and had aſked his Opinion whether the Perſons whom ſhe then intended to create, were Perſons proper to have been promoted to that Dignity? He does believe he ſhould have highly approved her Majeſty's Choice; and doth not apprehend that in ſo doing he had been guilty of any Breach of his Duty, or Violation of the Truſt in him repoſed; ſince they were all Perſons of Honour and diſtinguiſhed Merit, and the Peerage thereby was not greatly encreaſed, conſidering ſome of thoſe created would have been Peers by Deſcent, and that many Titles of Honour were then lately extinct. And the ſaid Earl believes many Inſtances may be given, where this Prerogative hath been exerciſed by former Princes of this Realm in as extenſive a manner; and particularly

cularly in the Reigns of King *Henry* the Eighth, King *James* the Firſt, and his late Majeſty King *William*. The ſaid Earl begs leave to add, that in the whole Courſe of his Life he hath always lov'd the eſtabliſh'd Conſtitution, and in his private Capacity, as well as in all public Stations, when he had the Honour to be employ'd, hath done his utmoſt to preſerve it, and ſhall always continue ſo to do.

In anſwer to the further Articles of Impeachment exhibited againſt the ſaid Earl: As to the Firſt of theſe Articles he ſaith, that he believes, in or about the Month of *January*, One Thouſand Seven Hundred and Ten, an Expedition was projected, for making a Conqueſt of the City *Quebeck*, on the River of St. *Laurence*, *Canada*, or other Poſſeſſions of the *French* King in *North America*; but denies he adviſed her Majeſty either to conſent to the making ſuch Expedition, or to give Orders for detaching any Battalions of the Forces in her Majeſty's Service in *Flanders*, or to ſend any ſuch Battalions, or any Squadron of Men of War on the ſaid Enterprize: But having heard that the ſaid Project, or ſome Expedition of the like Nature, had been ſome time before conſidered in a Committee of Council, and afterwards laid aſide for that Time, and not being fully apprized of the whole Project, nor ſo well vers'd in the Affairs of that Part of the World as others, who had more Opportunity of knowing them; and leſt the Expedition might not at that Time prove ſo feaſible or advantageous as others of better Knowledge in thoſe Matters than himſelf did expect, he did all that he apprehends his Duty required to prevent the putting the ſame in Execution, and expreſſed his Concern at it to ſome Perſons about the Queen. And having ſo far ſhewn his Opinion of the ſaid Deſign at that Time, believes it would not have been thought proper for him to have appeared at the Meetings, where the Methods only of carrying on the Expedition were to be adjuſted; of which Meetings there had been but few, before a Misfortune befel him, which confined him to his Bed. But the ſaid Earl denies, that he knew the ſaid Expedition was dangerous or deſtructive, nor did he hear that it was laid aſide formerly by a Committee of Council, as dangerous or impracticable, but only as improper in the Circumſtances of Affairs at that Time: Nor doth the ſaid Earl know or believe the ſaid Expedition was ſet on Foot with any Deſign to promote the Intereſt of the *French* King, or to weaken the Confederate Army in *Flanders*, or to diſſipate the Naval Forces of this Kingdom. And when others of her Majeſty's Council, better acquainted with that Affair, did judge it to be proper and practicable, he did not think it became him, upon the Strength of his own ſingle Judgment, further to oppoſe an Expedition, which if it had ſucceeded, moſt certainly would have given a great and ſenſible Blow to the Settlements and Trade of *France* in that part of the World. And the ſaid Earl, with good Reaſon, is perſuaded your Lordſhips will not think it unfit that her Majeſty ſhould take the Opinion of thoſe who better underſtood Affairs of that Nature; or that your Lordſhips can judge the ſaid Earl in that Reſpect to have been wanting in his Duty to her Majeſty; but hopes it will be rather an Evidence of his Fidelity to the Queen and his Country, that he ſo far diſcouraged what in his own Judgment he was diffident of. However he is ſatisfied, that thoſe of her Majeſty's Council who did approve the Expedition, acted therein with a ſincere Deſire for the public Good, notwithſtanding the ill Succeſs it was attended with; which might chiefly be owing to Delays by contrary Winds, and other unforeſeen Accidents. And he doth not believe, that her Majeſty's Allies did ſuffer any Prejudice, or the common Enemy receive any Advantage by the detaching of Forces from *Flanders* to ſerve on this Enterprize; and is inform'd, that to prevent any ſuch Danger, her Majeſty's General who commanded at that Time in *Flanders*, had Orders for providing other Forces in their Place, if he judg'd it neceſſary. And the ſaid Earl doth acknowledge, that the Sum of Twenty-eight Thouſand Pounds, or thereabouts, was demanded at the Treaſury about *June* One Thouſand Seven Hundred and Eleven, on account of Arms, Accoutrements, Goods, and Merchandize, ſaid to be ſent on the ſaid Expedition to *Canada*; but he ſaith, that he was ſo far from adviſing her late Majeſty that the ſaid Sum ſhould be iſſu'd and paid, that on the contrary he put a Stop to the Payment of the ſame, until he had done all he could at that Time to examine into the Expenditure of the ſaid Money: But being then High Treaſurer of *Great Britain*, and having receiv'd her Majeſty's Orders to pay the ſaid Sum, and not being able, with his utmoſt Precaution then, to diſcover any juſt Cauſe why it ſhould not be paid; he did afterwards, in Obedience to thoſe Orders, and according to the Duty of his Place, counterſign a Warrant to the Paymaſter of her Majeſty's Forces for the Payment of the ſame, purſuant to which, he believes the ſame was iſſued and received. And as to that Part of the ſaid Article, which charges the ſaid Earl with employing his Arts or Credit to keep the Houſe of Commons from examining that Affair; he begs leave to ſay, that whatever Suſpicions he might entertain in his own Mind, he did not upon Examination find, that there was ſufficient Proof to juſtify the laying them before either Houſe of Parliament. And although he had been inform'd, that the Papers relating to that Expedition were laid before the laſt, and have been all along in the Power of the preſent Houſe of Commons, yet he hath not heard that any Fraud hath been made out in that Affair, notwithſtanding the Gentlemen who had them under their Inſpection neither wanted Abilities to make the utmoſt Diſcoveries, nor could be ſuppoſed to be prevented therein by any Influence of the ſaid Earl: And he hopes it will not be imputed to him as a Fault, if he had uſed any Skill or Credit to keep the Houſe of Commons from examining this Affair at that Juncture, when by an unſeaſonable Enquiry, before a proper Proof could be had, the Fraud, if any ſuch there were, would be likely for ever to eſcape unpuniſhed. But the ſaid Earl denies that he ever exerciſed or had any arbitrary Power or Influence, either in her Majeſty's private Council, or the great Council of the Nation, or entertained any Deſign to prevent the Juſtice due to the Queen or the Nation, or that any Diſcovery had been made to him, further than what might give Suſpicion to one who was always jealous (as became him) of any Miſapplication of the public Treaſure. And the ſaid Earl ſaith, that he is not conſcious, that by any Letter or Memorial to her Majeſty, he hath acted contrary to his Duty; but humbly hopes he may allowed to obſerve, that it would be a Matter of particular Hardſhip; and what ſeems to him inconſiſtent with the Rules of Government, and without Precedent, if the moſt ſecret and intimate Papers and Letters, wrote to that moſt renowned and pious Princeſs, her late Majeſty, by her own ſpecial Command, and for her own private Peruſal, ſhould be imputed to any as a Crime; and if any Quotation from any ſuch Letter or Paper could be alledged againſt the ſaid Earl, he doubts not but there might appear from other of her Majeſty's private Papers what would juſtify him in many Particulars wherewith he is charged, and would give further Proof (if it were needful) how tender and affectionate her Majeſty was to all her Subjects.

In anſwer to the Second additional Article, the ſaid Earl doth admit, that about *October* One Thouſand Seven Hundred and Eleven, her late Majeſty did ſign a Warrant directed to him, then her Treaſurer of *Great Britain*, for the iſſuing and Payment of the Sum of Thirteen Thouſand Pounds to *John Drummond*, Eſq; in the Article named; and that on or about the Twenty-fourth of *November* following, in purſuance of the ſaid Warrant, under her Majeſty's Sign Manual, he the ſaid Earl did ſign a Warrant for the Payment of the ſaid Thirteen Thouſand Pounds, but for more Certainty, begs leave to refer to the ſaid ſeveral Warrants when the ſame ſhall be produced: And the ſaid Earl takes the Words [*for ſpecial Services of the War*] to have been inſerted by Miſtake of the Clerks; for he abſolutely denies that he gave any Direction for thoſe Words, or any other of like Import, to be inſerted: And he believes all the Clerks of the Treaſury know, that the Monies which aroſe from the Sale of Tin were the Queen's proper Money for the Support of her Houſhold, and ſuch Occaſions as ſhe ſhould pleaſe to direct, and not appropriated to the Services of the War; altho' ſometimes it hath been practiſed that Loans have been taken upon Tin-Tallies for the Service of the War, and other public Services, and afterwards repaid to the Civil Liſt, which might poſſibly give occaſion for ſuch Miſtake. And the ſaid Earl ſaith, that having been acquainted with the Services the ſaid Mr. *Drummond* had performed, by Order of the late Earl of *Godolphin*, in borrowing Money upon Tin at a low Intereſt, the ſaid Earl aſked Mr. *Drummond*'s Conſent that a Sum in Tin-Tallies might be ſtruck in his Name, and with ſuch Conſent did direct, that Orders amounting to the Sum of Thirteen Thouſand Pounds ſhould be charged in the Regiſter of the Exchequer, on the Monies ariſing by the Sale of Tin, in the Name of the ſaid Mr. *Drummond*, who afterwards, before his going to *Holland*, endorſed the ſaid Orders at the ſaid Earl's Requeſt, and left them in the Treaſury; but how long it was before the ſaid Orders were endorſed, or how long they remained afterwards in the Treaſury, the ſaid Earl doth not particularly remember; but doth not acknowledge that the ſaid Orders and Tallies came afterwards to his own Hands, and were diſpoſed for his own Uſe. But in order to lay the true State of this Affair before your Lordſhips, the ſaid Earl humbly repreſents, that upon his firſt attending the late Queen, after his being wounded, her Majeſty had the Goodneſs to tell him, that ſhe deſigned him a Sum of Money: Upon which he repreſented to her Majeſty the bad Condition of her Civil Liſt: But ſeveral times after her Majeſty aſked him, why he did not find a way for receiving the Money ſhe intended him, and bring the neceſſary Warrant for that Purpoſe? He ſtill urged the ſame Reaſon againſt it, and for near Six Months made no Step in it, till at laſt her Majeſty was pleaſed to ſay, ſhe was reſolved to have it done. And as her Majeſty had, in Matters of her Bounty, made uſe of Tin-Tallies for other Perſons, ſhe was pleaſed to mention the ſame herſelf, and ordered proper Warrants to be prepared for the Sum which her Majeſty of her Royal Bounty intended him: That after her Majeſty had ſo poſitively ſignified her Royal Pleaſure, to beſtow ſuch Marks of her Favour upon the ſaid Earl, the ſaid Tallies and Orders were ſtruck in Mr. *Drummond*'s Name, with her Majeſty's Knowledge, and at the ſaid Earl's Nomination; and from that Time the ſame were kept under the ſaid Earl's Direction for his Uſe. And the ſaid Earl was adviſed, that nothing further was requiſite to be done, after the Aſſignment of the ſaid Mr. *Drummond*, for ſecuring the ſaid Earl's Intereſt in the ſaid Tallies, till an Accident happened which made it neceſſary for further Security to have the ſaid Warrant as a Declaration of Truſt, which was accordingly ſigned by her Majeſty, and is to the Effect following.

ANNE *R.*

WHereas in the Year of our Lord One Thouſand Seven Hundred and Eleven, in Conſideration of the many good, faithful, and acceptable Services which before that Time had been performed unto us, by our Right Truſty and Well-beloved Couſin and Counſellor Robert *Earl of* Oxford *(then and now our High-Treaſurer of* Great Britain*) which Services have tended to the Quiet, Safety, and Proſperity of us and our Realms, tho' the ſame were accompanied with great Difficulties upon himſelf, and Hazards to him and his Family. And particularly reflecting upon the impious Attempt made upon his Life: We did then fully reſolve, as a particular Mark of our Favour, and of our Gracious Acceptance of the ſaid Earl's Services, to beſtow upon him a Sum in ready Money. But the ſaid Earl repreſenting to us, that the Arrears then due to our Servants and Tradeſmen, chargeable upon our Civil Liſt, were very great and preſſing, we did therefore agree and determine, that the ſaid Earl ſhould have to his own Uſe the ſeveral Sums amounting to Thirteen Thouſand Pounds, compris'd in certain Orders of Loans, bearing Date in or about the Eleventh Day of* December *One Thouſand Seven Hundred and Eleven, in your Name, and charged upon the Regiſter in our Exchequer on the Monies ariſing by Sale of our Tin, which Orders are not yet in Courſe of Payment. Now we do hereby declare and make known, that the ſaid ſeveral Sums amounting to Thirteen Thouſand Pounds, contained in the ſaid Orders, and the Intereſt thereof due and to be due, are, and ſhall be the proper Monies of the ſaid Earl of* Oxford. *And we do hereby direct and authoriſe you to transfer and aſſign the ſaid Orders, and the whole Right and Benefit thereof, to the ſaid Earl and his Aſſigns, or to ſuch Perſon or Perſons as he ſhall appoint in that behalf. And in Caſe any the Monies due, or to be due, or payable upon the ſaid Orders ſhall come to your Hands; in ſuch Caſe our Pleaſure is, that you forthwith pay over the ſame to the ſaid Earl, his Executors, Adminiſtrators, or Aſſigns, to his and their own Uſe and Behoof, without any Account*

to be therefore rendered to us, our Heirs, or Succeſſors. And this our Warrant, or an atteſted Copy thereof, ſhall be your ſufficient Warrant and Diſcharge for ſo doing.

Given at our Court at *Windſor-Caſtle* the Fourteenth Day of *December*, in the Twelfth Year of our Reign, *Anno Dom.* 1713.

To our Truſty and Well-beloved
John Drummond, *Eſq;*

And the ſaid Earl believes the ſaid Warrant was drawn by Mr. *Lowndes* Secretary to the Treaſury, and by what Means the ſame was omitted to be enter'd in the Treaſury he knows not: But upon hearing there was a Diſcourſe about the ſaid Thirteen Thouſand Pounds in Tin-Tallies, he ſent a Copy of the ſaid Warrant to the Officers of the Treaſury, without ſignifying any Deſire to have the ſame enter'd, well knowing it receiv'd its Authority from the Sign Manual, which wanted no additional Force from any Entry thereof in the Treaſury-Books. And the ſaid Earl ſaith, that her Majeſty was pleas'd, of her mere Goodneſs and Bounty, and of her own free Will, to give him the ſaid Sum of Money in Reward of his faithful Services, and for his Sufferings in her Service. And the ſaid Earl ſaith, that the ſaid Grant, according to the Diſcount upon thoſe Tallies at that Time, amounted to the Sum of Ten Thouſand Pounds, or thereabouts; wherein he acknowledgeth the great Bounty of her Majeſty, and takes notice, that Grants much larger have been made from the Crown to other Miniſters of State, while the Neceſſities of the Crown have been equally preſſing. And the ſaid Earl doth not know that in this or any other Part of his Adminiſtration, he ever was guilty of any Corruption, or any Breach of his Oath or Truſt as High-Treaſurer of *Great Britain*; or that he did in any Manner abuſe her Majeſty's Goodneſs, or make an ill Uſe of his Acceſs to her Majeſty, or embezzle the public Treaſure, or did at any Time knowingly injure or oppreſs her Majeſty's Subjects; but on the contrary, the ſaid Earl ſaith, that he managed the public Money in the moſt frugal Manner, in order to leſſen, as much as might be, the Charge of the War; and to eaſe, if he could, the Commons of *Great Britain* from all grievous Taxes. And in further Vindication of himſelf againſt all the Imputations of Avarice or Corruption inſinuated in this Article, the ſaid Earl ſaith, that in every Employment to which he was called by her Majeſty's Favour, he was always contented with the accuſtomed Incomes and Profits of the ſaid Employments, without endeavouring to encreaſe his Gain by unwarrantable or extraordinary Perquiſites; that whilſt he was in any Office of Truſt about her Majeſty, he never abuſed that Truſt in making any Manner of Profit or Advantage to himſelf, either by the Diſpoſal of Places in his own Gift, or by the Recommendation of Perſons to her Majeſty for ſuch as were granted immediately by herſelf; that neither in nor out of Place did he ever receive any Penſion from the Crown; that as he came with clean Hands into her Majeſty's Service, ſo he went not only with clean, but almoſt with empty Hands out of it, having ſpent therein moſt Part of the Profits which accrued to him from the Places he enjoy'd; ſo that at this Time, notwithſtanding all the Advantages he received from them, and the extraordinary Bounty of the Queen to him, in this Article mentioned, he can with great Truth affirm, that his private Fortune hath received very inconſiderable Addition thereby.

In anſwer to the Third additional Article, the ſaid Earl ſaith, that *Matthew Prior*, Eſq; being employed by her Majeſty at the Court of *France*, Warrants were ſigned in the uſual Form for Payment of ſeveral Sums of Money to the ſaid Mr. *Prior*, which he believes from the Twenty-ſeventh of *Auguſt* One Thouſand Seven Hundred and Twelve, to the Tenth of *July* One Thouſand Seven Hundred and Fourteen, might amount to the Sum of Twelve Thouſand Three Hundred and Sixty Pounds, as in the ſaid Article is ſet forth; and he believes he did pay, or cauſe to be paid, at ſeveral Times the ſaid Sums, purſuant to the Authority he had from her late Majeſty for that Purpoſe, which he conceives was not only lawful, but a Duty incumbent on him. He further ſaith, that he doth not know that by any Law there ought to be certain Appointments or Allowances for the Maintenance and Support of Ambaſſadors, Envoys, Plenipotentiaries, and other public Miniſters of the Crown in foreign Courts; but that her Majeſty was at Liberty to vary ſuch Appointments, and the Manner of paying them, as ſhe in her Wiſdom ſhould think fit, out of any Funds appropriated to the Civil Liſt. He doth believe, that there are ſeveral Inſtances where Perſons employed to negotiate Matters of Importance, as Ambaſſadors or Plenipotentiaries, have been allowed One Thouſand Five Hundred Pounds for their Equipage; One Hundred Pounds a Week for their ordinary Entertainment, and One Thouſand Six Hundred Pounds for Extraordinaries, and likewiſe further Sums for Services, performed by ſpecial Order: And if the ſaid Mr. *Prior* had been paid upon that Foot, he would have been entitled to a greater Sum from the Crown, for the Time wherein he was employed by her Majeſty as aforeſaid, over and above all Diſburſements for ſpecial Services. And the ſaid Earl ſaith, that he takes the ſaid *Matthew Prior* to have been ſent by her Majeſty into *France* for her Majeſty's Service, and in order to carry on the Negotiations of a general Peace; but denies that he was any Creature of the ſaid Earl, or ſent by the ſaid Earl into *France*, or that he carried on any Negotiations of the ſaid Earl, or that her Majeſty was prevailed on by his Counſels to ſend the ſaid *Matthew Prior* as her Plenipotentiary to the *French* King, without the Privity of or any Communication with the Allies, or that the ſaid Earl uſed the leaſt Contrivance for carrying on, or did carry on or promote any dangerous Practices with the Miniſters of *France*, or the Enemies of her Majeſty or her Kingdoms, or that he did at any Time combine with the ſaid *Matthew Prior* to defraud her Majeſty of any Sum of Money whatſoever, under Colour of his Employment; or that the ſaid *Matthew Prior* was ſent into *France* with the Character aforeſaid, without any ſettled Appointment or Allowance for any ſuch End; or that he the ſaid Earl did give the ſaid *Matthew Prior* an unlimited Credit, or promiſe to pay him any Bills whatſoever, other than what he ſhould be duly authoriſed to pay; or that any Bills of Exchange, in the ſaid Article mentioned, were drawn in purſuance of any ſuch Contrivance. The ſaid Earl ſaith, that *Thomas Harley*, Eſq; having been twice ſent by her late Majeſty to the Court of *Hanover*, he the ſaid Earl being then High-Treaſurer of *Great Britain*, paid, or cauſed to be paid, to the the ſaid Mr. *Harley*, the Sum of Five Thouſand Five Hundred and Sixty Pounds, or thereabouts; by Authority from her Majeſty, and according to the Duty of his Office; out of Monies appropriated to the Uſe of the Civil Liſt. And he believes, that if Mr. *Harley* had received an Allowance in Proportion to what hath been paid to Ambaſſadors, it would have amounted to a greater Sum. But denies, that the ſaid Sum of Five Thouſand Five Hundred and Sixty Pounds, or any Part of it, was paid without Authority, or for promoting any wicked Purpoſes of the ſaid Earl, or that he did either illegally or fraudulently iſſue, direct, or adviſe the Direction or Payment of any Sum or Sums of Money out of her Majeſty's Treaſury, to any Perſon whatſoever, or that he ever entered into any Combination with the Perſons abovementioned, or any other Perſon whatſoever, to defraud her Majeſty of any of the public Money which he was entruſted with the Management of.

In anſwer to the Fourth additional Article, the ſaid Earl denies, that he ever held any Correſpondence with *Mary* the late Conſort of the late King *James* the Second, either by the Means of Mr. *Prior*, or by any other Means whatſoever, or that he ever intended, or had the leaſt Deſign any way to promote the Intereſt of the *Pretender*; nor doth the ſaid Earl know or believe that Monſieur *Gaultier*, in the ſaid Article named, was entruſted or employed as an Agent between any of the Miniſters of *Great Britain* and *France*, in tranſacting any Affairs relating to the *Pretender*; and denies that he the ſaid Earl had any Conferences with him the ſaid Monſieur *Gaultier* on that Subject: Nor doth the ſaid Earl know or believe that he the ſaid Monſieur *Gaultier* was empowered to concert with him the ſaid Earl, particularly the ſettling any Payment or Remittance of the Annuities hereafter mentioned, or any other yearly Sum to be paid or remitted out of her Majeſty's Treaſury into *France:* Neither had the ſaid Earl the leaſt Deſign, that any of the Fruits or Advantages of the Peace ſhould be made an Offering to any Adherent of the *Pretender*; nor did he agree or undertake to procure the Payment of the yearly Sum of Forty-ſeven Thouſand Pounds, or any other yearly Sum, to the Uſe of the ſaid late Conſort, during her Life. But the ſaid Earl doth admit, that the late King *James* the Second, by Letters Patents under the Great Seal of *England*, bearing Date on or about the Twenty-eighth Day of *Auguſt*, in the Year One Thouſand Six Hundred and Eighty-five, granted unto *Lawrence* Earl of *Rocheſter*, *Henry* Earl of *Peterborough*, *Sidney* Lord *Godolphin*, *Robert Worden*, Eſq; and Sir *Edward Herbert*, Kt. (who are all ſince deceaſed) divers Annuities or yearly Sums of Money, amounting to Thirty-ſeven Thouſand Three Hundred Twenty-eight Pounds Thirteen Shillings and Seven Pence, payable out of the Hereditary Duty of Exciſe, and the Poſt-Office, and other Revenues in the ſaid Letters Patents mentioned, to hold to them and their Heirs, during the Life of the ſaid Conſort, in truſt for her: And by other Letters Patents, bearing Date on or about the Third Day of *December*, in the Year One Thouſand Six Hundred and Eighty-ſix, alſo granted unto the ſaid Conſort a further Penſion, or yearly Sum of Ten Thouſand Pounds, to hold during her natural Life; whereby the ſaid Revenues ariſing from the Hereditary Exciſe and Poſt-Office, and other the Revenues in the ſaid Letters Patents mentioned, became charged with, and were liable to the ſaid Annuities or yearly Sums, as in this Article is mentioned. And the ſaid Earl doth admit, that the ſaid Revenues were by ſeveral Acts of Parliament granted and ſettled during the Life of his late Majeſty King *William* the Third, for the Uſe and Service of his Houſhold and Family, and for other his neceſſary Expences and Occaſions; and after his Demiſe, during the Life of her late Majeſty Queen *Anne*, were appointed to be for the Support of her Houſhold, and of the Honour and Dignity of the Crown; but ſaith, that in the ſame Act of Parliament whereby the ſaid Revenues are ſo appointed, there is a general Saving to all and every Perſon or Perſons of all ſuch Rights, Titles, Eſtates, Intereſts, Claims, and Demands whatſoever, of, in, or to, or out of the ſaid Revenues and Hereditaments, or any of them, as they, or any of them had, or ought to have had before the making the ſaid Act, as fully, to all Intents and Purpoſes, as if the ſaid Act had never been made. And the ſaid Earl doth admit, that an Act of Parliament was made in the Twelfth Year of her late Majeſty's Reign, whereby the Sum of Five Hundred Thouſand Pounds, for the Cauſes therein mentioned, was to be applied in Aid of the Revenues or Branches which were appointed for the Support of her Majeſty's Houſhold, and of the Honour and Dignity of the Crown, for, or towards the paying and diſcharging ſuch Arrears of Salaries, Wages, Diet-money, and other Allowances, and ſuch Debts for Emptions, Proviſions, and other Cauſes, as ſhould appear to be due and owing to her Majeſty's Servants, Tradeſmen, and others. But the ſaid Earl ſaith, he hath heard that the ſaid late Conſort of the late King *James* the Second, eſteeming herſelf to be entitled by the Laws of *England*, by virtue of the ſaid Letters Patents, to the ſeveral Sums of Money therein mentioned, did, by Letter of Attorney, impower and authoriſe the ſaid Monſieur *Gaultier* to demand and receive for the only Uſe, Benefit, and Behoof, all Sums of Money which from and after the Feaſt of the *Annunciation* of the Bleſſed Virgin *Mary*, One Thouſand Seven Hundred and Thirteen, were become due and payable upon the ſeveral Annuities, amounting to Thirty-ſeven Thouſand Three Hundred and Twenty-eight Pounds Thirteen Shillings and Seven Pence, and the other Annuity or yearly Sum of Ten Thouſand Pounds, and to give Acquittances and Diſcharges for the Monies he ſhould ſo receive to her only Uſe and Behoof as aforeſaid; and that thereupon he the ſaid Monſieur *Gaultier* applied himſelf to her Majeſty for the Payment of the Monies which were incurred or grown due on the ſaid ſeveral Annuities, from the ſaid Twenty-fifth Day of *March* One Thouſand Seven Hundred and Thirteen, and that her Majeſty was pleaſed to ſign a Warrant, directed to him the ſaid Earl, being then her Majeſty's High-Treaſurer, or the High-Treaſurer or Commiſſioners of the Treaſury for the Time being, in the Words or to the Effect in the ſaid Article ſet forth; but for more Certainty refers himſelf to the ſaid Warrant, when the ſame ſhall be produced.

And

And that in Obedience to her Majesty's Commands signified by the said Warrant, he the said Earl did direct Two several Warrants to the Auditor of the Receipt of the *Exchequer*, to the Effect in the said Article set forth; but for more Certainty refers to the said several Warrants when the same shall be produced. But he denies he advised her Majesty to sign the said Warrant of the Twenty-third of *December* One Thousand Seven Hundred and Thirteen; but when such Warrant was brought to him, and he knew that the Jointure of the said Consort had been confirmed by Act of Parliament; and had heard that by some private Article of Agreement at the Treaty of *Ryswick*, Provision had been made in relation to it; and the Legality of the Demand not being doubted by her Majesty's Counsel learned in the Law, the said Earl thought it his Duty to pay Obedience to it. And the Sum of five hundred thousand Pounds intended to be raised by the said Act of the Twelfth Year of her Majesty's Reign, together with a great additional Sum in Tallies, being design'd for discharge of her Majesty's Debts, the said Earl thought himself sufficiently authorised to direct that the said Sum of Money mentioned in the said Warrants, which he was advised was a Debt from her Majesty, should be paid out of the said Five Hundred Thousand Pounds: Yet the Sum in the said Warrants mentioned or any Part thereof, was not paid out of the said appropriated Sum of Five Hundred Thousand Pounds, or otherwise; but the whole Sum of Five Hundred Thousand Pounds was applied to other Uses for which it was appropriated. And the said Earl humbly hopes, that he hath not hereby betrayed the Honour of her late Majesty, or the Imperial Crown of these Realms, or acted contrary to his Duty. And the said Earl doth acknowledge, that the said Monsieur *Gaultier* coming into *England* with Letters of Credence from the *French* King to her late Majesty, after having resided some time in *England*, her Majesty was pleased, before his Departure hence, to direct a Present should be made to the said Monsieur *Gaultier*, as hath been usual in like Cases to public Ministers: And he believes her said Majesty was the rather inclined to make such Present to the said Monsieur *Gaultier*, because the said Earl hath heard, and takes it to be true, that the said *Gaultier* had been instrumental with the *French* King to obtain the Delivery and Release of those poor Protestants who had suffered aboard the Gallies on account of their Religion, whose Rescue from Slavery her Majesty, out of her known Zeal to the Protestant Religion, and out of her wonted Piety and Compassion to the Confessors in so good a Cause, had much at Heart, and had prevailed therein beyond Expectation; it being what by his Majesty King *William* had been attempted in vain, and was thought by many impossible ever to be obtained: And the good Offices of the said *Gaultier* in that Affair having been very acceptable to her Majesty, she was pleased to encrease his Present in respect thereof, and therefore ordered it to be paid in the same manner as had been done to others, whose Present her Majesty thought fit to augment. And for this End her Majesty, about the time in this Article mentioned, did sign a Warrant directing the Payment of One Thousand Pounds Sterling to *Daniel Arthur*, Esq; in the same Article mentioned, to the Intent it might be paid to the said Monsieur *Gaultier* on the account aforesaid. And the said Earl believes the said Monies were issued and paid accordingly, and doth not apprehend he hath therein acted contrary to his Duty.

In answer to the Fifth additional Article, the said Earl doth admit the Sovereign of this Realm may refuse to receive any natural-born Subject who hath committed, and is under the Guilt of High-Treason, as a public Minister, or with any Character from any Foreign Prince, State, or Potentate: And that where such Person is known to be guilty of such Crime, it may in most Cases be fit so to do; but the said Earl apprehends that the Sovereign is the proper Judge whom to refuse or receive with such Character. The said Earl believes that a Person styling himself, or commonly known by the Name of *Lilesh* or *Lawless*, did about the Year One Thousand Seven Hundred and Twelve, or One Thousand Seven Hundred and Thirteen, come into *England* with Letters of Credence to her Majesty from the King and late Queen of *Spain*, and Authority to treat about carrying *British* Merchandizes to the *Spanish West-Indies*; and that her Majesty was pleased to admit such Person with such Letters of Credence; and before his Return to *Spain* was pleased to order, for the Use of such Person, the Sum of one thousand Pounds, to be paid out of the Monies appropriated to the Civil List, which the said Earl, in Obedience to such Orders, caused to be paid, and humbly apprehends it was his Duty so to do. But the said Earl believes, that when the said *Lilesh* or *Lawless* was so admitted, he was generally thought to be a natural *Spaniard*, and that from the Advantages of those Licences which he brought for carrying the *British* Merchandizes to the *West-Indies*, he expected much a larger Present: However, the said Earl denies that he knew, or was informed, before the Arrival of the said *Lawless* in *England*, any thing of his coming hither, nor after his Arrival did he see him, or know of his being here, before he had been introduced to her Majesty, it being usual for public Ministers to be introduced by those Servants of her Majesty to whose Office it belongs, as matter of Duty and common Dispatch, without consulting therein other Ministers of State. And upon the Notice taken of this Affair formerly in the House of Peers, it appeared that the noble Lord who introduced the said *Lawless* to the Queen, by virtue of his Office, did it as of Course, and did not then know he was other than a Native of *Spain*. And the said Earl saith, that of a long time after he had been so introduced, the said Earl neither knew nor heard that he was other than a natural *Spaniard*: But when the said Person had continued in *England* a considerable time, there was a Rumour, and the said Earl was afterwards informed that he was a Native of *Ireland*, and departed out of that Kingdom in his Youth, and had since been in the *Spanish* Service; but doth not know, nor was informed, that he had committed or been guilty of High-Treason, or that he had served the late King *James* the Second in the War in *Ireland* against King *William* the Third, or had followed the said King *James* the Second into *France*, or been in his Interest or Service, or had been in Rebellion against King *William*, or in Arms against the late Queen. And the said Earl having no notice of the said Person's Arrival before his being admitted to her Majesty, nor any Knowledge of any Crime he was guilty of, submits whether it shall be imputed to him as any want of Duty, that he did not advise her Majesty against admitting or receiving him in the Character aforesaid, or that he did, by her Majesty's Authority, meet, confer, or negotiate with him concerning any Affairs about which he was authorised to treat (in case he had so done, which however the said Earl doth not admit) or that by Authority from her Majesty he paid the said Sum of One Thousand Pounds to the said *Daniel Arthur*, which after came to his Use. But the said Earl doth deny, that he advised her Majesty to sign the Warrant for Payment of the said One Thousand Pounds, or gave any Directions for Payment thereof contrary to what was intended by her Majesty. And the said Earl admits, that some other Sums of Money (which might amount in the whole to Nine Hundred and Fifteen Pounds, or thereabouts) were paid in Satisfaction of Monies advanced to the said *Lawless*, as Part of the Monies agreed to be advanced to his Catholic Majesty by the *Assiento* Contract: But denies that he directed the Payment of any other Monies whatsoever out of her Majesty's Treasury to the said *Lilesh* alias *Lawless*, or knows that any other Monies were paid to him, beside the aforementioned Sum of One Thousand Pounds, and the Monies paid in Satisfaction of what was advanced to him towards the Part due to his Catholic Majesty by the said *Assiento* Contract. And the said Earl never assumed the supreme Direction in her Majesty's Councils, neither was he advising that the said Person should be introduced to her Majesty, or should be received or treated by her Ministers under the disguised Name of *Don Carlo Moro*, or should at all be received as a public Minister here: And the said Earl doth acknowledge, that the House of Lords with commendable Zeal made such Address, and came to such Resolution, and that her Majesty made such Answer, and issued such Proclamation, as in the said Article is mentioned. And as the said Earl had always the highest Regard to the Safety of her Majesty's Person, the Security of the Protestant Succession, and Advice and Resolutions of the House of Peers; so he denieth that he had the least Knowledge that the said *Lilesh* alias *Lawless* had ever been Minister or Agent to the Pretender at the Court of *Madrid*, or the least Suspicion that he was sent into *England* to promote the Interest of the Pretender in these Kingdoms, nor is he conscious to himself, that he hath done any thing to expose the Person of her most sacred Majesty; to enervate or render ineffectual the Advice of Parliament, or her Majesty's Declaration; to countenance any Emissary of the Pretender, or encourage his Adherents, to the Danger of the Protestant Succession as by Law establish'd in the serene House of *Hanover*: But on the contrary is persuaded his Conduct in that Affair is so well known, as not to need any further Justification; but if it should at any Time be thought necessary, he is able to produce those Proofs of it, which are the best Authority in the World for his Vindication.

In answer to the Sixth additional Article, the said Earl hath been informed, and doth believe it may be true, that after several unsuccessful Attempts by her late Majesty, in Conjunction with her Allies, to establish his present Imperial Majesty upon the Throne of *Spain*, Instructions in Writing were given to *Mitford Crow*, Esq; about the Seventh Day of *March*, One Thousand Seven Hundred and Five, taking notice her Majesty had been informed, that the People of *Catalonia* were inclined to cast off the Yoke imposed on them by the *French*, and to return to the Obedience of the House of *Austria*; and that her Majesty, desiring to maintain and improve that good Disposition in them, and to induce them to put the same speedily in Execution, had made choice of him to carry on so great a Work, for the Advantage of her Service, and the good of the common Cause, as was the making a Treaty with the *Catalans* or any other People of *Spain*, for the Purpose aforesaid: and that the said *Mitford Crow* was thereby impower'd to give the *Catalans*, or other *Spaniards*, Assurances of her Majesty's utmost Endeavours to procure the Establishment of all such Rights and Immunities as they had formerly enjoyed under the House of *Austria*, and the Confirmation of such Titles as had been conferr'd on any of them by the Duke of *Anjou*: And that for their further Satisfaction, her Majesty had sent to King *Charles* the Third for Powers for confirming the same to them, and was willing, if they insisted on it, to become Guarantee that it should be done. And the said Earl hath been likewise informed that her Majesty, in a Commission granted to the said *Mitford Crow*, expressed, that she thought fit to enter into a Treaty with the Principality of *Catalonia*, or any other Province of *Spain*, on Condition they would acknowledge and receive *Charles* the Third as lawful King of *Spain*, and utterly abdicate the House of *Bourbon*, and join their Forces with her Majesty's; and that her Majesty was pleased also to sign and deliver to the said *Mitford Crow*, Credential Letters, directed to the Nobility, Magistracy, and other Officers of *Catalonia*, or any other Province of *Spain*, desiring them to give Faith to every thing the said *Mitford Crow* would tell them in her Majesty's Name: And that Instructions were likewise given to the Earl of *Peterborough* and Sir *Cloudesly Shovel*, about the Time and to the Effect in the said Article mentioned; and that a Manifesto or Declaration was afterwards publish'd by the said Earl of *Peterborough*, to the Effect in the said Article set forth: But the said Earl denies, that such Manifesto or Declaration was prepared by his Advice or Privity. And the said Earl believes it may be true, that some Part of the Nobility, Clergy, and Inhabitants of the Principality of *Catalonia*, and also the Inhabitants of the Island of *Majorca*, did afterwards acknowledge King *Charles* the Third (now Emperor) for their lawful Sovereign, and did join their Arms with those of her Majesty and her Allies against the present King of *Spain*; but by what Motives they were induced thereunto, the said Earl doth not know. And the said Earl doth acknowledge, that for some Time the Arms of her Majesty and her Allies in *Spain* were attended with considerable Successes, in which the Bravery of the *Catalans* appear'd, and the Forces of the Confederates twice enter'd the capital City of that Kingdom: by which signal Conquests, and the great Supplies that have been granted by Parliament for their Assistance, the said People were under the highest Obligations of Gratitude to her Majesty: But the Advantages those Successes had given King *Charles* the Third being lost, her Majesty found the Burthen of that War very heavy to her Subjects, the Conquest of *Spain* for the present Emperor impracticable, and after the Accession of the Empire and Descent of the Hereditary Countries to him, esteemed inconsistent with the Interest of many of her Allies, and therefore thought it

it neceſſary for the Good of her People, and the Tranquillity of *Europe*, to enter into Negotiations for a general Peace. But the ſaid Earl denies that he entered into any Conſpiracy for ſubjecting the *Spaniſh* Monarchy to the Houſe of *Bourbon*, or ever had the leaſt Deſign of the Ruin or Deſtruction of any of the Rights, Liberties, or Privileges of the *Catalans*; or that he ever formed any Contrivance for abandoning them to the Fury or Revenge of the Duke of *Anjou*, or his Adherent; or for the Extirpation of any of their Rights, Liberties, or Privileges; or that he adviſed her Majeſty to give Directions to the Lord *Lexington* to acknowledge the Duke of *Anjou* King of *Spain*, before any Negotiation of Peace was ſet on foot, in form of Law, between the Crowns of *Great Britain* and *Spain*. On the contrary the ſaid Earl ſaith, that by Letters and Papers ſent by one of her Majeſty's Principal Secretaries of State to the Lord *Lexington*, it will appear, that after her Majeſty had hearkened to the Propoſals for a general Peace, for the Good of her own People, and her Allies, ſhe uſed her beſt Endeavours for obtaining the Liberties of the *Catalans*, at the Concluſion of the Peace, and that his Lordſhip was directed peremptorily and abſolutely to inſiſt thereon: Nor doth the ſaid Earl know or believe, that any Orders were ever ſent from or given by her Majeſty, to any of her Miniſters, to recede from that Demand; or that the ſaid Lord *Lexington* ever deſiſted from making the utmoſt Efforts he could for obtaining it. And if from any Meaſures of the *Catalans*, or of his Imperial Majeſty, or from any other Cauſe, her Majeſty's Endeavours had not their full Effect; the ſaid Earl conceives it cannot be imputed to any Neglect of her Majeſty, or any Want of Duty in him the ſaid Earl. He believes, that about the Time in the ſaid Article mentioned, his Imperial Majeſty did enter into a Convention or Agreement for evacuating *Catalonia*; and that her Majeſty, out of Inclination to perform her beſt Offices to the Emperor, was prevailed on to become one of the Guarantees thereof; but denies, that his Imperial Majeſty was neceſſitated by any Practices of the ſaid Earl to make any ſuch Convention, and is ignorant for what Cauſes his Imperial Majeſty, whom it moſt concerned, omitted, in ſuch Convention, to make expreſs and poſitive Stipulations for the Liberties of the *Catalans*. If it proceeded from any Dependence upon the Declaration of her Majeſty, to interpoſe her beſt Offices on their Behalf, and the Promiſes of the *French* King to join his Endeavour therein; he is confident it will appear, her Majeſty's beſt Offices were employed in that Affair, when it is conſidered what repeated Inſtances ſhe made by her Miniſters, and in the moſt pathetic Manner, to obtain for them the Privileges they deſired. And that her Majeſty, by her earneſt Interpoſition, did obtain a Grant and Confirmation to all the Inhabitants of *Catalonia*, of a perpetual Amneſty and Oblivion of all that was done in the late War, the full Poſſeſſion of all their Eſtates and Honours, and a further Grant of all their Privileges which the Inhabitants of both *Caſtiles* (who of all the *Spaniards* were moſt dear to the King of *Spain*) enjoy'd, or might at any Time after have or enjoy; whereby the *Catalans*, if they obtained not all the antient Privileges they pretended to, received however in Compenſation thereof, the Advantage of trading directly to the *Weſt-Indies*, and other Privileges, to which they were never before intitled. And the Houſe of Peers, upon Conſideration of ſeveral Papers laid before them, relating to this Affair, in Purſuance of their Addreſs to her Majeſty in that Behalf, expreſſed their utmoſt Thankfulneſs and Satisfaction for her Majeſty's repeated and earneſt Endeavours for preſerving to the *Catalans* the full Enjoyment of all their juſt and antient Liberties. And it is probable her Majeſty had prevailed to obtain for them the antient Privileges and Liberties, in the largeſt Extent, if they had waited the Event of her gracious Interpoſitions in their Favour, and not determined to carry on the War by themſelves againſt King *Philip*, after the Emperor had ſigned the Convention for evacuating their Country, which incenſed the King of *Spain* in the higheſt Degree, and was look'd upon by him as the moſt obſtinate Rebellion. However, the ſaid Earl ſaith, he never amus'd the *Catalans* with any Expectations whatſoever, nor in any Degree contributed to engage them in any obſtinate Defence againſt the Duke of *Anjou*; nor adviſed her Majeſty to conclude a Peace with *Spain* without Security for the antient Rights, Liberties and Privileges of that People; or to ſend Sir *James Wiſhart* with a Squadron of Men of War, for the Purpoſes in the ſaid Article mentioned: But believes her Majeſty might think herſelf obliged, by being Guarantee to the ſaid Convention for the evacuating *Catalonia*, to ſend the ſaid *James Wiſhart* into the *Mediterranean* with a Squadron of Men of War, although he knows not the Orders or Inſtructions given on that Occaſion; and humbly apprehends, that he cannot, in Juſtice, be charged with any Conſequences from that unhappy People's Refuſal to comply in their Submiſſion to the King of *Spain*, upon the Terms her Majeſty had ſtipulated for them.

Thus the ſaid Earl has laid his Caſe before your Lordſhips, wherein he hopes he hath fully anſwered the ſeveral Articles exhibited againſt him: Yet, leſt there ſhould be any Omiſſion in his Anſwer, which may be made uſe of to his Prejudice, he ſays, he is not guilty of all, or any of the Matters contained in the ſaid Articles, or any of them, in Manner and Form as they are therein charged againſt him; and humbly hopes that your Lordſhips will excuſe any Imperfections or Defects in the ſaid Anſwer, with regard to Expreſſion or Form; and impute whatever of that Kind may appear, to the great Weakneſs of Body and ill State of Health which the ſaid Earl now labours, and hath for ſome Months paſt laboured under; and that your Lordſhips will be induced to make all farther due Allowances in his Favour, from the following Conſiderations, which relate to the Nature of the Charge in general, and the Difficulties with which his Defence of himſelf, againſt the Particulars contained in that Charge, is, and muſt be attended.

Moſt of the Articles, with which he ſtands charged, relate entirely to the Negotiations of Peace lately concluded at *Utrecht*; he doubts not but your Lordſhips will conſider, that he muſt of neceſſity be under great Difficulties, in giving a full and particular Account of ſuch a great Variety of Facts as are contained in theſe Articles; that ſeveral of theſe Facts concern Tranſactions with the Miniſters of Foreign States, who cannot be produced as Witneſſes in his Defence, be their Teſtimony never ſo material; that many Steps and Proceedings in an Affair of this Nature, where the Intereſts of ſeveral Parties, not only ſeparate from, but ſome of them alſo contrary to each other, are to be adjuſted, do require great Secrecy and Addreſs in the Management; and that in Treaties between Enemies, ſuch Terms are often propoſed, and ſuch Arguments uſed, as carry a different Appearance from the real Intentions of thoſe that treat: Upon which Accounts, it muſt be very difficult to ſet every thing that paſt in the late Negotiations, with regard to the Enemy, and to the Allies, in a clear Light, and to juſtify every Step that was taken towards conducting them to the End propoſed; eſpecially ſince the Account of thoſe Tranſactions, and of the Reaſons on which they were founded, cannot, as he conceives, be duly cleared, but by inſpecting the entire Series of Letters and Papers, which paſſed, during the Continuance of theſe Tranſactions, and by comparing together ſuch Paſſages in them as might give Light to each other, and to the Whole: All which Letters and Papers are (as he is inform'd) now in the Poſſeſſion of the Honourable Houſe of Commons; nor was it thought fit, upon his humble Application to your Lordſhips, that he ſhould be indulg'd with a Copy of them.

He hopes it may not miſbecome him, on this Occaſion, to obſerve to your Lordſhips, that the Houſe of Commons, by being poſſeſſed of thoſe Papers, have a fuller View of the whole Progreſs, and of all the ſecret Steps of that Negotiation, than perhaps was ever in the like Caſe imparted to any Houſe of Parliament; and they have therefore all the Advantage poſſible towards forming the Charge againſt him upon the Articles of his Impeachment; whereas he (the ſaid Earl) being deſtitute of all Aſſiſtance from thoſe Papers, is under great and particular Diſadvantages towards making his Defence, in the Points whereof he there ſtands accuſed; and he is therefore humbly aſſured, that, as your Lordſhips, on the one Side, will not expect from him any ſuch Proofs of his Innocence as can only be drawn from a Peruſal of thoſe Papers; ſo, on the other, you will not admit of all, or any of thoſe Articles, as made good againſt him, unleſs the Accuſations therein contained be ſupported by the cleareſt and moſt unqueſtionable Evidence, of which the Nature of the Facts is capable.

He ſubmits it likewiſe to your Lordſhips Conſideration, whether in a Negotiation, drawn out into a great Length, where the Advice of all thoſe in high Truſt about her Majeſty was to be taken, and where ſeveral Perſons were to be entruſted with the Management of what was agreed upon, he can, with any Colour of Equity, be made anſwerable for adviſing and conducting the Whole?

He deſires alſo farther to obſerve, that every Thing, with which he is charged, was done in the Reign of a gracious Princeſs, now deceaſed, who, by Reaſon of the perfect Knowledge ſhe had of the ill State of Affairs at Home, of the Advances made towards Peace from Abroad, and of the Commands which ſhe at ſeveral Times laid on her Servants, had been the beſt, and indeed could be the only competent Judge, whether ſhe was fraudulently dealt with, led by ill Advice into Meaſures which ſhe did not direct and approve, or made an Inſtrument of ſacrificing the Intereſts of her Kingdoms to the Enemy. It is with great Grief that he finds ſuch Things ſuggeſted, as ſeem to lay a Stain upon the Character of ſo excellent a Queen, whoſe Memory he is confident will be for ever dear to this Country: And therefore he takes leave, in the moſt ſolemn Manner, to aſſure your Lordſhips, that as far as he knows, or can remember, every thing relating to the Tranſactions of Peace was communicated to her late Majeſty, and maturely conſidered by her, before any Thing was determined thereupon; nor was any Step taken, but in Purſuance of ſuch Determination.

As to the Peace in general, he the ſaid Earl thinks he has very good Reaſon to ſay, that the Queen had nothing more at Heart, than to procure ſo great a Bleſſing for her People; and that, when it was obtained, ſhe had this Satisfaction in herſelf, that ſhe had taken the moſt proper Meaſures to juſtify her Conduct, both toward her Allies and toward her own Subjects: For, upon a Review of her Majeſty's whole Proceeding, in relation to War and Peace, he believes it will appear, and hath in Part appeared by the Anſwer of the ſaid Earl to the ſaid Articles, that, as her Majeſty entered further into the War than ſhe was obliged by any Treaties ſubſiſting at the Time of her Acceſſion to the Throne, ſo ſhe contributed more Men and Money towards the carrying it on afterwards, than ſhe was engaged to provide by any ſubſequent Treaties: That her earneſt Deſires of Peace being twice fruſtrated, when ſuch Conditions might have been obtained, as would have fully anſwered all the Ends for which War was at firſt declared; that, all our Succeſſes and Victories ending in the annual Increaſe of the Charge of *England*, without any further Aſſiſtance from our Allies, and her Kingdoms being exhauſted to ſuch a Degree (notwithſtanding the great Advantages obtained by her Arms) that ſhe was not able to continue the War, upon the Foot it then ſtood, one Year longer; whilſt her Allies refuſed to continue it, upon thoſe equal Conditions to which they were by Treaties obliged: She was at laſt conſtrained, in Compaſſion to her People, to hearken to the Overtures of Peace then made her from *France*, without relying further on the vain Hopes of gaining more advantageous Terms, by protracting the War a Year longer. She had carried it on, for ſome Time, under that Proſpect, without reaping the Benefits propoſed, even at Junctures that ſeemed moſt favourable to her Demands, and to the Pretenſions of her Allies: She had indeed, by that means, raiſed the Glory of her Arms; but ſhe could not think this a ſufficient Recompence for the encreaſing Miſeries of her People; and therefore reſolved to lay hold of the Opportunity, then offered to her, of ending the War by a Peace, if it might be obtained upon Terms every way juſt, ſafe and honourable: And thoſe who were then employed in her Majeſty's Councils, thought themſelves obliged to ſecond her good Intentions in this Caſe, and to obey her Commands with all Readineſs.

The ſaid Earl preſumes, on this Occaſion, to mention to your Lordſhips the Saying of as wiſe a Man, and as great a General as the laſt Age produced, the Duke of *Parma*; when *France* was in a far lower Condition than now, being almoſt equally divided between two contending Parties, and *Spain* was at the Height of its Glory, and he himſelf at the Head of a *Spaniſh* Army,

Army, supporting one of those Parties, after *Paris* itself had been besieged by the other; it was his Opinion (and the Advice he gave to his Master the King of *Spain*, was grounded upon it) That if *France* were to be got only by reducing its Towns, the World would be sooner at an End than such a War. The Queen seemed at this Time, with better Reason, to frame the like Judgment; and it was therefore her Pleasure, and a great Instance (as the said Earl conceives) of her Wisdom and Goodness, to think of securing a Peace while she appeared able to carry on the War (her Armies being full and numerous) and before the exhausted Condition of her Kingdoms, and the Impossibili y, on her Side, of maintaining so disproportioned an Expence, was discovered by her Enemies. At this Juncture the Queen entered upon a Negotiation of Peace, with Circumstances of great Honour to herself; *France* applying to her first, on this Account, previously owning her Title, and acknowledging the Right of the Protestant Succession; two Chief Grounds, upon which the Declaration of the last War was built. And to the Allies, it was conducted in the same Manner as all Treaties of Peace in Confederacies have ever been, and according to the known Laws of Nations in such Cases; the first Motion, and the several Steps of it, as fast as they ripened into Proposals fit for Consideration, being without Delay communicated to the States-General.

By the Terms of this Peace, as all reasonable Satisfaction and Security due to any of the Allies, by Treaty, were obtained for them by the Queen, and their just Pretensions effectually supported; so larger Advantages were actually procured for *Great Britain* in particular, than ever had been demanded before, in any Treaty or Negotiation between this and any other foreign State. The said Earl craves leave, on this Occasion, to appeal to your Lordships, whether all the Ends for which the War was entered into have not, by this Treaty, been fully attained? Whether it does not appear, by the best of Proofs, Experience, that the Kingdoms of *France* and *Spain* are by the Conventions of this Treaty most effectually separated? And whether any other Expedient could have been so successful to this Purpose, as that whereby it is now happily brought about? Whether the Ballance of Power in *Europe* be not now upon a better Foot than it has been for a Hundred Years past? Whether the Advantages that have accrued to *Great Britain*, by this Treaty, do not appear, and have not appeared in the Security of the Protestant Succession, and in his Majesty's peaceable Accession to the Throne, with the universal Applause of his Subjects, in the Additions made to our Wealth by the great Quantities of Bullion lately coined at the Mint, by the vast Increase of Shipping, employed since the Peace, in the Fishery, and the Merchandize, and by the remarkable Rise of the Customs upon Import, and of our Manufacture, and the Growth of our Country, upon Export? For the Proof of which Particulars he refers himself to those Offices and Books, wherein an authentic Account of them is contained.

And as the Terms of the Peace were in these and other Respects manifestly profitable to *Great Britain:* so the said Earl begs leave humbly to remind your Lordships, that they were communicated to the Parliament, and with their Concurrence agreed on; that the Peace, thus concluded, was afterwards highly approved by both Houses; that solemn Thanks were rendered to God for it, in all our Churches, as well as in the Churches of the *United Provinces*; and that her Majesty received, on this Subject, the hearty and unfeigned Congratulations of her People, from all Parts of her Dominions.

These being the real Effects, and this a true Representation of her Majesty's Conduct in the Affairs both of War and Peace, the said Earl sees not how he, or any others then in her Majesty's Service, can be justly charged with betraying the Interests of their own Country, and of the Allies, by negotiating and promoting that Peace, which then was, and (as he hath good Grounds to believe) still continues to be very acceptable and advantageous to these Kingdoms. And, if the Peace itself be not condemned, and it be not even charged upon the said Earl as a Crime, that he advised her Majesty to conclude that Peace, (neither of which appear to him from the Articles) he humbly conceives, it is a particular and extraordinary Hardship upon him, that rough Draughts and Essays towards a Peace, with other Preliminary Steps in a Negotiation, all leading to an End, which he looks upon to be just and profitable, and which is not in any of the Articles alledged to be otherwise, should be brought into so many distinct Heads of Accusation against him. For supposing that, in the Process of so nice and difficult an Affair, subject to divers unforeseen Obstructions and Events, any improper Steps had been taken, which the said Earl doth not admit, but altogether, on his Part, denies; yet, if Things were at last conducted to a right Issue, and ended in an honourable and advantageous Peace, there can be (as he conceives) no just Ground to find fault with the Measures made use of to compass it, because they seemed, before the Accomplishment, to have a different Tendency; especially if it be considered, that scarce any Peace hath been made by a Confederacy, where less Occasion was administer'd for Jealousy among the several Parties, and less Reason given to complain, that every Nicety, required by the Letter of such an Alliance, was not strictly observed. And therefore he humbly hopes, that no Steps taken for obtaining a Peace, approved by the Wisdom of former Parliaments, shall by any succeeding Parliament be accounted criminal, unless it can be made appear, that those Steps were taken contrary to the Queen's Orders, or upon corrupt Views of private Advantage: But that no Charge of this Nature can be made good against him, he presumes to affirm, with great Assurance; nor does he know of any other Persons justly chargeable upon either of these Accounts.

And as a further Proof, that those who had the Honour to serve her Majesty in the Negotiations of Peace, acted with upright Views and Intentions, and without being conscious to themselves of any Failure in their Duty, either to their Queen or their Country, the said Earl craves leave to observe to your Lordships, that they never attempted to cover their Actions from public Censure by any Pardon or Indemnity, though they have very good Reason to believe, that, had they judged or imagined themselves to have wanted such Security, it might (through the Goodness of the Queen) have easily been obtained.

Nor can he think it an Observation unfit to be made, that, in few of the Articles which concern the Negotiations of Peace, the Charge is founded on any Breach of the Laws of *Great Britain*; but it is in most of them chiefly on the supposed Infraction of certain Treaties and Alliances with foreign Princes, or States; and he conceives that such Infractions of Public Treaties, where they do not particularly affect the Interests of *Great Britain*, being cognizable by the Laws of Nations only, and not by those of the Realm, are not wont to be examined into here at Home, and prosecuted as Criminal, but upon the Complaint of some Prince or State, pretending by that Means to be injured, and lodging such Complaint in some reasonable Time with the Prince, by the Advice of whose Ministers and Servants such Injury is supposed to have been done. But he knows not, that any such Steps have been taken, since the Peace, by any of the Powers concerned: On the contrary, he believes, that all the Allies, except the Emperor and Empire, made their Peace with the Enemy at the same Time the Queen did; and that none of them did afterwards complain to her Majesty (who survived the said Peace a Year and almost four Months) of any Hardships imposed upon them in it; that the Princes of the Empire, who contributed very little to the War, might have concluded their Peace upon reasonable Terms, at the same Time the other Allies did; and would probably have done it, if the Emperor, on his Part, had been willing to sign together with them, which, he is informed, at the Conclusion of any general Peace, has been seldom done; and particularly at the several Conclusions of the Peace of *Munster*, that of *Nimguen*, and that of *Ryswick* was not practised. And he submits it to your Lordships Consideration, whether the Emperor, having had all reasonable and equitable Satisfaction made him for his Pretensions to the Succession of the *Spanish* Monarchy, according to the Terms of the Grand Alliance, could have any just Reason to complain of the Queen's Ministers, or those of her Allies, for concluding a Peace, without insisting (on his Account) upon impossible Conditions; especially, when no Provision is made, or offered to be made, to reimburse her Majesty any Part of those vast Sums she had already expended, in Support of his Pretensions: whilst he failed of supplying his Quota, almost in every Part of the War, notwithstanding his new and great Acquisitions. But whether the Emperor, or any other of the Allies, had any just Ground of Complaint, or not, still the said Earl presumes to insist, that it ought to have been signified to the Queen; who upon such Complaint, had she found any of her Servants justly blameable, as disobeying her Orders, or misleading her by their Advice, into unjustifiable and dishonourable Measures, might have punished them forthwith as their Offences deserved: But nothing of this kind having been done, he humbly leaves it to be considered by your Lordships, Whether the Silence of the Powers concerned doth not carry in it a strong Presumption, either that they had no real and just Ground of Complaint, in relation to the Terms of the Peace itself, or at least did not look upon the Minister of the Queen as any ways liable to Blame on that Account; and therefore he must again beg leave to express to your Lordships his Concern, that he should be charged as a Criminal by the Laws of this Land, for supposed Breaches of Treaties with foreign States, which never were complained of, as such, by those States themselves, during the Life of her Majesty.

He desires farther to observe to your Lordships, that wherever he is charged with carrying on a private and separate Negotiation, 'tis all along understood, with regard only to the States of the United Provinces; no Step, that was communicated to them, being censured, upon this Account: Whereas all the other Allies had, by virtue of their Treaties with the Queen, a like Right to a Communication of Councils; and her Majesty was under no Stipulation to act more in Concert with any one, than with all of them.

He does indeed allow it to have been most agreeable to Reason, and to the Interests of State, that the Queen should act in a closer Conjunction with *Holland* than with any other of her Allies, because that, next to *Great Britain*, *Holland* bore the greatest Share in the Charge of the War: But then, he hopes it will be allowed also, that the States being more interested in the Success of the War than *England*, and that *England* having submitted to a greater Share of the Burthen, in order to procure, not only a fitting Security for the States, but such as brought great Advantages to them, though no Benefit to *England*; it was very reasonable for the Queen to take care of the Interest of her own Kingdoms some other Way: And, since the Advantages she demanded from the Enemy, were such as she might obtain without any Prejudice to the States, it was as lawful for her to negotiate this Matter without communicating it originally, and in the first Rise of it, to them, as it was for her, and the States, to concert their mutual Interests together, without the immediate and express Participation of the other Allies; which, being known to be done, without a Design to Defeat any of the main Ends of the Alliance, was never complained of by any of the Confederates.

And as for the Matters concerted previously with *France*, for the particular Interest of *England*, without the original Invention of *Holland*, the States were so far from Protesting against her Majesty's Measures, and condemning her Conduct in this Respect, that their Minister proffer'd several Times, in their Name, to have led the Way, in the most difficult Part of the whole Negotiation, and to have done his utmost to facilitate the Conclusion of it, provided his Masters might have a Share in the *Assiento* Contract, and Trade to the *Spanish West-Indies*; one of those Advantages, which *France* had discovered its Willingness should be allowed previously and entirely to *England*.

These few general Observations the said Earl has thought fit to add in the Close of his Answer to the several Articles of his Impeachment; not only in his own necessary Vindication, but also in Defence of her late Majesty's Conduct in the negotiating and concluding a Peace, the perfecting of which she esteemed the greatest Happiness of the Reign. Upon Review of the Two-and-Twenty Articles with which he is charged, as he is not conscious of any Offence committed by him, with respect to any one of them, so it is with a particular Concern and Surprize that he reflects on these two, wherein he is accused of High-Treason, for endeavouring to procure *Tournay* to *France*, and so deprive the States of that intended Part of their Barrier; and for procuring *Spain* and the *West Indies* to the Duke of *Anjou*, upon his Renunciation of the Crown of *France:* Referring himself to what he has said in his Answer to both these Articles, he here further assures your Lordships (and thinks it is suffi-

ciently known both at home and abroad) that his Opinion and Endeavour, as Occaſion offer'd, always were for *Tournay*'s remaining, as it does now, to the States-General: And as to the latter, he doubts not but that what has lately happen'd in *France*, is a convincing Proof to your Lordſhips, and to all the World, that the Renunciation was the beſt Expedient that could have been propoſed towards hindering the two Kingdoms from being united under one and the ſame Monarch; that that Branch of the Treaty which relates to this Expedient, has fully anſwered its End, and made good the Character given of it by the Queen, *That it would execute itſelf*; and therefore, that whoever adviſed this Method of ſeparating the two Crowns, was ſo far from being guilty of any traitorous Deſign, that he eminently promoted the Welfare of *Great Britain*, and the Good of *Chriſtendom*.

The ſaid Earl, with all the Aſſurances of an innocent Man, begs leave to repeat, that as well in this, as in all other Affairs of State, in which he had the Honour to be employed by her late Majeſty, he ever acted according to the beſt of his Skill and Judgment, with ſincere Deſires and Intentions to ſerve the Public, and without any View to his own private Advantage. As he was in ſeveral great Stations under her Majeſty, he came into all of them by her own ſpecial Command, without his ſeeking or deſiring them, and he ſerv'd her in all with the utmoſt Reſpect, Zeal, and Faithfulneſs. And while he continued in thoſe Stations for many Years, it was with great Wonder and Pleaſure that he obſerv'd, how her Majeſty's whole Thoughts, Endeavours, and Time were divided between her Duty to God, and her Love to her People; whoſe Good and Security ſhe preferred always to her own Eaſe, and often hazarded her Health and Life itſelf to procure it. He knew that the moſt effectual way for one to recommend himſelf to her good Opinion, was to act upon the ſame Principles of Juſtice and Love to his Country that ſhe did: And as ſhe abhorr'd the Thoughts of any Thing Burthenſome or Injurious to her People; ſo ſhe often expreſſed herſelf with the greateſt Satisfaction and Delight, when ſhe reflected on the Advantages obtained by her for her own Subjects, and the Quiet and Repoſe ſhe had gained for *Europe*, by that juſt and honourable Peace, for which, as the preſent Age doth, ſo Generations to come will, bleſs the Memory of that Excellent and Renowned Queen.

OXFORD.

L. H. Steward. Read the Replication of the Houſe of Commons.
The Clerk read the Replication as followeth.

The Commons REPLICATION *to the Anſwer of* Robert *Earl of* Oxford *and Earl* Mortimer.

THE Commons have conſidered the Anſwer of *Robert* Earl of *Oxford* and Earl *Mortimer*, to the Articles of Impeachment exhibited againſt him, by the Knights, Citizens, and Burgeſſes in Parliament aſſembled; and do with Aſtoniſhment obſerve, that the ſaid Earl, inſtead of giving a reaſonable and pertinent Anſwer to the juſt and heavy Charge brought againſt him by the Commons of *Great Britain*, has preſum'd not only to deny his adviſing and being concerned in any Matters of State, in the Articles charged againſt him, though confeſſed to be done under an Adminiſtration wherein he was notoriouſly the firſt Miniſter and chief Director; but has alſo joined therewith a falſe and malicious Libel; laying upon his Royal Miſtreſs the Blame of every thing, which, by impoſing upon her, he had effected againſt her Honour, and the good of his Country; thereby attempting to reflect upon the Honour and Juſtice of the Houſe of Commons, and to caſt an Odium upon their Proceedings againſt him, as tending to aſperſe the Memory of the late Queen.

But the Commons are of Opinion, that if it were poſſible to add to the heavy Load of Guilt, in which the Treaſons and other moſt flagitious Crimes committed by the ſaid Earl have already involv'd him; this baſe and ungrateful Attempt, to impute them to his Royal Miſtreſs, muſt bring ſuch a new Weight of Infamy upon him, and ſo juſtly provoke the Indignation of the Commons, that they might think themſelves obliged to demand your Lordſhips immediate Juſtice, for this unwarrantable Attempt upon the Honour of the late Queen, and the Proceedings of Parliament.

But the Commons being ſenſible that the Treaſons and other Crimes whereof the ſaid Earl ſtands impeached, and the Neceſſity of bringing him to ſpeedy and exemplary Juſtice, require that all Occaſions of Delay ſhould be avoided; and not doubting that your Lordſhips will in due Time vindicate the Honour of the late Queen, and of the Commons of *Great Britain*, and the Juſtice of their Proceedings: The Commons do aver their Charge againſt the ſaid Earl of *Oxford* and Earl *Mortimer* for High-Treaſon, and other High Crimes and Miſdemeanors, to be true; and that the ſaid Earl is guilty of all and ſingular the Articles and Charges therein reſpectively contained, in ſuch Manner as he ſtands impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient Time as ſhall be appointed for that Purpoſe.

L. H. Steward. Robert Earl of *Oxford* and Earl *Mortimer*, it has been uſual before the Commons proceed, to ſay ſomething from this Place to Perſons in your Lordſhip's preſent Condition; partly by way of Exhortation to a reaſonable Confidence in the great Honour, Juſtice, Wiſdom, Integrity and Candour of their Judges, their Peers, the Houſe of Lords in Parliament aſſembled; and partly by way of Direction, to aſſiſt them in their Behaviour and Conduct during the courſe of their Trial.

But conſidering the many great Offices your Lordſhip has borne in the State, your long Experience and known Learning in all Parliamentary Proceedings, I cannot but think it would ſeem improper for me to be ſpeaking to your Lordſhip in that Matter.

Wherefore I proceed barely to acquaint your Lordſhip, and others whom it may concern, with ſuch Orders as the Lords have made, which 'tis fit ſhould be taken Notice of thus Early in this Trial.

1. Your Lordſhip, and all other Perſons who have Occaſion to ſpeak to this Court, muſt addreſs your Speech to the Lords in general, and not to any Lord in particular.

2. Your Lordſhip's Counſel may be preſent at the Bar, in order to be heard to any Point or Matter of Law, if ſuch ſhall ariſe on either of the Articles for High-Treaſon, and that you may make your full Defence by Counſel, if you think fit, on the Articles for High Crimes and Miſdemeanours, as well on Matters of Fact as of Law.

3. That your Witneſſes are to be examined on Oath as well to the Articles for High-Treaſon, as thoſe for High Crimes and Miſdemeanors.

L. H. Steward. My Lords, the Diſtance between this Place and the Bar is ſo great, that I hope your Lordſhips will excuſe me, if I go to the Table, for the better hearing of what ſhall be ſaid during this Trial.

Lords. Ay, ay.

Then the Lord High-Steward went down, and ſeated himſelf by the Table.

Serj. at Arms. O yes, &c. (as before.)

L. H. Steward. Gentlemen of the Houſe of Commons, you will be pleaſed now to proceed.

Mr. *Stanhope.* My Lords, the Diſtance of the Lord High-Steward from this Place, may have been the Occaſion, that we have miſtaken ſomething that fell from thence; we do therefore deſire to avoid all Miſtakes (and I believe we might be miſtaken) for we underſtood my Lord High-Steward, that Counſel ſhould be allowed the Priſoner at the Bar, as well to the Defence of the High-Treaſon, as to the High Crimes and Miſdemeanors; it is poſſible we miſapprehended his Lordſhip, but we hope his Lordſhip will be pleaſed to explain it to us.

L. H. Steward. To prevent Miſtakes, I repeat what I ſaid, and it is this: That Counſel for the Lord (the Priſoner at the Bar) may be preſent at the Bar, in order to be heard to any Matter or Point of Law (if any ſuch ſhall ariſe) relating to the High-Treaſon, and likewiſe to make that Lord's full Defence on the Articles of Impeachment of High Crimes and Miſdemeanors, as well in Matters of Fact, as Matters of Law.

Mr. *Hampden.* MY Lords, the Commons of *Great Britain* in Parliament aſſembled, out of indiſpenſable Duty to their Country, and Zeal for the Preſervation of the *common Liberties of Europe*, have brought to your Lordſhips Bar *Robert* Earl of *Oxford* and Earl *Mortimer*, late High-Treaſurer and a Privy Counſellor of this Kingdom, charged with the higheſt Crimes and Miſdemeanors, by him committed and done againſt the Perſon, Crown and Dignity of his Sovereign, the Peace and Intereſt of this Kingdom, and in Breach of the ſeveral Truſts repoſed in him.

The Commons in their Charge ſet forth, the many ſolemn Treaties and Alliances which had been entered into between the *Crown* of *England*, and other *Princes* and *Potentates* of *Europe*, for their mutual Safety, from the Conſiderations of the common Danger which then threatened all Chriſtendom from the *immoderate Growth* of the *Power* of *France*.

They likewiſe take Notice to your Lordſhips of the proſperous and flouriſhing Condition which the *Liberties* of *Europe* were in when, under theſe Treaties and Alliances, it pleaſed Almighty God to bleſs the Confederate Arms under the Command of their *Great* and *Victorious General* the *Duke* of *Marlborough*, with ſuch a Series of Succeſſes, as far exceeded their own Expectations, and by the Wiſdom and Unanimity of their Counſels, the Glory of the Confederate Arms, and the Reputation of *Great Britain* in particular, was rais'd to a higher Pitch than in any former Age.

That in this proſperous Condition of Affairs, the *Priſoner* at the *Bar*, with *other evil-minded Perſons*, Enemies to the true Intereſt of their Country, as well as to the common Liberties and Welfare of *Europe*, did by many wicked Arts and Inſinuations obtain Acceſs to her late Majeſty Queen *Anne*, got into her *Councils* and into Places of the higheſt Truſt, to make way for his and their pernicious Enterprizes, *form'd a treacherous Correſpondence* with the *Emiſſaries* of *France*, and gave *falſe* and *deſtructive Counſels* to her *Majeſty*.

The particular Articles exhibited by the Commons, to which proper Evidence will be apply'd, contain a Charge,

That this Great Perſon at the Bar, having no Regard to the Honour or Safety of his Sovereign or theſe Kingdoms, wherewith he was entruſted, or to the many ſolemn Engagements with the old and faithful Allies of this Nation, but being devoted to the Intereſt and Service of the *common Enemy*, did, by private and ſecret Negotiations, in Breach of all *public Faith*, malicioufly and wickedly cultivate and improve the Demands of the Enemies of his Country, more to their Advantage than they themſelves could have ever hoped for.

That by clandeſtine and ſecret Negotiations with the Enemies of *England*, he gave up the particular Intereſt of his own Country: That he aſſumed to himſelf *Regal Power*, and in a Time of *open War* took upon himſelf to meet and treat with the Enemy, without any Authority or Power from his *Sovereign*, and did what in him lay to ſubvert the *ancient* and *eſtabliſhed Conſtitution* of this Kingdom.

That he conceal'd the Advice and pernicious Influence whereby he had engaged his Sovereign and proſtituted her Honour, which had been raiſed to the higheſt Pitch of Glory abroad, and been juſtly held in Veneration with her Allies; and the Royal Hand was by the wicked Arts of the Priſoner at the Bar, made the Inſtrument to advance the Intereſt of the common Enemy.

That by deceitfully amuſing the Allies of the Crown of *Great Britain*, and by private, ſeparate and unjuſtifiable Negotiations, entered into, and carry'd on by the Priſoner at the Bar, a laſting Reproach was brought upon this Nation, and the public Faith of many Treaties, wherein *England* was engaged in the moſt ſacred and ſolemn Manner, was notoriouſly Violated, and the faithful Allies of the Crown Amus'd and Deceiv'd.

That the Priſoner at the Bar did in the moſt fatal Manner Impoſe upon and Delude his *Sovereign*, in accepting a pretended Expedient from the Enemy, which the Enemy at the ſame Time declar'd to be Null and Void. *That* the moſt unjuſtifiable and deſtructive Meaſures were taken by him to diſſolve the whole Confederacy, without any Regard to *Religion*, *Liberty*, or the *Faith* of *Treaties*; and in Conſideration of his wicked Advice great Numbers of the Confederate Troops, who had on many Occaſions ſignaliz'd themſelves in the Defence of the Cauſe of *Europe*, were given up as a Sacrifice to the Fury and Revenge of the Enemy.

My Lords, *The* Commons in their Charge ſet forth the particular Meaſures concerted and taken by the *Priſoner* at the Bar, to complete the Deſtruction of the Common Cauſe of *Europe*, and the *Proteſtant Succeſſion* to the *Crown* of theſe *Realms*. And they Charge,

That the Priſoner now before your *Lordſhips* did *traiterouſly Aid*, *Aſſiſt*, and *Adhere* to the *Enemies* of his *Queen* and *Country*, and adviſ'd and promoted the giving up to thoſe Enemies the *important Town* and *Fortreſs* of *Tournay*, together with *Spain* and the *Weſt-Indies*.

That he *Sacrificed* the Trade and Commerce of *Great Britain* to its common Enemy without the leaſt Shadow of Advantage procur'd to theſe Kingdoms, and *Betray'd* the National *Faith* and Honour of the *Crown*, employing againſt his *Imperial Majeſty* (the Great and Faithful Ally of this Kingdom) the *Naval Power* of the *Crown*, and the Supplies granted by *Parliament*, in direct Violation of the *Grand Alliance*, and contrary to *her* Majeſty's repeated Declarations from the Throne, and *her* plain and full Inſtructions to her *Plenipotentiaries* at *Utrecht*.

That he took upon himſelf to Exerciſe the moſt arbitrary and unwarrantable Authority; aſſuming to himſelf the chief Direction and Influence in her late *Majeſty's Councils*, and moſt wickedly proſtituted the Honour of the *Crown*, and the Dignity of Parliaments, totally depriving her Majeſty of the wholſome and neceſſary Advice of her Parliament, and Miſrepreſenting the moſt eſſential Parts of the Negotiations of Peace, to obtain the *Sanction* of *Parliament* to his wicked and pernicious Proceedings, thereby fatally Deceiving her *Majeſty*, her *Allies*, her Parliament, and her People, by ſeveral falſe Speeches and Declarations, concerted and adviſ'd by him, to be made by her *Majeſty* from the Throne to her *Parliament* on the Subject of the ſaid *Negotiations* of *Peace*; and by ſuch wicked and unexampled *evil Counſel*, he did moſt ungratefully *abuſe* the Favour of his *Royal Miſtreſs*, and by means of her Authority miſled her *Parliament* into Groundleſs and Prejudicial Reſolutions; and thereby not only prevented the *juſt Advice* of the *Parliament* to her *Majeſty* in that *CRITICAL JUNCTURE*, but obtained the Approbation of *Parliament* to his *MYSTERIOUS* and *DANGEROUS PRACTICES*; and did not only Deprive her *Majeſty* of the Confidence and Affection of her *Allies*, but Expoſe her *Majeſty* and her People to the Contempt of the *Enemy*.

That he has us'd his utmoſt Endeavours to *Subvert* the *Ancient Conſtitution* of *Parliaments*, the Great and only Security of the *Prerogative* of the *Crown*, and of the Rights, Liberties, and Properties of the People, and moſt wickedly attempted to deſtroy the Freedom and Independency of this *Noble Houſe*, the *great Ornament and neareſt Support of the Crown*; diſguiſing his miſchievous Intention under pretence of *Superior Zeal* for the *Prerogative* of the *Crown*; but by his falſe Advice her *Majeſty* was depriv'd of the *ſeaſonable* and *wholſome Counſels* of her *Parliament*, and the *Prerogative* perverted to the Diſhonour of the *Crown*, and the irreparable *Miſchief* to the Conſtitution of *Parliaments*.

My Lords, *The* Commons have further charg'd the *Noble Lord* with Corruptions, in illegally miſapplying Monies appropriated by *Parliament*, and with preventing any Parliamentary Enquiry into the ſame, to the Reproach and Scandal of Parliaments, in *Breach* of his *Truſt*, the higheſt Abuſe of the Goodneſs of *his Sovereign*, and the greateſt Injuſtice and Oppreſſion of *her Subjects*; and that he defrauded her late Majeſty of the *Public Money* with which he was entruſted for the Support of the Honour and Dignity of the *Crown*.

That this *Great Perſon* did aſſume to himſelf the Supreme Direction in her late *Majeſty's Councils*, and did introduce to her *Majeſty* for a *pretended public Miniſter*, a *TRAYTOR* in Diſguiſe named in the Articles; and gave ſuch *Traytor* ſeveral conſiderable Sums out of her Majeſty's Treaſure, in a Fictitious and Scandalous manner; ſuch Perſon being ſent into this Kingdom under falſe Pretences, ſecretly to promote the Intereſt of the *PRETENDER*, whereby the Priſoner at the Bar did ungratefully expoſe the Perſon of her Majeſty, and notoriouſly encourage the *Adherents* of the *Pretender*, to the apparent Danger of the Proteſtant Succeſſion to the Imperial Crown of theſe Realms. And,

Laſtly, That this *Great Perſon* at the Bar did, by the moſt falſe and wicked Counſels and Practices, *Betray* and give up as a *Sacrifice* to the implacable Reſentments of their enrag'd and powerful Enemy, a *Free and Generous People*, the *faithful* and *uſeful Allies of this Kingdom*, the brave *CATALANS*: who, by the evil Meaſures concerted and taken by the Priſoner at the Bar, were *Betray'd* into irrecoverable Slavery, and the *Honour* of the *Britiſh* Nation, always *Renown'd* for the Love of *Liberty*, and for giving Protection to the *Diſtreſſed Aſſerters* of it, therein moſt baſely proſtituted by the pernicious and deteſtable Counſel of the *Priſoner* at the Bar.

Thus your Lordſhips have a View of the Guilt in which the Treaſons and other Crimes committed by the Priſoner at the Bar have involv'd him: And it is with Aſtoniſhment the Commons obſerve, that his Defence is an Attempt to aſperſe the Memory of his *Royal Miſtreſs* with the Blame of what was tranſacted during his Adminiſtration, which by impoſing upon her he had effected againſt her Honour, and the Good of his Country; thereby attempting to reflect upon the Juſtice of the Houſe of Commons, and to caſt an *Odium* upon their Proceedings againſt him. But we doubt not your Lordſhips Vindication of the Honour of her late *Majeſty*, and the Proceedings of the Commons in this Proſecution.

The Commons think it their Duty to expreſs their utmoſt Abhorrence of the traitorous and wicked Proceedings of the *Priſoner* at the *Bar*, and to ſhew their Reſentment againſt him, as the Author and Promoter of them.

They have found him Abuſing and Betraying the Honour of his *Royal Miſtreſs*, into whoſe Favour he had inſinuated himſelf, for the moſt deſtructive and wicked Purpoſes. They have found him inſidiouſly dividing and weakening Us and our *Allies*: *Betraying our Counſels*; *traiterouſly giving up our ſtrong Holds*, *Fortreſſes and Defences of* Europe, and *her* moſt Wealthy and Flouriſhing Countries to the *Common Enemy* in time of *OPEN WAR*: And contriving and effecting the Diſſolution of the greateſt and moſt noble Confederacy that ever formed and united in Defence of the *Proteſtant Intereſt*, and the glorious Liberties of *Europe*.

They have found him attempting to deprive theſe Kingdoms of the only Bleſſing left to their Hopes, and which, by the Providence of God only, they now enjoy, the moſt auſpicious Government of his *preſent Majeſty*, the *Greateſt* and *Beſt* of *Princes*, whoſe Magnanimity, Wiſdom, Piety, and other princely Virtues, have fill'd the *Imperial* Throne of *Great Britain* with a Luſtre unknown in any former Age. In this Attempt, the *Noble Lord* at the Bar wickedly endeavour'd to defeat us of our happy Proſpect of laſting Felicities, in a long Succeſſion of *Proteſtant Princes* in the *Royal Line* of his moſt *Excellent Majeſty*, the moſt Illuſtrious *Prince* and *Princeſs* of *Wales*, and their *Iſſue*, eminently endow'd with all Graces and Accompliſhments for making a generous and free People happy: On the Continuance of which Succeſſion, next under God, all that is Dear and Valuable to us entirely depends.

My Lords, *The* Commons juſtly Reſent and Deteſt the Reproach brought upon the Faith and Honour of their Country, by the great Evil Miniſter at the Bar: But they promiſe themſelves your Lordſhips will ever be a *Terror* to all *Evil Miniſters*, how *Great ſoever*; and that your *Lordſhips* can never fail to do Juſtice to your injur'd Country, upon all *Perfidious Counſellors*, who lie in wait to deſtroy our *Religion*, *Laws* and *Liberties*.

Sir *Joſeph Jekyll*. My Lords, by the Commands of the Houſe of Commons, I appear to make good that Part of the Charge againſt the Noble Lord at the Bar, which is contain'd in the firſt Article.

Here the Lord *Harcourt* moved to adjourn to the Houſe of Lords.

L. H. Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This Houſe is adjourn'd to the Chamber of Parliament.

And being adjourn'd accordingly, the Lords and others return'd in the ſame Order they went down.

And the Houſe being Reſum'd, this Queſtion was moved and ſtated,

That the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles for High-Treaſon:

And a Debate enſuing thereupon,

The previous Queſtion was put, whether that Queſtion ſhall be now put?

It was Reſolved in the Affirmative.

And the main Queſtion being accordingly put, *viz.*

That the Commons be not admitted to proceed, in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, till Judgment be firſt given on the Articles for High Treaſon?

It was Reſolved in the Affirmative.

Ordered, That the ſaid Reſolution be communicated to the Commons by the Lord High Steward.

A Meſſage was ſent to the Houſe of Commons by Mr. *Brown* and Mr. *Orlebar*, two Maſters of the Court of Chancery, to acquaint them, that the Lords are now about going down into *Weſtminſter Hall*.

The Meſſengers return'd, and acquainted the Houſe, that they had delivered their Meſſage, and that the Commons were preparing to go immediately into *Weſtminſter-Hall*.

Then the Houſe was again adjourn'd into *Weſtminſter-Hall*; and the Lords being there ſeated, and the Houſe reſum'd, the Lord High Steward acquainted the Managers for the Commons, that their Lordſhips had come to a Reſolution, that the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer* for High Crimes and Miſdemeanors, 'till Judgment be firſt given on the Articles for High-Treaſon.

Sir *William Thomſon*. My Lords, the Managers for the Commons conceive it to be the undoubted Right of the Commons to proceed in their own Method in Maintenance of the Articles exhibited by them; and do apprehend that this Reſolution of your Lordſhips may be of ſuch fatal Conſequence to the Rights and Privileges of all the Commons of *Great Britain*, that they cannot take upon them to proceed any further, without reſorting to the Houſe of Commons for their Direction herein.

L. H. Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the Houſe adjourned to the Chamber of Parliament. And being Reſumed,

The Earl of *Oxford* was Order'd to be Remanded to the *Tower*, and to be brought again to the Bar in *Weſtminſter-Hall* To-morrow at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl.

Die Martis 25 *Junii*, 1717.

THE Houſe of Lords being met as uſual in the Chamber of Parliament, it was there Ordered, that a Meſſage be ſent to the Houſe of Commons to acquaint them that the Lords have Ordered *Robert* Earl of *Oxford* and Earl *Mortimer* to be brought to the Bar of their Houſe in *Weſtminſter-Hall* this Day at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl.

And a Meſſage was ſent accordingly by Mr. *Holford* and Mr. *Lovibond*, two of the Maſters of the Court of Chancery.

A Meſſage was ſent from the Houſe of Commons by Mr. *Carter* and others, that the Commons having taken into their Conſideration their Lordſhips Reſolution communicated to their Managers relating to the Proceedings on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, and being deſirous to preſerve a good Correſpondence between the two Houſes, have appointed a Committee to ſearch Precedents upon a matter of this great Importance, and deſire that their Lordſhips will not proceed at the time appointed.

Ordered, That the Meſſengers of the Houſe of Commons be called in and acquainted, that the Lords having taken the Meſſage of the Commons into their Conſideration, their Lordſhips will not proceed on the Trial of the Earl of *Oxford* and Earl *Mortimer* at the time appointed, but will proceed further on the ſaid Trial on *Thurſday* next at Eleven o'Clock in the Forenoon.

Accordingly the Meſſengers were called in and acquainted therewith.

Ordered, That the Lieutenant of the *Tower* do take back the Earl of *Oxford* and Earl *Mortimer* to the *Tower*, and do bring the ſaid Earl to the Bar of this Houſe in *Weſtminſter-Hall* on *Thurſday* next at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the ſaid Earl.

Di

Die Jovis 27 Junii, 1717.

THE Houſe of Lords being met as uſual, a Meſſage was ſent from the Houſe of Commons by the Lord *Morpeth* and others, to deſire a Conference with the Houſe of Lords, in relation to Proceedings in the Proſecutions of Impeachments. To which the Houſe agreed.

And the Commons were called in and told, that the Lords do agree to a Conference as is deſired, and appoint it preſently in the *Painted Chamber*.

Then ſeveral Lords were named Managers of the Conference.

The Houſe being informed, that the Commons were ready for the Conference, in the *Painted Chamber*;

The Houſe was adjourned during Pleaſure, and the Lords named as Managers went to the Conference: Which being ended,

The Houſe was reſumed.

And the Lord Privy Seal reported, that they had been at the Conference, and met Mr. *Carter* and other Managers, for the Commons, who delivered to their Lordſhips a Paper as follows.

The Commons having taken into their Conſideration your Lordſhips Reſolution, communicated to their Managers, relating to the Proceedings on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, and being deſirous as far as in them lies to maintain a good Correſpondence with your Lordſhips; have deſired this Conference, and have commanded us to acquaint your Lordſhips, that they conceive it to be the undoubted Right of the Commons to impeach a Peer, either for High-Treaſon or for High Crimes and Miſdemeanors, or, if they ſee Occaſion, to mix both the one and the other in the ſame Accuſation.

The Impeachment preferr'd againſt *Robert* Earl of *Oxford* and Earl *Mortimer*, is one continued Accuſation, conſiſting of High Crimes and Miſdemeanors, and alſo of Charges of High-Treaſon. The Facts on which the Articles preceding thoſe of High-Treaſon are grounded are laid together in Order of Time, and follow one another ſucceſſively, in the manner they were committed.

As the Commons thought this the moſt natural Method for exhibiting the ſeveral Articles againſt the ſaid Earl, they were all of Opinion that they ſhould proceed in the Proof of theſe ſeveral Facts after the ſame Method; ſince it is manifeſt, that in laying open the Courſe of ſuch a wicked Adminiſtration, the preceding Parts of it give Light to thoſe which follow; and that the Proof of ſeveral Articles of the High Crimes and Miſdemeanors would naturally lead to the Proof of thoſe of High-Treaſon.

Your Lordſhips received theſe ſeveral Articles of Impeachment without making any Exception againſt the Form in which they were exhibited. The ſaid Earl made his Anſwer to them in the ſame Order, and has no where inſiſted to be tried in any other Method; ſo that the Commons are ſurprized to find a Stop put to their Proſecution, by an Objection which has never been ſtarted by the ſaid Earl, and which your Lordſhips had given them ſo little Reaſon to expect.

To this muſt be added, that as the Commons only are Maſters of the Evidence, and as upon that Account they are beſt able to determine in what Method to proceed for the Advantage of the Proſecution, in the Event of which all the Commons of *Great Britain* are ſo highly concerned.

To which they further add, that they ſee no Reaſon but that your Lordſhips may as well invert the whole Order of the Articles, as preſcribe to the Commons thoſe particular Articles on which they are firſt to proceed; which will neceſſarily produce ſuch a Confuſion, both in the Facts and Evidence, as is by no means conſiſtent with that Clearneſs and Perſpicuity in which the Commons think this Affair ought to appear.

The Commons, upon examining Precedents, do find divers Precedents of Impeachments for High-Treaſon and other High Crimes and Miſdemeanors, in the ſame Accuſation; and do not find that the Lords ever objected to ſuch Proceeding, or ever gave Judgment upon any particular Article of an Impeachment before the Commons had gone through and concluded their Evidence upon all the Articles, or ſo many of them as they thought fit; and the Commons are at a Loſs to conceive what Arguments or Precedents can be brought to ſupport the Reſolution of your Lordſhips, to give Judgment upon one Part of the ſame Accuſation, reſerving the other Part for a ſubſequent Trial; as they are to know what your Lordſhips mean by admitting the Commons to proceed upon the Articles for High Crimes and Miſdemeanors, after the Judgment is given upon the Articles for High-Treaſon, ſuppoſing the Judgment proper for High-Treaſon ſhould be given againſt the ſaid Earl.

For theſe Reaſons the Commons aſſert it as their undoubted Right to proceed on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer*, after the Method in which their Managers were proceeding, when interrupted by your Lordſhips Reſolution.

The Reaſons delivered by the Commons at the Conference were read by the Clerk.

And after Debate, and Reading the Reſolution of this Houſe communicated to the Commons on *Monday* laſt, *viz.*

That the Commons be not admitted to proceed in Order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer*, for High Crimes and Miſdemeanors, 'till Judgment be firſt given on the Articles for High Treaſon:

The Queſtion was put, Whether to inſiſt on the ſaid Reſolution?

It was reſolv'd in the Affirmative.

Then it being propoſed that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Reſolution for inſiſting:

And a Queſtion being ſtated thereupon,

It was moved to add theſe Words to the ſaid Queſtion, *viz.* [And alſo to prepare ſuch Reaſons as ſhall be thought proper to be then uſed in Maintenance thereof.]

And after Debate, the Queſtion was put, Whether thoſe Words ſhall be added to the ſaid Queſtion?

It was reſolv'd in the Affirmative.

Reſolv'd upon the Queſtion, and ordered, that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Reſolution of this Houſe for inſiſting on their Lordſhips Reſolution above-mentioned, and alſo to prepare ſuch Reaſons as ſhall be thought proper to be then uſed in Maintenance thereof.

Ordered, That all the Lords preſent be the ſaid Committee.

Then it being propoſed, that the Committee meet immediately. And the ſame being objected to;

The Queſtion was put, Whether the Committee ſhall withdraw and ſit immediately?

It was reſolv'd in the Negative.

Ordered, That the ſaid Committee, or any Seven of them, meet To-morrow at Ten o' the Clock in the Forenoon in the Prince's Lodgings near the Houſe of Peers, and to adjourn as they pleaſe.

Ordered, That the Lieutenant of the *Tower* do take back the Earl of *Oxford* and Earl *Mortimer*, and bring the ſaid Earl to the Bar of this Houſe in *Weſtminſter-Hall*, on *Saturday* next at Eleven o' the Clock, in order to proceed further on the Trial of the ſaid Earl.

Die Veneris 28 Junii, 1717.

THE Lords being aſſembled in their Houſe as uſual, a Meſſage was ſent to the Houſe of Commons by Mr. *Fellows* and Mr. *Meller*, two of the Maſters of the Court of *Chancery*, to acquaint them that the Lords do deſire they will continue ſitting for ſome Time.

The Lord *Trevor* reported from the Committee appointed to prepare what is to be offer'd to the Commons at a Conference in communicating to them the Reſolution of this Houſe, for inſiſting on their Lordſhips Reſolution communicated to the Commons on *Monday* laſt, and alſo to prepare ſuch Reaſons as ſhall be thought proper to be then uſed in Maintenance thereof, that the Committee have prepared Reaſons accordingly, as follow, *viz.*

Their Lordſhips, in order to preſerve a good Correſpondence with the Houſe of Commons (which they ſhall always endeavour to do as far as lies in their Power) have deſired this Conference upon the Subject-Matter of the laſt Conference, and have directed us to acquaint you, that their Lordſhips judge it a Right inherent in every Court of Juſtice, to order and direct ſuch Methods of Proceedings as ſuch Courts ſhall think fit to be obſerved in all Cauſes depending before them, which can have no Influence to the Prejudice of Juſtice; and where ſuch Methods of Proceedings are not otherwiſe ſettled by any poſitive Rule. The Power of Judicature on all Impeachments being a Right unqueſtionably inherent in their Lordſhips, and it not being determined by any poſitive Rule, whether the Houſe of Commons may proceed to make good the ſeveral Articles exhibited for Miſdemeanors, in ſuch Order as they ſhall think fit, before they proceed to make good the Articles exhibited for High-Treaſon; and there being no Precedent where the Commons, upon Trial of any ſuch Impeachments, attempted to proceed in the firſt Place to make good any of the Articles contained in ſuch Impeachment for High Crimes and Miſdemeanors; their Lordſhips conſidering the Nature of the Impeachment now depending before them, and the Method wherein the Managers for the Houſe of Commons were beginning to proceed upon the Trial to make good the firſt Article thereof, which is a Charge for High Crimes and Miſdemeanors only; and alſo conſidering the very different Methods of Proceedings on an Impeachment of a Peer for High-Treaſon, as well before, as upon the Trial thereof, and the Circumſtances attending ſuch a Trial, from the Proceedings on the Impeachment of a Peer for High Crimes and Miſdemeanors, and the known Circumſtances attending ſuch a Trial, thought themſelves obliged to come to the Reſolution communicated to the Commons on the Twenty-fourth Inſtant, as well for the doing Juſtice in the Caſe depending before them, as for the preventing a new Precedent to be made on this Trial, in Conſequence whereof a new and unjuſtifiable Form of Proceeding againſt a Peer upon an Impeachment for High-Treaſon and High Crimes, might be introduced at his Trial upon thoſe Articles in which he is charged for High Crimes and Miſdemeanors only, to the Prejudice of the Peerage of *Great Britain* in all Time to come, *viz.* the Trying a Peer on Articles for High Crimes and Miſdemeanors without the Bar, the detaining in Cuſtody a Peer ſo accuſed, and repeated Commitments of him to the *Tower* during the Time of ſuch Trial, and ſubjecting a Peer to as ignominious Circumſtances on his Trial, on Articles for Miſdemeanors, as if he were then on his Trial on Articles for High-Treaſon: Whereas a Peer on his Trial on Articles for Miſdemeanors only, ought not to be deprived of his Liberty, nor ſequeſter'd from Parliament, and is entitled to the Privilege of ſitting within the Bar during the whole Time of his Trial: In all which Particulars the known Rule of Proceedings in ſuch Caſes may be evaded, ſhould a Peer be brought to his Trial on ſeveral Articles exhibited againſt him on High Crimes and Miſdemeanors and for High-Treaſon mixed together, and the Commons be admitted to proceed in order to make good the Articles for High Crimes and Miſdemeanors before Judgment be given upon the Articles for High-Treaſon. Their Lordſhips have fully conſidered the Matters offered to them by the Houſe of Commons at the laſt Conference relating to the Proceedings againſt *Robert* Earl of *Oxford* and Earl *Mortimer*; and their Lordſhips are fully ſatisfied, that the Reſolution they have taken and communicated to the Commons on the Twenty-fourth Inſtant is juſt and reaſonable; and that the Houſe of Commons are not put under any real Inconvenience thereby in carrying on their preſent Proſecution. Their Lordſhips have commanded us to let you know that they do inſiſt on their ſaid Reſolution, *viz.* That the Commons be not admitted to proceed in order to make good the Articles againſt *Robert* Earl of *Oxford* and Earl *Mortimer*, for High Crimes and Miſdemeanors, 'till Judgment be firſt given upon the Articles for High-Treaſon.

Which Report being read by the Clerk was agreed to by the Houſe.

Then a Meſſage was ſent to the Houſe of Commons by Mr. *Fellows* and Mr. *Meller*, to acquaint them, that the Lords do deſire a preſent Conference in the *Painted Chamber*, upon the Subject-Matter of the laſt Conference.

Ordered, That the Managers of the laſt Conference be the Managers of this Conference.

The Messengers sent to the House of Commons, return Answer, That the Commons will give a present Conference as desired.

The House being inform'd, that the Commons were ready in the *Painted Chamber* for the Conference, the Names of the Managers were read: And,

The House was adjourned during Pleasure, and the Lords named as Managers went to the Conference; which being ended, the House was resumed: And

The Lord Chamberlain reported, that the Managers had been at the Conference, and delivered to the Commons what they were directed.

A Message was sent to the House of Commons by Mr. *Fellows* and Mr. *Meller*, to acquaint them, That the Lords have ordered the Earl of *Oxford* to be brought to the Bar of this House in *Westminster-Hall* To-morrow at Eleven o'Clock in the Forenoon, in order to proceed further on the Trial of the said Earl.

A Message was brought from the House of Commons by Mr. *Yonge* and others, to desire that this House will continue sitting for some Time; to which the House agreed.

And the Commons were called in and told, That the Lords will continue sitting for some Time, as is desired.

Ordered, That the Lieutenant of the *Tower* do bring the Earl of *Oxford* to the Bar of this House in *Westminster-Hall*, on *Monday* next at Eleven o'Clock; in order to proceed further on the Trial of the said Earl.

Die Sabbati 29 *Junii*, 1717.

THE House of Lords being assembled as usual in the Chamber of Parliament, a Message was brought from the House of Commons by Mr. *Pelham* and others, to desire a free Conference with this House upon the Subject-Matter of the last Conference.

Ordered, That this House will send an Answer by Messengers of their own. And

The Messengers were called in, and acquainted therewith.

The House proceeded to take the said Message into Consideration. And after Debate, and reading out of the Journal the Proceedings at the several Conferences in the Case of the Lord Viscount *Mordaunt*, upon his Impeachment in the Year One Thousand Six Hundred and Sixty-six;

The Question was put, Whether to give a free Conference with the House of Commons, as is desired, upon the Subject-Matter of the last Conference?

It was resolv'd in the Negative.

Ordered, That a Message be sent to the House of Commons, to acquaint them, That the Subject-Matter of the last Conference concerning a Point of Judicature determined by this House after the Trial began, their Lordships do not think fit to give a free Conference on the Subject-Matter of the last Conference, as is desired by the House of Commons.

And also, That another Message be sent to the House of Commons, to acquaint them, That their Lordships have ordered *Robert* Earl of *Oxford* and Earl *Mortimer* to be brought to the Bar of this House in *Westminster-Hall*, on *Monday* next at Eleven o' Clock in the Forenoon, in order to proceed further on the Trial of the said Earl; and Mr. *Holford* and Mr. *Dormer*, two of the Masters of the Court of Chancery, were sent accordingly with the said Messages.

Die Lunæ 1 *Julii*, 1717.

THE Lords being assembled in their House as usual, and this Day being appointed to proceed further on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer* in *Westminster-Hall*, the House (according to Order) was called over by the Clerk; and the Names of the absent Lords being set down (pursuant to the same Order) they were again called over, and excused.

A Message was brought from the House of Commons by Mr. *Gibbon* and others, to desire their Lordships to defer going down into *Westminster-Hall* for some Time.

Ordered, That the Messengers of the House of Commons be called in and told, That the Lords have considered their Message, and that their Lordships will defer going down into *Westminster-Hall* for some Time, as is desired.

And the Messengers were called and acquainted accordingly.

A Message was brought from the House of Commons by Mr. *Craggs* and others, to desire a Conference with this House upon the Subject-Matter of their Lordships Message relating to the free Conference desired by the Commons.

To which the House agreed.

And the Messengers of the House of Commons were called in and told, That the Lords do agree to a Conference as desired, and appoint it presently in the *Painted Chamber*.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

The House being informed, That the Commons were ready in the *Painted Chamber*,

The Managers Names were read, and the House was adjourned during Pleasure, and the Lords named as Managers went to the Conference; which being ended, the House was resumed, and the Lord Privy-Seal reported the Effect of the Conference, which was, that the Managers for the Commons had delivered to their Lordships a Paper, containing as follows, *viz.*

The Commons having taken into Consideration your Lordships Message, *viz.*

That your Lordships did not think fit to give a free Conference on the Subject-Matter of the last Conference, as was desired by the Commons, and they being still desirous, to the utmost of their Power, to preserve a good Correspondence with your Lordships, have ask'd this Conference; and have commanded us to acquaint your Lordships, that they are very much surprized to find your Lordships deny a free Conference, after your Lordships had already agreed to a Conference desir'd by the Commons on the said Subject-Matter, and after your Lordships have on your Parts also desired a Conference upon the same Subject.

That free Conferences are the most antient and establish'd Methods for adjusting the Differences that have at any Time arisen between the Two Houses, and, as the Commons conceive, is the only Method to preserve a good Correspondence between them on such Occasions, which at this Time is of the highest Importance, because a Misunderstanding on this Account would tend to defeat the Trial of the Impeachment of the Commons.

That the Commons conceive clearly, that the Subject-Matter of the last Conference is not a Point of Judicature, but a Point relating only to the Prosecution of the Commons, it having arisen before any Matter of Judgment had come before your Lordships upon the Trial.

For which Reasons the Commons conceive, that your Lordships ought not to have denied them a free Conference upon the Subject-Matter of the last Conference.

Which being read by the Clerk;

A Message was sent to the House of Commons by Mr. *Orlebar* and Mr. *Browning*, two of the Masters of Chancery, to desire they would continue sitting for some Time:

Then the House proceeded to take into Consideration the Matter delivered by the Commons at the last Conference.

And it being proposed to insist on denying a free Conference with the Commons;

And Debate thereupon;

The Question was put, Whether to insist on denying a free Conference upon the Subject-Matter concerning which a free Conference was desir'd by the Commons?

It was resolv'd in the Affirmative.

Ordered, That a present Conference be desir'd with the Commons in the *Painted Chamber* on the Subject-Matter of the last Conference, and that the Commons be there acquainted, that the Lords having taken into Consideration the Subject-Matter of the last Conference, their Lordships do insist on denying a free Conference upon the Subject-Matter concerning which a free Conference was desir'd by the House of Commons.

Accordingly a Message was sent to the House of Commons by Mr. *Orlebar* and Mr. *Browning*, to desire a present Conference in the *Painted Chamber* on the Subject-Matter of the last Conference.

The Messengers returned, and acquainted the House, that the Commons do agree to a Conference, as desir'd.

Ordered, That the Managers of the last Conference be the Managers of this Conference.

Then the House being informed, that the Commons were ready in the *Painted Chamber*, the Managers Names were read. And

The House was adjourn'd during Pleasure, and the Lords appointed Managers went to the Conference; which being ended, the House was resum'd, and the Lord Privy-Seal reported, that they had been at the Conference, and acquainted the Commons as above directed.

A Message was sent to the House of Commons by the former Messengers, to desire they will continue sitting for some Time.

The Messengers being return'd, acquainted the House, that the Commons will continue sitting for some Time, as desir'd.

Then it being mov'd, that a Message be sent to the House of Commons, that this House intends presently to proceed further on the Trial of the Earl of *Oxford* in *Westminster-Hall*.

And it being also mov'd, that the House do now adjourn during Pleasure,

The Question was put, Whether now to adjourn during Pleasure?

It was resolv'd in the Affirmative.

The House was accordingly adjourn'd during Pleasure.

The House was resum'd.

A Message was sent to the House of Commons by Mr. *Orlebar* and Mr. *Browning*, to acquaint them, that this House intends presently to proceed further on the Trial of *Robert* Earl of *Oxford* and Earl *Mortimer* in *Westminster-Hall*.

Then it being proposed provisionally to consider the Form of a Proclamation proper to be made in *Westminster-Hall* for the Appearance of the Prosecutors, if they should not be there present to proceed, in order to make good their Impeachment against the said Earl of *Oxford* and Earl *Mortimer*;

And thereupon the Proclamation made the Seventeenth of *June*, One Thousand Seven Hundred and One, at the Trial of the Lord *Somers*, being read;

It was agreed by the House, that when the Lords are gone down into *Westminster-Hall*, immediately after the Lords House shall be resumed in *Westminster-Hall*, and Proclamation for Silence made, and Proclamation for bringing the Prisoner to the Bar, if the Managers of the House of Commons shall not be there, Proclamation be likewise made in these Words, *viz.*

Whereas Robert *Earl of* Oxford *and Earl* Mortimer *stands impeached of High-Treason, and other High Crimes and Misdemeanors, by the House of Commons, in the Names of Themselves and of all the Commons of* Great Britain, *all Persons concern'd are to take Notice, that he now stands on his Trial, and they may now come forth in order to make good their said Charge.*

Then the House was adjourned into *Westminster-Hall*, and the Lords being come down into *Westminster-Hall*, and seated in the usual Manner about Five in the Evening;

L. H. Steward. My Lords, the House is resumed——Make Proclamation for Silence.

Serj. at Arms. O Yes, *&c.* (as before.)

L. H. Steward. Make Proclamation for the Lieutenant of the *Tower* of *London* to bring the Prisoner to the Bar.

Serj. at Arms. O Yes, *&c.* Lieutenant of the *Tower* of *London*, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

The Earl of *Oxford* and Earl *Mortimer* being brought to the Bar accordingly, and the Commons not being present;

L. H. Steward. Make Proclamation according to the Order of the House of Lords.

Then the Serjeant at Arms made the following Proclamation according to the said Order of the House of Lords, the Clerk of the House of Lords reading it to him as followeth:

Serj. at Arms. Whereas *Robert* Earl of *Oxford* and Earl *Mortimer* ſtands impeached of High-Treaſon, and other High Crimes and Miſdemeanors, by the Houſe of Commons, in the Name of Themſelves and all the Commons of *Great Britain*, all Perſons concern'd are to take Notice, that he now ſtands upon his Trial, and they may now come forth in order to make good their ſaid Charge.

After about Twenty Minutes Silence, the Lord *Guilford* mov'd for an Adjournment to the Houſe above.

L. H. Steward. Do your Lordſhips hear what is mov'd? is that your Lordſhips Pleaſure?

Lords. Ay, ay.

L. H. Steward. This Houſe is adjourn'd to the Chamber of Parliament.

And being return'd in the ſame Order they went down,

The Houſe was reſumed.

Then it was propoſed, that *Robert* Earl of *Oxford* and Earl *Mortimer* be acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all things therein contained, and that the ſaid Impeachment be diſmiſſed.

And a Queſtion being ſtated thereupon, it was moved to leave out theſe Words (*viz.* and other High Crimes and Miſdemeanors;) and thereupon the Queſtion being put,

Whether thoſe Words ſhall ſtand part of the Queſtion?

It was Reſolved in the Affirmative.

Then the laſt Queſtion being again ſtated,

Ordered, That the Queſtion now ſtated be the Queſtion to be put in *Weſtminſter-Hall.*

Then the Lord High-Steward deſiring that further Directions might be given concerning the further Proceedings in the Trial of the ſaid Earl in *Weſtminſter-Hall*, it was agreed by the Houſe, and Ordered, That in *Weſtminſter-Hall* the Lord High-Steward ſhall read the Queſtion as already ſtated; and then call to the loweſt Baron firſt, and to every other Lord then preſent, and aſk him his Opinion, whether Content or not Content; and that every Lord ſhall ſtand up when called to, and give his Vote, Content or not Content; and that the Lord High-Steward having taken the Votes, ſhall declare the Majority; and if the Majority anſwer in the Affirmative, the Lord High-Steward is to declare the ſame, and particularly to the Earl of *Oxford*, as ſoon as he ſhall be brought to the Bar, and ſhall immediately pronounce the Judgment of this Houſe in the Form following, *(viz.)* It is conſidered, ordered and adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, that *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall be, and is hereby acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all things therein contained; and that the ſaid Impeachment ſhall be, and is hereby diſmiſſed. And ſhall immediately direct the Lieutenant of the *Tower* then to diſcharge his Priſoner.

And after that to Diſſolve the Commiſſion.

The Houſe was then again adjourned into *Weſtminſter-Hall*, and being there reſumed;

L. H. Steward. Make Proclamation for Silence.

Serj. at Arms. O Yes, *&c.* (as before.)

O Yes, *&c.* Lieutenant of the *Tower* of *London*, bring forth your Priſoner to the Bar.

L. H. Steward. My Lords, the Clerk acquaints me, that for want of Light in the Paſſage he could not take an exact Liſt of your Lordſhips; I therefore deſire that he may now take a Liſt of the Lords preſent.

Then the Clerk took a Liſt of the Lords preſent.

L. H. Steward. If your Lordſhips think fit, your Lordſhips Names ſhall now be called over.

Lords. Ay, ay.

Then their Names were called over.

Lords. The Earl of *Oxford* is not yet gone from the Bar.

Then the Earl was ordered to withdraw from the Bar. And being withdrawn,

L. H. Steward. My Lords, I ſhall now ſtate the Queſtion, upon which your Lordſhips are to give your Votes; it is this, That *Robert* Earl of *Oxford* and Earl *Mortimer* be acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all Things therein contained, and that the ſaid Impeachment be diſmiſſed.

L. H. Steward. The Clerk ſhould attend near the Lords with Candles, as they give their Votes.

Then the Lord High-Steward put the Queſtion to their Lordſhips, beginning at the youngeſt Baron, in Manner following.

L. H. Steward. My Lord, your Lordſhip has heard the Queſtion ſtated, what ſays your Lordſhip, is your Lordſhip Content, or not Content?

The Names of the Lords preſent, who were all Content, are as follow.

BARONS.

Newburgh
Parker
Cobham
Carleton
Bingley
Bathurſt
Foley
Maſham
Lanſdowne
Trevor
Middleton
Manſel
Montjoy
Hay
Boyle
Harcourt
Belhaven
Gower
Haverſham
Herbert
Aſhburnham
Guilford
Stawell
Carteret
Lumley
Oſborne
Cornwallis
Berkeley of *Stratton*
Leigh
Bruce
Teynham
Compton
St. John
Hundſdon
North and *Grey*
Willoughby of *Brooke*
Fitzwalter
Delawar
Willoughby of *Erſby*
Abergavenny

BISHOPS.

St. Aſaph.
Cheſter
Briſtol
Rocheſter
St. David's
Hereford
Landaff
Bath and *Wells*
Carliſle
Litchfield and *Coventry*
Winchester
London.

VISCOUNTS.

Caſtleton
Tadcaſter
Londſdale
Longueville
Townſhend
Say and *Seal*
Hereford.

EARLS.

Halifax
Briſtol
Carnarvon
Uxbridge
Dartmouth
Stafford
Ferrars
Ilay
Delorain
Orkney
Loudoun
Buchan
Cholmondeley
Poulet
Greenwich
Rochford
Plimouth
Abingdon
Rocheſter
Litchfield
Burlington
Carliſle
Angleſea
Cardigan
Clarendon
Scarſdale
Mancheſter
Northampton
Saliſbury
Dorſet
Pembroke
Derby.

DUKES.

Portland
Ancaſter
Rutland
Buckingham
Devonſhire
Shrewſbury
St. Alban's
Grafton
Cleveland and *Southampton*
Somerſet
Kent
Kingſton

ARCHBISHOPS.

York
Canterbury.

L. H. Steward. My Lords, upon the Queſtion ſtated, I am Content.

L. H. Steward. My Lords, *Robert* Earl of *Oxford* and Earl *Mortimer* is acquitted of the High-Treaſon and other High Crimes and Miſdemeanors wherewith he ſtands charged, by the Unanimous Vote of all your Lordſhips here preſent.

L. H. Steward. Call the Earl to the Bar.

Serj. at Arms. O Yes, *&c.* Lieutenant of the *Tower* of *London*, bring the Earl of *Oxford* and Earl *Mortimer* to the Bar of this Houſe.

Lord H. Steward. *Robert* Earl of *Oxford* and Earl *Mortimer*, I am to acquaint your Lordſhip, that your Lordſhip is acquitted of the Articles of Impeachment Exhibited againſt you for High-Treaſon, and other High Crimes and Miſdemeanors, by the Houſe of Commons, and all Things therein contained; and thereupon I am to pronounce this Judgment, which I pronounce accordingly:

It is conſidered, ordered and adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, that *Robert* Earl of *Oxford* and Earl *Mortimer* ſhall be, and is hereby acquitted of the Articles of Impeachment exhibited againſt him by the Houſe of Commons for High-Treaſon, and other High Crimes and Miſdemeanors, and of all Things therein contain'd, and that the ſaid Impeachment ſhall be and is hereby diſmiſſed.

L. H. Steward. Lieutenant of the *Tower* of *London*, you are now to diſcharge your Priſoner.

L. H. Steward. My Lords, this is all that remains to be done by Virtue of his Majeſty's Commiſſion; I do therefore declare the ſame to be diſſolved.

Then the Lord High-Steward broke his Staff.

L. Chancellor. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament? —*Lords.* Ay, ay.

L. Chancellor. This Houſe is adjourn'd to the Chamber of Parliament.

The Earl was immediately diſcharg'd at the Bar, and paying his Reſpects to the Lords, and having receiv'd the Compliments of his Friends, went away directly to his own Houſe.

But the Houſe of Commons reſented this Proceeding ſo far, as to Addreſs the King, that the Earl of *Oxford* might be excepted out of the then intended Act of Grace; which was done accordingly.

CLXXXIX. *The Trials of Major* Stede Bonnet, *and Thirty-three others, at the Court of Vice-Admiralty, at* Charles-Town *in* South-Carolina, *for* Piracy, Oct. 30, *&c.* 1718. 5 Geo. I.

Tueſday, October the 28th, 1718, the Court met according to Appointment.

PRESENT

Nicholas Trott, Eſq; Judge of the Vice-Admiralty, and Chief-Juſtice of the ſaid Province of *South-Carolina.*

ASSISTANT JUDGES,

George Logan, Eſq;
Alexander Parris, Eſq;
Philip Dawes, Eſq;
George Chicken, Eſq;

Benjamin de la Conſeillere, Eſq;
Samuel Dean, Eſq;
Edward Brailsford, Gent.

John Croft, Gent.
Capt. *Arthur Loan.*
Capt. *John Watkinſon.*

THE King's Commiſſion to *Nicholas Trott*, Eſq; Judge of the Court of *Vice-Admiralty*, and the Commiſſion in the Name of the Lord *Palatine*, and the reſt of the Lords Proprietors, and Teſtified by the Honourable *Robert Johnſon*, Eſq; *Governor*, and the reſt of the Lords *Deputies*, for holding the Court of *Admiralty Seſſions*, was openly read.

Then the Grand-Jury was called, and Twenty-three of them were ſworn; the Names of which are as followeth:

Michael Brewton, Foreman.
Robert Tradd.
Andrew Allen.
Peter Manigault.
John Beauchamp.
John Bullock.
Thomas Barton.
Anthony Matthews.
Alexander Kinlock.
Henry Perrineau.
Paul Douxſaint.
John Breton.
John Bee.
Daniel Gale.
Thomas Loyde.
Laurence Dennis.
Elias Foiſin.
John Shepherd.
John Simmons.
George Peterſon.
Solomon Legare.
Abraham Leſuir.
John Caywood.

Then the Judge of the Vice-Admiralty proceeded to give his Charge to the Grand Jury, as followeth.

GENTLEMEN,

WE are here assembled to hold this Court of *Admiralty-Sessions*; and the Duty of my Office requires me to give in *Charge* to you the things that you are *to Enquire of and to Present*.

In a former *Admiralty Charge*, by way of *Preface* or *Introduction* to the particular Crime of *Piracy*, which will again now be brought before you;

I then shewed you, *First, That the Sea was given by God for the Use of Men, and is subject to Dominion and Property, as well as the Land.*

And then I *particularly* remarked to you, the *Sovereignty* of the *Kings of England* over the *British* Seas.

I then proceeded, *Secondly*, to shew you, *That as Commerce and Navigation could not be managed without Laws; so there have been always particular Laws for the better ordering and regulating Marine Affairs; with an Historical Account of those Laws, and their Origin.*

Of all those Matters I then spake largely and fully; and shall not now trouble you with any farther *Repetition* of them.

But I shall now proceed, in the *Third* Place, to shew you, *That there have been particular Courts and Judges appointed, to whose Jurisdiction Maritime Causes do belong; and that in Matters both Civil and Criminal.*

And then I shall in *particular* shew you the *Constitution* and *Jurisdiction* of this Court of *Admiralty Sessions*.

And shall mention the *Crimes* cognizable therein; and shall particularly enlarge upon the Crime of *Piracy*, that will now be brought before you.

Time will not permit me to speak of the several Sorts of *Magistrates*, to whose Jurisdiction Maritime Affairs do belong, in the *Transmarine* or Foreign Parts of the World: Therefore I shall confine myself under this Head, only to speak of the Laws of *England*; by which the general *Jurisdiction* in Marine Affairs is by the King as Supreme, as well by Sea as Land, committed to the *Lord High Admiral*; who, besides his Power over the *Navy*, and the Government over the *Seamen*, hath a Jurisdiction [a] *Civil* and *Criminal* in Marine Affairs, which are decided by his *Maritime Judges* in the Court of *Admiralty*, the Chief of which is known by the Stile of *Supremæ Curiæ Admiralitatis Angliæ Judex:* within those Cognizance, in Right of the Jurisdiction of the Admiralty by the Sea Laws, and the Laws and Customs of the Admiralty of *England*, are comprized all Matters properly Maritime, and pertaining to Navigation.

As to the *Antiquity* of the Office of *Lord Admiral*, and the Court of the [b] *Admiralty*, it is sufficient to remark, that the thing itself that signified that Office, now known to us by the Stile of *Lord High Admiral*, and the *Jurisdiction* thereof, hath been in the Kingdom of *England* time out of mind.

The learned Antiquary Sir *Henry Spelman*, in his [c] *Glossarium*, and out of him [d] Dr. *Godolphin* gives us the *Catalogues* of the *Admirals* from the Reign of King *Henry* III. Not but that the *Office* of *Admiral* is far more ancient: For the same learned Antiquary saith, that he hath not in that Catalogue inserted *Marthusius*, that *Princeps Nautarum*, in King *Edgar*'s Time; nor those *Tetrarchs* of his Navy; nor of those other Commanders in Chief in Sea Affairs, constituted by his Successors Kings of *England*; but of such only as in the ordinary way have been dignified with the said Office.

The Lord [e] *Coke* in the *first* part of his *Institutes*, in honour of the *Admiralty* of *England*, saith, "That the Jurisdiction of the Lord Admiral is "very ancient, and long before the Reign of *Edward* III. as some have "supposed, as may appear by the Laws of *Oleron*, (so called, for that "they were made by King *Richard* I. when he was there) that there had "been an Admiral time out of mind, and by many other ancient Records "in the Reigns of *Henry* III. *Edward* I. and *Edward* II. is most manifest."

But the learned *Selden* [f] in his Notes upon *Fortescue*, tells us, *That in an ancient Manuscript* De l'Office de l'Admiralty, *translated into* Latin *by one* Tho. Rowghton, *calling it* De Officio Admiralitatis, *there are Constitutions often mentioned touching the Admiralty of* Henry I. Richard I. *King* John, *and* Edward I. which shews the great Antiquity of that Court.

And as to the *Jurisdiction* of the Court of *Admiralty*, not to enter upon the Disputes between the *Civilians* and the *common Lawyers* concerning the same; I shall now only observe to you, that it is allowed even by those *Statutes* that were made purposely to restrain the Jurisdiction of the Court of Admiralty, that that Court ought to have Cognizance of *all things done upon the main Sea* [g], *or Coasts of the Sea. And of the Death* [h] *of a Man, and of Maihem done in great Ships, being and hovering in the main Stream of great Rivers, only beneath the Bridge of the same Rivers nigh the Sea.*

And by the *Preamble* to the Statute of the 28 *H.* VIII. it is declared, [i] that *Traitors, Pirates, Thieves, Robbers, Murderers, and Confederates upon the Sea, were tried before the Admiral, or his Lieutenant or Commissary, after the Course of the Civil Law.*

But as appears further by the said *Preamble* that it was found inconvenient to try those Offenders before the *Admiral*;

Therefore by the said *Statute* this Court of *Admiralty Sessions* was appointed, whereby such Offenders were to be tried according to the *Course* of the *Common Law*, as if their Offences were committed on Land.

And now I shall proceed to speak of the *Crimes* cognizable in this Court. And particularly I shall enlarge upon the Crime of *Piracy* that will come before you.

The *Crimes* cognizable in this Court, and within the *Jurisdiction* of the same, by the express Words of the Statute [k] are all *Treasons, Felonies, Robberies, Murders, and Confederacies, committed in or upon the Sea, or in any other Haven, River, Creek, or Place where the Admiral or Admirals have or pretend to have Power, Authority, or Jurisdiction.*

There being only one of those Crimes, *viz. Robbery* or *Piracy*, that will come before you, I shall omit the rest, and only speak to that: wherein I shall shew you the Nature of the Offence, and the Heinousness thereof.

Now, as this is an Offence that is destructive of all Trade and Commerce between Nation and Nation; so it is the Interest of all Sovereign Princes to punish and suppress the same.

And the King of *England* [l] hath not only an *Empire* and *Sovereignty* over the *British* Sea, but also an undoubted *Jurisdiction* and Power, in concurrency with other Princes and States, for the Punishment of all *Piracies* and *Robberies* at *Sea*, in the most remote Parts of the World.

Now as to the *Nature* of the Offence: *Piracy* is a *Robbery* committed upon the *Sea*, and a Pirate is a *Sea Thief*.

Indeed, the Word *Pirata* as it derived from πειρᾶν, *transire, à transeundo mare*, was anciently taken in a good and honourable [m] Sense, and signified a *Maritime Knight*, and an *Admiral* or *Commander* at Sea; as appears by the several Testimonies and Records cited to that Purpose, by that learned Antiquary Sir *Henry Spelman* in his *Glossarium*. And out of him the same Sense of the Word is remarked by Dr. *Cowel*, in his [n] *Interpreter*; and by *Blount* in his [o] *Law Dictionary*. But afterwards the Word was taken in an ill Sense, and signified a *Sea-Rover* or *Robber*; either from the [p] *Greek* Word πεῖρα, *Deceptio, Dolus, Deceipt*; or from the Word πειρᾶν, *transire*, of their wandering up and down, and resting in no Place, but coasting hither and thither to do Mischief: And from this Sense, οἱ κατὰ θάλασσαν κακοῦργοι, Sea-Malefactors were called πειρᾶται, *Pirates*.

Therefore a *Pirate* is thus defined by my Lord *Coke* [q]; *This Word Pirate*, saith he, *in Latin* Pirata, *is derived from the* Greek *Word* πειράτης, *which again is fetched from* πειρᾶν à transeundo Mare, *of Roving upon the Sea: and therefore in* English *a Pirate is called, a Rover and Robber upon the Sea.*

Thus the *Nature* of the Offence is sufficiently set forth in the *Definition* of it.

As to the *Heinousness* or *Wickedness* of the *Offence*, it needs no Aggravation, it being evident to the Reason of all Men. Therefore a *Pirate* is called [r] *Hostis Humani Generis*, with whom neither Faith nor Oath is to be kept. And in our Law they are termed [s] *Brutes*, and [t] *Beasts of Prey:* and that it is lawful for any one that takes them, if they cannot with Safety to themselves bring them under some Government to be tried, to put them to Death.

And by the *Civil* Law any one may take from them their Ships or Vessels: so that excellent Civilian [u] Dr. *Zouch*, in his Book *De Jure Nautico*, saith, *In Detestation of Piracy, besides other Punishments, it is enacted, that it may be lawful for any one to take their Ships.*

And yet by the same *Civil* Laws, *Goods* taken by *Piracy* gain not any *Property* against the *Owners*. Thus in the *Roman Digests*, or *Pandects* of *Justinian* [w], it is said, *Persons taken by Pirates or Thieves, are nevertheless to be esteemed as free.*

And then it follows, [x] *He that is taken by Thieves, is not therefore a Servant of the Thieves, neither is Postliminy necessary for him.*

And the learned *Grotius*, in his Book *De Jure Belli ac Pacis*, [y] saith, *Those things which Pirates and Thieves have taken from us, have no need of Postliminy, because the Law of Nations never granted to them a Power to change the Right of Property: therefore Things taken by them, wheresoever they are found, may be claimed.*

And agreeable to the *Civil Law* are the Laws of [z] *England*, which will not allow that a taking Goods by *Piracy* doth divest the Owners of their *Property*, tho' sold at *Land*, unless sold in *Market overt*.

Before the Statute of the [aa] 25 *E.* III. *Piracy* was holden to be *Petit Treason*, and the Offence said to be done *contra Ligeantiæ suæ debitum*, for which the Offenders were to be drawn and hanged: but since that Statute the Offenders received Judgment as *Felons*.

And by the said Statute of 28 *H.* VIII. [bb] the Offenders are ousted of the *Clergy*.

But still it remains a *Felony* by the [cc] *Civil Law*; and therefore tho' the aforesaid Statute of 28 *H.* VIII. gives a *Trial* by the Course of the *Com-*

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[a] See *Godolph. Admir. Jurisd.* c. 4. p. 41. [b] *Godolph.* p. 24. [c] *Spelmanni Glossarium in voce Admiral.* p. 14. *usque ad* p. 17. [d] P. 215. *to* p. 230, And *Justice* his Laws of the Sea, *p.* 284. to *p.* 289. [e] *Coke on Littl.* l. 3. c. 7. Sect. 439. f. 260. b. [f] *Selden*'s Notes on *Fortescue*, p. 35, 36. [g] 13 *R.* 2. c. 5. p. 173. [h] See the Stat. 15 *R.* 2. *c.* 3. *p.* 180. 2 *H.* 4. *c.* 11. *p.* 193. 2 *H.* 5. *c.* 6. Sect. 2. *p.* 214. And see 13 *Car.* 2. *c.* 9. Art. 36. *p.* 1174. [i] 28 *H.* 8. *c.* 15. *p.* 486. [k] N° 3. [l] See Sir *Charles Hedges* his Charge at the Trial of *Dawson*, &c.

[m] *Pirata pro milite maritimo, ἀπὸ τοῦ πειρᾶν, i. e. transire vel pervagari. Asser. Menevens. Epist. in vit. Ælfredi—Rex Ælfredus jussit cymbas & galeas, i. e. longas naves, fabricari per Regnum, ut navali prælio hostibus adventantibus obviaret. Impositisque Piratis in illis, vias maris custodiendas commisit. Hoc sensu Archipiratam dici censeo pro nautarum præfecto, vel quem hodie Admirallum nuncupamus. In quadam enim Chartâ Regis Edgari Cœnobio Glastoniensi confectu, An. Dom.* 971. *testium unus, Martusin Archipiratam se nominat. Annal. Gisburnenses, in Will. Rufo, cap.* 1. *Robertus vero Comes (Normaniæ) attempt avit venire in Angliam cum magno exercitu; sed à Piratis Regis, qui curam Maris à Rege (Willielmo) susceperat, repulsus est. Spelman Glossar. in voce Pirata,* P. 460. *Vid. etiam Selden. Mare clauss.* l. 2. c. 10. p. 257. *Engl. & Godolph. Admir. Jurisd.* c. 3. p. 25.

[n] In the Word *Pirata.* [o] In the Word *Pirate.* [p] See *Ridley*'s View of the Civil Law, *p.* 2. *c.* 1. Sect. 3. *p.* 127.

[q] 3 *Inst. c.* 49. *p.* 113. And on *Littleton*, f. 391. a. And see *Bridal* his *Jus Criminis*, p. 70, 71. [r] *Coke*, 3 *Inst.* c. 49. p. 113. *Molloy de Jure Marit.* l. 2. c. 4. Sect. 1. p. 51. [s] See Laws of *Oleron*, c. 47. in *Godolph.* in *p.* 211. [t] *Molloy, ib.* Sect. 12. p. 57.

[u] *In odium Piratarum, præter alias pœnas, statutum est ut eorum navigia cuivis deripere liceat.* Zouch de Jure Nautico, *p.* 1. Sect. 10. *p.* 400.

[w] *A Piratis aut Latronibus capti liberi permanent.* D. l. 49. t. 15. 19. Sect. 2. p. 757.

[x] *Qui a Latronibus captus est, servus Latronem non est: nec Postliminium illi necessarium est.* Ib. N° 24.

[y] *Et quæ Piratæ aut Latrones nobis eripuerunt non opus habent Postliminio, quia jus gentium illis non concessit ut jus Domini mutare possint. Itaque res ab illis captæ ubicunque reperiuntur vindicari possunt.* Grot. de Jur. Bel. ac Pac. l. 3. c. 9. Sect. 16. p. 561.

[z] See 27 *E.* 3. *c.* 13. *p.* 128. 1 *Croke*, p. 685. *Anonym. Hobart*, p. 78, 79. Sir *R. Bingley*'s Case; and *Edmian* and *Smith*'s Case, 29 *C.* 2. 3 *Keble*, p. 744. *pl.* 11. *Bridal*'s *Jus. Crim.* p. 71. *Molloy*, *B.* 1. *c.* 4. Sect. 22, 23. p. 61, 62.

[aa] *Coke* 3 *Inst. c.* 49. p. 113. *Hale*, *P. C.* p. 77. *Bridall*, p. 71. *Molloy*, p. 56. *W. I.* his Law of *England* concerning Offences against the Crown, *p.* 288. *Hawkins* his *P. C. l.* 1. *c.* 37. Sect. 2. p. 98.

[bb] 28 *H.* 8. *c.* 15. Sect. 3. p. 487.

[cc] *Coke*, p. 112. *Hale*, p. 77. *Bridal*, p. 72. *Molloy*, B. 1. c. 4. Sect. 25, 26. p. 62.

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mon Law, yet it alters not the *Nature* of the Offence; and the *Indictment* muſt mention the ſame to be done *ſuper altum mare*, upon the *High Sea* [d], and muſt have both the Words *Felonicè* and *Piraticè*; and therefore a *Pardon* of all Felonies doth not extend to this Offence, but the ſame ought to be ſpecially named.

Thus having explained to you the *Nature* of the Offence, and the *Wickedneſs* thereof, as being deſtructive of Trade and Commerce; I ſuppoſe I need not uſe any Arguments to you, to perſuade you to a faithful Diſcharge of your Duty, in the bringing ſuch Offenders to Puniſhment.

And indeed, the *Inhabitants* of this *Province* have of late to their great *Coſt* and *Damages*, felt the Evil of *Piracy*, and the Miſchiefs and Inſults done by *Pirates*; when lately an *infamous Pirate* had ſo much Aſſurance as to lie at our *Bar*, in ſight of our *Town*, and to ſeize and rifle ſeveral of our Ships bound inward and outward.

And then had the Confidence to ſend in his inſolent *Demands* for what he wanted, with Threats of *murdering* our People he had on board him, if they were not complied with. Which was putting the Province under *Contribution*.

And the Succeſs he had in going off from our Coaſt with Impunity, encouraged [e] another of thoſe *Beaſts of Prey* to come upon our Coaſt, and take our *Veſſels*.

And this very *Company*, which will now be charged before you with the Crime of *Piracy*, their *Ringleader*, with many, if not all of the *Company*, were belonging to that *Crew*, which firſt inſulted us. And preſuming upon their former Succeſs and Impunity, had the Confidence to lie upon our *Coaſt* to fit their *Veſſel*, and to go on *Shore* at their Will and Pleaſure; deſigning, as we had had juſt Reaſon to ſuppoſe, that when all Things were fitted for their miſchievous Deſigns, to come again to cruize before our *Bar*, and take our *Veſſels*.

And therefore upon the receiving theſe Accounts, it was high Time for the *Government* to fit out a *Force* againſt the *Pirates*; and to endeavour to ſuppreſs them, in order to ſupport our *Trade* and *Commerce*, which otherwiſe muſt have been inevitably ruin'd.

And being under ſuch a Neceſſity of having Forces raiſed for that Purpoſe, we cannot ſufficiently commend and honour the *Zeal* and *Bravery* of thoſe Perſons, who ſo willingly and readily undertook that *Expedition* againſt the *Pirates*; and ſo gallantly acted their Parts when they *engaged* them.

But it will not be fit for me to ſay any more upon that *Subject*, by reaſon of the near Relation I ſtand in to the *Commander* in Chief in that Expedition; and who is known to you all to have ſo well acted his Part therein, that as it is not proper, ſo he needs not my Commendations.

But then I muſt not omit mentioning to you, that in this *Attack* made upon thoſe *Enemies of Mankind*, many of our People loſt their Lives in the Diſcharge of their Duty to their King and Country, and who fell by the Hands of thoſe inhuman and murdering *Criminals* which will now be brought before you. And the Blood of thoſe murdered Perſons will cry for Vengeance and Juſtice againſt theſe Offenders.

And therefore I hope the Conſideration of doing Juſtice to thoſe Perſons who were kill'd in the Service of their Country, will make you to uſe your Diligence in bringing the Criminals to Puniſhment, without which the Blood of thoſe Perſons will in a great meaſure be required at our Hands.

I need not expatiate to you upon the Heinouſneſs of the Sin of *Murder*; a Crime which carries its own natural Horror and Guilt along with it; ſo that it is altogether needleſs for me to aggravate it; and the manifeſt Injuſtice and Evil of which is evident to all Perſons, even by the Light of Nature: So that there is no Nation ſo barbarous, but by their univerſal Practice do conſent to the Equity and Juſtice of that antient Law of God, that, *Whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*, Gen. ix. 6.

Indeed, I freely grant, that the Greatneſs of the Crimes the Perſons are charged with, ſhould make you the more careful in your *Enquiry*, and to avoid any Error or Miſtake on both Extremes; that as you would not *condemn* the *Innocent*, ſo likewiſe that you do not *acquit* the *Guilty*, always remembring what the Wiſe Man ſaith, that *He that juſtifieth the Wicked, as well as he that condemneth the Juſt, even both are an Abomination to the Lord*, Prov. xvii. 15. See *Ch.* xxiv. *v.* 24.

I have only this to add, that you being a *Grand* Jury, your Buſineſs is not to try the Priſoners, but to conſider whether or no, by the Evidence, there is that probable Proof of the Perſons being guilty of the Fact charged upon them, as that they ought to be put upon their *Trial* for the ſame.

An Indictment found by you being virtually but a legal Accuſation, there being another Jury to paſs upon them.

But on the other Side, tho' your finding the Bill of Indictment is not concluſive to the Priſoners, but that they will have a *Trial*, and be heard in their own Defence before another Jury, which properly are ſaid to try the Priſoners, and paſs between the King and them upon their Lives or Deaths; nevertheleſs, you ought to be cautious and diligent in your Enquiry, and not raſhly and careleſsly find a Bill of Indictment againſt Perſons, and put them upon the Hazard of a Trial for a capital Crime.

But as to thoſe *Indictments* that will now be brought before you, I am very well aſſured the *Proofs* will be ſo clear and full, that you'll have no Reaſon to doubt the Truth of the Facts charged therein; and then I ſhall not queſtion your faithful Diſcharge of that great Duty and Truſt the Law hath repoſed in you, in bringing ſuch Criminals to Juſtice.

Thus having ſufficiently explained to you what is likely to come before you, I ſhall now diſmiſs you to your Buſineſs.

Then the Court adjourned till the Afternoon.

The Court met according to Adjournment.

And the *Grand* Jury being called over, a Bill of Indictment was given to them againſt *Stede Bonnet*, *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley*, for feloniouſly and piratically taking the Sloop *Francis* with her Goods, Capt. *Peter Manwareing*, Commander.

Then the Court adjourn'd till *Wedneſday* Morning.

Wedneſday, October the 29*th*, 1718.

The Court met according to Adjournment.

THE *Grand* Jury being called over, a Bill of Indictment was delivered to them againſt *David Hariot*, *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, for feloniouſly and piratically taking the ſaid Sloop *Francis*, with her Goods, Capt. *Peter Manwareing*, Commander.

And another Bill of Indictment againſt *William Eddy* alias *Wedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *Thomas Nichols*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*, for the ſame Fact, in taking Capt. *Manwareing*.

And another againſt *James Ribbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, *Zachariah Long*, and *James Wilſon*, for the ſame Fact.

Then the *Grand* Jury returned, finding *Billa Vera* on the Bill of Indictment againſt *Stede Bonnet* alias *Edwards* alias *Thomas*, *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley*, for feloniouſly and piratically taking the ſaid Sloop *Francis*, with her Goods, *Peter Manwareing* Commander.

On the Bill of Indictment againſt *David Hariot*, *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, for the ſame Fact, in taking Capt. *Manwareing*.

On the Bill of Indictment againſt *William Eddy* alias *Wedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *Thomas Nichols*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*.

As alſo a Bill of Indictment againſt *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, *Zachariah Long*, and *James Wilſon*, both for the ſame Fact.

Then the Court proceeded to arraign *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley*, upon the Indictment, for feloniouſly and piratically taking the Sloop *Francis*, *Peter Manwareing*, Commander.

Who all pleaded Not Guilty.

The Court then delivered another Bill of Indictment to the *Grand* Jury againſt *Stede Bonnet* alias *Edwards* alias *Thomas*, *David Hariot*, *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayley*, *Neal Paterſon*, *John William Smith*, *Thomas Carman*, and *John Thomas*, for feloniouſly and piratically taking the Sloop *Fortune*, with her Goods, Capt. *Thomas Read* Commander.

Another Bill of Indictment againſt *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *James Wilſon*, *John Lopez*, and *Zachariah Long*, for the ſame Fact, in taking Capt. *Read*.

And another againſt *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* alias *Wedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, and *Thomas Nichols*, for the ſame Fact.

Then the Court proceeded to arraign *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, for feloniouſly and piratically taking the Sloop *Francis*, with her Goods, Capt. *Peter Manwareing*, Commander.

Who all pleaded Not Guilty.

Then the Court adjourned till *Thurſday* Morning.

Thurſday, October the 30*th*, 1718.

The Court met according to Adjournment.

THEN the *Grand* Jury returned, finding *Billa Vera* on the Bill of Indictment againſt *Stede Bonnet* alias *Edwards* alias *Thomas*, *David Hariot*, *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayley*, *Neal Patterſon*, *John William Smith*, *Thomas Carman*, and *John Thomas*, for taking the ſaid Sloop *Fortune*, with her Goods, Capt. *Thomas Read* Commander.

On the Bill of Indictment againſt *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *James Wilſon*, *John Lopez*, and *Zachariah Long*, for the ſame Fact, in taking Capt. *Read*.

And on the Bill of Indictment againſt *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* alias *Wedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, and *Thomas Nichols*, for the ſame Fact.

Then the Court proceeded to the *Trial* of *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley*.

Clerk. Set *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, and *Job Bayley* to the Bar.

Then the *Petit Jury* were called over.

Clerk. You the Priſoners at the Bar: Theſe good Men that were called laſt, and have here appeared, are thoſe that ſhall paſs between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore, if you or any of you will challenge them or any of them as they come to the Book to be ſworn, and before they be ſworn, you may, and you ſhall be heard.

Then the Petit Jury were ſworn, whoſe Names were as followeth.

Timothy Bellamy, Foreman,	*Benjamin Dennis.*	*John Lee.*
George Ducket.	*Hugh Durſey.*	*Thomas Bee.*
John Rivers.	*Thomas Chambers.*	*John Barton.*
William Sheriffe.	*Daniel Townſend.*	*Richard Fairchild.*

Cryer. *O Yes*, If any Man can inform the Judge of this Vice-Admiralty for the Vice-Admiralty Juriſdiction of this Province, and the reſt of the Commiſſioners of this Admiralty-Seſſions, or the Attorney-General of this Inqueſt to be taken between our Sovereign Lord the King, and the Priſoners at the Bar, or any of them, of any Treaſon, Piracy, Murder, or other Felony committed or done by the Priſoners at the Bar, or any of them, let them come forth, and they ſhall be heard; the Priſoners now ſtand at the Bar upon their Deliverance.

Then the Priſoners were ſeverally bid to hold up their Hands (which they did.)

[d] *Hawkins*, Ib. Sect. 10. p. 100.

[e] *Vane.*

Then the *Clerk* charged the Jury with them thus:

Clerk. You Gentlemen of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge.

Then the Indictment was read, as followeth.

" THE Jurors for our Sovereign Lord the King do upon their Oath " preſent, That *Stede Bonnet* alias *Edwards* alias *Thomas*, late of " *Barbadoes*, Mariner; *Robert Tucker*, late of the Iſland of *Jamaica*, " Mariner; *Edward Robinſon*, late of *Newcaſtle* upon *Tine*, Mariner; " *Neal Paterſon*, late of *Aberdeen*, Mariner; *Job Bailey* alias *Beely*, late " of *London*, Mariner; *William Scot*, late of *Aberdeen*, Mariner; the " Second Day of *Auguſt* in the Fifth Year of the Reign of our Sovereign " Lord *George*, by the Grace of God of *Great Britain*, *France*, and *Ire-* " *land*, King, Defender of the Faith, *&c.* by Force, *&c.* upon the " High Sea, in a certain Place called *Cape James* alias *Cape Inlopen*, about " two Miles diſtant from the Shore, in the Latitude of Thirty-nine, or " thereabouts, and within the Juriſdiction of the Court of *Vice-Admiralty* " of *South Carolina*, did piratically and felonioufly ſet upon, break, " board, and enter a certain Merchant-Sloop, called the *Francis*, *Peter* " *Manwareing* Commander, then being a Sloop of certain Perſons (to " the Jurors aforeſaid unknown) and then and there piratically and fe- " loniouſly did make an Aſſault, in and upon the ſaid *Peter Manwareing*, " and other his Mariners, (whoſe names to the Jurors aforeſaid are un- " known) in the ſame Sloop, againſt the Peace of God, and of our " ſaid now Sovereign Lord the King, then and there being, piratically " and feloniouſly did put the aforeſaid *Peter Manwareing*, and others his " Mariners of the ſame Sloop, in the Sloop aforeſaid then being, in cor- " poral Fear of their Lives, then and there in the Sloop aforeſaid, upon " the *High Sea*, in the Place aforeſaid, called *Cape James* alias *Cape In-* " *lopen*, about two Miles diſtant from the Shore, in the Latitude of " Thirty-nine or thereabouts, as aforeſaid; and within the Juriſdiction " aforeſaid, *piratically* and *feloniouſly* did ſteal, take and carry away the " ſaid Merchant-Sloop, called the *Francis*, and alſo Twenty-ſix Hogſ- " heads, three Tierces, and three Barrels of Rum, of the Value of Two " Hundred and Sixty-three Pounds Six Shillings and Eight-Pence, cur- " rent Money of the Iſland of *Barbadoes*; Twenty-five Hogſheads of " Moloſſes, of the Value of One Hundred Thirty-eight Pounds Thir- " teen Shillings and Eight-Pence, current Money of the Iſland of *Ante-* " *goa*; three Barrels and three Tierces of Sugar, of the Value of Thirty- " three Pounds, like current Money of *Antegoa*; two Pockets of Cot- " ton, of the Value of Fifty Shillings, like current Money of *Ante-* " *goa*; and about Sixty Weight of Indigo, of the Value of Nine Pounds, " like current Money of *Antegoa* aforeſaid; one new Cable, of the Value " of Fifty Pounds, Sterling Money of *Great Britain*; nineteen *French* " or *Spaniſh* Piſtoles; two Half Moidores of Gold; fourteen *French* " Crowns; one Pair of Silver Buckles, Value Ten Shillings, Sterling " Money of *Great Britain*; and one Silver Watch, of the Value of " Seven Pounds, Sterling Money of *Great Britain* aforeſaid; the " Goods and Chattels of certain Perſons (to the Jurors aforeſaid un- " known) then and there, upon the *High Sea* aforeſaid, in the afore- " ſaid Place, called *Cape James* alias *Cape Inlopen*, about two Miles " diſtant from the Shore, in the Latitude of Thirty-nine or thereabouts, " as aforeſaid, and within the Juriſdiction aforeſaid; being found in the " aforeſaid Sloop, in the Cuſtody and Poſſeſſion of the ſaid *Peter Man-* " *wareing*, and others his Mariners of the ſaid Sloop, and from their " Cuſtody and Poſſeſſion then and there, upon the *High Sea* aforeſaid, " in the Place aforeſaid, called *Cape James* alias *Cape Inlopen*, as afore- " ſaid, and within the Juriſdiction aforeſaid, againſt the Peace of our " now Sovereign Lord the King, his Crown and Dignity."

Clerk. Upon this Indictment they have been arraign'd: Upon their Arraignment they have pleaded *Not Guilty*; and for their Trial have put themſelves upon God and their Country, which Country you are. Your Charge is to enquire whether they, or any of them, are guilty of the Felony and Piracy of which they ſtand indicted, in Manner and Form as they ſtand indicted, or not guilty. If you find them, or any of them, guilty, you ſhall then enquire what Goods or Chattels, Lands or Tenements, they, or any of them, had at the Time of the Felony of Piracy committed, or at any time ſince. But if you find them not guilty, *&c.* And hear your Evidence.

Then *Richard Allen*, Eſq; Attorney-General, ſpake as followeth:

May it pleaſe your Honours, and you Gentlemen of the Jury,

THE Nature of the Crime, *Piracy*, for which the Priſoners at the Bar are now to be tried, and the Statute of the Twenty-eighth of *Henry* the Eighth, intitled, *For Pirates*, has been fully and learnedly laid open and explain'd by the Judge in his Charge to the Grand Jury, (at which I am ſenſible moſt, if not all of you, were preſent.) Therefore I ſhall ſay but little more on that Head; and only remark, that it is a Crime ſo odious and horrid in all its Circumſtances, that thoſe who have treated on that Subject have been at a loſs for Words and Terms to ſtamp a ſufficient Ignominy upon it: Some calling them Sea-Wolves; others Beaſts of Prey, and Enemies of Mankind, with whom neither Faith nor Treaty is to be kept. And all this is but a faint Deſcription of theſe Miſcreants: For Beaſts of Prey, though fierce and cruel in their Natures, yet, as has been obſerv'd of them, they only do it to ſatisfy their Hunger, and are never found to prey upon Creatures of the ſame Species with themſelves. Add hereto, that thoſe wild Beaſts have neither rational Souls, Underſtanding, nor Reaſon to guide their Actions, or to diſtinguiſh between Good or Evil. But Pirates prey upon all Mankind, their own Species and Fellow-Creatures, without Diſtinction of Nations or Religions; *Engliſh*, *French*, *Spaniards* and *Portugueſe*, and *Moors* and *Turks* are all alike to them: For Pirates are not content with taking from the Merchants what Things they ſtand in need of, but throw their Goods over-board, burn their Ships, and ſometimes bereave them of their Lives for Paſtime and Diverſion, as we have had frequent Inſtances of late, and prove deſtructive to all Trade and Commerce in general. And if a Stop be not put to thoſe Depredations, and our Trade no better protected, not only *Carolina*, but all the *Engliſh Plantations* in *America* will be totally ruin'd in a very ſhort Time.

The Pirates are become very numerous and formidable in theſe Parts: The Trade of *America* is no ſmall Advantage to the Crown of *Great Britain*. *Jamaica*, by Relation, is ruin'd by thoſe Pirates already; and other Parts of *America* have ſuffered moſt grievouſly, and are like to ſhare in the ſame Fate. I know not what is done at home, therefore I can't ſay no Care at all has been taken of us: But this I do ſay, no effectual Care has been taken to ſuppreſs thoſe Pirates. And if a true Repreſentation of theſe Matters were laid before his Majeſty, we could not but hope for ſome Redreſs.

'Tis not my Buſineſs to call in queſtion the Conduct of the *Spaniards*, in breaking up the *Bay* of *Campeachy*. They could not but think the turning away ſuch a Number of profligate Wretches, as were got together, muſt put them on a worſe Courſe of Life: They have done them more Harm ſince than cutting their Log-Wood; for nine Parts in ten of them turned Pirates, and have lived upon robbing and plundering them and us ever ſince that Time. That, and the great Expectations which ſo many had from the *Bahama* Wrecks, where not one in ten proved ſucceſsful, gave Birth and Increaſe to all the Pirates in thoſe Parts, *Engliſh*, *French*, and *Spaniards*.

I juſt now inſtanced *Jamaica* as a Place that is almoſt ruin'd by the Pirates: But what Occaſion have we to look abroad? What a grievous Dilemma were we ourſelves reduced to in the Month of *May* laſt? When *Thatch*, the Pirate, came and lay off this Harbour with a Ship of Forty Guns mounted, and One Hundred and Forty Men, and as well fitted with warlike Stores of all Sorts as any Fifth-Rate Ship in the Navy, with three or four Pirate Sloops under his Command. And after having taken Mr. *Samuel Wragg*, one of the Council of this Province, bound out from this Place to *London*, as alſo one Mr. *Marks*, and ſeveral other Veſſels going out and coming into this Harbour, they plundered thoſe Veſſels going home to *England* from hence of about Fifteen Hundred Pounds Sterling, in Gold and Pieces of Eight. And after that, they had the moſt unheard-of Impudence to ſend up one *Richards*, and two or three more of the Pirates with the ſaid Mr. *Marks*, with a Meſſage to the Government, to demand a Cheſt of Medicines of the Value of Three or Four Hundred Pounds, and to ſend them back with the Medicines, without offering any Violence to them, or otherwiſe they would ſend in the Heads of Mr. *Wragg* and all thoſe Priſoners they had on board; and *Richards*, and two or three more of the Pirates, walked upon the Bay, and in our public Streets, to and fro in the Face of all the People, waiting for the Governor's Anſwer. And the Government, for the Preſervation of the Lives of the Gentlemen they had taken, were forced to yield to their Demands. And ſome of thoſe very Priſoners now at the Bar were Part of that *Thatch*'s and *Bennet*'s Crew. Afterwards one *Vaughan*, another noted Pirate, came and lay off our Bar, and ſent in another inſolent Meſſage. This rouſed our Spirits; and though reduced to a very low Ebb by reaſon of the Calamities of the *Indian* War, and long and heavy Taxes, we could not bear thoſe Inſults, but ſent out a Force to ſuppreſs them. However, we muſt own, that that honourable Gentleman, Colonel *William Rhett*, was the chief, if not the firſt Promoter of fitting out two Sloops to take ſome of thoſe Pirates. The Government readily fell in with the Meaſures propoſed: Colonel *Rhett* went in Perſon, accompanied by many Gentlemen of the Town, animated with the ſame Principle of Zeal and Honour for our public Safety, and the Preſervation of our Trade.

'Tis probable *Vaughan* the Pirate, before Things could be got in readineſs, might have ſome Intimation of our Deſign, and made his Way off the Coaſts, though all poſſible Care was taken to prevent it. However, Col. *William Rhett* and the reſt of the Gentlemen were reſolv'd not to return without doing ſome Service to their Country, and therefore went in queſt of a Pirate they had heard lay at Cape *Fear*. About the latter End of *September* they came up with and engaged them: The *Fight* laſted above *ſix* Hours, and the Pirates were forced to ſurrender, tho' the Colonel's Veſſel running a-ground, lay under all the Diſadvantages in the World, as you are all ſenſible.

The Piratical Crew at the Bar, and now to be tried, in the Engagement, killed *ten* or *eleven* of our Men on the Spot, and wounded about *eighteen*, ſeveral of which died ſince they came on Shore here.

This Pirate-Sloop was commanded by that noted Pirate Major *Stede Bonnet*, and formerly called the *Revenge*, now the *Royal James*, and was one of thoſe very Sloops that lay off the Harbour of *Charles-Town* about *May* laſt, when they took Mr. *Wragg* Priſoner, and ſent up their inſolent Demands to the Governor, as I have mentioned before.

We muſt all own, that the Undertaking and Deſign of fitting out thoſe Sloops after theſe Pirates, was bold and noble, and carried on with Prudence and Courage, and crown'd with Victory and Succeſs; and I hope Col. *Rhett*, and the reſt of the Gentlemen that were with him, will meet with both Thanks and Rewards ſuitable to their great Merit, and the Credit and Reputation they have brought to this Province by this gallant Action.

But ſee how Juſtice follows thoſe wicked Offenders! They are now brought to ſuffer in that Country which they ſo lately inſulted. 'Tis true, *Bonnet* had not the ſole Command of his Sloop when he lay off the Bar, but was turned out ſome time before by *Thatch*, but that was not *Bonnet*'s Fault.

Bonnet's Eſcape out of Priſon is no ſmall Misfortune to us: Firſt, becauſe ſome will be reproached with conniving at his Eſcape that had no hand in it, and though they be never ſo innocent: Secondly, by reaſon of the ill Conſequence that may happen to many Merchants in caſe *Bonnet* makes a Head again, and particularly to the Merchants of this Province.

I hope the great Reward of Seven Hundred Pounds offer'd by the Government for taking *Bonnet* and his *Maſter*, will make the People vigilant in apprehending them. I'm ſure the Government gave frequent and ſtrict Charges to the Marſhal for ſecuring him, and ordering Centinels to be placed early in the Evening; and immediately on his Eſcape, ſet up all Night, ſending *Hue and Cries* and *Expreſſes* by *Land* and by *Water* throughout the whole Province; ſo that it is to be hop'd he will be retaken before this Service be over. I am ſenſible *Bonnet* has had ſome Aſſiſtance in mak-

ing his Escape; and if we can discover the Offenders, we shall not fail to bring them to exemplary Punishment.

And now, Gentlemen of the Jury, I must remind you of your Duty on this Occasion. You are bound by your Oaths, and are oblig'd to act according to the Dictates of your Consciences, to go according to the Evidence that shall be produced against the Prisoners, without Favour or Affection, Pity or Partiality to any one of them, if they appear to be guilty of those Crimes they are charg'd with. And you are not allowed a Latitude of giving in your Verdict according to Will and Humour.

I am sorry to hear some Expressions drop from private Persons (I hope there is none of them upon the Jury) in favour of the Pirates, and particularly of *Bonnet*; that he is a Gentleman, a Man of Honour, a Man of Fortune, and one that has had a liberal Education. Alas, Gentlemen, all these Qualifications are but several Aggravations of his Crimes. How can a Man be said to be a Man of Honour, that has lost all Sense of Honour and Humanity, that is become an Enemy of Mankind, and given himself up to plunder and destroy his Fellow-Creatures; a common Robber, and a Pirate?

Nay, he was the *Archipirata*, as it is now taken in the worst Sense, or the chief Pirate, and one of the first of those that began to commit those Depradations upon the Seas since the last Peace.

I have an Account in my Hand of above Twenty-eight Vessels taken by him, in Company with *Thatch*, in the *West Indies*, since the Fifth Day of *April* last; and how many before, No-body can tell.

His Estate is still a greater Aggravation of his Offence, because he was under no Temptation of taking up that wicked Course of Life.

His Learning and Education is still a far greater; because that generally softens Men's Manners, and keeps them from becoming savage and brutish; but when these Qualifications are perverted to wicked Purposes, and contrary to those Ends for which God bestows them upon Mankind, they become the worst of Men, as we see the present Instance, and more dangerous to the Commonwealth.

Gentlemen, most of the said *Bonnet*'s Crew, and particularly the Prisoners at the Bar, to wit, *Edward Robinson*, *Robert Tucker*, *William Scot*, *Job Bayley*, and *Neal Paterson*, are old Offenders, and were with *Thatch* and *Bonnet* at the taking of all, or most of these Vessels I have mentioned, and were either with *Bonnet* or *Thatch* when they lay off our *Bar* in *May* last, and sent up that insulting Message, and were in the Engagement against Col. *Rhett*, so that there is hardly any room left for the least Pity or Compassion: Who can think of it, when you see your Fellow-Townsmen, some dead, and others daily bleeding and dying before your Eyes?

But the particular Fact or Act of Piracy for which the Prisoners at the Bar are now to be tried, is set forth in the Indictment; for that they the said *Edward Robinson*, *Robert Tucker*, *William Scot*, *Job Bayley*, and *Neal Paterson*, the *second* Day of *August*, in the *fifth* Year of his Majesty's Reign, by Force and Arms, upon the high Sea, in a certain Place called *Cape James* alias *Cape Inlopen*, in the Latitude of *Thirty-nine*, did *piratically* and *feloniously* set upon, board, break and enter a certain Merchant Sloop called the *Francis*, *Peter Manwareing* Commander, putting the said *Manwareing* and others in corporal Fear of their Lives; and then and there piratically and feloniously did take and carry from the said *Manwareing* out of the said Sloop, Twenty-six Hogsheads and Three Tierces, and Three Barrels of Rum, of the Value of Two Hundred Sixty-three Pounds Six Shillings and Eight-Pence, and other the Goods mentioned in the Indictment, of the Value of Five Hundred Pounds.

We shall call the Evidence, and prove the Fact fully and clearly upon them.

Take Notice, Gentlemen, that the boarding, breaking, and entry of one, if the rest were present and consenting, is the boarding, breaking, and entry of all the rest.

We shall prove, that all the Prisoners at the Bar were at the taking of *Manwareing*'s Sloop, that they all bore Arms, and that they all shared a few Days before they came to Cape *Fear*: and if so, we doubt not but you'll find them *Guilty*, and discharge that Duty the Country expects from you.

Mr. *Thomas Hepworth*. *May it please your Honours*, and you Gentlemen of the *Jury*, The Crime the Prisoners now stand charged with, is *Piracy*, which is the worst Sort of Robbery, both in its Nature and its Effects, since it disturbs the Commerce and Friendship betwixt different Nations, and if left unpunished, involves them in War and Blood. What Calamities and Ruin they carry along with them, no Person can be a Stranger to; so that those that bring not such Criminals to Judgment, when it lies in their Power, and is their Duty to do so, are answerable in a great Measure, before God and Man, for all the fatal Consequences of such Acquitals, which bring a Scandal on the public Justice, and are often attended with public Calamities.

It is not therefore, Gentlemen, to be supposed that wise or honest Men, (and there is none who would willingly be thought otherwise) who love their Country, and wish its Peace and Prosperity, would be guilty in that kind.

What has been said by the King's Attorney or myself upon this unexpected Occasion, I hope will not be looked upon as intended to influence any of the Jury. I am sure it is far from being so designed; Religion, Conscience, Honour, common Honesty, Humanity, and all Laws forbid such Methods. There is no doubt but the Judges as well as the Jurymen best discharge their Duty when they proceed without Favour or Affection, Hatred or Ill-will, or any partial Respect whatsoever: Malice and Favour (two great Enemies to Justice) are to be excluded all Courts of Judicature as too partial.

Every Man ought to be extremely tender of such a Person as he has Reason to believe is innocent; but it should be considered likewise, on the other Side, that he who brings a notorious Pirate or common Malefactor to Justice, contributes to the Safety and Preservation of the Lives of many, both bad and good; of the good, by Means of the Assurance of Protection; and of the bad too, by the Terror of Justice. It was upon this Consideration that the *Roman* Emperors, in their Edicts, made this Piece of Service for the public Good as meritorious as any Act of Piety or religious Worship.

Our own Laws demonstrate how much our Legislators, and particularly how highly that great Prince King *Henry* V. and his Parliament, thought *England* concerned in providing for the Security of Traders, and scouring the Seas of Rovers and Free-booters. Certainly there never was any Age wherein our Ancestors were not extraordinary zealous in that Affair; looking upon it, as it is and ever will be, the chief Support of Navigation, Trade, Wealth, Strength, Reputation and Glory of the *English* Nation.

Gentlemen, our Concern, as our Trade is, ought in Reason to be rather greater than that of our Fore-fathers: We want no Manner of Inducements, no Motives to stir us up, whether we consider our Interest or Honour. We have not only the sacred Word, but also the glorious Acts of the best of Kings, which sufficiently manifest to us, that the Good and Safety of the *English* Nation is the greatest Care of his Life. Let every Man therefore who pretends to any Thing of a true *English* Spirit, readily and cheerfully follow so good, so great, so excellent an Example, by assisting and contributing to the utmost of his Power and Capacity at all Times towards the carrying on his noble and generous Designs for the common Good; and particularly at this Time, by doing all he can, to the End that by the Administration of equal Justice, the Discipline of the Seas, on which the Good and Safety of the *English* Nation, and these Parts of *America* more especially, entirely depends, may be supported and maintained.

The Civil Law terms the Pirates *Beasts of Prey*, with whom no Communication ought to be kept; neither are Oaths or Promises made to them binding. And by the Law-Marine the Captors may execute such Beasts of Prey immediately, without any Solemnity of Condemnation, they not deserving any Benefit of the Law.

I believe, Gentlemen, that no greater Motives can be urged to spur you on in your Duty, than to desire you to reflect and consider how long our Coasts have been infested with Pirates (for the Name of Men they do not deserve), and how many Vessels they have taken and pillag'd belonging to this Place, as well as Multitudes of others belonging to divers Parts of his Majesty's Dominions; and how many poor Men in whose Blood they have imbru'd their Hands with the greatest Inhumanity imaginable, and how many poor Widows and Orphans they have made, and how many Families they have ruin'd, and how long they have gone on in their abominable Wickedness: Nay, do but consider how those very Pirates lately insulted this Government, when they sent for Medicines, threatening to destroy our Vessels and Men in case of Refusal; nay, since these have accepted of Certificates from the Government of *North Carolina*, like Dogs to their Vomits they have returned to their old detestable way of living, and since taken off these Coasts Thirteen Vessels belonging to *British* Subjects.

I believe you can't forget how long this Town has laboured under the Fatigue of watching them, and what Disturbances were lately made with a Design to release them, and what Arts and Practices have been lately made use of and effected for the Escape of *Bonnet* their Ringleader; the Consideration of which shews how necessary it is that the Law be speedily executed on them to the Terror of others, and for the Security of our own Lives, which we were apparently in Danger of losing in the late Disturbance, when under a Notion of the Honour of *Carolina*, they threaten'd to set the Town on Fire about our Ears.

We shall now call our Witnesses, who will relate to you what enormous and horrid Crimes the Prisoners at the Bar have committed in the Prosecution of the Fact laid in the Indictment.

Clerk. Call *Ignatius Pell* the Boatswain. Who appeared and was sworn.

Mr. *Hepworth*. Do you know the Prisoners at the Bar?

Ig. Pell. I know them all very well.

Mr. *Hepworth*. Please to give the Court an Account what Vessels were taken after you came from *North Carolina*.

Ig. Pell. I shall begin before that Time. We came from the Bay of *Honduras*, and from thence to *Providence*, after which we took several Vessels, and then we came and lay off this Bar, where we to took Five Vessels.

Judge *Trott*. Did all the Prisoners come from the Bay of *Honduras*?

Ig. Pell. All except *Robert Tucker*; he came out of a Sloop belonging to *Bermuda*; after that we took a *Brigantine*, out of which we took fourteen Negroes. After we had discharged the Brigantine, we set sail and went to *Topsail-Inlet* at *North Carolina*, where the Ship was run ashore and lost, which *Thatch* caused to be done. After we had been there some Time, Capt. *Thatch* came aboard, and demanded all our Arms, and took our best Hands and all our Provision, and all that we had, and left us.

Att. Gen. Were all these Men sent aboard of Major *Bonnet* immediately, or no?

Ig. Pell. No, Sir, they were put ashore upon an Island.

J. *Trott*. How came they on board the *Revenge*?

Ig. Pell. The Boat was sent off to fetch them aboard.

Pris. Major *Bonnet* came with the Boat, and told us, as we were on a Marroon Island, that he was going to *St. Thomas*'s to get a Commission from the Emperor to go against the *Spaniards* a Privateering, and we might go with him or continue there: so we having nothing left, was willing to go with him.

Att. Gen. You say all were on Shore, and all might have gone up into the Country; pray what Constraints were any of you under?

Ig. Pell. Sir, none; when we left *Topsail-Inlet*, it was with a Design to go to *St. Thomas*'s for the Emperor's Commission to go against the *Spaniards*; but the first Vessel we saw we gave Chace to, and came up with her.

Mr. *Hepworth*. What did you take out of that Vessel?

Ig. Pell. We took some Provisions out of her. After we had discharged her, we saw another, which we chaced and took.

Att. Gen. Were all these Men aboard and in Arms at the same time?

Ig. Pell. Yes, Sir, all were in Arms: So after we had taken some Provisions out of her, then we discharged her. Next Day we saw two Sloops bound to *Bermuda*, which we took. The next Day we gave Chace to another, and about Seven or Eight of the Clock we came up with them.

J. *Trott*. I suppose you were always ready for an Engagement; so that they had their Arms always in Order?

Ig. Pell. I know nothing to the contrary.

J. *Trott*. Was *Tucker* there in particular?

Ig. Pell.

Ig. Pell. He was, to be ſure.

J. *Trott.* Go on.

Ig. Pell. Then we gave Chace to a Ship bound and we came up with her, in which were ſome Negroes. We left three Negroes on Board, and two White Men, and ſent three Hands from the *Revenge*: But we ſeeing two Sloops more we ſtood after them, and the other turn'd Tail, and we never ſaw them more: So we came up with the Sloop, out of which we took thirty Barrels of Beef, ſome Butter, and other Proviſion.

Mr. *Hepworth.* What did you return in the room of theſe Goods?

Ig. Pell. Some *Moloſſes* that we had on board Major *Bonnet*'s Sloop, after we had diſcharged theſe Sloops. Next Day we took a Ship and a Schooner, which Major *Bonnet* took with him.

Mr. *Hepworth.* Did you take no Plunder out of thoſe?

Ig. Pell. The chief was Proviſions. Then we ſailed in Company; and the next Day we came to the Capes of *Virginia*, where we met with two Veſſels bound for *Glaſgow* in *Scotland*, out of which we took Proviſions and ſome *Tobacco*. And after we had diſcharged them we ſailed for Cape *James*; and after we had been at Anchor ſome Time, we ſaw a Sloop, which was Capt. *Manwareing*: We let down our Dory, and ſent ſome Hands on board; and in a little Time after they came on board the *Revenge* with Captain *Manwareing*.

Att. Gen. Were all the Priſoners on board *Manwareing*'s Sloop; or had they all their Arms ready when *Manwareing* was taken?

Ig. Pell. I cannot ſay that they were all on board; but they had all their Arms ready.

J. *Trott.* Did they all appear forward and active? Did none of them ſhow themſelves diſſatisfied or unwilling to act at that Time?

Ig. Pell. No, I don't know but one was as forward and as willing to act as the other; all of them had their Arms ready.

J. *Trott.* Well, how did you proceed after Captain *Manwareing* was taken?

Ig. Pell. Next Day we haled the Schooner alongſide of Captain *Manwareing*'s Sloop, and hoiſted out ſeveral Hogſheads of Moloſſes, and put on board the Schooner.

Mr. *Hepworth.* What became of the Schooner afterwards?

Ig. Pell. After we put *Reeves*'s Wife on board, and Captain *Read*'s Son, we ſent them on Shore.

Att. Gen. How long was Captain *Manwareing* a Priſoner?

Ig. Pell. About ten Weeks.

Att. Gen. Was not there more Goods taken out of *Manwareing*'s Sloop? What became of them? Did you not ſhare them?

Ig. Pell. Yes, we ſhared a little before we came to Cape *Fear*.

Att. Gen. Did all the Priſoners at the Bar receive their Shares?

Ig. Pell. Yes, Sir; I know nothing to the contrary.

J. *Trott.* They did not refuſe their Shares, none of them, did they?

Ig. Pell. No.

Clerk. Have any of you any Queſtions to aſk the King's Evidence? *Robert Tucker*, have you any?

Priſoner. No, Sir.

Clerk. Edward Robinſon, have you?

Priſoner. No, Sir.

Mr. *Hepworth.* May it pleaſe your Honours, we will proceed to call another Evidence.

Clerk. Call Capt. *Thomas Read.* Who appeared, and was ſworn.

Mr. *Hepworth.* Capt. *Read*, pleaſe to look upon the Priſoners at the Bar, if you know them.

Capt. *Read.* I know them all very well.

Mr. *Hepworth.* Pleaſe to give an Account to the Court how you was taken, and alſo of the taking of Capt. *Manwareing*.

Capt. *Read.* The Sloop *Revenge* was at an Anchor, and the Schooner lay alongſide of her. I was then a Priſoner on board the Sloop *Revenge*. In the Evening we ſaw a Sloop coming into the Bay, and Major *Bonnet* ſent off five Hands with the Dory; and about an Hour after they came on board the *Revenge*, and brought Capt. *Manwareing*. After they brought him on board, Major *Bonnet* demanded his Papers, and he gave them to him. He aſked him from whence he came? He anſwered, from *Antegoa*, and bound for *Boſton*. He aſk'd him what he had on board? He told him: But it being Night, he ſaid but little more to him: Next Morning they brought the Sloop and haled alongſide the Schooner; and I ſaw them hoiſt out ſeveral Hogſheads out of the Sloop and put on board the Schooner. And I heard Major *Bonnet* ſay the next Day, that there were twenty-one Hogſheads; and that he had ordered Pitch and Tar to be put on board the Sloop, and in the Evening they took the Foreſail and Mainſail of the Schooner, and ſailed for Cape *Fear*.

J. *Trott.* You look upon all thoſe Men as belonging to Major *Bonnet*, and they were all active in the taking of *Manwareing*?

Capt. *Read.* I did not ſee but one acted as the other did.

J. *Trott.* You did not look upon them to be Priſoners, like you and your Men?——Capt. *Read.* No, Sir.

J. *Trott.* Do you know any thing of their *ſharing*? Did they all take their Shares?

Capt. *Read.* I know nothing of that; for we were all in the Round-Houſe, and were not admitted among them at that Time.

Mr. *Dean.* Did you ſee them have their Shares each of them?

Capt. *Read.* I will not ſay I ſaw them have every Man his particular Share; but they were all together when they did ſhare.

Clerk. Would any of you aſk the King's Evidence any Queſtion?

Priſoners. We deſire nothing but that he would ſpeak the Truth.

Mr. *Hepworth.* May it pleaſe your Honours, we ſhall proceed to call another Evidence, which is Capt. *Peter Manwareing*.

Clerk. Call Capt. *Peter Manwareing*. Who appeared, and was ſworn.

Mr. *Hepworth.* Capt. *Manwareing*, do you know the Priſoners at the Bar?

Capt. *Manwareing.* I know them very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account of your being taken by them.

Capt. *Manwareing.* When they came on board us we were at an Anchor. About Eight or Nine of the Clock in the Evening we ſaw the Canoo coming: I ordered my Man to hale them. He aſked from whence they came, and what Sloops they were? They anſwered, Capt. *Thomas Richards* from *St. Thomas*'s, and Capt. *Read* from *Philadelphia*. So we were glad to hear of it; ſo hoped all was well. But as ſoon as they came up the Shrowds, they clapp'd all Hands to their Cutlaſhes. Then I ſaw we were taken: And I ſaid, Gentlemen, I hope, as you are *Engliſhmen*, you'll be merciful, for you ſee we have nothing to defend ourſelves. They told us they would if we were Civil. So I was ordered on board the *Revenge* with two of their Men. So when I came on board, Major *Bonnet* deſired me to come under the Auning. He demanded my Papers. I gave them to him. So he told me I muſt lie as well as I could. Next Day Morning *Robert Tucker* came to me, and aſked me what I had on board? and told me, if I did not tell the Truth, it ſhould be the worſe for me. I told him I had ſome Moloſſes, Sugar, and Rum. Then he aſked me concerning my Paſſengers, what Money they had? I told him I never examined Paſſengers what Money they had. So then Major *Bonnet* ordered them to come and lie alongſide the Schooner; but what was done till then on board my Sloop I cannot tell. But then they took out the Moloſſes and the Rum, and put on board the Schooner.

Att. Gen. How did they behave themſelves with reſpect to yourſelf afterwards?

Capt. *Manwareing.* They were civil to me, very civil: But they were all very briſk and merry, and had all Things plentiful, and were a-making Punch and drinking.

Clerk. Would any of you the Priſoners aſk the King's Evidence any Queſtions?

They aſk no Queſtions.

Mr. *Hepworth.* Pleaſe your Honours, we will proceed to call another Evidence.

Clerk. Call *James Killing*, Capt. *Manwareing*'s Mate. Who appeared, and was ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

James Killing. Yes, Sir, I know them all very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account of the taking Captain *Manwareing*'s Sloop.

James Killing. The *Thirty-firſt* of July, between Nine and Ten of the Clock, there running a ſtrong Tide at Ebb, we came to an Anchor about fourteen Fathom of Water near Cape *James*. In about Half an Hour's Time I perceived ſomething like a Canoo: So they came nearer. I ſaid, here's a Canoo a-coming; I wiſh they be Friends. I haled them, and aſk'd from whence they came? They ſaid, Capt. *Thomas Richards* from *St. Thomas*'s, and Capt. *Thomas Read* from *Pennſylvania*. They aſk'd me from whence we came? I told them from *Antegoa*. They ſaid we were welcome. I ſaid they were welcome, as far as I knew. So I ordered the Men to hand down a Rope to them. So ſoon as they came on board they clapp'd their Hands to their Cutlaſſes; and I ſaid we are taken. So they curs'd and ſwore for a Light. I ordered our People to get a Light as ſoon as poſſible. So they ordered our Captain immediately to go on board the *Revenge*; and accordingly was ſent with two of their own Hands; and I ſaw him no more that Night. So when they came into the Cabin, the firſt Thing they begun with was the Pine-Apples, which they cut down with their Cutlaſhes. They aſk'd me if I would not come and eat along with them? I told them I had but little Stomach to eat. They aſk'd me why I look'd ſo melancholy? I told them I looked as well as I could. They aſked me what Liquor I had on board? I told them ſome Rum and Sugar. So they made Bowls of Punch, and went to drinking of the *Pretender*'s Health, and hoped to ſee him King of the *Engliſh* Nation: Then ſung a Song or two. Next Morning they ordered more Hands on board the Sloop, and ſo came and lay long-ſide the Schooner; after that they hoiſted out ſeveral Hogſheads of Moloſſes, and ſeveral Hogſheads of Rum, and put on board the Schooner, and took ſeveral Barrels of Pitch and Tar and put on board the Sloop; and I happened to go down into the Cabin, and *Robert Tucker* came to me, and told me I had no buſineſs there, but was better go forward and work among the reſt of the Men. So I went forward, and aſked who that was? They told me that was their Father. In the after-part of the Day two of *Bonnet*'s Men were ordered to the Maſt to be whipt, and I was threatened if I did not confeſs all I knew. Then *Robert Tucker* came to me, and told me I muſt go along with them. I told him I was not fit for their Turn, neither were my Inclinations that way. After that Major *Bonnet* himſelf came to me, and told me I muſt either go on a Marroon Shore, or go along with them, for he deſign'd to take the Sloop along with him. That Evening between Eight and Nine we were ordered to ſet Sail, but whither I knew not. So we ſailed out that Night, and I being weary with the Fatigue, went to Sleep; and whether it was with a Deſign or not I cannot tell, but we fell to Leeward of the *Revenge*; and in the Morning Major *Bonnet* took the Speaking Trumpet, and told us if we did not keep cloſer, he would fire in upon us, and ſink us. So then we proceeded on our Voyage till we came to Cape *Fear*.

J. *Trott.* Have you done with your Evidence?

J. Killing. Yes.

Clerk. Would any of you Priſoners aſk the King's Evidence any Queſtions?

No Queſtions aſked by the Priſoners.

J. *Trott.* You the *Priſoners* at the Bar ſtand charged with *Felony* and *Piracy* committed on a certain Sloop belonging to Capt. *Peter Manwareing*. The Evidences have proved it home upon you; the Botſwain tells what old Offenders you were, and that you were with *Thatch* off this Bar, and that you were at the taking ſeveral Veſſels after you left *Topſail-Inlet*; and all the Evidences prove the ſame; ſo that it appears all of you took up with this wicked Courſe of Life out of Choice: Now what Evidences have you to come in on your Behalf? or what have you to ſay in your Defence? Now is your Time to ſpeak, what you have to ſay?

Clerk. Robert Tucker, what have you to ſay?

Robert Tucker. After Capt. *Thatch* had taken what we had and left us, Major *Bonnet* came and told us that he was going to St. *Thomas*'s for the Emperor's Commiſſion, if there was any to be had.

J. *Trott.* Pray, if you were bound to *St. Thomas*'s, what did you do at the Cape of *Virginia*? What buſineſs had you there?

Robert Tucker. We had but little Proviſion on board.

J. *Trott.* So you went and met with ſome by the way.

Clerk. Edward Robinſon, what have you to ſay?

Edward Robinſon. When Capt. *Thatch* left us it was on a Marroon Iſland, and Major *Bonnet* came and told me he was going to St. *Thomas*'s, and we might go with him.

J. *Trott.* Was not you one of them that was off this Bar with *Thatch?*

Edw. Robinſon. Yes.

J. *Trott.* Why did you not come on ſhore then?

Edw. Robinſon. I would have come on ſhore, but Capt. *Thatch* would not give me leave. I was with Mr. *Wragg*, and told him I would go on ſhore if I had Liberty.

J. *Trott.* Was you one of the five that came up to Town?

Edw. Robinſon. No.

Clerk. Neal Paterſon, what have you to ſay in Defence of yourſelf?

N. Paterſon. Thatch came on board and carried away fourteen of our beſt Hands, and marrooned twenty-five of us on an Iſland; and Major *Bonnet* came and told us he was minded to go to St. *Thomas*'s, and if there were any Commiſſions from the Emperor, to get one, and go a privateering againſt the *Spaniards*; ſo I was willing to go with him, and when I was on board, he forced me to do what he pleas'd, for it was againſt my Will.

J. *Trott.* Did not *Thatch* carry away your Money and what you had beſides of Goods?——*N. Paterſon.* Yes.

Att. Gen. Was you not all aſhore when you receiv'd the Act of Grace?

N. Paterſon. Yes, Sir.

Att. Gen. Why had you not continued aſhore? Why did you join with *Bonnet?* Or who forc'd you to it?

N. Paterſon. But, Sir, it was in a ſtrange Land, and I had no Money, nor nothing left, and I was willing to do ſomething to live; but it was againſt my Will to go a pirating.

J. *Trott.* If you were forc'd and took only Proviſions, pray how did you come to ſhare ſo much Money and Goods afterwards? You ſay *Thatch* carried away what you had before.

N. Paterſon. I could not hinder the reſt from doing what they pleaſed; but it was contrary to my Inclination.

Clerk. William Scot, what have you to ſay?

W. Scot. When we left *Topſail Inlet*, it was to go to *St. Thomas*'s; and I aſked whether there was Proviſions on board? They told me there was enough, which was not above ten or eleven Barrels.

J. *Trott.* So you took it where you could find it, becauſe you had it not of your own: But pray what did you with ſo much Moloſſes, which was neither fit to eat or drink?

W. Scot. What I did, was to keep me from periſhing; but it was not in my Power to hinder the reſt.

Clerk. Job Bayley, what have you to ſay?

Job Bayley. When Capt. *Thomas* or Major *Bonnet* was ready to ſail, I went aboard, and I aſked whether they had Proviſions on board? They told me they had: But in a few Days it was all ſpent, and then I was forc'd to do as the reſt did.

J. *Trott.* But why did you not do as Capt. *Manwareing* and his Men did? You ſee they did not act as you did.

Job Bayley. Capt. *Manwareing* was not taken then.

J *Trott.* But how came you to join with them afterwards? And pray what made you fight againſt Col. *Rhett*, when he came out with lawful Authority to you?

Job Bayley. We thought it had been a Pirate.

J. *Trott.* And ſo one Pirate might fight with another. But how could you think it was a Pirate, when he had King *George*'s Colours?

Att. Gen. May it pleaſe your Honours, and you Gentlemen of the Jury, the Evidences have plainly prov'd, that all the Priſoners at the Bar were at the taking of Capt. *Manwareing*'s Sloop, that they all conſented to, and all were active in it, and all receiv'd their Shares; ſo that I think it hath been plainly prov'd home upon them.

J. *Trott.* Gentlemen of the Jury, the Priſoners at the Bar all ſtand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt *Peter Manwareing*, as it is expreſſed in the *Indictment*. The *Boatſwain* tells us what old Offenders they were before they went to *Topſail Inlet*; that they were at the taking of no leſs than *thirteen* Veſſels; and that in particular they were at the taking of Capt. *Manwareing*. Then comes Capt. *Read*, and he was taken before Capt. *Manwareing*, and was then a Priſoner on board the Pirate-Sloop, and he tells you, they all appear'd in Arms, and that he did not look upon them as Priſoners, or under Conſtraint, but of the ſame Company; and he tells you he ſaw them take Capt *Manwareing*, and that he ſaw them take out the Goods, as is mentioned in the Indictment, out of *Manwareing*'s Sloop. Then comes Capt. *Manwareing* himſelf, and he ſays all the Goods mentioned in the Indictment were taken out, and that they ſhar'd theſe Goods among themſelves. Then comes *Killing* the Mate, and he proves the ſame, and particularly *Tucker*, he was ſo forward, that he told them, if they did not tell the Truth, it ſhould be the worſe for them: And *Paterſon* was ſo active, that he was for having them brought to the Gun to make them confeſs; and that all the reſt had their Arms ready, and all had their Shares: So that I think the Evidences have fully prov'd the Indictment upon them, and that it is very plain and home againſt them. They plead indeed, that they were forc'd and conſtrain'd to go, but give no Proof of it; and therefore what Conſtraint any of them appears to be under, I ſhall leave to your Conſidera tions: Tho' I think the Evidence is very plain and clear, yet I ſhall not pretend to direct your Judgments. I ſhall only remark to you what the Wiſe Man ſaith, that *he that juſtifieth the Wicked, as well as he that condemneth the Juſt, even both are an Abomination to the Lord.*

Then an *Officer* was ſworn to keep the *Jury*.

And about *two* Hours after the Jury return'd, and gave in their *Verdict*.

Clerk. Gentlemen, anſwer to your Names. *Timothy Bellamy.*

Timothy Bellamy. Here, *&c.*

Clerk. Are you all agreed of your Verdict?——*Jury.* Yes.

Clerk. Who ſhall ſay for you?——*Jury.* The Foreman.

Clerk. Robert Tucker, hold up thy Hand. (*Which he did.*) How ſay you? Is he guilty of the Piracy whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Clerk. What Goods and Chattels, *&c.*

Foreman. None that we know of.

Clerk. Then hearken to your Verdict, as the Court hath recorded it. You ſay that *Robert Tucker* is guilty of the *Piracy* whereof he ſtands indicted, and that he had no Goods or Chattels, *&c.*

Jury. Yes.

And the Jury alſo found *Edward Robinſon, Neal Paterſon, William Scot*, and *Job Bayley* guilty.

Clerk. Marſhal, look to your Priſoners.

THEN the Court proceeded to the Trial of *John William Smith, Thomas Carman, John Thomas, William Morriſon, William Livers* alias *Evis, Samuel Booth, William Hewet*, and *John Levit*, for the aforeſaid Fact, in *piratically* taking the ſaid Sloop *Francis*, Capt. *Peter Manwareing* Commander.

Clerk. Set *John William Smith, Thomas Carman*, &c. to the Bar.

Then the Petit Jury were called over.

Clerk. You the Priſoners at the Bar: Theſe good Men that were called laſt, and have here appeared, are thoſe that ſhall paſs between our Sovereign Lord the King and you, upon your Lives and your Deaths; therefore if you or any of you will challenge them or any of them as they come to the Book to be ſworn, and before they be ſworn, you may, and you ſhall be heard.

Then the Jury were ſworn, whoſe Names are as followeth.

Samuel Prioleau, Foreman.	*Joſhua Marriner.*	*Charles Marche.*
John Hodgſon.	*Thomas Fairchild.*	*John Grimbal.*
Garrard Vanvilſen.	*Henry Gennelack.*	*Benjamin Griffin.*
Robert Harvey.	*John Jeffers.*	*Joſeph Maſſey.*

Then the uſual Proclamation for Information was made. And the Priſoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

Clerk. You Gentlemen of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge.

Then the *Indictment* was read as followeth.

THE *Jurors for our Sovereign Lord the King, do upon their Oaths preſent, That* Daniel Harriott, *late of* Jamaica, *Mariner*; John William Smith, *late of* Charles-Town, *Mariner*; Thomas Carman, *late of* Maidſtone *in* Kent, *Mariner*; John Thomas, *late of* Jamaica, *Mariner*; William Morriſon, *late of* Jamaica, *Mariner*; William Livers *aliàs* Evis, *late of* Dublin, *Mariner*; Samuel Booth, *late of* Charles-Town, *Mariner*; John Levit, *late of* North Carolina, *Mariner*; *and* William Hewet, *late of* Jamaica, *Mariner*; *the Second Day of* Auguſt, &c. as before.

Clerk. Upon this Indictment they have been arraigned, *&c. as before.*

The Witneſſes againſt the Priſoners were *Ignatius Pell* the Boatſwain, Capt. *Thomas Read*, Capt. *Peter Manwareing*, and Mr. *James Killing* his Mate, who all gave the ſame Evidence againſt theſe as againſt the others that were tried before.

Clerk. Will any of you Priſoners aſk the King's Evidence any Queſtions?

No Queſtions aſked by the Priſoners.

J. *Trott.* You the Priſoners at the Bar, you have heard how fully the Witneſſes have charged the Facts upon you: Now what you have to ſay in your Defence, I ſhall be ready to hear you.

Clerk. John William Smith, if you have any thing to ſay, you have Liberty to ſpeak.

John William Smith. When we left *Topſail-Inlet*, I knew nothing but that we were going to *St. Thomas*'s; but after we were out, they hoiſted the bloody Flag: But I did before believe we were going to *St. Thomas*'s.

Att. Gen. Did you bear Arms on board of Major *Bonnet?*

Smith. Yes, Sir,

Att. Gen. Was you at the taking all thoſe Veſſels?

Smith. Yes, Sir; but it was againſt my Will.

Clerk. John Carman, what have you to ſay?

Carman. As for what I did on board Captain *Thatch*, I was forced; but when I came to *North Carolina*, I would not have went on board, but Major *Bonnet* ſhew'd me the Act of Grace; and when I enter'd myſelf on board, it was to get my Bread, in hopes to have went where I might have had Buſineſs; for when we left *Topſail-Inlet*, I had not ſign'd the Articles.

Ign. Pell. But you gave the Captain your Word that you would.

Carman. When I was left in the Sloop, I endeavour'd to make my Eſcape with the Sloop.

J. *Trett.* So, I find you wanted a Veſſel of your own.

Carman. No, but to have got one from them: But I could not.

Att. Gen. This confirms what the King's Evidence proves againſt them.

Clerk. John Thomas, what have you to ſay?

Thomas. We had nothing left us, and we were on a Marroon Iſland, and Major *Bonnet* he came and told me I might go with him; but it was againſt my Will to bear Arms.

J. *Trott.* Was not you off this Bar?

Thomas. Yes, but I was forced to it.

Mr. *Hepworth.* And was you not at the taking of Capt. *Manwareing*'s Sloop?——*Thomas.* Yes.

Mr. *Hepworth.* And had you not your Share?——*Thomas.* Yes, Sir.

J. *Trott.* And yet you ſay you was not willing to go a pirating.

Clerk. William Morriſon, what have you to ſay?

Morriſon. Capt. *Thatch* had run the Sloop aſhore, and Major *Bonnet* went up to the Governor for the Act of Grace; and when he returned he told me I might go to *St. Thomas*'s; and after that he ſaid Proviſions would fall ſhort, and he ſhould go on the Coaſt of *Virginia* to ſee for ſome.

J. *Trett.* But was that your Manner of going for a Commiſſion, to take *thirteen* Veſſels by the Way? But was you not at the taking *Manwareing*'s Sloop? And had you not your Share?

Clerk. William Livers aliàs *Evis*, what have you to ſay?

Evis. After we came to *North Carolina*, and Capt. *Thatch* had loſt the Ship, Major *Bonnet* told me he would give me my Paſſage to *St. Thomas*'s, and he would endeavour to get a Ship there, and I might go with him a privateering: But when he came to Sea, I found how it was, and I would not conſent for a long Time; but at laſt they forced me to it.

J. Trott. But you had your Share as well as the reſt?

Evis. They forced me to do what I did.

Clerk. *Samuel Booth*, what have you to ſay?

Booth. As we came from *Topſail-Inlet*, we met with the Sloop *Revenge*; they boarded us and took us, and I was a Priſoner three Weeks before I conſented; and then they order'd me to the Gun before I would conſent.

J. *Trott.* But you had your Share of Capt. *Manwareing*'s Sloop?

Booth. But my Inclination was not that Way.

Clerk. *William Hewet*, what have you to ſay?

Hewet. I deſign'd to go to *St. Thomas*'s with Major *Bonnet*, for he told me he was bound thither; ſo I was willing to go with him.

Clerk. *John Levit*, what have you to ſay?——*He makes no Defence.*

Att. Gen. May it pleaſe your Honours, the Boatſwain and all the Evidences prove the Indictment upon each of the Priſoners, that they were all at the taking of Capt. *Manwareing*'s Sloop, and all had their Shares.

J. *Trott.* Gentlemen of the Jury, I think I need ſay but little on this Matter: They all confeſs the Fact of which they ſtand indicted. Some of them were old Offenders, and all of them were proved to be at the taking of Capt. *Manwareing*'s Sloop, and all took their Shares: ſo that I think the Fact is very fully and clearly proved upon them. But I ſhall leave that to your Conſiderations, and I pray God direct you to give a true Verdict.

Then an *Officer* was ſworn to keep the *Jury*,

Who after they had conſider'd of their *Verdict*, return'd and found *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* aliàs *Evis*, *Samuel Booth*, *William Hewet*, and *John Levit*, guilty.

Then the Court adjourn'd to *Friday* Morning.

Friday, *October* the 31ſt, 1718.

THE Court proceeded to arraign *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *Thomas Nichols*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*, upon the following *Indictment*, for *piratically* taking Capt. *Manwareing*.

The Jurors for our Sovereign Lord the King do upon their Oaths preſent, That William Eddy *aliàs* Nedy, *late of* Aberdeen, *Mariner*; Alexander Annand, *late of* Jamaica, *Mariner*; George Roſs, *late of* Glaſcow, *Mariner*; George Dunkin, *late of* Glaſcow, *Mariner*; Thomas Nichols, *late of* London, *Mariner*; John Ridge, *late of* London, *Mariner*; Matthew King, *late of* Jamaica, *Mariner*; Daniel Perry, *late of* Guernſey, *Mariner*; *and* Henry Virgin, *Mariner*, *late of* Briſtol; *the ſecond Day of* Auguſt, *in the fifth Year of the Reign of our Sovereign Lord King* George, *by the Grace of God of* Great Britain, France, *and* Ireland, *King*, *Defender of the Faith*, &c. *as before.*

Who all pleaded *Not Guilty.*

Then the Court proceeded on their *Trial.*

And the Jury were ſworn, whoſe Names are as followeth.

Timothy Bellamy, Foreman, *&c. as before.*

The ſame Witneſſes againſt theſe, *viz.*

Ignatius Pell, the Boatſwain; Capt. *Thomas Read*; Capt. *Peter Manwareing*, and Mr. *James Killing*, his Mate;

Who all gave the ſame Evidence againſt theſe Priſoners as againſt the others, excepting *Thomas Nichols.*

Capt. *John Stevenſon*, one of the Captors, being ſworn, declared, that *George Roſs*, the Gunner of the Pirate's Sloop, was for blowing up the ſaid Sloop, and that he acknowleg'd he was to have ſet fire to the Train, and that he would have done it.

As to *Thomas Nichols:*

Ignatius Pell declared, that *Nichols*, after he came to Sea, was very much diſcontented; but Major *Bonnet* ſaid he would force him to go. However, he would not join with the reſt of the Men, but always ſeparated himſelf from the Company.

Capt. *Read* ſaid, that *Nichols* behaved himſelf different from the reſt, and did not join with them.

Capt. *Manwareing* ſaid, that *Nichols*, when he was aboard his Sloop ſaid, *he did hope it would be over with him in a little time, for he hoped to get clear of them*, and looked very melancholy, and never joined with the reſt in their Cabals when they were drinking: and when Major *Bonnet* ſent for him, he refuſed to go, and ſaid, *he would die before he would fight.*

Clerk. Will any of you aſk the King's Evidence any Queſtions?

Nichols. Mr. *Killing*, did you never hear me ſay I would leave that Courſe of Life?

J. *Trott.* Did you hear him ſay ſo?

Killing. When he came on board he told me, *he would give the whole World, if he had it, to be free from them:* And when he was on board and Major *Bonnet* ſent for him, he refuſed to go on board the *Revenge*, till he ſent to fetch him by force, and then he told me *he would not fight if he did loſe his Life for it:* And he was not with them when they ſhared; and he told them *he hoped he ſhould not be long with them*; and he never was at their Cabals as the reſt were.

J. *Trott.* He ſeems to be under a Conſtraint indeed, and therefore muſt be taken into Conſideration.

Clerk. Will any of you Priſoners aſk any more Queſtions?—None aſked.

J. *Trott.* If any of them have any thing to ſay, they now have their Liberty to ſpeak.

Clerk. *William Eddy* aliàs *Nedy*, what have you to ſay?

Nedy. I never was on board Capt. *Manwareing*'s Sloop, nor had no hand in it.

J. *Trott.* You was one of *Bonnet*'s Crew.——*Nedy.* I never acted in it.

J. *Trott.* That is no Excuſe; it is not ſuch or ſuch a one that goes on board only, but thoſe that ſtand ready to aſſiſt them, have as great a hand in the Fact as the other; for Men would not be taken by two or three, if they had no more Help; ſo that the whole Crew are equally concern'd at ſuch a Time.

Clerk. *Alexander Annand*, what have you to ſay?

Annand. When we were at *Topſail-Inlet*, Major *Bonnet* told me he would go and get a Clearance for the Sloop, for he deſign'd to go to *St. Thomas*'s for a Commiſſion, and I might go with him: So I ſuſpected nothing till we were out at Sea, and then I could not help it.

J. *Trott.* But why did you not declare againſt it then, and ſo not join with them?

Annand. I was but one Man, and a Stranger, and I was afraid I ſhould have loſt my Life.

Clerk. *George Roſs*, what have you to ſay?

Roſs. I belonged to Sloop, and we met with Major *Bonnet* and was taken by him: Next Day two of the Men told me I muſt go with them. I anſwer'd them, No; I did not deſign to leave the Sloop: But they told me I muſt; and they told me if I would but conſent I ſhould have any thing. And a little after Capt. *Manwareing* was taken.

J. *Trott.* And you had your Share of *Manwareing*'s Goods?

Roſs. Yes.

J. *Trott.* So, tho' you were unwilling at firſt, you was willing afterward, and alſo fought Col. *Rhett* when he came out againſt you.

Roſs. They told me it was Capt. *Thatch*; for my part I did not know who *Thatch* was.

J. *Trott.* But pray what Authority had you to fight any body?

Clerk. *George Dunkin*, you may ſpeak what you have to ſay.

Dunkin. After we were taken at the Capes of Major *Bonnet* came to me and told me I muſt go along with them. But I told him I could not leave the Veſſel. He told me I muſt.

J. *Trott.* But why did you join with them afterwards in taking your Share of *Manwareing*'s Goods? and why did you fight Col. *Rhett* and his Men? If you had not fought, you might have ſav'd the Lives of twelve or fourteen Men.

Dunkin. Major *Bonnet* declared, if any one refuſed to fight he would blow his Brains out.

Thomas Nichols made his Defence before.

Clerk. *John Ridge*, what have you to ſay?

Ridge. After we came to *Topſail-Inlet*, and the Ship was loſt, Major *Bonnet* came and told me that he would go and accept the Act of Grace, and get a Clearing for the Sloop, and go to *St. Thomas*'s for a Commiſſion; and he expected we would go with him; ſo when he was gone up to the Country we rigged the Sloop; ſo the Quarter-Maſter, the Boatſwain and he agreed together; but for my part I knew nothing what their Deſign was; and ſo the firſt Veſſel we ſaw they took: But it was my Reſolution to go away by the firſt Opportunity.

Clerk. *Matthew King*, what have you to ſay?

King. When we were at *Topſail-Inlet*, Captain *Thatch* marrooned us on an Iſland, and left us; and Major *Bonnet* told us he would go to *St. Thomas*'s; but the firſt Prize we met with we took, having but little Proviſions on board.

J. *Trott.* How could you think of going to *St. Thomas*'s without Proviſions?

Att. Gen. But the Boatſwain ſays there were Proviſions on board; ſeveral Barrels of Flour, and ſeveral Barrels of Beef and Pork.

J. *Trott.* What need had you then to go a pirating?

King. I did not know it 'till we were out.

J. *Trott.* *Bonnet* had not above *five* Hands, and there were of you twenty-five; why would you be all commanded by them? You had no need to yield to them.

Clerk. *Daniel Perry*, what have you to ſay?

Perry. When Capt. *Thatch* left us, it was on a Marroon Iſland, and Major *Bonnet* came and told us he had the Act of Grace, and ſo we might go with him.

J. *Trott.* Is that all you have to ſay? You knew *Thatch* and *Bonnet* were both *Pirates*, and why would you go with them again?

Clerk. *Henry Virgin*, what have you to ſay?

Virgin. Major *Bonnet* ordered about thirty Hands to be ready, and in a little time we were ordered on board; and when we were about an hundred Leagues from Land, he aſked if there were any that would go a Marrooning; and I believe there were two or three that promiſed him they would, tho' I did not.

J. *Trott.* But had you no Opportunity to come from them?

Virgin. If we had known any thing of the Act of Grace when we were off this Bar, we had come aſhore. I went to make my Eſcape, and leapt into the Water, and had like to have been drown'd.

J. *Trott.* How many Veſſels have you been at the taking and burning of do you think?——*Virgin.* I believe about three.

Mr. *Hepworth.* He was with them at the Bay of *Honduras*, and all along.

Virgin. But I never gave my Conſent; for Capt. *Thatch* never aſked any of us.

J. *Trott.* Would any of the *Priſoners* ſay any more? If they will I am ready to hear them.

Att. Gen. May it pleaſe your Honours, and you Gentlemen of the Jury, theſe three, *Nichols*, *Dunkin*, and *Ridge*, ſeem to make ſome Defence. As for *Nichols*, he was with them when *Manwareing* was taken; and the Mate tells us, that he ſeparated himſelf from the reſt of the Cabal; and when they ſhared, he told them they might do as they pleaſed with his Share, for he hoped he ſhould not be with them long; ſo that it appears that he ſeparated himſelf from the reſt of the Company from the very firſt: Theſe things therefore ought to be conſidered. And as for *Dunkin*, he looked upon himſelf as a Priſoner at firſt: but the Boatſwain indeed ſays he had his Shares. And as for *Ridge*, he ſaid, that he reſolved to make his Eſcape. For all the reſt, they ſeem to be equally guilty.

J. *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Peter Manwareing* Commander, and not only did they break and board the ſaid *Manwareing*'s Sloop, which was an Act of Piracy, but it hath been proved upon them, that they were at the taking of thirteen Veſſels after they left *Topſail-Inlet*. Indeed there are three that have ſomething to ſay in their Defence, *Nichols*, *Ridge*, and *Dunkin*. As for *Dunkin*, *Pell* ſays he had his Share, as the reſt had: Capt. *Read* looked upon him as a Priſoner, but Capt. *Manwareing* did not. As for *Ridge*, he was at *North Carolina*, and took up with *Bonnet* to go to *St. Thomas*'s, and it is poſſible for a Man to be deceived, for *Pell* declares that they were bound to *St. Thomas*'s, at firſt; and *Killing* the Mate declared, that he told him he would free himſelf from that Courſe of Life the firſt Opportunity: So I ſhall leave this to your Conſideration. But for *Nichols*, I think it is plain he was under Conſtraint and Force; for *Pell* himſelf declares that he would have nothing to do with their Shares, and he did hope that he ſhould not be long with them. Capt. *Manwareing*, and Mr. *Killing* his Mate, all confirm the ſame. And when he was ſent for to come on board *Bonnet*,

to go out to fight Colonel *Rhett*, he refuſed to go; and when he was forced to go on board, he ſaid he would die before he would fight; and accordingly went into the Hole, and did not fight Colonel *Rhett*. So that by the whole Courſe of the Evidence, I think it is very clear that he was under Conſtraint and Fear. As to the reſt, I think the Proof is full againſt them; but I ſhall leave them to your Conſideration. You know that as the Innocent muſt not be condemned, ſo the Guilty ought not to be acquitted. Remember you have the Lives of theſe Perſons in your Hands; and I pray God direct you to give a true Verdict.

Then an *Officer* was ſworn to keep the *Jury*,

Who, after they had conſidered of their *Verdict*, returned, and found *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, and *Henry Virgin*, Guilty; and *Thomas Nichols*, Not Guilty.

THEN the Court proceeded to arraign *James Robbins* aliàs *Rattle*, *James Mullet* aliàs *Millet*, *Thomas Price*, *James Wilſon*, *John Lopez*, and *Zachariah Long*, upon the following *Indictment*, for piratically taking Capt. *Manwareing*.

" The Jurors for our Sovereign Lord the King do upon their Oath " preſent, that *James Robbins* alias *Rattle*, late of *London*, Mariner; " *James Mullet* aliàs *Millet*, late of *London*, Mariner; *Thomas Price*, late " of *Briſtol*, Mariner; *James Wilſon*, late of *Dublin*, Mariner; *John* " *Lopez*, late of *Oporto*, Mariner; and *Zachariah Long*, late of the Pro- " vince of *Holland*, Mariner; the *Second* Day of *Auguſt*, in the *Fifth* " Year of the Reign of our Sovereign Lord *George*, by the Grace of " God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the " Faith, *&c.*"

To which Indictment *James Robbins* aliàs *Rattle*, *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, pleaded *Not Guilty*. *James Wilſon* pleaded *Guilty*.

Then the Court proceeded upon the Trial of thoſe that pleaded *Not Guilty*.

The Jurors were ſworn, whoſe Names are as followeth:

Samuel Preileau, Foreman.	*Joſhua Mariner.*	*Charles Marche.*
John Hodgſon.	*Thomas Fairchild.*	*John Grimball.*
Garrat Vanvelſin.	*Henry Genelac.*	*Benjamin Griffin.*
Lucas Stoutenborough.	*John Jeffers.*	*Joſeph Maſſey.*

The *Witneſſes* againſt the *Priſoners* were the above-named.

Ignatius Pell, the Boatſwain; Capt. *Thomas Read*; Capt. *Peter Manwareing*, and Mr. *James Killing* his Mate;

Who all gave the ſame *Evidence* againſt theſe *Priſoners*, as againſt the others that were tried before.

Clerk. You, the Priſoners at the Bar, have heard what the King's Evidence have ſworn againſt you. Now is your time to make your *Defence*.

Clerk. James Robbins, what have you to ſay?

Robbins. I was on board the *Revenge*, and then I was ſent on board of Capt. *Read*'s Sloop, and was there four Days; and then was ſent on board the *Revenge* again: For I was about to run away, if I had an Opportunity.

Clerk. James Mullet, what have you to ſay?

Mullet. When we left *Topſail-Inlet*, it was to go to *St. Thomas*'s; ſo Major *Bonnet* told me: And I being on a Marroon Shore, I was willing to go with him.

Clerk. Thomas Price, what have you to ſay?

Price. Capt. *Thatch* left us on a Marroon Shore, and had nothing left; and Major *Bonnet* told me I might go with him to *St. Thomas*'s; but I deſigned not to go a pirating.

J. *Trott.* Had you not your Share?

Price. I was forc'd to do as I did when I was on board.

Clerk. John Lopez, what have you to ſay?

Lopez. I was at the Bay of *Honduras*, and was taken by *Thatch* and carried to *Topſail-Inlet*, and there he marrooned me on an Iſland, and came with five Hands and carried all away that we had, and left us. And Major *Bonnet* told me he would go to *St. Thomas*'s, and I might go along with him. I told Capt. *Manwareing*, *I would not go a pirating, for I did not like it.*

J. *Trott.* Did you not ſhare a little before you came to Cape *Fear?*

Lopez. Yes; but it was againſt my Will.

J. *Trott.* Capt. *Manwareing*, do you know any thing of this Man?

Capt. *Manwareing.* All as I know, he told me *he had a Wife and Children*; *and that he did not like that Courſe of Life.* This is all I can ſay of him.

Clerk. Zachariah Long, what have you to ſay?

Long. When we ſailed, I knew nothing but that it was to go to *St. Thomas*'s, till afterwards; and then I muſt do as the reſt did.

Then the Judge ſumm'd up the Evidence.

And an *Officer* was ſworn to keep the *Jury*,

Who after they had conſidered of their *Verdict* returned, and found the aboveſaid *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, Guilty; and *James Robbins* aliàs *Rattle*, Not Guilty.

Then the Court adjourn'd till *Saturday* Morning.

Saturday, *November* the Firſt, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign *Edward Robinſon*, *Robert Tucker*, *William Scot*, *Job Bayley*, *Neal Paterſon*, *John William Smith*, *Thomas Carman*, and *John Thomas*, upon the following Indictment.

" The Jurors for our Sovereign Lord the King do upon their Oath " preſent, that *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, late of the " Iſland of *Barbadoes*, Mariner; *David Heriot*, late of the Iſland of *Ja-* " *maica*, Mariner; *William Scot*, late of *Aberdeen*, Mariner; *Job Bayley*, " late of *London*, Mariner; *Edward Robinſon*, late of *New-Caſtle* upon " *Tyne*, Mariner; *Robert Tucker*, late of the Iſland of *Jamaica*, Mariner; " *Neal Paterſon*, late of *Aberdeen*, Mariner; *John William Smith*, late of " *Charles-Town*, Mariner; *Thomas Carman*, late of *Maidſtone* in *Kent*, " Mariner; and *John Thomas*, late of the Iſland of *Jamaica*, Mariner; " the *thirty-firſt* Day of *Auguſt*, in the *fifth* Year of the Reign of our " Sovereign Lord *George*, by the Grace of God of *Great Britain*, *France*, " and *Ireland*, King Defender of the Faith, *&c.* by Force, and Arms, " *&c.* upon the High Sea, in a certain Place called *Cape Fear*, in the " Latitude of Thirty-four or thereabouts, and within the Juriſdiction of " the Court of *Vice-Admiralty* of the Province of *South Carolina*, did pi- " ratically and felonioufly ſet upon, board, break, and enter a certain " Merchant-Sloop, called the *Fortune*, *Thomas Read*, Commander, then " being a Sloop of certain Perſons (to the Jurors aforeſaid unknown), and " then and there piratically and felonioufly did make an Aſſault in and " upon the ſaid *Thomas Read*, and other his Mariners, (whoſe Names to " the Jurors aforeſaid are unknown). In the ſame Sloop, againſt the " Peace of God, and of our now Sovereign Lord the King, then and " there being, piratically and felonioufly did put the aforeſaid *Thomas* " *Read*, and others his Mariners of the ſame Sloop, in the Sloop afore- " ſaid, then being in corporal Fear of their Lives, then and there in the " Sloop aforeſaid, upon the *High Sea*, in the Place aforeſaid, called *Cape* " *Fear*, in the Latitude of Thirty-four, or thereabouts, aforeſaid; in the " Sloop aforeſaid, and within the Juriſdiction aforeſaid, *piratically* and " *felonioufly* did ſteal, take, and carry away ſix Tierces of Bread, of the " Value of Thirteen Pounds, current Money of *Penſylvania*; four Barrels " of Bread, of the Value of Four Pounds, like current Money of *Pen-* " *ſylvania*; one Barrel of Linſeed Oil, of the Value of Seven Pounds, " like current Money of *Penſylvania*; two Tierces of *Hams*, of the Value " of Twenty Pounds, like current Money of *Penſylvania*; and twenty " Barrels of Flour, of the Value of Twenty Pounds, like current Money " of *Penſylvania*; ſix China Plates, of the Value of Three Pounds, like " current Money of *Penſylvania*; ſeven Iron-bound Blocks, of the Value " of Forty Shillings, like current Money of *Penſylvania*; ninety Fathom " of Rigging, of the Value of Three Pounds, like current Money of " *Penſylvania*; the ſaid Pump, with Boxes and Breaks, of the Value of " Twenty Shillings, like current Money of *Penſylvania*; the Goods " and Chattels of certain Perſons (to the Jurors aforeſaid unknown) then " and there upon the *High Sea* aforeſaid, in the aforeſaid Place, called " *Cape Fear*, in the Latitude of thirty-four, or thereabouts, aforeſaid, in " the Sloop aforeſaid, and within the Juriſdiction aforeſaid; being found " in the aforeſaid Sloop, in the Cuſtody and Poſſeſſion of the ſaid *Thomas* " *Read*, and others his Mariners in the ſame Sloop, from the ſaid *Thomas* " *Read*, and others his Mariners of the ſaid Sloop, and from their Cuſtody " and Poſſeſſion, then and there, upon the High Sea aforeſaid, in the " Place aforeſaid, called *Cape Fear*, in the Latitude of thirty-four, or " thereabouts, as aforeſaid, in the Sloop aforeſaid, and within the Ju- " riſdiction aforeſaid, and againſt the Peace of our ſaid now Sovereign " Lord the King, his Crown and Dignity, *&c.*

Who all pleaded *Not Guilty*.

Then the Court proceeded upon their *Trial*.

The Petit Jury were ſworn, whoſe Names are as followeth:

Timothy Bellamy, Foreman.	*Benjamin Dennis.*	*John Lee.*
George Ducket.	*Hugh Durfey.*	*Thomas Bee.*
John Rivers.	*Thomas Chambers.*	*John Barton.*
William Sheriff.	*Daniel Townſhend.*	*Richard Fairchild.*

Then the uſual Proclamation for Information was made. And the Priſoners being bid to hold up their Hands, the Clerk charged the Jury with them thus.

Clerk. You the Gentlemen of the Jury that are ſworn, look upon the Priſoners, and hearken to their Charge.

Then the Indictment was read, *as before.*

Clerk. Upon this Indictment they have been arraigned, *&c. as before.*

Then the Witneſſes againſt the Priſoners were called.

Clerk. Call *Ignatius Pell*, the Boatſwain,

Who appeared and was ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Ign. Pell. Yes, Sir.

Mr. *Hepworth.* Give the Court an Account of the taking Capt. *Thomas Read*, and plundering of his Sloop.

Ign. Pell. Capt. *Read* was in Company with two Veſſels more, which we took, but did not ſhare, till we came to Cape *Fear*.

Mr. *Hepworth.* Were the Goods mentioned in the Indictment taken out?

Ign. Pell. Yes, Sir.

J. *Trott.* Did all the Priſoners at the Bar receive their Shares?

Ign. Pell. Yes.

Clerk. Will any of you aſk the King's Evidence any Queſtions? *Edward Robinſon*, will you aſk any Queſtions?

Edw. Robinſon. Boatſwain, do you not remember when we left *Topſail-Inlet*, it was with a Deſign to go to *St. Thomas*'s?

Ign. Pell. I do believe you might think we were going to *St. Thomas*'s; but the firſt Veſſel we ſaw, we conſented to take, and you had your Share as well as the reſt.

Clerk. Robert Tucker, will you aſk any Queſtio ?

Tucker. No.

Mr. *Hepworth.* May it pleaſe your Honours, we will proceed to call another Evidence.

Capt. *Peter Manwareing* called and ſworn.

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Capt. *Manwareing.* I know them all.

Mr. *Hepworth.* Pleaſe to give the Court an Account of the ſharing of Capt. *Read*'s Goods at Cape *Fear*.

Capt. *Manwareing.* As for taking of Capt. *Read*, I can ſay nothing, becauſe he was taken by them before I was taken; but when we came to Cape *Fear*, they ſhared what they had.

J. *Trott.* And had all the Priſoners at the Bar their Shares?

Capt. *Manwareing.* I did not ſee any of them refuſe; and they were amongſt the reſt when they did ſhare.

Clerk. Will any of you aſk the Evidence any Queſtions?

The Priſoners aſk no Queſtions.

Mr. *Hep-*

Mr. *Hepworth.* We will proceed to call another Evidence. Capt. *Thomas Read*, do you know the Prisoners at the Bar?

Capt. *Read.* I know them all.

Mr. *Hepworth.* Please to give the Court an Account of your being taken and plundered by them.

Capt. *Read.* After we were taken, *Robert Tucker* with some others came on board; and then we sailed to Cape *Inlopen*, where Capt. *Manwareing* was taken, and after that to Cape *Fear*.

Mr. *Hepworth.* Were those Goods taken out as are mentioned in the Indictment? —— Capt. *Read.* Yes, Sir.

J. *Trott.* Did all the Prisoners receive their Shares?

Capt. *Read.* Yes, I did not see but what they did: They were all together when they shared.

Clerk. Will any of you ask the Evidence any Questions?

Edward Robinson. Capt. *Read.* When did you see me on board your Sloop?

Capt. *Read.* I cannot say I saw you on board; but you were with them when they shared.

J. *Trott.* If you were not on board the Sloop, you was one of the Crew; and, as I told you before, it's not they only are Pirates that go on board of a Vessel, but they that stand ready to assist are as much Pirates as the other, and are as much concerned in the Fact.

Clerk. Will any of you ask any Questions? —— *Prisoners.* No.

Mr. *Hepworth.* We will proceed to call another Evidence. *James Killing*, do you know the Prisoners at the Bar? —— *Killing.* Yes, Sir.

Mr. *Hepworth.* Give the Court an Account of what you know of the taking of Capt. *Read.*

Killing. I can say but little to the Matter till we came to Cape *Fear*, and there they shared the Goods.

J. *Trott.* Did you see the Goods taken out?

Killing. I cannot say I saw them all taken out; but I saw them a-sharing of them together.

Mr. *Hepworth.* We will call another Evidence.

Francis Griffin, Capt. *Read*'s Mate; who was sworn.

Mr. *Hepworth.* Do you know the Prisoners at the Bar?

Griffin. Yes, Sir.

Mr. *Hepworth.* Please to give an Account of the taking the Sloop you belong'd to.

Griffin. After we were taken, *Tucker* and some more came on board, and *Tucker* fell to beating and cutting the People with his Cutlash, and cut one Man's Arm. So then we went to Cape *James* alias Cape *Inlopen*, where Captain *Manwareing* was taken, and thence we sailed for Cape *Fear*.

Mr. *Hepworth.* Were all these Goods mentioned in the Indictment taken out? (*That Part of the Indictment read.*)

Griffin. Yes, Sir.

J. *Trott.* Did all the Prisoners take their Shares?

Griffin. I know nothing to the contrary.

Clerk. Will any of you ask the King's Evidence any Questions?

No Questions asked.

J. *Trott.* You the Prisoners at the Bar, what have you to say in your Defences? I am now ready to hear you.

Clerk. Edward Robinson, what have you to say?

Robinson. I have nothing to say, more than what I have said.

Clerk. Robert Tucker, what have you to say?

Tucker. I knew nothing but we were going to *St. Thomas's*, when I engaged with Major *Bonnet*.

J. *Trott.* You was his Quarter-Master; and you was the Person that cut the Man with the Cutlash, and abused the People.

Clerk. William Scot, what have you to say?

Scot. I was never on board Capt. *Read*.

J. *Trott.* You was never on board! What of that? You was one of the Crew, and consented to it, and had your Share.

Clerk. Job Bayley and *Neal Paterson*, what have you to say?

Prisoners. We have nothing more to say.

Clerk. John William Smith, what have you to say?

Smith. It was never my Design to go a-pirating; and when I was at Sea, I could not help what others did.

J. *Trott.* If it was not your Design at first, you afterwards consented to it.

Clerk. Thomas Carman and *John Thomas*, what have either of you to say?

Prisoners. We have no more to say, than what we have said.

Att. Gen. May it please your Honours, I think the Evidence have plainly proved the Prisoners at the Bar guilty of the Fact charged upon them in the Indictment; so that they were all equally guilty.

J. *Trott.* Gentlemen of the Jury, the Prisoners at the Bar stand indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Thomas Read*: All the Evidences fully prove the Fact upon them, that they were all equally guilty, and all shared in the Goods and Plunder; but *Tucker* abused the People, and cut one Man with his Cutlash, so that he added Barbarity to his other Crimes. They all pretend they were under Force and Constraint; but it is but a Suggestion of their own, without the least Proof: But there is full Proof of their consenting. But I shall leave them to your Consideration. But the Case is so clear, that I believe you will not be long before you return with your Verdict.

Then an *Officer* was sworn to keep the *Jury*.

Who after they had considered of their Verdict, return'd, and found the aboveSaid *Edward Robinson*, *Robert Tucker*, *William Scott*, *Job Bayley*, *Neal Paterson*, *John William Smith*, *Thomas Carman*, and *John Thomas*, Guilty.

THEN the Court proceeded to arraign *William Morison*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* alias *Nedy*, *Alexander Annand*, *George Ross*, *George Dunkin*, and *Thomas Nichols*, upon the following Indictment, for taking Capt. *Read*.

" The Jurors for our Sovereign Lord the King do upon their Oath " present, That *William Morison*, late of *Jamaica*, Mariner, &c. (*as* " *before.*)

Who all pleaded *Not Guilty*, excepting *John Levit*, who pleaded *Guilty*.

Then the Court proceeded on the *Trial* of those that had pleaded *Not Guilty*.

And the Jury were sworn, whose Names are as followeth:

Timothy Bellmay, Foreman, &c. (*as before.*)

Ig. Pell, one of the Witnesses against the Prisoner, was called and sworn. He, and the rest of the Witnesses in general, gave the same Evidence against these Prisoners, as against the former, only they were more particularly examined as to *Thomas Nichols*, and *George Dunkin*.

Mr. *Hepworth. Ig. Pell*, do you know the Prisoners at the Bar?

Ig. Pell. Yes, Sir, I know them all very well.

Att. Gen. Please to give the Court an Account of the taking and plundering Capt. *Read*; and begin with *Nichols*.

Ig. Pell. Thomas Nichols was very much dissatisfied on board, and did not join with the rest of the Company, and would not take the Share, and said, *he hoped he should not continue long with them.*

Foreman. Do you know any thing of *Dunkin?* How did he behave himself?

Ig. Pell. I did not see but he was as active as any of the rest, and took his Share as the rest did at Cape *Fear*.

J. *Trott.* And had all the Prisoners their Shares?

Ig. Pell. Yes, excepting *Nichols*.

J. *Trott.* Were the Goods mentioned in the Indictment taken out of *Read*'s Sloop? —— *Ig. Pell.* Yes.

Clerk. Will any of you ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Mr. *Hepworth.* We will proceed to call another Evidence. Capt. *Manwareing*, do you know the Prisoners at the Bar?

Capt. *Manwareing.* I know them all very well.

Mr. *Hepworth.* Please to give the Court an Account of their sharing Capt. *Read*'s Goods at Cape *Fear*; and particularly how *Nichols* behaved himself.

Capt. *Manwareing.* When *Nichols* was on board my Sloop, he said several Times, *he would get clear of them the first Opportunity, and he hoped it would not be long first*; and when Major *Bonnet* sent for all Hands on board the *Revenge*, he refused to go, till he sent word, *if he would not come, he wou'd make him*; and when he went, he said, *before he wou'd fight, he wou'd die:* And he always kept himself from the Company, and from their Cabals.

J. *Trott.* Do you know any Thing of *Dunkin?*

Capt. *Manwareing.* What I can say is, There was some Brown Bread upon Deck, and he said, *it was fit for nothing but Negroes to eat*; and I told him, *I wished he might never want it.* So they went, and brought some whiter out of the Hole.

Mr. *Hepworth.* How did he behave himself?

Capt. *Manwareing.* I saw nothing but he was as the rest were.

Mr. *Hepworth.* Would any of you ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Mr. *Hepworth.* Please your Honours, we proceed to call another Evidence.

James Killing sworn.

Mr. *Hepworth.* Do you know the Prisoners at the Bar?

Killing. I know them all very well.

Mr. *Hepworth.* Please to give the Court an Account of what you know of their taking and plundering Capt. *Read*; and first begin with *Nichols*.

Killing. I remember when he was on board our Sloop, and Major *Bonnet* sent for him, when he went off, he said, *he hoped to get clear of them, and he wou'd die before he wou'd fight.*

J. *Trott. Pell*, do you know whether he did fight Col. *Rhett*, or not?

Ig. Pell. He did not fight; and if one that Major *Bonnet* loved very well had not been shot-down by his Side, he had blowed his Brains out; for he had his Pistol ready.

Mr. *Hepworth.* How did *Dunkin* behave himself?

Ig. Pell. I can say nothing for any of the rest, but that they were all as one, and had all their Shares.

Clerk. Would any of you ask the King's Evidence any Questions?

No Questions asked by the Prisoners.

Mr. *Hepworth.* We will proceed to call another Evidence. Capt. *Thomas Read*, do you know the Prisoners at the Bar?

Capt. *Read.* I know them all very well.

Mr. *Hepworth.* Please to give the Court an Account of what Goods were taken from you, and how the Prisoners behaved themselves; and first of *Nichols*.

Capt. *Read.* The most of the Time he was on board Capt. *Manwareing*'s Sloop, I heard him say, *he did not like that Course of Life*; and the last Words I heard Major *Bonnet* say to him, was, *that he would force no Man to go against his Will.*

J. *Trott.* Can you say any thing of *Dunkin?*

Capt. *Read.* As for *Dunkin*, I did not see but he acted as the rest did.

Dunkin. Capt. *Read*, it was against my Will.

Mr. *Hepworth.* Capt. Read, were these Goods taken out of you, as are mentioned in the Indictment? (*That Part of the Indictment read.*) Were all these Goods taken out? —— Capt. *Read.* Yes.

Clerk. Will any of you ask any Questions? *George Dunkin*, will you ask any Questions?

George Dunkin. Capt. *Read*, when did you see me as active as any of the rest?

Capt. *Read.* Before Capt. *Manwareing* was taken, I thought you had been a Prisoner; but afterwards I saw no difference.

J. *Trott.* You was one of *Bonnet's* Crew, one of that Company.

Mr. *Hepworth.* We proceed to call another Evidence.

Francis Griffin. Capt. Read's *Mate sworn.*

Mr. *Hepworth.* Do you know the Prisoners at the Bar?

Griffin. I know them all.

Mr. *Hepworth.* Give an Account of what you know of *Nichols*, and the rest of the Prisoners.

Griffin. As for *Nichols*, he was a Man I know nothing of, he being on board of *Manwareing*'s Sloop.

Mr. *Hepworth.* What do you know of *Dunkin?*

Griffin.

Griffin. I knew nothing of him till we were come to Cape *Fear*; and I ſaw no difference, but he ſhared among the reſt.

Mr. *Hepworth.* Were thoſe Goods taken out of the Sloop, the Goods mentioned in the Indictment?——*Griffin.* Yes, Sir.

J. *Trott.* Now you the Priſoners, what you have to ſay in your Defence I ſhall be ready to hear.

Clerk. William Morriſon, what have you to ſay?

Morriſon. I have no more to ſay than I have ſaid already.

Clerk. William Livers alias *Evis*, what have you to ſay?

Evis. Nothing more.

Clerk. Samuel Booth.

Booth. When I went on board Major *Bonnet*, it was to go to *St. Thomas*'s with him.

J. *Trott.* Why had you not continued at *North Carolina*, ſince you could not continue here?

Booth. I thought to have had better Buſineſs there.

Clerk. John Levit, *William Eddy* alias *Nedy*, *Alexander Annand.*

Priſoners. We were forced to go, and did not know what they would do.

Att. Gen. But did you not know what you did when you ſhared? You knew that did not belong to you, did you not?

Clerk. George Roſs, *George Dunkin*, *Thomas Nichols*, aſked no Queſtions; only *Dunkin* deliver'd in a Paper, which was read in Court, and contained a Teſtimony of his former Behaviour when in *Scotland.*

Att. Gen. Pleaſe your Honours and you Gentlemen of the Jury, I think it appears from the Evidence, that *Nichols* was under Conſtraint, and forced. As for *Dunkin* and the reſt, they all took their Shares at Cape *Fear.*

J. *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for *Felony* and *Piracy* committed on a Sloop belonging to Capt. *Thomas Read.* As for *Nichols*, *Pell* ſays that he was not joined to the Company, and ſaid, *As for his Share they might do what they pleaſed, for he hoped he ſhould not be with them long:* And when Major *Bonnet* ſent for him on board, he refuſed to fight Col. *Rhett*; and if another had not been kill'd, Major *Bonnet* had blown his Brains out. Capt. *Manwareing* ſays, he refuſed his Share, and kept himſelf from the Company and from their Cabals; and he ſaid when ſent for on board, *that he would die before he would fight.* And Capt. *Read* ſays, that Major *Bonnet* ſaid, *that he would put him aſhore, for he would force no Man againſt his Will.* And *Killing* ſays that he told him, that *he would not fight Col.* Rhett, when Major *Bonnet* ſent for him on board the *Revenge.* So that I think it plainly appears he was under Conſtraint. But for *Dunkin*, he ſays of himſelf indeed that he was a Priſoner, and under Conſtraint; but *Pell* ſays he was not, and that he took his Share, and was as the reſt were. And Capt. *Manwareing* ſays, that he complained of the Bread, that it was fit for none but Negroes: ſo I ſhall leave you to conſider that. As for the reſt, they have but little to ſay in their Defence, and I think the Evidence have proved the Fact fully upon them. But I ſhall leave this to your Conſideration; and remember you have the Lives of theſe Perſons in your Hands.

Then the *Officer* was ſworn to keep the *Jury:*

Who after they had conſider'd of their *Verdict*, returned and found the aboveſaid *William Morriſon*, *William Livers* alias *Evis*, *Samuel Booth*, *William Hewit*, *William Eddy* alias *Nedy*, *Alexander Annand*, *George Roſs*, and *George Dunkin*, Guilty; and *Thomas Nichols*, Not Guilty.

Then the Court adjourned till *Monday* Morning.

Monday, *November* the 3d, 1718. the Court met according to *Adjournment.*

THEN the Court proceeded to arraign *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *James Wilſon*, *John Lopez*, and *Zachariah Long*, upon the following Indictment for taking Capt. *Read.*

The Jurors for our Sovereign Lord the King do, upon their Oaths, preſent, that John Ridge, *late of* London, *Mariner*, &c. *as before.*

To which Indictment *John Ridge*, *Matthew King*, *Henry Virgin*, *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, pleaded Not Guilty: and *Daniel Perry* and *James Wilſon* pleaded Guilty.

Then the Court proceeded upon the Trial of thoſe that had pleaded *Not Guilty.*

And the Jury were ſworn, whoſe Names are as followeth:

Samuel Proileau, Foreman.	*Joſhua Mariner.*	*Charles Marche.*
John Hodgſon.	*Thomas Fairchild.*	*John Grimball.*
Garrat Vanvelſin.	*Henry Genelac.*	*Nicholas Stephens.*
Lucas Stoutenborough.	*Benjamin Griffin.*	*William Harvey.*

The Witneſſes againſt the Priſoners were the above-named.

Ignatius Pell, Capt. *Peter Manwareing*, Capt. *Thomas Read*, *James Killing*, and *Francis Griffin.*

Who gave the ſame Evidence againſt theſe Priſoners as thoſe *tried* before.

And fully prov'd upon them all the Fact of piratically taking Capt *Read.*

Only the Witneſſes were more particularly examined as to *James Robbins* alias *Rattle*, who upon a former *Indictment* for taking Capt. *Manwareing* was acquitted.

Att. Gen. Ignatius Pell, give an Account of *James Robbins.*

Ig. Pell. He was as the reſt were when we ſhared at Cape *Fear.*

J. *Trott.* How long was he with you before he joined himſelf to the Company, after he came on board?

Ig. Pell. As ſoon as we came to Cape *Fear.*

Att. Gen. Did you ſee *Robbins* have his Share?

Ig. Pell. Yes, Sir, they had all their Shares.

Att. Gen. Was *Robbins* on board *Read*'s Sloop?

Ig. Pell. I cannot tell whether he was on board or not.

J. *Trott.* You looked upon him as one of the Company?

Ig. Pell. Yes.

Capt. *Manwareing* ſworn.

Mr. *Hepworth.* Pleaſe to begin with *Robbins*, how he behaved himſelf.

Capt. *Manwareing.* He was as the reſt of the Men were: He was on board the *Revenge*, and I think they called him *James Rattle* ſometimes.

J. *Trott.* Did he receive his Share?

Manwareing. He was among the Company when they did ſhare.

James Killing called and ſworn.

Mr. *Hepworth.* Give an Account of *Robbins.*

Killing. All I can ſay, he was as the reſt were in ſharing Capt. *Read*'s Goods, and was amongſt them when they did ſhare.

Capt. *Read* ſworn.

Mr. *Hepworth.* Give an Account of *Robbins.*

Capt. *Read.* I did not know him before we came to Cape *Fear*; but I did not ſee but he was as active there in taking out the Goods as any of the reſt.

J. *Trott.* Did he ſhare among the reſt?

Capt. *Read.* Yes, I believe he did, for he was among them when they ſhared.

Robbins. I was forced to do what I did.

J. *Trott.* Did they force you to take your Share?

Francis Griffin called and ſworn.

Mr. *Hepworth.* Give an Account of *Robbins.*

Griffin. I did not know him till we came to Cape *Fear*, and there I ſaw him on board the *Revenge*; and I did not ſee but that he did as the reſt of the Company; and when they were ſharing he was with them, and received his Share.

Clerk. What have you to ſay, *Robbins?*

Robbins. I never was on board Capt. *Read.*

J. *Trott.* But you was one of the Company.

Robbins. I never conſented to take out the Goods.

J. *Trott.* But you conſented to take part of them; and they that ſhared the Goods were as much Pirates as thoſe that took them out of the Veſſel.

Then the *Judge* ſumm'd up the Evidence.

And an *Officer* was ſworn to keep the *Jury.*

Who after they had conſidered of their Verdict, returned and found the ſaid *John Ridge*, *Matthew King*, *Thomas Price*, *Henry Virgin*, *James Robbins* alias *Rattle*, *James Mullet* alias *Millet*, *John Lopez*, and *Zachariah Long*, Guilty.

THE Court then delivered a Bill of Indictment to the *Grand Jury*, againſt *John Brierly* alias *Timber-head*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, for felonioufly and piratically entering the Sloop *Francis* belonging to Capt. *Peter Manwareing* the Commander, and taking certain Goods out of the ſame at Cape *Fear.*

And *another* Bill of *Indictment* againſt the ſame Perſons for *feloniouſly* and *piratically* entering the Sloop *Fortune* belonging to Capt. *Thomas Read* Commander, and taking certain Goods out of the ſame at Cape *Fear.*

The Grand Jury returned upon the ſaid Bills of Indictment *Billa vera.*

Then the Court proceeded to arraign the ſaid *John Brierly* alias *Timber-head*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, upon the following Indictment.

" The Jurors for our Sovereign Lord the King do, upon their Oath, " preſent, that *John Brierly* alias *Timber-head*, late of *Bath-Town* in " *North Carolina*, Mariner; *Robert Boyd*, late of *Bath-Town* aforeſaid, " Mariner; *Rowland Sharp*, late of *Bath-Town*, Mariner; *Jonathan Clarke*, " late of *Charles-Town*, in the Province of *South-Carolina*; and *Thomas* " *Gerrard*, late of *Antegoa*, Mariner; the 27th Day of *September*, in the " fifth Year of the Reign of our Sovereign Lord *George*, by the Grace " of God, of *Great Britain*, *France*, and *Ireland* King, Defender of the " Faith, *&c.* by Force and Arms, upon the High Sea, in a certain Place " call'd Cape *Fear*, about half a Mile diſtant from the Shore, in the La- " titude of Thirty-four, or thereabouts, and within the Juriſdiction of " the Court of Vice-Admiralty of this Province of *South-Carolina*, did " piratically and felonioufly ſet upon, board, break, and enter a certain " Merchant Sloop call'd the *Francis*, Capt. *Peter Manwareing* Com- " mander, then being a Sloop of certain Perſons, (to the Jurors aforeſaid " unknown) and then and there piratically and felonioufly did make an " Aſſault in and upon the ſaid *Peter Manwareing*, and other his Mari- " ners (whoſe Names to the Jurors aforeſaid are unknown) in the ſame " Sloop, in the Peace of God, and our Sovereign Lord the King, then " and there being, piratically and felonioufly did put the aforeſaid *Peter* " *Manwareing*, and others his Mariners of the ſame Sloop, in the Sloop " aforeſaid then being, in corporal fear of their Lives; then and there in " the Sloop aforeſaid, upon the high Sea, in the Place aforeſaid, call'd " Cape *Fear*, about half a Mile diſtant from the Shore, in the Latitude " of Thirty-four, and within the Juriſdiction aforeſaid, piratically and " felonioufly did ſteal, take and carry away the ſaid Sloop *Francis*, and " alſo ſix Hogſheads of Rum of the Value of Eight Pounds current Money " of the Iſland of *Barbadoes*, and one Tierce of Sugar of the Value of " Seven Pounds current Money of the Iſland of *Antegoa*, the Goods and " Chattels of certain Perſons (to the Jurors aforeſaid unknown) then and " there upon the high Sea aforeſaid, in the Place aforeſaid call'd Cape " *Fear*, about half a Mile diſtant from the Shore, in the Latitude of " Thirty-four, or thereabouts, as aforeſaid, and within the Juriſdiction " aforeſaid, being found in the aforeſaid Sloop in the Cuſtody and Poſ- " ſeſſion of the ſaid *Peter Manwareing*, and other his Mariners of the " Sloop aforeſaid; and from their Cuſtody and Poſſeſſion, then and there " upon the high Sea aforeſaid, and in the Place aforeſaid, called Cape " *Fear*, about half a Mile diſtant from the Shore, in the Latitude of " Thirty-four, or thereabouts, as aforeſaid, and within the Juriſdiction " aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the King, " his Crown and Dignity, *&c.*

To which Indictment they all pleaded *Not Guilty.*

Then the Court proceeded upon their Trial.

The *Jurors* were ſworn, whoſe Names were as followeth:

Timothy Bellamy, Foreman.	*Benjamin Dennis.*	*John Lee.*
George Ducket.	*Hugh Durfey.*	*Thomas Bee.*
John Rivers.	*Thomas Chambers.*	*John Barton.*
William Sheriffe.	*Daniel Townſhend.*	*Richard Fairchild.*

Then the *Witneſſes* were ordered to be called.

Clerk. Call *Ignatius Pell, who was ſworn.*

Mr. *Hepworth. Pell*, do you know the Priſoners at the Bar?

Ig. Pell. I know them all very well.

Mr. *Hepworth.* Pleaſe to give an Account of what you know of them, and of their Behaviour at Cape *Fear*.

Ig. Pell. John Brierly and *Robert Boyd* came on board three or four Days after we came to Cape *Fear*.

J. *Trott.* You took them firſt, did you not?

Ig. Pell. Yes; we ſent off our Dory, and took them.

J. *Trott.* From whence did they come?

Ig. Pell. From *North Carolina.*

Att. Gen. How long after they came on board did they join themſelves to the Company?

Ig. Pell. Brierly did very ſoon, but *Boyd* did not ſo ſoon, tho' he did afterwards; and for *Sharpe*, I do not know that ever he was joined to the Company.

J. *Trott.* And how did *Clarke* behave himſelf?

Ig. Pell. Jonathan Clarke and one came in from *South Carolina:* they went away from the Sloop; and then after ſome Days *Clarke* returned again, but it was with Hunger, tho' he ſaid then it was not.

Att. Gen. Were there any Goods taken out of Capt. *Read*'s Sloop after he had joined himſelf a ſecond time?

Ig. Pell. I cannot ſay that certainly.

J. *Trott.* Nor you cannot ſay poſitively there were?——*Ig. Pell.* No.

Mr. *Hepworth.* What do you know of *Gerrard?*

Ig Pell. I can ſay nothing to him.

Clerk. Will any of you aſk the Evidence any Queſtions? *John Brierly*, will you aſk any Queſtions?

Brierly. Pell, you know I often ſaid I would not bear Arms, and that I deſired no Share.

Ig. Pell. But *John*, you know you had your Arms ready as well as the reſt, and that you had your Share.

Clerk. Robert Boyd, will you aſk any Queſtions?——*Boyd.* No, Sir.

Clerk. Rowland Sharp, will you?——*Sharp.* No, Sir.

Clerk. Jonathan Clarke, Will you aſk any Queſtions?

Clarke. Pell, don't you remember that I was abaft, and one of the Negroes came and damned me, and aſked me what I did there? why I did not go and work amongſt the reſt? and told me I ſhould be uſed as a Negroe.

Ig. Pell. I do remember it was ſo.

Mr. *Hepworth.* We proceed to call another Evidence.

Capt. Thomas Read *called and ſworn.*

Att. Gen. Capt. *Read*, pleaſe to begin with *Brierly.*

Capt. *Read Brierly* came on board one Morning very early, and helped to take out ſeveral Goods.

Mr. *Hepworth.* Do you know what Goods?

Capt. *Read.* Some Rum and Sugar.

J. *Trott.* Do you know thoſe Goods to be taken out?

Capt. *Read.* Yes.

J. *Trott.* How did he behave himſelf when Major *Bonnet* ſent for him on board to fight Colonel *Rhett?*

Capt. *Read.* I cannot tell.

Mr. *Hepworth.* How did *Boyd* behave himſelf?

Capt. *Read.* I took him to be a Priſoner like myſelf at firſt, till he was ſent for on board the *Revenge* by Major *Bonnet* to fight Colonel *Rhett.*

Att. Gen. What made you think he was a Priſoner?

Capt. *Read.* Becauſe he was not employ'd in any Buſineſs, as the reſt were.

J. *Trott.* That Day they engaged Colonel *Rhett*, was he on board your Sloop?

Capt. *Read.* Yes, and Major *Bonnet* ſent for all Hands on board the *Revenge.*

Att. Gen. What do you ſay of *Sharp?*

Capt. *Read.* I can ſay nothing of him.

Att. Gen. What have you to ſay of *Clarke?*

Capt. *Read.* He run away for a time, and then he return'd again after ſome Days.

Att. Gen. Was there any Goods taken out after he return'd?

Capt. *Read.* Yes, Sir.

J. *Trott.* Did *Clarke* himſelf take out thoſe Goods?

Capt. *Read.* That I cannot tell; and as for *Gerrard*, he belong'd to Capt. *Manwareing:* and as the Captain and I was together, he came and told us how they us'd him; but *he was ſorry for what he had done, and was reſolved to make his Eſcape the firſt Opportunity he had to get away.*

Clerk. Have any of you any Queſtions to aſk the King's Evidence?

The Priſoners aſk no Queſtions.

Mr. *Hepworth.* We proceed to call another Evidence.

Francis Griffin *ſworn.*

Mr. *Hepworth.* Look upon the Priſoners; do you know them?

Griffin. I know them all.

Mr. *Hepworth.* Begin with *John Brierly.*

Griffin. He was on board of us ſome time when we were at Cape *Fear*, and he was as the reſt of the Company was; and he ſaid *he hoped when Major* Bonnet *ſhould go to the Northward, to be revenged on ſome at the* Hore-kills, for ſome Offence they had given him there.

J. *Trott.* You looked upon him as one of the Crew?——*Griffin.* Yes.

J. *Trott.* What do you know of *Boyd?*

Griffin. He was on board of us ſome time; and when Major *Bonnet* ſent for all Hands on board the *Revenge*, he went with them: but as for *Sharp*, I can ſay nothing of him, nor of *Clarke*, only he run away, and in ſome Days he return'd again.

Mr. *Hepworth.* We ſhall call another Evidence.

Capt. Peter Manwareing *ſworn.*

Mr. *Hepworth.* Capt. *Manwareig*, do you know the Priſoners at the Bar?

Capt. *Manwareing.* I know them all very well.

Mr. *Hepworth.* Pleaſe to give the Court an Account of what you know of them; and begin with *Brierly.*

Manwareing. Brierly, the 12th Day of *Auguſt* he came on board; and a little after he was on board, I did not ſee but he acted as the reſt did, and he hoped to come up with ſome at the *Hore-kills:* but as for *Boyd*, he was on board Capt. *Read*'s Sloop.

J. *Trott.* What have you to ſay of *Sharp?*

Manwareing. Some time after he came to Cape *Fear*, and Major *Bonnet* ſent for him on board the *Revenge*, he ſaid he would go on ſhore if he had an Opportunity, and I never ſaw him among the reſt of the Company.

J. *Trott.* What have you to ſay of *Jonathan Clarke?*

Manwareing. After we had been at Cape *Fear* ſome Days, *Jonathan Clarke*, and one *Dolton*, came in, and Major *Bonnet* ſent the Dory, and brought them on board; and after ſome Days, *Clarke* and went away, and was gone ſome Days, and then returned again, and then he was ordered to work among the Negroes. As for my Man *Gerrard*, he came and told me, *he was not able to bear any longer, but was forced to comply with them, for they told him they would have no regard for the Colour, but wou'd make a Slave of him*; but he did not receive any of their Goods; and when he was at home, he had the Character of an honeſt Man, and fought for his King and Country.

Mr. *Hepworth.* We will call another Evidence.

James Killing *called and ſworn.*

Mr. *Hepworth.* Do you know the Priſoners at the Bar?

Killing. I know them all very well.

Mr. *Hepworth.* Give the Court an Account of what you know of their ſharing at Cape *Fear.*

Killing. Brierly was put on board our Sloop there to work at his Trade, and would often ſay, *he had a Quarrel againſt ſome at the Hore-Kills, he hoped to revenge himſelf upon them.*

J. *Trott.* Why what had they done to him?

Killing. He was in debt, and therefore he owed them a Grudge; but for the reſt, I can ſay nothing.

J. *Trott.* You the Priſoners, what have you to ſay in your Defence? I ſhall now be ready to hear.

Cl. John Brierly, what have you to ſay?

Brierly. Mr. *Boyd* and I was in a leaky Canoo, and we were afraid ſhe would ſink, and ſo we were obliged to keep along ſhore; and I ſtood up, and thought I ſaw a Veſſel or two, and he bid me look again, and then I ſaw it was a Veſſel. They ſent off their Dory, and aſked if we would conſent to go with them? And we ſaid, No: But they ſaid they would break the Canoo, and we might go where we pleaſed. So they made me conſent to go on board the *Revenge*, but I never joined myſelf while I was on board: And then I was order'd on board Capt. *Manwareing*, and there I worked; but I never bore Arms, nor did fight Colonel *Rhett.*

Clerk. Rowland Sharp, what have you to ſay?

Sharp. After I was taken, I went on ſhore, and travelled four Days in the Woods without eating or drinking, and could find the way to no Plantation, and ſo was forced to return again, and I refuſed to ſign the Articles; and one of the Men came and told me I was to be ſhot, and I had the Liberty to chuſe the Four Men that ſhould do it, and the Boatſwain went about to get Hands to beg me off; but I was reſolved to make my Eſcape the firſt Opportunity.

Clerk. Jonathan Clarke, what have you to ſay?

Clarke. The 12th of *Auguſt*, coming into Cape *Fear* with Mr. *Dolton*, he thought he ſaw the Maſt of a Veſſel, and I deſired him to take the Helm that I might ſee, for if there was any Veſſel it was *Pirates*; but *Dolton* ſaid it was nothing but an old Tree: But when we came farther in, we ſaw three Sloops, and they ſent off their Dory and took us, and carried us aboard the *Revenge*; and Major *Bonnet* aſked us from whence we came? and I told him. He aſked me where we were a going? we told him. The next Day he aſked if I did not deſign to do as they did? I told him no. Then I went away with a Deſign to get clear of them, but with Hunger was forced to return again: And they aſked me if I would ſign the Articles then? and I refuſed; and one of the Negroes came and damned me, and aſked me why I did not go to the Pump, and told me that was my Buſineſs: And Major *Bonnet* told me, if I did not, he would make me Governor of the firſt Iſland he came to; for he would put me aſhore and leave me there.

Clerk. Thomas Gerrard, what have you to ſay?

Gerrard. Some time after we were taken, one of the Men came and aſked if I would join with them? I told him, No. He ſaid, I was but *(a)* like a Negro, and they made Slaves of us all of that Colour, if they did not join. So I did it with a Deſign to get clear of them the firſt Opportunity; and I never ſhared any of the Goods.

J. *Trott. Pell*, did he never ſhare?——*Pell.* He never did ſhare.

J. *Trott.* And did they threaten to make a Slave of him, if he did not join?—— *Pell.* Yes.

Att. Gen. May it pleaſe your Honours, and you the Gentlemen of the Jury, as for *Brierly* and *Boyd*, it appears from the Evidence that they came to Cape *Fear* three or four Days after *Bonnet: Brierly* he took up very ſoon, and *Boyd* ſome time after; and that there were ſeveral Goods taken out of Capt. *Manwareing*'s Sloop, and particularly Rum and Sugar. And as for *Sharp*, there is no Evidence proves any thing fully on him; and therefore I think he may be looked upon as under Conſtraint and Force. As for *Gerrard*, I think the ſame; for though he ſigned the Articles, yet no Evidence proves that he did ſhare any of the Goods: Nay, the Boatſwain ſays he did not ſhare; and if they did not comply with them, they would make a Slave of him all the Days of his Life. And Capt. *Manwareing* ſays he had the Character of an honeſt Man at home; and that he fought for his King and Country.

J. *Trott.* Gentlemen of the Jury, the Priſoners at the Bar ſtand charged with *Piracy*, committed on a Sloop belonging to Capt. *Manwareing*; and the Evidence have proved it fully upon *Brierly* and *Boyd*; and particularly, that there was Rum and Sugar taken out. *Brierly* took up very ſoon with them, and had his Share; and that he hoped to revenge himſelf on ſome at the *Hore-Kills. Boyd* did not take up ſo ſoon; but he did afterward. As for *Sharp*, he would have made his Eſcape, but could not; and Major *Bonnet* told him he ſhould die, and bid him chuſe four Men to ſhoot him; and tho' he ſigned the Articles, he never ſhared, as *Pell* proves. As for *Clarke*, he ſays he was forced to it; that he went away, and Hunger forced him to return again, and the Negroes inſulted over him; and Major *Bonnet* told him, he would make him Governor of

(a) He was a Mullato.

an Iſland, and leave him there; and none of the Evidence proves that he ſhared any of the Goods. And as for *Gerrard*, he was threaten'd to be made a Slave of; tho' indeed he had been better made a Slave than go a pirating: But Capt. *Manwareing* ſays he had the Report of an honeſt Man in his Country; and that he was faithful to his King and Country: So I ſhall leave thoſe to your Conſideration. And if you think they were under Force and Conſtraint, as indeed it appears to me, by the whole Courſe of the Evidence, that they were; then you ought to acquit them.

Then an *Officer* was ſworn to keep the *Jury*,

Who, after they had conſidered of their Verdict, returned, and found *John Brierly* aliàs *Timberhead*, and *Robert Boyd*, Guilty; *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourn'd till *Tueſday* Morning.

Tueſday, *November* the Fourth, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign the ſaid *John Brierly* aliàs *Timberhead*, *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, upon the following Indictment.

" The Jurors for our Sovereign Lord the King do upon their Oath " preſent, That *John Brierly* aliàs *Timberhead*, late of *Bath-Town* in " *North Carolina*, Mariner; *Robert Boyd*, late of *Bath-Town* aforeſaid, " Mariner; *Rowland Sharp*, late of *Bath-Town* aforeſaid, Mariner; " *Jonathan Clarke*, late of *Charles-Town*, in the Province of *South Caro-* " *lina*, Mariner; and *Thomas Gerrard*, late of *Antegoa*, Mariner; the " *twenty-ſeventh* Day of *September*, in the *Fifth* Year of the Reign of our " Sovereign Lord *George*, by the Grace of God, of *Great Britain*, " *France*, and *Ireland*, King, Defender of the Faith, *&c.* by Force and " Arms, *&c.* upon the High Sea, in a certain Place called *Cape Fear*, " about half a Mile diſtant from the Shore, in the Latitude of Thirty-four " or thereabouts, and within the Juriſdiction of the Court of *Vice-Admi-* " *ralty* of *South Carolina*, did piratically and feloniouſly ſet upon, board, " break, and enter a certain Merchant-Sloop, called the *Fortune*, *Thomas* " *Read* Commander, then being a Sloop of certain Perſons (to the Ju- " rors aforeſaid unknown) and then and there piratically and feloniouſly " did make an Aſſault in and upon the ſaid *Thomas Read*, and other his " Mariners (whoſe Names to the Jurors aforeſaid are unknown.) In the " ſame Sloop, againſt the Peace of God, and of our now Sovereign Lord " the King, then and there being, piratically and feloniouſly, did put " the aforeſaid *Thomas Read*, and others his Mariners of the ſame Sloop, " in the Sloop aforeſaid, then being in corporal Fear of their Lives, then " and there in the Sloop aforeſaid, upon the *High Sea*, in the Place afore- " ſaid, called *Cape Fear*, about half a Mile diſtant from the Shore, in " the Latitude of Thirty-four, or thereabouts, and within the Juriſ- " diction aforeſaid, *piratically* and *feloniouſly* did ſteal, take, and carry " away the ſaid Sloop *Fortune*, and alſo ten Barrels of Pork, of the " Value of Twenty Pounds, current Money of *Penſylvania*; two " Firkins of Butter, of the Value of Fifty Shillings, like current " Money of *Penſylvania*; and three Tierces of Bread, of the Value " of Six Pounds Ten Shillings, like current Money of *Penſylvania*; " the Goods and Chattels of certain Perſons (to the Jurors aforeſaid un- " known) then and there, upon the *High Sea* aforeſaid, in the aforeſaid " Place, called *Cape Fear*, about half a Mile diſtant from the Shore, in " the Latitude of Thirty-four, or thereabouts, as aforeſaid, and within " the Juriſdiction aforeſaid; being found in the aforeſaid Sloop, in the " Cuſtody and Poſſeſſion of the ſaid *Thomas Read*, and others his Mari- " ners of the Sloop aforeſaid, and from their Cuſtody and Poſſeſſion, then " and there, upon the *High Sea* aforeſaid, in the Place aforeſaid, called " *Cape Fear*, about half a Mile diſtant from the Shore, in the Latitude " of Thirty-four or thereabouts, as aforeſaid, and within the Juriſdic- " tion aforeſaid, againſt the Peace of our ſaid now Sovereign Lord the " King, his Crown and Dignity, *&c.*

Who all pleaded *Not Guilty*.

Then the Court proceeded upon their *Trial*.

The Jurors were ſworn, whoſe Names are as followeth:

Samuel Proileau, Foreman.	*Joſhua Mariner.*	*Charles Marche.*
John Hodgſon.	*Thomas Fairchild.*	*John Grimball.*
Garrat Vanvelſin.	*Henry Genelac.*	*Nicholas Stephens.*
Lucas Stoutenborough.	*John Ballentine.*	*William Harvey.*

Then the *Witneſſes* were ordered to be called.

Clerk. Call *Ignatius Pell*. *Who was ſworn.*

Mr. *Hepworth*. *Pell*, give an Account firſt of *Brierly* and *Boyd*.

Ig. Pell. As for *Brierly*, he ſoon united himſelf to the Company; and when we engaged Colonel *Rhett*, he was as active as any of the reſt. But for *Boyd*, he was ſent on board Capt. *Read's* Sloop, and was there till Major *Bonnet* ſent for him on board the *Revenge*, to fight Colonel *Rhett*.

J. *Trott*. And did he fight?

Ig. Pell. He was wounded with one of the firſt Shot, and ſo was carried down into the Hole; ſo that he never did fight.

Mr. *Dean*. Why was he put on board the Sloop?

Ig. Pell. To look after the Sloop, I ſuppoſe.

Att. Gen. Had he his Arms ready when you engaged Colonel *Rhett?*

Ig. Pell. Yes, Sir: So we had all in general: But I did not ſee him uſe them.

As for the other *three*, he thought them to be under Conſtraint, and they did not fight Colonel *Rhett*.

Clerk. Will any of you aſk the King's Evidence any Queſtions?

No Queſtions aſk'd by the Priſoners.

Mr. *Hepworth*. We proceed to call another Evidence.

Capt. Peter Manwareing *ſworn.*

Mr. *Hepworth*. Capt. *Manwareing*, give an Account of the Priſoners of their fighting Colonel *Rhett*, and begin with *Brierly* and *Boyd*.

Capt. *Manwareing*. They came on board, and *Brierly* ſoon became one of the Company, and hoped to revenge himſelf on them at the *Hore-Kills*, and acted as the reſt did when they engaged Colonel *Rhett*. But as for *Boyd*, I took him to be a Priſoner for ſome Time.

Captain *Manwareing's* Evidence concerning *Sharpe*, *Clarke*, and *Gerrard*, the ſame as in the former Trial.

Mr. *Hepworth*. Will any of you aſk the King's Evidence any Queſtions?

No Queſtions aſk'd by the Priſoners.

Mr. *Hepworth*. We will call another Evidence.

James Killing *call'd and ſworn.*

Mr. *Hepworth*. Give an Account of the Priſoners at the Bar; and firſt of *Brierly* and *Boyd*.

Killing. As for *Boyd*, he was on board Capt. *Read* after we came to Cape *Fear*, till they were ſent for to fight Colonel *Rhett*; and I thought he had been a Priſoner till then, and I talked very free to him. And as for *Brierly*, he was as the reſt of the Company.

Att. Gen. Were there any Goods taken out after *Brierly* came on board?

Killing. Yes.

Mr. *Hepworth*. Do you know what Goods?

Killing. I cannot remember every particular Sort.

His Evidence againſt the other three *the ſame as in the former Trial.*

Clerk. Will any of you aſk the King's Evidence any Queſtions?

No Queſtions aſk'd by the Priſoners.

Mr. *Hepworth*. We will call another Evidence.

Capt. Thomas Read *call'd and ſworn.*

Mr. *Hepworth*. Capt. *Read*, pleaſe to give an Account of the Priſoners at the Bar; and firſt of *Brierly* and *Boyd*.

Capt. *Read*. As for *Brierly*, I did not ſee but he acted as all the reſt of the Company did.

J. *Trott* What have you to ſay of *Boyd?*

Capt. *Read*. I thought him to be a Priſoner, and diſcours'd freely with him, which if he had diſcovered, it had done me an Injury; for I heard him wiſh we might meet with a Thirty-Gun Ship, and I told him I ſhould be glad of it as well as he.

Foreman. What did he wiſh to meet with a Thirty-Gun Ship for?

Capt. *Read*. To free us from the Pirates.

His Evidence againſt the other three *the ſame as before.*

Clerk. Will any of you aſk the King's Evidence any Queſtions?

None of the Priſoners aſk'd any Queſtions.

J. *Trott*. You the Priſoners may now ſpeak what you have to ſay.

Clerk. What have you to ſay, *John Brierly?*

Brierly. When Mr. *Boyd* and I came in at Cape *Fear*, we ſaw three Sloops; and then came off a Dory with ſome Hands, and haled us, and then carried us on board; but we did not know that they were Marrooners. But Mr. *Boyd* trembled and ſhook like a Leaf; and I told him not to be afraid. So they carried us on board.

J. *Trott*. And ſo you united yourſelf with them to make up the Company?

Brierly. I was forced to do what I did.

Clerk. *Robert Boyd*, what have you to ſay?

Boyd. After we came to Cape *Fear*, and was taken by *Bonnet's* Men, I was on board the *Revenge* for ſome Time, and they aſked me to ſign the Articles, the which I refuſed; and Major *Bonnet* told me, if I did not, he would marroon me on an Iſland, and leave me. And after I was ſent on board Capt. *Read's* Sloop, I had nothing but the Proviſions I lived on; I never had any thing more. And when Major *Bonnet* ſent for all on board to fight Colonel *Rhett*, it would have been preſent Death for any to refuſe, and I was wounded with one of the firſt Shot.

(*The other three made it appear they were innocent, as in the other Indictment.*)

Att. Gen. May it pleaſe your Honours, and you the Gentlemen of the Jury, the Evidence proves the Fact fully on *Brierly*; that he ſoon engaged with *Bonnet* after he was taken, and that he acted as the reſt of the Company did; and that he hoped to be revenged on ſome at the *Hore-Kills*. As for *Boyd*, though he was on board the Pirate-Sloop, he never took Part with them; and he wiſhed for a Thirty-Gun Ship, that they might be ſet at Liberty. And Capt. *Read* took him for a Priſoner, till he was ſent for on board the *Revenge*; and then the Boatſwain ſays he did not fight. As for the other three, I think it appears they were under Conſtraint and Force.

J. *Trott*. Gentlemen of the Jury, the Priſoners at the Bar ſtand indicted for piratically taking Capt, *Read*, in the Sloop *Fortune*. As for *Brierly*, the Evidence proves it very plain and fully upon him, that he took up very ſoon with them, and did hope to revenge himſelf upon ſome of the *Hore-Kills*, and that he engaged againſt Col. *Rhett*. As for *Boyd*, Capt. *Read* looked upon him as a Priſoner; and that he had ſuch Diſcourſe with him, that if he had diſclos'd it to *Bennet's* Crew, it had done him much hurt; and the *Boatſwain* ſays, he did not fight Col. *Rhett*. And as for the other *three*, I think it hath been fully proved they were under Conſtraint. But I ſhall leave it to your Conſideration.

Then an *Officer* was ſworn to keep the *Jury*.

Who, after they had conſider'd of their *Verdict*, returned, and found *John Brierly* aliàs *Timberhead*, Guilty; *Robert Boyd*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, Not Guilty.

Then the Court adjourned till *Wedneſday* Morning.

Wedneſday, *November* the Fifth, 1718. the Court met according to Adjournment.

THEN *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, *Job Bayley*, *John William Smith*, *Thomas Carman*, *John Thomas*, *William Morriſon*, *William Livers* aliàs *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins*, *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, *Zachariah Long*, *James Wilſon*, *John Brierly* aliàs *Timberhead*, *and Robert Boyd*, who ſtood convicted of *Piracies*, as appears by the above Records, were brought to the Bar, and were ſeverally aſked what they could ſay why Judgment of Death ſhould not paſs upon them?

And

And they having Nothing to alledge in arreſt of Judgment;

Then Proclamation for *Silence* was made, while the Judge of the Court of Vice-Admiralty pronounced *Sentence* of *Death* upon the *Priſoners*.

J. *Trott*. You the Priſoners at the Bar, *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, *Job Bayley*, *John-William Smith*, *Thomas Carman*, *John Thomas*, *William Merriſon*, *William Livers* aliàs *Evis*, *Samuel Booth*, *William Hewet*, *John Levit*, *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *John Ridge*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins*, *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, *Zachariah Long*, *James Wilſon*, *John Brierly*, and *Robert Boyd*, ſtand here convicted of *Piracy*.

You have been *indicted* but for *two* Acts of *Piracy*; but you know upon the *Trials* it was fully proved againſt moſt of you, that you *piratically* took *thirteen* Veſſels ſince you joined Major *Bonnet*, and ſailed from *Topſail-Inlet* in *North Carolina*.

So that many of you might have been convicted on *eleven* more Indictments of *Piracy*.

Beſides, ſeveral of you were proved to be *Pirates* before that Time, as belonging to *Thatch*'s Crew; and ſo were guilty of the ſeveral *Piracies* committed while you belong'd to him.

You cannot but acknowledge that you have all of you had a fair and indifferent Trial.

You were fully heard, not only as to all you could pretend to ſay in your own *Defences*, but alſo as to what you alledge in *Mitigation* of your Crimes.

And indeed, when you ſaw that the *Facts* laid in the Indictment were ſo fully proved againſt you, tho' moſt of you pleaded *Not Guilty* for Form-ſake, yet in the open Court, upon your Trials, moſt of you acknowledged the Facts charged upon you. Therefore no one can think but that you were all of you juſtly found *Guilty*; and your own Conſciences will oblige you to acknowledge the ſame. So that there is not any of you who can complain of any Hardſhips at your Trials.

As to the *Crime* that you are convicted of, which is *Piracy*, the *Evil* and *Wickedneſs* of it is evident to the Reaſon of all Men: So that it needs no Words to aggravate the ſame; it is ſo deſtructive of all Trade and Commerce between Nation and Nation, that *Pirates* are called *Enemies to Mankind, with whom no Faith nor Oath ought to be kept*; and they are term'd in our Law *Brutes* and *Beaſts of Prey*, and therefore it is the *Intereſt*, as well as *Duty*, of all Governmenis to bring ſuch Offenders to Puniſhment.

Tho' the Greatneſs of your *Crime* is ſuch, that no one can think but that the *Sentence of Death* which will now be paſſed upon you is juſtly due to you for the ſame; yet as Pity and Compaſſion, even to the worſt of Criminals, when brought to Puniſhment, are natural to all Men who have not flung off all Senſe of Humanity, but much more firmly ingrafted in the Hearts of Chriſtians; therefore ſurely it cannot but be a very melancholy Spectacle to ſee ſo many Perſons in the Prime of their Years, in perfect Health and Strength, dropping into the Grave: And which is a more ſorrowful Conſideration, that they are in the height of their Sins; and therefore, without the infinite Mercies of God, through the Satisfaction of Chriſt, muſt neceſſarily ſink into the Dwellings of everlaſting Miſery.

And indeed, moſt ſad and deplorable is the Condition you have brought yourſelves to: To be adjudg'd by the Laws of your Country unworthy any longer to live, and to tread the Earth, or breathe the Air; and that no further Good or Benefit can be expected from you but by the Example of your Deaths; and to ſtand like Marks or fatal Rocks and Sands, to warn others from the ſame Shipwreck and Ruin for the future.

As moſt of you have been *Mariners* by Profeſſion, and every one of you have ſeveral Times been at *Sea*; ſo I cannot but wonder, that being ſo often at Sea, you ſhould not conſider the great *Power* of God in creating the ſame, and his *Providence* in preſerving thoſe who paſs upon it; and conſequently, that ſuch Thoughts ſhould not cauſe in you a *Dread* of his *Power*, and a *Love* of his *Goodneſs*.

The Conſideration of God's Power in making the Sea, and ſetting Bounds to the raging Waters thereof, is uſed as an Argument by God himſelf, why Men ſhould fear him; for thus God expreſſeth it by the Prophet *Jeremiah*: *Fear ye not me? ſaith the Lord: will ye not tremble at my preſence, which have placed the Sand for the bound of the Sea by a perpetual Decree, that it cannot paſs it; and tho' the Waves thereof toſs themſelves, yet can they not prevail: tho' they fear, yet can they not paſs over it*; Jer. 5. *v.* 22. Or as it is expreſſed in the Book of *Job*: *Hitherto ſhalt thou come, but no farther; and here ſhall thy proud Waves be ſtayed*; Job. 38. *v.* 11.

The *Pſalmiſt* ſaith, that *they that go down to the Sea in Ships, that do Buſineſs in great Waters; theſe ſee the Works of the Lord, and his Wonders in the Deep. For he commandeth and raiſeth the ſtormy Wind, which lifteth up the Waves thereof. They mount up to the Heaven, they go down again to the Depths, their Soul is melted becauſe of Trouble. They reel to and fro, and ſtagger like a drunken Man, and are at their Wits end. Then they cry unto the Lord in their Trouble, and he bringeth them out of their Diſtreſſes. He maketh a Storm a Calm, ſo that the Waves thereof are ſtill. Then they are glad becauſe they be quiet; ſo he bringeth them unto their deſired Haven.* But the practical Inference that he draws from theſe is, *That Men ſhould praiſe the Lord for his Goodneſs, and for his wonderful Works to the Children of Men*; Pſal. 107. *v.* 23, 24, 25, 26, 27, 28, 29, 30, 31.

But inſtead of having a Senſe of God's Power and Goodneſs, in preſerving you and others upon the Sea, your frequent Preſervations harden'd you into a Contempt of the Danger you were in; and you thereby ſlighted your Deliverance. And tho' you could not but ſee the many *natural* Dangers that attend the Seas, and thoſe who had occaſion to go upon the ſame, yet you were reſolved that you would contribute what in you lay to the Hazards thereof, by the frequent *Rapines* and *Murders* which you committed. So that what the *Prophet* ſaith of the Pride of the *Tyrians*, may be apply'd to you, *that you cauſed your Terror to be on all that haunt the Sea*; Ezek. 26. *v.* 17.

Altho' it may be, while you were in your ſeeming Proſperity, and went on in your committing *Spoils* and *Robberies without* controul, you might make *a mock at your Sins*, Prov. 14. v. 9. and ch. 10. v. 23. and *ſay in your Hearts, God hath forgotten, he hideth his Face, he will never ſee it*, Pſal. 10. *v.* 11. 94. *v.* 7. 64. *v.* 5. and Job 22. *v.* 13. yet now that you ſee that God's Hand hath reached you, and his Power hath brought you to public Juſtice; I hope your preſent unhappy Condition hath had a good Effect upon you, that it hath raiſed in you more ſerious Thoughts; and that you are now ſenſible of the greatneſs of your Sins, and that you will ſincerely repent you of the ſame.

As to the great *Evil* and *Sinfulneſs* of the *Facts* you have committed, ſurely you cannot but know, that it is one of the expreſs Commandments of God, *Thou ſhalt not ſteal*, Exod. 20. *v.* 15. and the Apoſtle St. *Paul* expreſly affirms, that *Thieves ſhall not inherit the Kingdom of God*, 1 Cor. 6. *v.* 10.

But then remember that to *Theft* you have added the Sin of *Murder*, in deſtroying thoſe Perſons who were ſent by lawful Authority to ſuppreſs you, and to put a Stop to your wicked Actions. For you being no way authorized to uſe the Sword, or to fight any one, every one of thoſe Perſons who fell by your Hands, were murdered; and their Blood now cries for Vengeance againſt you: For it is the *Voice* of *Nature*, as well as the revealed Law of God, that *Whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*, Gen. 9. *v.* 6.

It is the Commandment of God, *Thou ſhalt do no Murder*, Exod. 20. *v.* 13. and the Apoſtle enumerating ſeveral of the Works of the Fleſh, amongſt the reſt reckons *Murders*; and then concludes with theſe remarkable Words: *Of which I tell you before, as I have told you in time paſt, that they which do ſuch things ſhall not inherit the Kingdom of God*, Gal. 5. *v.* 21.

And *Murderers* are threaten'd to have *their part in the Lake which burneth with Fire and Brimſtone, which is the ſecond Death*, Rev. 21. *v.* 8. See *ch.* 22. *v.* 15. Words which carry that Terror with them, that conſidering your Circumſtances, and your Guilt, ſurely the Sound of them muſt make you tremble; *For who can dwell with everlaſting Burnings?* Iſa. 33. *v.* 14.

I ſuppoſe you all know that you muſt appear before the Tribunal of Chriſt; from whoſe infinite *Knowledge* none of your Actions can be hid, and from whoſe infinite *Power* no one can reſcue you or protect you; and from whom, without a true and unfeigned Repentance for all your Sins paſt, you can expect no other than that dreadful Sentence of Condemnation, *Depart from me, ye curſed, into everlaſting Fire, prepared for the Devil and his Angels*, Matth. 25. *v.* 41.

I do not ſpeak this to overwhelm you with Sorrow, much leſs to drive you into *Deſpair* of God's Mercy, which is one of the worſt of Sins, and which I hope you will not add to your other Offences againſt God. But I mention this to you, to make you ſenſible of the great Danger of your Condition, without true and unfeigned Repentance. For ſeeing I can give you no hopes of Pardon from Man, I hope you will improve the ſhort Time you have now left you, to make your Peace with God, and to obtain Pardon from him.

And I wiſh that what I now ſay to you in this your deplorable Conditions, may make you all ſenſible of the Greatneſs of your Offences, that ſo you may become truly penitent; which if you are, you may yet hope for Mercy from God: *For tho' your Sins be as Scarlet* [even dyed in Blood] *yet he can make them white as Snow*, Iſa. 1. *v.* 18.

Therefore if you will now turn unto God by a true and unfeigned Repentance, he will not refuſe you nor reject you, even now in your great Diſtreſs.

For the Threatenings declared by God in the Scripture againſt Sinners, muſt always be underſtood againſt impenitent Sinners; for God hath declared himſelf to be *Merciful and Gracious*, Exod. 34. *v.* 6. *And that he hath no Pleaſure in the Death of the Wicked, but that the Wicked turn from his way and live*, Ezek. 33. *v.* 11. *ch.* 18. *v.* 23. And hath promiſed, that when he doth ſo, *he ſhall Save his Soul alive*, *ver.* 27.

But be ſure remember that you muſt go to God, in and through the alone Merits and Interceſſion of his Son *Jeſus Chriſt*, who hath made *Satisfaction* to the *Juſtice* of God for us: *For he is our Advocate with the Father*; *And he is the Propitiation for our Sins*, John 2. *v.* 1, 2. *For his Blood cleanſeth us from all Sin*, *ch.* 1. *v.* 7. Know, therefore, that *there is none other Name under Heaven given among Men, whereby we muſt be ſaved*, but only by the Name of the Lord *Jeſus*, Acts 4. *v.* 12.

But then conſider how he invites *all them that labour and are heavy laden with their Sins to come unto him, and he will give them reſt*, Matth. 11. *v.* 28. *He will not break the bruiſed Reed, nor quench the ſmoaking Flax*, Iſa. 42. *v.* 3. compared with *Matth.* 12. *v.* 20. The Apoſtle tells us, *that Chriſt Jeſus came into the World to ſave Sinners*, 1 Tim. 1. *v.* 15. And he himſelf aſſures us, *that he came to ſeek and ſave that which was loſt*, Luke 19. *v.* 10. Matth. 18. *v.* 11. And hath promiſed, that *he that cometh unto him, he will in no wiſe caſt out*, John 6. 37.

Doubt not, therefore, but that if you will now ſincerely turn to God, he will accept you, and pardon and forgive you your Sins.

But know that the *Condition* of theſe and other the Promiſes of God made to Sinners, is *Faith* and *Repentance*. And great Sins (ſuch as yours are) muſt have great Repentance. You muſt earneſtly cry unto God for Pardon and Remiſſion of your Sins, and particularly, that he would *deliver you from Blood-guiltineſs*, Pſal. 51. *v.* 14.

And do not miſtake the *Nature* of Repentance, to be only barely a Sorrow for your Sins, by reaſon of the *Evil* and *Puniſhment* which they have now brought upon you: but your Sorrow for your Sins muſt ariſe from the Conſideration of your having offended a gracious and merciful God. To which ſhould be added, a ſincere Reſolution and an actual Amendment for the Future. Indeed, ſuch is your unhappy Circumſtances, that you cannot give any actual Proof of the Amendment of your Lives: but remember that God knows the Heart.

Time will not permit me to enlarge upon the *Nature* of Repentance, and of the many Miſtakes that Men make in that great Duty: Neither indeed will I ſo far preſume to meddle out of my own Profeſſion. You may have thoſe Matters better explained to you by ſome of the *Miniſters* of this Province, whom you may deſire to attend you, and fit you for Death; and from them you may expect more full and particular Directions: *For the Prieſts Lips ſhall keep Knowledge, and you ſhall ſeek the Law at their Mouths: for they are the Meſſengers of the Lord*, Mal. 2. *v.* 7. *And the Ambaſſadors of Chriſt; and to them is committted the Word* [or Doctrine] *of Reconciliation*, 2 Cor. 5. *v.* 19, 20.

Thus having diſcharged my Duty to you as a *Chriſtian*, by exhorting you to an unfeigned Repentance for your Crimes, and Faith in Chriſt,

by

by whoſe Merits alone you muſt hope for Pardon and Salvation, I muſt now do my Office as a Judge.

The *Sentence* that the Law hath appointed to paſs upon you for your Offences, and which this Court doth therefore award, is,

That you the ſaid Robert Tucker, Edward Robinſon, Neal Paterſon, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morriſon, William Livers *aliàs* Evis, Samuel Booth, William Hewet, John Levit, William Eddy *aliàs* Nedy, Alexander Annand, George Roſs, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet *aliàs* Millet, Thomas Price, John Lopez, Zachariah Long, James Wilſon, John Brierly, *and* Robert Boyd, *ſhall go from hence to the Place from whence you came, and from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck, till you are ſeverally dead.*

And the God of infinite Mercy be merciful to every one of your Souls.

After the Condemnation of the above-mentioned Perſons, *Thomas Nichols*, *Rowland Sharp*, *Jonathan Clarke*, and *Thomas Gerrard*, who were found *Not Guilty*, were *diſcharged*.

And then the Court adjourn'd to *Monday* the 10th Inſtant.

On Saturday, November the 8th, 1718, *Robert Tucker*, *Edward Robinſon*, *Neal Paterſon*, *William Scot*, *Job Bayley*, *John William Smith*, *John Thomas*, *William Morriſon*, *Samuel Booth*, *William Hewet*, *William Eddy* aliàs *Nedy*, *Alexander Annand*, *George Roſs*, *George Dunkin*, *Matthew King*, *Daniel Perry*, *Henry Virgin*, *James Robbins*, *James Mullet* aliàs *Millet*, *Thomas Price*, *John Lopez*, and *Zachariah Long*, were executed at the *White Point* near *Charles-Town*, according to the above *Sentence*.

Monday, *November* the 10th, 1718. the Court met according to Adjournment.

THEN the Court proceeded to arraign *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, [*who had eſcaped, but was retaken. Nov.* 6.] for feloniouſly and piratically taking the Sloop *Francis*, with her Goods, Capt. *Peter Manwareing* Commander; and the Sloop *Fortune*, with her Goods, Capt. *Thomas Read* Commander; upon the two following Indictments.

The Jurors for our Sovereign Lord the King, do on their Oath preſent, That Stede Bonnet *aliàs* Edwards *aliàs* Thomas, *late of* Barbadoes, *Mariner*; Robert Tucker, *late of the Iſland of* Jamaica, *Mariner*, *&c. as before.*

The Jurors for our Sovereign Lord the King, do on their Oath preſent, That Stede Bonnet *aliàs* Edwards *aliàs* Thomas, *late of the Iſland of* Barbadoes, *Mariner*; David Heriot, *late of the Iſland of* Jamaica, *Mariner*; Edward Robinſon, *late of* Newcaſtle *upon* Tine, *Mariner*, *&c. as before.*

To both which Indictments he pleaded *Not Guilty*.

J. *Trott*. You are to come upon your Trial this Day, upon the firſt *Indictment*, and you have pleaded *Not Guilty:* ſo that what Evidence you have muſt be ready.

Bonnet. My pleading *Not Guilty* is becauſe I may have ſomething to offer in my Defence; and therefore I hope none of the Bench will take it amiſs.

The Court proceeded upon his Trial on the *firſt* Indictment, for piratically taking the Sloop *Francis*, Capt. *Peter Manwareing* Commander.

Then the Jurors were ſworn, whoſe Names are as followeth:

Timothy Bellamy, Foreman.	*Jonathan Main.*	*Thomas Lamboll.*
George Ducket.	*John Lee.*	*Henry Beaton.*
William Sheriff.	*Thomas Bee.*	*Moſes Wilſon.*
Benjamin Dennis.	*James Mazyck.*	*Claas Joor.*

Mr. *Hepworth*. May it pleaſe your Honours, and you Gentlemen of the Jury; The *Priſoner* who now ſtands arraigned at the Bar, has been guilty of many *Piracies*, committed many *Robberies*, ruined many Families, and been the Occaſion of many moſt cruel and inhuman *Murders*, and all that within a very ſhort Time paſt. Should I here deſcend into all the Particulars, I ſhall take up too much of your Time. You know (all of ye) I believe, after what manner he lately *fled* from *Juſtice*. Nay, he was not ſatisfied with his own *Eſcape*, but he muſt tamper with the King's Evidence, to avoid others being proſecuted; and prevailed with the Maſter *Heriot* to run away with him, who has been ſince killed. And I believe the Priſoner at the Bar cannot, upon Reflection, but think himſelf anſwerable for that Man's Death. Nay, ſome people took particular notice of the Priſoner's Behaviour at the Time when *Thatch* having got the Command from him, he began to reflect upon his paſt Courſe of Life, and was then filled with ſuch *Horror*, that he was perfectly confounded with *Shame* at the many deteſtable Crimes he had been guilty of, and ſaid, he would gladly leave off that way of living, being fully tired, and having got conſiderably by it; but he ſhould be aſhamed ever to ſee the Face of an *Engliſhman:* Therefore if he could not get to *Spain* or *Portugal*, where he might be undiſcovered, he would live and die in the ſame Courſe of Life, *viz.* in *Piracy* and *Robbery*.

The Trial of this Man ought to be the more conſiderable, as he was the great *Ringleader* of them; who has ſeduced many poor, ignorant Men to follow his Courſe of Living, and ruined many poor Wretches; ſome of whom lately *ſuffered*, who with their laſt Breath expreſſed a great Satisfaction at the *Priſoner*'s being *apprehended*, and charged the Ruin of themſelves and Loſs of their Lives entirely upon him.

We ſhall now proceed to call our *Evidences*.

Ignatius Pell *called and ſworn.*

Mr. *Hepworth*. *Pell*, begin with the *firſt* Indictment, and when you was firſt acquainted with Major *Bonnet*.

Ign. Pell. It was at the Bay of *Honduras*; but Capt. *Thatch* was Commander in Chief.

Att. Gen. This I obſerve was before they went to *Topſail-Inlet*, at *North-Carolina*.

Ign. Pell. Yes, Sir; for when we came to *Topſail-Inlet*, *Robert Tucker* was choſe Quarter-Maſter; and we went out to go to *St. Thomas*'s for a Commiſſion to go a privateering againſt the *Spaniards*; but the firſt Veſſel we ſaw we took.

Mr. *Hepworth*. What did you take out of her?

Ign. Pell. We took ſome Proviſions.

Att. Gen. Had you no Proviſions on board the *Revenge?*

Ign. Pell. Yes, Sir, ſome Beef, Pork, and Flour.

Mr. *Hepworth*. What was the next Veſſel you took?

Ign. Pell. A Sloop belonging to *Bermudas*. After we had diſcharged her, we took another in which were eight Negroes. We took out two, and left three Men and two Women, and ſent three Hands more which made eight; and the next Day we gave Chace to two Ships belonging to *Glaſcow* in *Scotland*, and in the Evening we came up with them, and the other turned Tail, and we never ſaw them more after that. And after we had taken ſome Tobacco and other Goods we diſcharged them. We took, as I remember, two Veſſels belonging to *Briſtol*, when Capt. *Read* was taken.

Att. Gen. What do you know of Capt. *Manwareing?*

Ign. Pell. We were at an Anchor near Cape *James* aliàs Cape *Inlopen*, and a little before Night we ſaw a Sloop come to an Anchor at the Mouth of the River, and we ſent off the Dory with five Hands, and in a little Time they returned with Capt. *Manwareing*; and the next Day we haled the Sloop long-ſide the Schooner which we had taken before, and hoiſted out ſeveral Hogſheads of Moloſſes and Rum, and put them on board the Canoo, and put ſome Pitch and Tar on board the Sloop.

Att. Gen. Who gave you Orders for the doing of that?

Ign. Pell. I cannot tell, Sir.

Att. Gen. Did you ſee Major *Bonnet* on board *Manwareing*'s Sloop?

Ign. Pell. I cannot ſay he was, neither do I know certainly that he was not.

J. *Trott*. Was he not your Commander?

Ign. Pell. He was called our Captain, to be ſure.

Clerk. Have you any Queſtions to aſk the King's Evidence?

Bonnet. Don't you believe in your Conſcience, that when we left *Topſail-Inlet*, it was to go to *St. Thomas*'s? And there were near forty Hands, and they concluded to a marrooning?

Ign. Pell. I did believe it was ſo till after we were out.

J. *Trott*. That was what they accuſed you for on their Trials; that you deceived them, under a Pretence of going to *St. Thomas*'s.

Bonnet. I am ſorry that they ſhould take the Opportunity of my Abſence to accuſe me of that which I was free from.

Mr. *Dean*. If there were forty Hands on board, it cannot be thought that he had Power to command them.

J. *Trott*. But he was Commander in Chief among them, and that after they went a pirating; Was it not ſo, Boatſwain?

Ign. Pell. He went by that Name; but the Quarter-Maſter had more Power than he.

J. *Trott*. What do you mean by your Evaſions? Was he Commander in Chief, or was he not?

Ign. Pell. He was.

J. *Trott*. Then who had the greateſt Power?

Att. Gen. Do you know if he received his Share of Capt. *Manwareing*'s Goods? Or did any receive it for him?

Ign. Pell. Sir, it was the Quarter-Maſter took care of that.

J. *Trott*. He was Commander in Chief, and therefore I ſuppoſe he had a double Share?

Ign. Pell. I did never enquire whether he had or not.

J. *Trott*. Boatſwain, tell the Truth; had he his Share, or had he not?

Ign. Pell. He had it.

Bonnet. Boatſwain, did you ever hear me force any Man to go?

Ign. Pell. No, Major, I cannot ſay I did.

Bonnet. Do you not remember, that when we left *Topſail-Inlet*, and they began to quarrel about Proviſion, that I ſaid I would leave the Sloop?

Ign. Pell. I do remember you ſaid ſo.

J. *Trott*. But if you did take ſome for Proviſion, would no leſs than *thirteen* Veſſels ſatisfy you?

Bonnet. It was contrary to my Inclination.

Mr. *Hepworth*. We proceed to call another Evidence.

Capt. Peter Manwareing *call'd and ſworn.*

Mr. *Hepworth*. Capt. *Manwareing*, look upon the Priſoner at the Bar, do you know him?

Manwareing. I know him very well.

Mr. *Hepworth*. Give the Court an Account of your being taken by him.

Manwareing. I arrived at Cape *James* aliàs Cape *Inlopen*, the thirty-firſt of *July*; and after being at an Anchor ſome time, we ſaw a Dory coming, as I ſaid before. So I was ordered on board the *Revenge*.

J. *Trott*. And before whom was you brought?

Manwareing. Before the Man at the Bar, Capt. *Thomas* he was called then; and ſo I gave him my Papers; and it being Night, he ſaid but little more that Night. Next Morning they haled the Sloop long-ſide the Schooner, and hoiſted out the Rum and Moloſſes out of the Sloop, and put on board the Schooner; and the firſt of *Auguſt* we ſailed in Company to Cape *Fear*. But indeed the Gentleman was very civil to me.

Att. Gen. Did you ever hear him give Orders to take out any Goods?

Manwareing. He was on board the Sloop himſelf when it was done.

Mr. *Hepworth*. Do you remember any particular Goods taken out?

Manwareing. Yes, Sir.

Clerk. Will you aſk the King's Evidence any Queſtions?

Bonnet. I beg leave to aſk whether you ever ſaw me ſhare among the reſt?

Manwareing. You was in the Round-Houſe, and a Bundle and ſome Pieces was brought; and I ſaw you take it, and give it the Negroe-Boy, to put into the Cheſt.

Bonnet. There were ſeveral that I kept their Shares for; but it was not mine.

Manwareing. It was put away by your Order.

Bonnet. Did you ever hear me order any thing out of the Sloop?

Manwareing. Major *Bonnet*, I am ſorry you ſhould aſk me that Queſtion; for you know you did: Which was my All that I had in the World.

So that I do not know but my Wife and Children are now periſhing for want of Bread in *New-England*. Had it been only myſelf, I had not matter'd it ſo much: but my poor Family grieves me.

Clerk. Will you aſk any more Queſtions?

Bonnet. No, Sir.

Mr. *Hepworth*. We will call another Evidence.

(*James Killing* called and ſworn.)

Mr. *Hepworth*. Give the Court an Account of your being taken, and what Goods were taken out of you.

The Evidence gave in the ſame Relation as in the former Trials; and then added, That Major *Bonnet* ordered him to go and ſhew which was the Rum, and which was the Molaſſes.

Mr. *Hepworth*. Do you remember in particular what Goods were taken out?——*Killing*. Yes, Sir.

Mr. *Hepworth*. Were the twenty-one Hogſheads of Molaſſes, and the Rum taken out?——*Killing*. Yes, Sir.

Att. Gen. And all by Major *Bonnet*'s Order?

Killing. Major *Bonnet* gave Orders for it to be done.

Judge *Trott*. What need had you of ſo much Molaſſes?

Bonnet. I did not carry it away, and it was contrary to my Inclination.

Judge *Trott*. You gave Orders for it to be done, and yet it was contrary to your Inclinations.

Clerk. Will you aſk the King's Evidence any Queſtions?

Bonnet. No, Sir.

Mr. *Hepworth*. We will call another Evidence.

(Capt. *Thomas Read* called and ſworn.)

Mr. *Hepworth*. Pleaſe to give the Court an Account of Capt. *Manwareing*'s being taken.

Capt. *Read*. After we came to Cape *James*, we ſaw a Sloop come to an Anchor, and Major *Bonnet* ordered the Dory, with five Hands to go off; and in about half an Hour they came on board with Capt. *Manwareing*.

Att. Gen. Was you on board the *Revenge* when the Dory was ſent off?

Capt. *Read*. Yes, Sir.

Att. Gen. And Major *Bonnet* gave Orders to take out thoſe Goods?

Capt. *Read*. Yes, Sir.

Judge *Trott*. Was he on board himſelf?

Capt. *Read*. Yes; and ordered the ſeveral Goods to be taken out.

Att. Gen. Do you know if the Major received his Share?

Capt. *Read*. The Captain was in the Round-Houſe when they ſhared, and they brought in ſeveral Pieces of Cloth, and a Bag of Money.

Mr. *Hepworth*. Who brought that to him?

Capt. *Read*. I do not know which of the Men.

Att. Gen. And did the Captain receive his Share?

Capt. *Read*. He ordered it to be put in the Cheſt by the Boy.

Clerk. Will you aſk any Queſtions?——*Bonnet*. No, Sir.

Judge *Trott*. You now ſtand on your Defence: What have you to ſay, I ſhall be ready to hear.

Bonnet. May it pleaſe your Honours, there is a young Man come from *North Carolina*, that will ſay ſomething in my Defence.

(*James King* called and ſworn.)

Judge *Trott*. What do you know of the Priſoner at the Bar?

King. When Major *Bonnet* took out his Clearance at *North Carolina*, the Sloop was cleared for *St. Thomas*'s, for a Commiſſion to go againſt the *Spaniards* a privateering.

Mr. *Dean*. Do you certainly know it was ſo?

King. It was reported to be ſo by the Governour.

Att. Gen. Did you hear the Governour declare this?

King. No; but Colonel *Brice*'s Son told me ſo.

Judge *Trott*. Colonel *Brice* lives fifty Miles in the Country, how did he come to inform you of this?

King. He came down out of the Country.

Judge *Trott*. If this be all the Evidence you have, I do not ſee this will be of much uſe to you; but if you have any thing further to ſay, I ſhall be ready to hear you.

Bonnet. I ſhould be glad to go through both Indictments at once.

Judge *Trott*. We ſhall go through but one Indictment now; therefore you muſt prepare to ſpeak to that ſingly.

Bonnet. May it pleaſe your Honours, and the reſt of the Gentlemen, though I muſt confeſs myſelf a Sinner, and the greateſt of Sinners, yet I am not guilty of what I am charged with. As for what the *Boatſwain* ſays, relating to ſeveral Veſſels, I am altogether free; for I never gave my Conſent to any ſuch Actions: For I often told them, if they did not leave off committing ſuch Robberies, I would leave the Sloop; and deſired them to put me on ſhore. And as for taking Capt. *Manwareing*, I aſſure your Honours it was contrary to my Inclination. And when I cleared my Veſſel at *North Carolina*, it was for *St. Thomas*'s; and I had no other End or Deſign in view but to go there for a Commiſſion. But when we came to Sea, and ſaw a Veſſel, the Quarter-Maſter, and ſome of the reſt, held a Conſultation to take it: But I oppoſed it, and told them again I would leave the Sloop, and let them go where they pleaſed. For, as the young Man ſaid, Col. *Brice*'s Son can teſtify that I had Clearance for *St. Thomas*'s.

Judge *Trott*. Was Col. *Brice*'s Son there when you cleared for *St. Thomas*'s?

Bonnet. Yes; and Col. *Brice*'s Son knew I was deſign'd for *St. Thomas*'s.

Judge *Trott*. But, pray, what Buſineſs had you at *St. Thomas*'s? Surely after you had contracted ſo much Guilt upon your Conſcience by your former *Piracies* and *Robberies*, you might have been contented to have lived a retired Life in *North Carolina*, reflected on your former wicked Courſe of Living, and repented of the ſame, and not engaged in new Actions.

Bonnet. I never took a Veſſel but with Capt. *Thatch*.

Judge *Trott*. Did you not take Capt. *Manwareing*'s Sloop?

Bonnet. It was contrary to my Inclinations; and I told them ſeveral Times if they would not leave off that Courſe of Life, I would leave the Sloop: And when Capt. *Manwareing* was taken, I was aſleep.

Judge *Trott*. How came you to order the Dory to be ſent off with five Hands to take him? And Capt. *Read* ſwears it was by your Order.

Att. Gen. May it pleaſe your Honours, and the Gentlemen of the Jury, the Priſoner at the Bar hath pleaded *Not Guilty* to the *Indictment*; but the *Boatſwain*, tho' he ſeems to bear a very great Affection to him, yet tells you that he was Commander in Chief among them at the Time when Capt. *Manwareing* was taken. Capt. *Manwareing* tells you, when he was brought on board the *Revenge*, he was brought before him, and no other; and that he delivered his Papers to him; and he ſaw his Share brought to him in the Round-Houſe, and put into the Cheſt.

Then Capt. *Manwareing*'s *Mate* ſays, Major *Bonnet* was on board the Sloop, and ordered him to ſhew which was the Molaſſes, and which was the Rum. And then Capt. *Read* ſays, Major *Bonnet* was Commander in Chief, and that he ordered the Dory to be ſent off with five Hands to take Capt. *Manwareing*. Indeed the Priſoner pleads he was under Conſtraint from his Men, and that it was contrary to his Inclinations; but I think it not common for one that is forced to have ſuch Command. And as for what *James King* ſays in behalf of the Priſoner, that he had his Clearance for *St. Thomas*'s, in what he was accuſed of before, that he deceived his Men with a Notion of his going there for a Commiſſion.

Judge *Trott*. Gentlemen of the Jury, the Priſoner at the Bar ſtands indicted for *Felony* and *Piracy*, committed on a Sloop belonging to Capt. *Peter Manwareing*, for breaking and boarding the ſaid Sloop. The firſt Evidence, *Ignatius Pell*, through the great Affection he ſeemed to have for him, was unwilling to ſpeak the Truth: yet he cannot deny but he was at the taking of *thirteen* Veſſels, and particularly Capt. *Manwareing*'s, and that he had his Share. Then comes Capt. *Manwareing*, and he ſays Major *Bonnet* was Commander in Chief; and that he was brought before him, and he gave his Papers to him, and by his Order it was that the Goods were taken out. And then *Killing* the Mate, he ſays *Bonnet* was on board when the Goods were taken out. Then comes Capt. *Read*, and he ſays the Dory was ſent off by Major *Bonnet*'s Order; and that his Share was brought into the Round-Houſe to him. As for his Pretence, that his Men forced him againſt his Will, it appears by the Evidence he did not act like a Perſon under Conſtraint. And in the former Trials, ſeveral of you remember, that his Men generally ſaid, that he deceived them under Pretence of his going to *St. Thomas*'s; and that he forced them. So that I think the Evidence have proved the Fact upon him: But I ſhall leave this to your Conſideration.

(*Then an Officer was ſworn to keep the Jury.*)

Who after they had conſidered of their *Verdict*, returned, and found the aboveſaid *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, Guilty.

Then the Court adjourned till *Tueſday* Morning.

Tueſday, *November* the 11th, 1718, the Court met according to Adjournment.

THEN the Court proceeded on the Trial of *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, upon the ſecond Indictment for *feloniouſly* and *piratically* taking the Sloop *Fortune*, with her Goods, Capt. *Thomas Read* Commander.

To which *Indictment* upon his Arraignment he pleaded *Not Guilty*; but now deſired leave to withdraw his *Plea*, and pleaded *Guilty*.

Then the Court adjourned till *Wedneſday* Morning.

Wedneſday, *November* the 12th, 1718. the Court met according to Adjournment.

THEN *Stede Bonnet* aliàs *Edwards* aliàs *Thomas*, who ſtood convicted of Piracies, as appears by the above Record, being brought to the Bar; and being aſked what he had to ſay why Judgment of Death ſhould not paſs upon him:

And he having nothing to alledge in Arreſt of Judgment;

Then Proclamation for *Silence* was made, while the *Judge* of the Court of *Vice-Admiralty* pronounced *Sentence* of Death upon the Priſoner.

Judge *Trott*. Major *Stede Bonnet*, you ſtand here convicted upon two Indictments of *Piracy*: One by the *Verdict* of the Jury, and the other by your own *Confeſſion*.

Although you were indicted but for *two* Facts, yet you know that at your Trial it was fully proved, even by an unwilling Witneſs, that you *piratically* took and rifled no leſs than *thirteen* Veſſels, ſince you ſailed from *North Carolina*.

So that you might have been indicted and convicted of *eleven* more Acts of *Piracy*, ſince you took the Benefit of the King's *Act of Grace*, and pretended to leave off that wicked Courſe of Life.

Not to mention the many *Acts* of *Piracy* you committed before; for which, if your Pardon from *Man* was never ſo authentic, yet you muſt expect to anſwer for them before God.

You know that the Crimes you have committed are *evil* in themſelves, and contrary to the *Light* and *Law* of *Nature*, as well as the *Law* of God, by which you are commanded that *you ſhould not ſteal*, Exod. xx. 15. And the Apoſtle St. *Paul* expreſly affirms, that *Thieves ſhall not inherit the Kingdom of God*, 1 Cor. vi. 10.

But to *Theft* you have added a greater Sin, which is *Murder*. How many you may have *killed* of thoſe that reſiſted you in the committing your former *Piracies*, I know not: But this we all know, that beſides the wounded, you killed no leſs than *eighteen* Perſons out of thoſe that were ſent by lawful Authority to ſuppreſs you, and to put a Stop to thoſe Rapines that you daily acted.

And however you may fancy that that was killing Men fairly in open *Fight*, yet this know, that the Power of the *Sword* not being committed into your Hands by any lawful Authority, you were not impower'd to uſe any Force, or to *fight* any one; and therefore thoſe Perſons that fell in that Action, in doing their Duty to their King and Country, were *murdered*, and their *Blood* now cries out for *Vengeance* and *Juſtice* againſt you: For it is the *Voice* of *Nature*, confirmed by the *Law* of God, that *whoſo ſheddeth Man's Blood, by Man ſhall his Blood be ſhed*. Gen. ix. 6.

And conſider that Death is not the only Puniſhment due to *Murderers*; for they are threatened to have *their Part in the Lake which burneth with Fire and Brimſtone, which is the ſecond Death*, Rev. xxi. 8. See *Chap.* xxii. 15. Words which carry that Terror with them, that conſidering your Circumſtances and your Guilt, ſurely the Sound of them muſt make you tremble; *For who can dwell with everlaſting Burnings?* Chap. xxxiii. 14.

As the *Teſtimony* of your *Conſcience* muſt convince you of the great and many Evils you have committed, by which you have highly offended God, and provoked moſt juſtly his Wrath and Indignation againſt you, ſo I ſuppoſe I need not tell you, that the only way of obtaining Pardon and Remiſſion of your Sins from God, is by a true and unfeigned *Repentence* and *Faith* in Chriſt, by whoſe meritorious Death and Paſſion, you can only hope for Salvation.

You being a Gentleman that have had the Advantage of a *liberal Education*, and being generally eſteemed a Man of *Letters*, I believe it will be needleſs for me to explain to you the Nature of *Repentance* and *Faith* in Chriſt, they being ſo fully and ſo often mentioned in the Scriptures, that you cannot but know them. And therefore, perhaps, for that Reaſon it might be thought by ſome improper for me to have ſaid ſo much to you, as I have already upon this occaſion; neither ſhould I have done it, but that conſidering the Courſe of your Life and Actions, I have juſt reaſon to fear, that the Principles of Religion that had been inſtilled into you by your *Education*, have been at leaſt corrupted, if not entirely defaced, by the *Scepticiſm* and *Infidelity* of this wicked Age; and that what time you allowed for Study, was rather applied to the *Polite Literature*, and the vain *Philoſophy* of the Times, than a ſerious Search after the *Law* and *Will* of God, as revealed to us in the *Holy Scriptures:* For *had your Delight been in the Law of the Lord, and that you had meditated therein Day and Night*, Pſal. i. 2. you would then have found that God's *Word was a Lamp unto your Feet, and a Light to your Path*, Pſal. cxix. 105. and that you will account all other Knowledge but *Loſs*, in compariſon of *the Excellency of the Knowledge of Chriſt Jeſus*, Phil. iii. 8. *who to them that are called is the Power of God, and the Wiſdom of God*, 1 Cor. i. 24. *even the hidden Wiſdom which God ordained before the World*, Chap. ii. 7.

You would then have eſteemed the *Scriptures* as the *Great Charter* of Heaven, and which delivered to us not only the moſt perfect *Laws* and *Rules* of Life, but alſo diſcovered to us thoſe Acts of *Pardon* from God, wherein we have offended thoſe righteous Laws: For in them only is to be found the great *Myſtery* of fallen Man's *Redemption, which the Angels deſire to look into*, 1 Pet. i. 12.

And they would have taught you that *Sin* is the debaſing of *Human Nature*, as being a *Deviation* from that *Purity, Rectitude*, and *Holineſs*, in which God created us; and that *Virtue* and *Religion*, and walking by the Laws of God, were altogether preferable to the Ways of *Sin* and *Satan*; for that the *Ways* of Virtue are *Ways of Pleaſantneſs, and all her Paths are Peace*, Prov. iii. 17.

But what you could not learn from God's Word, by reaſon of your *carleſly*, or but *ſuperficially* conſidering the ſame, I hope the Courſe of his *Providence*, and the preſent *Afflictions* that he hath laid upon you, hath now convinced you of the ſame: For however in your ſeeming Proſperity you might make a *Mock at your Sins*, Prov. iii. 17. yet now that you ſee God's Hand hath reached you, and brought you to public Juſtice, I hope your preſent unhappy Circumſtances hath made you ſeriouſly reflect upon your paſt Actions and Courſe of Life; and that you are now ſenſible of the Greatneſs of your Sins, and that you find the Burden of them is intolerable.

And that therefore being thus *labouring, and heavy laden with Sin*, Mat. xi. 28. you will eſteem that as the moſt valuable *Knowledge*, which can ſhew you how you can be reconciled to that ſupreme God whom you have ſo highly offended; and which can reveal to you him who is not only the powerful *Advocate with the Father for you*, 1 John ii. 1. but alſo who hath paid that Debt that is due for your Sins by his own Death upon the Croſs for you, and thereby made full Satisfaction to the Juſtice of God. And this is to be found no where but in God's Word, which diſcovers to us that *Lamb of God, which taketh away the Sins of the World*, John i. 29. which is *Chriſt* the Son of God: For this know, and be aſſured, that *there is none other Name under Heaven given among Men, whereby we muſt be ſaved*, Acts iv. 12. but only by the Name of the Lord *Jeſus*.

But then conſider how he invites all Sinners to come unto him, and *that he will give them reſt*, Matt. xi. 28. for he aſſures us, *that he came to ſeek and to ſave that which was loſt*; Luke xix. 10. Matt. xviii. 11. and hath promiſed that *he that cometh unto him, he will in no wiſe caſt out*, John vi. 37.

So that if now you will ſincerely turn to him, tho' late, even at the *eleventh Hour*, Matt. xx. 6. 9. he will receive you.

But ſurely I need not tell you, that the *Terms* of his *Mercy* is *Faith* and *Repentance*.

And do not miſtake the *Nature* of Repentance to be only a bare Sorrow for your Sins, ariſing from the Conſideration of the *Evil* and *Puniſhment* they have now brought upon you; but your Sorrow muſt ariſe from the Conſideration of your having offended a gracious and merciful God.

But I ſhall not pretend to give you any particular Directions as to the Nature of Repentance: I conſider that I ſpeak to a Perſon whoſe Offences have proceeded not ſo much from his not *knowing*, as his *ſlighting* and *neglecting* his *Duty:* Neither is it proper for me to give Advice out of the way of my own Profeſſion.

You may have that better delivered to you by thoſe who have made Divinity their particular Study; and who by their Knowledge, as well as their Office, as being the *Ambaſſadors of Chriſt*, 2 Cor. v. 20. are beſt qualified to give you Inſtructions therein.

I only heartily wiſh that what, in compaſſion to your Soul, I have now ſaid to you upon this ſad and ſolemn Occaſion, by exhorting you in general to *Faith* and *Repentance*, may have that due Effect upon you, that thereby you may become a true *Penitent*.

And therefore having now diſcharged my Duty to you as a *Chriſtian*, by giving you the beſt Counſel I can with reſpect to the Salvation of your Soul, I muſt now do my Office as a *Judge*.

The Sentence that the Law hath appointed to paſs upon you for your Offences, and which this Court doth therefore award, is,

'That you the ſaid *Stede Bonnet* ſhall go from hence to the Place from 'whence you came, and from thence to the Place of Execution, where 'you ſhall be hanged by the Neck till you are Dead. And the God of 'infinite Mercy be merciful to your Soul.'

On *Wedneſday December* the 10th, 1718. the ſaid Major *Stede Bonnet* was *executed* at the *White-Point* near *Charles-Town*, according to the above *Sentence*.

CXC. *Proceedings of the Houſe of Lords in* Ireland *againſt* Jeffery Gilbert, *Eſq. Lord Chief Baron,* John Pocklington, *Eſq. and Sir* John St. Leger, *Kt. Barons of the* Exchequer *there, for iſſuing Proceſs in the Cauſe of* Anneſley *and* Sherlock, *in oppoſition to an Order of that Houſe,* July 28. 1719. 5 Geo. I.

Alexander Burrowes, High-Sheriff of the County of *Kildare*, having been ſeveral times fined by the Court of *Exchequer*, for not obeying an Order of that Court, which he apprehended to be a breach of a former Order of the Houſe of Lords, preſented the following Petition.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled, the Humble Petition of *Alexander Burrowes*, Eſq. late Sheriff of the County of *Kildare*.

Moſt humbly Sheweth,

THAT on the 3d Day of *October*, 1717. your Lordſhips were pleaſed to Order, that the High-Sheriff of the County of *Kildare* ſhould forthwith put *Heſter Sherlock* into the Poſſeſſion of the Lands of *Little-Rath*, and other Lands in the ſaid Order mentioned, which were to be held by her till ſhe ſhould receive thereout the Sum of 1507*l.* 14*s.* 8*d.* Farthing, chargeable upon the ſaid Lands.

That *Charles Nuttal*, Eſq. then High-Sheriff of the County of *Kildare*, in Obedience to, and by Virtue of your Lordſhips ſaid Order, on the ſixth Day of *October* aforeſaid, put the ſaid *Heſter Sherlock* into the Poſſeſſion of the Premiſſes; and ſhe was in the actual Poſſeſſion thereof, when your Petitioner was appointed and ſworn Sheriff of the ſaid County of *Kildare* for the Year, ending at *Michaelmas*, 1718.

That on the 15th Day of *March*, 1717. an Injunction iſſued out of the Court of *Exchequer*, ſign'd by the Right Honourable *Jeffery Gilbert*, Eſq. Lord Chief Baron of the ſaid Court; and under the Seal thereof, directed to your Petitioner, being then Sheriff of the ſaid County; whereby your Petitioner was required immediately after Receipt thereof, purſuant to an Order of the ſaid Court of *Exchequer*, bearing Date the 19th Day *February* preceding, (although the Barons of the ſaid Court had due Notice of your Lordſhips ſaid Order of the 3d of *October* aforeſaid) to reſtore *Maurice Anneſley*, Eſq. to the Poſſeſſion of thoſe Lands, whereof the ſaid *Heſter Sherlock* was then actually poſſeſſed by Virtue of, and under your Lordſhips ſaid Order. And your Petitioner was alſo required by the ſaid Injunction to ſupport and keep the ſaid *Maurice Anneſley* in ſuch Poſſeſſion of the Premiſſes till the further Order of the ſaid Court, or till the ſaid *Maurice Anneſley* ſhould be thereout Evicted by due Courſe of Law; which Injunction was delivered to your Petitioner by *John Anneſley* (the ſaid *Maurice*'s Brother) who required your Petitioner to give him the Poſſeſſion of the ſaid Lands, having a Letter of Attorney from his ſaid Brother for that Purpoſe (as he informed your Petitioner); but your Petitioner refuſed to execute the ſaid Injunction, conceiving it to be a Breach of your Lordſhips ſaid Order of the 3d of *October*, 1717. and of the Rights and Privileges of this Honourable Houſe.

Whereupon the ſaid *John Anneſley* in his proper Perſon, on the 13th Day of *May*, 1718. moved the ſaid Court of *Exchequer* on his Affidavit, ſetting forth, That your Petitioner refuſed to execute the ſaid Injunction, and prayed that the ſaid Affidavit might be read, which was ordered; and accordingly read by *John Beauman*, Gent. one of the Attornies of the ſaid Court, and the ſaid Lord Chief Baron, and the Honourable *John Pocklington*, Eſq. and Sir *John St. Leger*, Kt. two other of the Barons of the ſaid Court, then ſitting in the ſaid Court of *Exchequer*, Ordered, That your Petitioner ſhould be fined 40*s.* if he did not return the ſaid Injunction in four Days; and on ſeveral Motions afterwards made by the ſaid *John Beauman*, the ſaid Barons impoſed ſeveral Fines on your Petitioner, which amount to 77*l. Sterl.* and upon ſaid *Beauman*'s Motion on the 30th Day of *June*, 1718. ordered an Attachment to the Purſuivant againſt your Petitioner, for the Matters aforeſaid, which accordingly iſſued.

That on the 7th Day of *July*, 1718. your Petitioner returned the ſaid Writ of Injunction, and thereon returned in *hæc Verba*, your Lordſhips ſaid Order of the 3d Day of *October*, 1717. and the Reſolutions of this Honourable Houſe, bearing Date the 11th Day of *February*, 1703. on the Petition

Petition of *Edward* Earl of *Meath*, and *Cecilia* Counteſs of *Meath* his Wife; of which the ſaid Barons had likewiſe due Notice. And that your Petitioner, by Reaſon of your Lordſhips ſaid Order and Reſolutions, and of the Rights and Privileges of this Honourable Houſe, durſt not reſtore the ſaid *Maurice Anneſley* to the Poſſeſſion of the Premiſes, as by the ſaid Writ of Injunction was required.

That all the ſaid Fines being impoſed on your Petitioner for not Returning ſaid Writ, and your Petitioner having complied with the ſaid Orders by Returning the ſame; the ſaid Barons *Pocklington* and *St. Leger*, on the 16th Day of *July*, 1718, ſitting publickly upon the Reducing of Fines in the *Exchequer* Chamber, and having heard the ſaid ſeveral Fines impoſed on your Petitioner read unto them by the proper Officer, and being by him informed, that your Petitioner had returned ſaid Injunction, were pleaſed to reduce, and accordingly took off the ſaid Fines, upon paying 6*d.* in the Pound, (as by a Rule made by the Barons had been practis'd in ſuch Caſes, tho' the ſame was never taken before, as your Petitioner is informed;) but in the Afternoon of the ſaid Day, *John Draycott*, one of the Attorneys of the ſaid Court, (who paid the Box for your Petitioner on taking off the ſaid Fines) was ſent for by the ſaid Lord Chief Baron to his Lordſhip's Houſe, where the ſaid other two Barons then were; and after the ſaid Barons had heard the ſaid Writ of Injunction and Return read, and what was offered in Behalf of your Petitioner in Juſtification of the ſaid Return, the ſaid Barons were pleaſed, at his Lordſhip's ſaid Houſe, to oblige the ſaid *Draycott* to take back the Money he ſo paid for taking off ſaid Fines; and eſtreated the ſame, which have ſince iſſued in Proceſs againſt your Petitioner; although the ſaid Return was never complained of by the ſaid *Maurice Anneſley*, or his Counſel, nor had your Petitioner an Opportunity or Day given him to juſtify the Legality of the ſaid Return, though the ſame was prayed by the ſaid *Draycott* in behalf of your Petitioner.

That the ſaid Barons, without having any regard to the ſaid Return, on the 7th Day of *November* laſt, upon ſaid *Beauman*'s Motion, ordered the ſaid Attachment to the Purſuivant to be renewed againſt your Petitioner; which having iſſued, your Petitioner was obliged to abſcond, and keep as private as poſſible, ſo that he could not attend his Affairs, whereby your Petitioner has ſuffered very much in his Fortune.

That by Reaſon of the ſaid Attachment to the Purſuivant, ſo from time to time iſſued againſt your Petitioner, he could not come upon his Accounts before the ſaid Barons in the ſaid Court of *Exchequer*: your Petitioner being adviſed and well aſſured, that if he ſhould appear in the ſaid Court the ſaid Barons would commit your Petitioner into cloſe Cuſtody, for not obeying their ſaid Injunction. And the ſaid Barons taking Advantage of your Petitioner's ſaid Circumſtances, ordered your Petitioner to be Fined 1200*l.* and upwards, for not coming upon his Accounts; tho' your Petitioner always was, and ſtill is ready, to give his Majeſty a juſt and true Account of his ſaid Office of Sheriff-wick, while he was concerned therein.

May it therefore pleaſe your Lordſhips to take the Premiſſes into Conſideration, and make ſuch Order therein for your Petitioner's Relief, as to your Lordſhips in your great Wiſdom ſhall ſeem meet.

And your Petitioner will ever Pray,

ALEX. BURROWES.

Upon reading this Petition, the Houſe of Lords referred it to the Committee for Courts of Juſtice, who after an Examination into the Affair, made the following Report by the Lord Biſhop of *Clogher*, their Chairman.

My LORDS,

THE Lords Committees for *Courts of Juſtice*, to whom the Petition of *Alexander Burrowes*, Eſq; late Sheriff of the County of *Kildare* was referred, do find,

That by the Order of this Houſe of the 3d of *October*, 1717. *Heſter Sherlock*, Widow, was upon the 6th of the ſame Month, put into the actual Poſſeſſion of the Lands of *Little Rath*, *Bodingſtown*, *Darr* and *Mullenaſooky* in the County of *Kildare*, by *Edward Conyers* Under Sheriff to *Charles Nuttall*, Eſq; then High Sheriff of the ſaid County; to continue therein till ſhe ſhould receive thereout the Sum of 1507*l.* 14*s.* 8*d.* Farthing, chargeable on the ſaid Lands; and the ſaid *Heſter* continued ſo poſſeſſed by Virtue of the ſaid Order for near two Years.

That by the Minutes of the *Chancery* Side of the *Exchequer* it appears, that the Lord Chief Baron of the *Exchequer*, on the 19th *February*, 1717, produced a Letter (*a*) dated *London* the 8th *February*, 1717, ſign'd *Cowper*, *C.* in which two Papers (*b*) were incloſed, dated the 6th *February*, 1717, ſign'd *William Cowper*, *Cler' Parliamentor'* directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the reſt of the Barons of the ſaid Court; alledged by the Lord Chief Baron to be Orders from the Lords in *Great Britain*, requiring them to reſtore *Maurice Anneſley*, Eſq; to the Poſſeſſion of the Lands he was diſpoſſeſſed of; pending his Appeal in the *Houſe of Lords* of *Great Britain*.

That on the ſaid 19th Day of *February*, 1717. in purſuance of the ſaid alledged Orders and Letter, (inſerted at the End of this Report) tho' no Affidavit had been made, that the ſaid Orders or Letter were regularly compared and ſigned, the ſaid Lord Chief Baron, and the other Barons, without any Motion by Counſel or Attorney, ordered an Injunction for the reſtoring the ſaid *Maurice Anneſley* to Poſſeſſion of the Lands he was diſpoſſeſs'd of; pending his ſaid Appeal, in the Name of the *Chancellor-Treaſurer*, and *Barons* of the ſaid Court of *Exchequer*, whereby the Sheriff or Sheriffs of the County or Counties where the ſaid Lands lay, was forthwith to put the ſaid *Maurice* into the Poſſeſſion of the ſaid Lands.

That in order to make out the ſaid Injunction, the ſaid Court ordered the ſaid *Maurice Anneſley*, his Attorney, Agent, Solicitor or Counſel, ſhou'd forthwith attend the Chief Remembrancer, or his Deputy, with the Names of the Lands of which the ſaid *Maurice Anneſley* was ſo diſpoſſeſſed of, and alſo the County or Counties where the ſaid Lands lay.

That upon the 14th of *March*, 1717. Affidavit was made before the Lord Chief Baron by *John Anneſley* of *Balliſax*, in the County of *Kildare*, Eſq; wherein *Heſter Sherlock*, was made Plaintiff, and *Maurice Anneſley*, Eſq; Defendant; that he the ſaid *John* was diſpoſſeſs'd of the Lands of *Little Rath*, *Darr*, *Bodingſtown*, and *Mullenaſooky*, which he the ſaid *John* held by Virtue of a Leaſe from the ſaid *Maurice Anneſley*, pending his ſaid Appeal; and that the ſaid *John*'s Leaſe was then in being and undetermined.

That upon the 14th of *March*, 1717. the ſaid Affidavit of the ſaid *John Anneſley* was filed in the Chief Remembrancer's Office, in order to have the ſaid Injunction made out; but before the ſaid Injunction iſſued, it appears by the Examination of Mr. *John Draycot*, Attorney for Mrs. *Sherlock* in the *Exchequer* (after having been ſworn at the Bar of this Houſe), that he the ſaid *Draycott* attended Mr. *John Becher*, then Deputy Chief Remembrancer, at his Office, and in the Preſence of the ſaid *John Anneſley* informed the ſaid *Becher*, that the ſaid Affidavit was inſufficient, and that the ſaid *Draycott* was ready to prove, that the ſaid *Maurice Anneſley* was not at the time of his ſaid Appeal, nor at any time ſince, in poſſeſſion of the ſaid Lands mentioned in the ſaid Affidavit; having ſold the ſaid Lands ſome Years before to *Andrew Wilſon*, Eſq; and Mrs. *Frances Harman*.

That by two Copies of Memorials out of the Regiſter's Office (for Regiſtring Deeds, *&c.* purſuant to Act of Parliament), proved by the ſaid *Draycott* to be true Copies of the Memorials remaining in the ſaid Office, it appears, that by Deeds of Leaſe and Releaſe bearing Date reſpectively the 1ſt and 2d Days of *March*, 1714. the Leaſe being made between *Jeffery Paul*, Eſq; on the one Part, and *Andrew Wilſon*, Eſq; of the other Part; and the Releaſe made between the ſaid *Jeffery Paul* of the firſt Part, ſaid *Andrew Wilſon* of the ſecond Part, and *Maurice Anneſley*, Eſq; on the third Part, whereby the ſeveral Lands of *Little Rath*, *Darr*, and *Bodingſtown* in the Pariſh of *Naas*, and County of *Kildare*, were for the Conſiderations therein mentioned, conveyed to the ſaid *Andrew Wilſon* and his Heirs for ever: And the Right Honourable the Lord *Altham* upon his Honour declared, that he knew that *John Anneſley* of *Balliſax*, Eſq; had paid Rent to the ſaid *Andrew Wilſon* by Virtue of, and under the ſaid Purchaſe; but believed that the Lord Chief Baron or the other Barons knew nothing thereof. It alſo appears, that by Deeds of Leaſe and Releaſe, bearing Date reſpectively the 2d and 3d Days of *April* 1715. made between *Maurice Anneſley*, Eſq; of the one Part, and *Frances Harman*, of the City of *Dublin*, Widow, of the other Part: By which ſaid Releaſe the ſaid *Maurice Anneſley* for the Conſiderations therein mentioned, conveyed to the ſaid *Frances Harman*, and her Heirs for ever, the Lands of *Mullenaſooky* in the ſaid County of *Kildare*. That notwithſtanding there was no County mentioned in the ſaid Affidavit, and ſaid Notice given of ſaid Sale to the ſaid Officer as aforeſaid; neither did it appear by the ſaid Affidavit, that the ſaid *Maurice Anneſley* was diſpoſſeſſed of the ſaid Lands therein mentioned, pending his Appeal, the ſaid Injunction iſſued directly to the Sheriff of the County of *Kildare*, bearing Date the 22*d February*, in the Fourth Year of his Majeſty's Reign, ſign'd *Gulfridus Gilbert*, and returnable into the ſaid Court in *Quindec. Paſch.* then next enſuing.

That by an Affidavit ſworn by *John Anneſley* on the 7th of *May*, 1718. before Mr. Baron *St. Leger*, and filed in the Chief Remembrancer's Office the 9th of the ſame Month; wherein he made *Maurice Anneſley*, Eſq; Plaintiff, and *Heſter Sherlock*, Widow, Defendant; in which the ſaid *John Anneſley* depoſed, That on or about the 15th of *March* preceding, he delivered the before-mentioned Injunction to *Alexander Burrowes*, Eſq; then High Sheriff of the ſaid County of *Kildare*; and ſhewed the ſaid Sheriff a Letter of Attorney from the Plaintiff, impowering the ſaid *John Anneſley* to receive the Poſſeſſion of the Lands in the ſaid Injunction mentioned; but the ſaid Sheriff refuſed to execute the ſaid Injunction.

That the ſaid *John Anneſley* in his proper Perſon, on the 13th of the ſaid Month, moved the ſaid Court upon an atteſted Copy of the ſaid Affidavit; but the ſaid *Draycott* inſiſting, that there was no ſuch Cauſe in Court, the ſaid *Anneſley* was directed by the ſaid Court to amend his Affidavit and move it again.

That the ſaid *Anneſley* thereupon eraſed and altered the ſaid Copy, and made *Heſter Sherlock*, Widow, Defendant; and ſwore the ſame before Mr. Baron *St. Leger*, and filed the ſaid Affidavit ſo amended in the Chief Remembrancer's Office, without any Alteration made in the Body of the ſaid Affidavit; which was proved by the Depoſition of *Daniel Reading*, Eſq; Deputy Chief Remembrancer; who was ſworn at the Bar of this Houſe, and examined before the ſaid Lords Committee.

That the ſame Day (*viz.*) 13th *May*, upon reading the ſaid Affidavit, the ſaid Court was informed by Counſellor *Dixon*, that what was ſworn in the ſaid Affidavit could not be true: For that the ſaid *Anneſley* ſwore he had a Letter of Attorney from the Plaintiff (who was Mrs. *Sherlock*) to

(*a*) *London*, the 8th *February*, 1717. My Lord Chief Baron, By Order of the Houſe of Lords (a Copy whereof I herewith ſend you), I Tranſmit to your Lordſhip, and the reſt of the Barons of his Majeſty's Court of *Exchequer* in *Ireland*, the Order of the ſaid Houſe; whereby the Barons of that Court are commanded to Reſtore Mr. *Anneſley* to the Poſſeſſion of his Eſtate. Your Lordſhip will immediately communicate this to the reſt of the Barons, and let me know, as ſoon as can be, what is done by yourſelf, and the reſt of the Barons, in purſuance to their Lordſhips Order, as you ſee by the above-mentioned Copy I am ordered to require of you. I am your Lordſhips moſt faithful Servant. *Cowper*, *C.*

To the Lord Chief Baron of the Exchequer *in* Ireland, *and the reſt of the Barons of the ſaid Court.*

(*b*) *Die Jovis*, 6° *Februarii*, 1717. *Ordered*, By the Lords Spiritual and Temporal in Parliament Aſſembled, That the Lord Chancellor do Tranſmit the Order of this Houſe to the Barons of the *Exchequer* in *Ireland*, which requires them to cauſe Poſſeſſion to be forthwith delivered to *Maurice Anneſley*, Eſq; of the Lands of which he was diſpoſſeſſed, pending his Appeal in this Houſe, commanding the Barons of the *Exchequer* at the ſame time to return to this Houſe, as ſoon as they can, an Account of what ſhall be done therein. *William Cowper*, Cler' Parliamentor'.

Die Jovis, 6 *Die Februarii*, 1717. Upon Report from the Committee of the whole Houſe, to whom it was Referr'd, to conſider by what Methods the Order of this Houſe, for the Reſtoring Poſſeſſion to *Maurice Anneſley*, Eſq; of the Eſtate in *Ireland*, whereof he was Diſpoſſeſs'd, pending his Appeal in this Houſe, may be moſt properly enforced and executed: It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, that the Barons of the Court of *Exchequer* in *Ireland*, do cauſe the ſaid *Maurice Anneſley*, Eſq; to be forthwith Reſtored to the Poſſeſſions of the Lands of which he was Diſpoſſeſs'd, pending his Appeal, which was received by this Houſe the 8th Day of *June* laſt. *William Cowper*, Cler', Parliamentor'.

receive Poſſeſſion of the Lands therein mentioned; when, in truth, Mrs. *Sherlock* was then in actual Poſſeſſion of the ſaid Lands.

That the Lord Chief Baron ſaid it was only a Miſtake, and without rectifying the ſame, on Motion of Mr. *John Beauman*, an Attorney, the Court ordered the ſaid Sheriff to be fined forty Shillings, if he did not return the ſaid Injunction in four Days; and on ſaid *Beauman*'s ſeveral Motions, there were Fines at ſeveral Times laid upon the ſaid Sheriff for not returning the ſaid Injunction, which amounted to 77*l.* which was proved by the Minutes of the ſaid Court, and the Teſtimony of the ſaid *Draycott*.

That the ſaid *Draycott* likewiſe proved, that the ſaid Lord Chief Baron and the other Barons had due Notice of the ſaid Order of this Houſe; and the Reſolutions thereof made the 11th *February*, 1703. before any Proceedings were had in the ſaid Cauſe, ſubſequent to the ſaid Order of this Houſe of the 3d of *October*, 1717. and that the ſaid *Anneſley* and *Beauman* were ſerved with Copies of the ſaid Order and Reſolutions, before any Motions were made by them in the ſaid Cauſe.

That by the Minutes of the 13th *June*, 1718. taken in the ſaid Court, it appears, that Mr. *Chancellor* of the *Exchequer* declared, that the Orders of the Houſe of Lords of *England* being only directed to the *Barons* of that Court; and that he found, that the Order of that Court, which was made thereon, was made as if done by him and the *Treaſurer*, as well as by the *Barons*; that he apprehended, that in regard the ſaid Orders were not directed to him, or he preſent when the ſaid Order of the Court of *Exchequer* was made, *That he had nothing to do therewith, and did not conſent thereto.*

That it appeared by the Teſtimony of the ſaid Mr. *Reading*, that the ſaid Cauſe between *Sherlock* and *Anneſley* was of the *Chancery* Side of the *Exchequer*; and that all Bills in the *Chancery* Side of the ſaid Court were directed to the *Chancellor*, *Treaſurer* and *Barons*, and believed, that if a Bill was directed otherwiſe, it would be Error.

That upon the 30th of *June*, 1718. on Motion of the ſaid *Beauman*, an Attachment to the Purſuivant was awarded againſt the ſaid *Burrowes* for not returning the ſaid Injunction, bearing Teſt the 1ſt Day of *July*, in the Fourth Year of his Majeſty's Reign, and returnable before the *Chancellor*, *Treaſurer* and *Barons* of the ſaid Court, in *Craſt. Animar.* then next.

That upon the 7th *July*, 1718. the ſaid *Burrowes* return'd the ſaid Injunction, and the ſaid *Beauman* was acquainted therewith by the ſaid *Draycott*; who told the ſaid *Beauman*, that he was ready to pay him the Coſt of impoſing the ſaid Fines and Purſuivant, which the ſaid *Beauman* refuſed, and told the ſaid *Draycott*, that *he muſt firſt have the ſaid Sheriff in Cuſtody:* That the ſaid *Draycott* applied again to the ſaid *Beauman*; and the ſaid *Beauman* ſaid, *He muſt firſt lay the ſaid Sheriff by the Heels.*

That by the Teſtimony of the ſaid Mr. *Reading* and Mr. *Draycott*, Barons *Pocklington* and *St. Leger*, upon 16th *July*, 1718. ſat in the *Exchequer*-Chamber on the reducing of Fines: That the Fines impoſed upon the ſaid Sheriff were then read by Mr. *Becher* the Officer, who informed the ſaid Barons, that the ſaid Injunction was return'd; that a Piſtole and ſeven Half-Crowns were paid to the Box, and the ſaid Fines were then taken off by the ſaid Barons.

That upon the ſame Day in the Afternoon, the ſaid *Becher*, *Reading*, and *Draycott* were ſent for to the Lord Chief Baron's Houſe, where the two other Barons were with his Lordſhip; that the ſaid Injunction was ſent for, and ſaid Injunction and Return thereon was read, and the Barons declared that it was no Return; that the ſaid *Draycott* told his Lordſhip, that he hoped he would at leaſt reſpite the ſaid Fines till the then next Term, or give the ſaid Sheriff an Opportunity to juſtify his ſaid Return, which was refuſed: That the Liſt of Fines, which was that Day read in the *Exchequer*-Chamber, was then call'd for, and the Fines impoſed upon the ſaid *Burrowes* were then read: That the ſaid *Draycott* was obliged to take back the ſaid Money, which he had paid to the Box for taking off the ſaid Fines, and the ſame were then eſtreated.

That the Return made by the Sheriff upon the ſaid Injunction, was to this Purpoſe, *(viz.)* That before the ſaid Writ came to him, the Order of this Houſe of the 3d of *October*, 1717. and the Reſolutions of this Houſe of the 11th of *February*, 1703. were delivered to him, which he recites in *hæc verba*. Which Return *(a)* the Lords Committees have thought fit to annex to their Report. That *Charles Nuttal*, Eſq; late Sheriff of the County of *Kildare*, by Virtue of the ſaid Order of the 3d of *October*, put *Heſter Sherlock* into the Poſſeſſion of the Premiſſes, and that ſhe was at the Time of the Return in Poſſeſſion thereof; that by reaſon of their Order and Reſolutions, he durſt not reſtore *Maurice Anneſley* to the Poſſeſſion of the Lands in the ſaid Injunction mentioned, in Prejudice and Violation of the Right and Privileges of this Houſe.

That upon the 7th of *November*, 1718. upon Motion of the ſaid *Beauman*, the ſaid Attachment to the Purſuivant againſt the ſaid *Burrowes* was renewed bearing Teſt the 6th of *November* laſt, and returnable before the ſaid *Chancellor*, *Treaſurer* and *Barons* in *Octabis Sanct. Hilarii* then next enſuing; and on the 30th *January* following, the ſaid Attachment was again ordered to be renewed: That the ſaid *Sheriff*, by Reaſon of their ſaid Attachments, was obliged to abſcond, and thereby prevented from coming upon his Accounts, and was upon that Account fined by the ſaid Court 1200*l.* and upwards.

That upon the 4th *February*, 1718. the Lord Chief Baron, and Mr. Baron *Pocklington*, upon the Receipt of Three Papers, *(b)* which the ſaid Barons alledged to be Orders from the Houſe of Lords of *Great-Britain*, dated the 23 *January*, 1718. ſign'd *William Cowper*, *Cler' Parliamentor'*. In a Letter produced by the ſaid Barons from the Lord Chancellor, dated *London*, the 27th *January*, 1718. ſign'd *Parker* C. which came by the Poſt; directed to the Lord Chief Baron of the *Exchequer* in *Ireland*, and the reſt of the Barons of that Court; whereby it was Ordered, That the Barons of the ſaid Court of *Exchequer*, ſhould cauſe *Heſter Sherlock* to account before them upon Oath, for the Rents and Profits of the Eſtate in Queſtion, which ſhe had made or received ſince her gaining the Poſſeſſion thereof by the Order of the Houſe of Lords in *Ireland*; and to anſwer and pay the ſame to *Maurice Anneſley*, Eſq; but without Prejudice in Caſe of an Appeal: Alſo, that the Barons of the ſaid Court were directed to proceed by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the ſaid *Maurice Anneſley*, as required by their Order of the 6th *February*, to be reſtored to him; and alſo that the Chancellor of *Great Britain* ſhould tranſmit to the ſaid Barons the ſaid Orders, and that they ſhould give an Account of what ſhould be done therein.

That without any Proof by Affidavit, (as uſual in Courts of Equity) the ſaid *Alledged Orders* were regularly ſigned and compared; and without

(a) The Return upon the Injunction. *Cancellar. Theſaurar. & Baronibus Infraſcript. humilime Certifico quod ante adventum hujus Brevis mihi direct. quædam Reſolutiones Præhonorabil. Dom. Procerum hujus Regni* Hiberniæ *fact. in Parliament. apud* Dublin. *in hoc Regno Congregat. undecimo die* Febr. *Anno Dom. Milleſimo Septingenteſimo Tertio mihi deliberat. fuer. quæ ſ. quuntur in hæc verba, ſcilicet.* Reſolutions of the Right Honourable the Houſe of Peers, the Eleventh of *February*, 1703.

Ordered on Motion, That the Petition of *Edward* Earl of *Meath*, and *Cecilia* Counteſs of *Meath*, his Wife, be read; read accordingly.

Ordered on Motion, That the Clerk of the Rolls do bring into this Houſe the Roll of the Acts of Parliament of the 38th of *Henry* the Sixth.

Reſolved on the Queſtion, *Nemine Contradicente*, That by the antient and known Laws and Statutes of this Kingdom, her Majeſty hath an undoubted Juriſdiction and Prerogative of Judging in this her High Court of Parliament, in all Appeals and Cauſes within her Majeſty's Realm of *Ireland*.

Reſolved on the Queſtion, *Nemine Contradicente*, That the Determinations and Judgments of this High Court of Parliament are final and concluſive, and cannot be revers'd or ſet aſide by any other Court whatſoever.

Reſolved on the Queſtion, *Nemine Contradicente*, That if any Subject or Reſiant within this Kingdom, ſhall hereafter preſume to remove any Cauſe determined in this High Court of Parliament, to any other Court, ſuch Perſon or Perſons ſhall be deemed *Betrayers* of her Majeſty's Prerogative and Juriſdiction, and the undoubted antient Right and Privileges of this Honourable Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Reſolved on the Queſtion, *Nemine Contradicente*, That if any Subject or Reſiant within this Kingdom, ſhall preſume to put in Execution any Order from any other Court, contrary to the final Judgment and Determination of this High Court of Parliament, ſuch Perſon or Perſons ſhall be deemed *Betrayers* of her Majeſty's Prerogative and Juriſdiction, and the undoubted antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom

En Sterne, Cler' Parliamentor'.

Et ulterius Certifico, quod ante Adventum iſtius Brevis mihi direct. quidam Ordo fact. per Præhonorabil. Domin. Spiritual. & Temporal. in Parliament. in hoc Regno Congregat. geren. dat. Tertio die Octobris, *Anno Dom. Milleſimo Septingenteſimo decimo Septimo etiam mihi deliberat. fuit, qui ſequitur in hæc verba, ſcilicet. Die* Jovis *Tertio die* Octobris, 1717. Whereas by the Report made from the Lords Committees appointed to conſider the propereſt Method for the relieving of *Heſter Sherlock*, Widow, &c. purſuant to what was Ordered and Adjudged by this Houſe, on the 19th Day of *June*, 1716. in a Cauſe wherein the ſaid *Heſter Sherlock*, Widow, was Appellant, and *Maurice* and *John Anneſley*, Eſqrs; were Reſpondents: As alſo upon the Reſolutions agreed to this Day by this Houſe, it appears, That the Sum of One Thouſand Five Hundred and Seven Pounds, Fourteen Shillings, and Eight Pence Farthing was due to *Heſter Sherlock*, the Appellant, upon the 19th Day of *February*, 1716. on Account of the Principal and Intereſt of the Portion of *Edward Sherlock*, decreed unto the ſaid Appellant as Adminiſtratrix to the ſaid *Edward*, by this Houſe on the 19th Day of *June*, 1716; and that the Lands of *Little Rath*, *Bodingſtown*, *Darr*, and *Mullenaſooky* in the Barony of *Naas* and County of *Kildare* are chargeable with, and liable to the Payment of the ſaid Sum. It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the High-Sheriff of the County of *Kildare*, do forthwith put the ſaid *Heſter Sherlock* into the Poſſeſſion of the ſaid Lands of *Little Rath*, *Bodingſtown*, *Darr*, and *Mullenaſooky*, ſubject to the ſaid ſum of one Thouſand Five Hundred and Seven Pounds, Fourteen Shillings, and Eight Pence Farthing, to be held by her the ſaid *Heſter*, until ſuch Time, as ſhe ſhall receive the ſaid Sum chargeable upon the ſaid Lands as aforeſaid, and this ſhall be a ſufficient Warrant in that behalf.

To CHARLES NUTTAL, Eſq; High-Sheriff of the County of *Kildare.*

En Stern. Cler' Parliamentor'. *Virtut. cujus Ordin. prædict.* Carolus Nuttal *poſuit prædict.* Heſter Sherlock *in plen. quiet. & pacific. Poſſeſſion. Omn. Vill. & Terr. prædict. & prædict.* Heſter Sherlock *jam uſq; Continuavit in ead. Poſſeſſion. Præmiſſ. prædict. ſecund. tenor. & effect. Ordinis prædict. Ratione quorum Reſolution. & Ordin. in Prejudict. & Seſſion. Privileg. Parliament. per Leges & Statut. hujus Regni* Hiberniæ *proviſ. infra Nominat.* Mauric. Anneſley, *Ar. ad Poſſeſſion. Separal. Vill. & Terr. de* Little Rath, Bodingſtown, Darr, & Mullenaſooky *infra Mencionant. reſtituer. non audeo. Sic Reſpond.* Alex. Burrowes, *Ar. vic.*

(b) Anneſley verſ. *Sherlock. Die Veneris* 23 *Januarii*, 1718. *Ordered*, By the Lords Spiritual and Temporal in Parliament aſſembled, That the Lord High Chancellor of *Great-Britain* do tranſmit the two Orders made this Day on the Behalf of *Maurice Anneſley*, Eſq; to the Barons of the Court of *Exchequer* in *Ireland*, commanding them at the ſame time to return, as ſoon as they can, an Account of what ſhall be done therein. *William Cowper, Cler' Parliamentor'.*

My Lord Chief Baron, *London the 27th January*, 1718.

By Order of the Houſe of Lords (a Copy whereof I herewith ſend you) I tranſmit to your Lordſhip and the reſt of the Barons of his Majeſty's Court of *Exchequer* in *Ireland*, two Orders of the ſaid Houſe, made in the Cauſe of *Anneſley* againſt *Sherlock*; by one of which the Barons of that Court are commanded to proceed by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the Appellant, *Maurice Anneſley*, Eſq; to be reſtor'd to him, as was required by Order of the ſaid Houſe of the 6th *February* laſt: and by the other, the ſaid Barons are commaded to cauſe *Heſter Sherlock* to account before them upon Oath for the Rents and Profits of the Eſtate in Queſtion, which ſhe has made or received ſince her gaining Poſſeſſion thereof, by order of the Houſe of Lords in *Ireland*; and anſwer and pay the ſame to the ſaid Appellant, *Maurice Anneſley*, Eſq; but without Prejudice to the Right, in Caſe of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland.*

Your Lordſhip will immediately communicate this to the reſt of the Barons, and return, as ſoon as you can, an Account of what ſhall be done by yourſelf, and the reſt of the Barons, in Purſuance of your Lordſhips ſaid Orders, as you ſee by the abovementioned Copy I am order'd to require of you.

I am, Your Lordſhip's moſt faithful Servant, *Parker*, C.

To the Lord Chief Baron of the Exchequer *in* Ireland, *and the reſt of the Barons.*

Anneſley verſ. *Sherlock. Die Veneris* 23 *Januarii*, 1718. Upon Report from the Lords Committees, appointed to enquire into the Reaſon of the Delay, in not obeying the Orders of this Houſe, relating to the Appeal of *Maurice Anneſley*, Eſq; and how the ſame may more properly be enforced: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Barons of the Court of *Exchequer* in *Ireland* be, and are hereby directed to proceed by the moſt ſpeedy and effectual Methods, to cauſe Poſſeſſion of the Eſtate of the ſaid *Maurice Anneſley*, as required by Order of this Houſe of the 6th of *February* laſt, to be reſtored to him. *William Cowper, Cler' Parliamentor'.*

Anneſley verſ. *Sherlock. Die Veneris* 23 *Januarii*, 1718. *Ordered*, By the Lords Spiritual and Temporal in Parliament aſſembled, That the Barons of the Court of *Exchequer* in *Ireland* do cauſe the Reſpondent, *Heſter Sherlock*, to account before them upon Oath, for the Rents and Profits of the Eſtate in Queſtion, which ſhe has made or received ſince her gaining the Poſſeſſion thereof, by the Orders of the Houſe of Lords in *Ireland*; and to anſwer and pay the ſame to the Appellant, *Maurice Anneſley*, Eſq; but without Prejudice to the Right, in Caſe of an Appeal to be brought by either Party from the Decree of the Court of *Exchequer* in *Ireland.*

William Cowper, Cler' Parliamentor.'

Motion of Counſel or Attorney, it was ordered in the Name of the *Chancellor* and *Treaſurer*, *Lord Chief Baron*, and the reſt of the *Barons* of his Majeſty's Court of *Exchequer* in *Ireland*, that the Injunction of that Court ſhould forthwith iſſue, directed to the ſaid *Heſter Sherlock*, and to the ſeveral and reſpective Tenants of the Lands in Queſtion; requiring them, and every of them, quietly to reſtore to the ſaid *Maurice Anneſley*, the Poſſeſſion of the Town and Lands of *Little Rath*, *Boddingstown*, *Darr*, and *Mullenafocky*, lying and being in the County of *Kildare*; the ſaid Lands by the ſaid Barons ſuppoſed to be comprehended in the ſaid Order.

That the ſaid Injunction was ordered to be ſerved upon the ſaid Perſons by the Purſuivant attending the ſaid Court, or by any other Perſon or Perſons whom the ſaid *Maurice Anneſley*, or his Agent ſhould appoint: And the ſaid *Maurice Anneſley*, or his Agent, was thereby required to leave the Names of the ſeveral and reſpective Tenants of the ſaid Lands at the proper Office, in order to be inſerted in the ſaid Injunction: And alſo ordered, that the Rents of the ſaid Lands remaining in the ſeveral Tenants Hands from the Time the ſaid *Heſter Sherlock* was put in Poſſeſſion, ſhou'd be forthwith by them paid over to the ſaid *Maurice Anneſley*; and that a Copy of the ſaid Order ſhould be ſerved upon the ſaid ſeveral Tenants of the ſaid Lands, together with the ſaid Injunction: Tho' by the Order of the Houſe of Lords of *Great Britain*, the Barons were only directed to oblige *Heſter Sherlock* to account before them upon Oath, for the Rents of the ſaid Lands received by her ſince her gaining the Poſſeſſion thereof; which ſhe was to pay to *Maurice Anneſley*, without Prejudice, in Caſe of an Appeal.

That purſuant to the ſaid Order of the 4th of *February*, an Injunction iſſued out of the ſaid Court, ſign'd *Jeff. Gilbert*; bearing Teſt the 12th *February* laſt, directed to *Heſter Sherlock*, and Twenty-one Perſons as Tenants to the ſaid Lands. That the ſaid *Heſter Sherlock* was never ſerved with the ſaid Injunction or Order; notwithſtanding which, ſhe was thereby diſpoſſeſſed of the ſaid Lands about the 20th *February* laſt, by the Attornments of the Tenants; except a ſmall Part thereof in the Poſſeſſion of *Dennis Galvin*.

That upon an Affidavit made by *Richard Lyons*, in a Cauſe of *Anneſley* verſ. *Sherlock*, ſworn before Mr. Baron *St. Leger*, the 23d of *February* laſt; and upon Motion of ſaid *Beauman*, an Attachment to the Purſuivant was the ſame Day ordered by the ſaid Court, againſt ſaid *Dennis Galvin*, for not obeying the ſaid Injunction, though no ſuch Perſon was named in the ſaid Writ of Injunction.

The ſaid Lords Committees had alſo the Oath adminiſtred to the *Barons* of the *Exchequer*, laid before them by Mr. *Hartley Hutchinſon*, Deputy Clerk of the Crown in the High Court of *Chancery*, and is as follows, *viz.*

'YE ſhall ſwear, That well and truly ye ſhall ſerve the King in the Office of Baron of his *Exchequer*; and that truly ye ſhall Charge and Diſcharge all manner of People; as well the Poor as Rich, and that for Highneſs nor for Riches, nor for Hatred, nor for the Eſtate of no manner of Perſon or Perſons, nor for any good Deed, Gift nor Promiſe of any Perſon the which is made to you, nor by Craft nor by Engine, ye ſhall Lett the King's Right, nor none other Perſons Right ye ſhall Diſturb, Lett nor Reſpitt againſt the Laws of the Land, nor the King's Debts ye ſhall put in Reſpitt where that they may goodly be Levied, and that the King's Needs ye ſhall ſpeed before all other, and that for Gift, Wages, no good Deed ye ſhall Layne, Diſturb nor Lett the Profit and Reaſonable Advantage of the King, in the Advantage of any other Perſon nor of yourſelf: And that nothing ye ſhall take of any Perſon for to do Wrong or Right or Delay, or for to Deliver or to Delay the People which that have to do afore you; but as haſtily as ye may them goodly to Deliver without Hurt of the King, and having no regard to any Profit, that might thereof to you be therein, you ſhall make to be delivered: And whereas ye may know any Wrong or Prejudice to be done to the King, ye ſhall put and do all your Power and Diligence that to Redreſs, and if ye may not do it, ye ſhall tell it to the King, or to them of his Council, which may make Relation to the King if ye may not come to him, to the King's Majeſty's Lieutenant, or other Chief Governour or Governours of this Realm for the time being, and the King's Council ye ſhall keep and Layne in all things, as God you help, and by the Contents of this Book.'

The Committee humbly take leave to obſerve to your Lordſhips, That there is no Name of any Attorney to the firſt Injunction.

Which ſaid Report being read, the Houſe agreed to the ſame, and came to the following Reſolutions.

RESOLVED on the Queſtion, that *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has fully proved the Allegations of his Petition, to the Satisfaction of this Houſe.

Reſolved on the Queſtion, That the ſaid *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, in not obeying the Injunction iſſued forth out of his Majeſty's Court of *Exchequer*, dated the 22d *February*, 1717. in the Cauſe between *Sherlock* and *Anneſley*, has behaved himſelf with *Integrity* and *Courage*, and with due Reſpect to the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That the Fines impoſed upon *Alexander Burrowes*, Eſq; by the Court of *Exchequer*, amounting to 77 *l.* for not returning the Writ of Injunction in the Cauſe between *Sherlock* and *Anneſley*, be taken off without Fees.

Reſolved on the Queſtions, That the Fines impoſed upon *Alexander Burrowes*, Eſq; by the Court of *Exchequer*, for not Entering on his Accounts, amounting to 1200 *l.* and upwards, be taken off, when he ſhall have made a juſt Account, without other Fees than ſuch as are uſual on paſſing Sheriffs Accounts.

Reſolved on the Queſtion, That the Lord Chief Baron, and the other Barons of the Court of *Exchequer*, had due Notice of the Reſolutions of this Houſe, made the 11th of *February* 1703. in the Cauſe of the Earl of *Meath*, and Lord *Ward*, before they made an Order for an Injunction to put *Maurice Anneſley* into Poſſeſſion.

Reſolved on the Queſtion, That the Lord Chief Baron, and the other Barons of the Court of *Exchequer*, had due Notice of the Order of this Houſe of the 3d of *October*, 1717. in the Cauſe of *Sherlock* and *Anneſley*.

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſly*, as alſo againſt *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has acted in manifeſt Derogation to, and Diminution of, the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as alſo of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Reſolved on the Queſtion, That *John Pocklington*, Eſq; one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That *John Pocklington*, Eſq; one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſley*, as alſo againſt *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has acted in manifeſt Derogation to, and Diminution of, the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as alſo of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Reſolved on the Queſtion, That Sir *John St. Leger*, Knt. one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſly*, as alſo againſt *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has acted in direct Violation of the Orders and Reſolutions of this Houſe.

Reſolved on the Queſtion, That Sir *John St. Leger*, Knt. one of the Barons of his Majeſty's Court of *Exchequer*, in the Proceedings in the Cauſe between *Sherlock* and *Anneſly*, as alſo againſt the ſaid *Alexander Burrowes*, Eſq; late High-Sheriff of the County of *Kildare*, has acted in manifeſt Derogation to, and Diminution of, the King's Prerogative of finally Judging in his High Court of Parliament in *Ireland*, as alſo of the Rights and Privileges of this Kingdom, and the Parliament thereof.

Reſolved on the Queſtion, *Nem. Con.* That it is the Duty of the Barons of the *Exchequer*, where there is any Wrong or Prejudice done to the King, in Matters lying before them, to inform the King, or the Chief Governour, or Governours of this Kingdom, or the Council.

Reſolved on the Queſtion, That the Caſe of *Sherlock* and *Anneſley*, as it lately lay before the Barons of the *Exchequer*, being Matter not only of Law, but of State, ought to have been laid before the King, the Chief Governour or Governours of this Kingdom, or the Council of the ſame: It ſo nearly concerning his Majeſty's Prerogative, and the Intereſt of the whole Kingdom.

Diſſentient.
Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killalla and *Achonry*. *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of the Court of *Exchequer*, *John Pocklington*, Eſq; and Sir *John St. Leger*, Kt. Barons of the ſame, in their Proceedings in the Cauſe between *Sherlock* and *Anneſley*, and againſt *Alexander Burrowes*, Eſq; late Sheriff of the County of *Kildare*, have acted contrary to Law, and to the eſtabliſhed Practice of the King's Courts.

Diſſentient.
Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killala and *Achonry*, *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That *Jeffery Gilbert*, Eſq; Lord Chief Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, is a *Betrayer* of his Majeſty's Prerogative, and the undoubted antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Diſſentient.
Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killalla and *Achonry*, *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That *John Pocklington*, Eſq; Second Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, is a *Betrayer* of his Majeſty's Prerogative, and the undoubted antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Diſſentient.
Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton*, Canc.
Henry Killalla and *Achonry*, *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

Reſolved on the Queſtion, That Sir *John St. Leger*, Third Baron of the Court of *Exchequer*, having taken upon him to put in Execution a pretended Order from *Another Court*, contrary to the final Judgment of this High Court of Parliament, in the Cauſe between *Sherlock* and *Anneſley*, is a *Betrayer* of his Majeſty's Prerogative, and the undoubted antient Rights and Privileges of this Houſe, and of the Rights and Liberties of the Subjects of this Kingdom.

Diſſentient.

Jo. Meath, *Donerayle.*
Welbore Kildare, *Midleton,* Canc.
Henry Killalla and *Achonry.* *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

It is *Ordered* by the Lords Spiritual and Temporal in Parliament aſſembled, That the Right Honourable *Jeffery Gilbert*, Eſq. Lord Chief Baron of the Court of *Exchequer*, ſhall, for the ſaid Offences, be taken into the Cuſtody of the Gentleman Uſher of the *Black-rod* attending this Houſe.

Diſſentient.

Jo. Meath, *Fitz-Williams.* *Midleton,* Canc.
Welbore Kildare, *Donerayle.*
Henry Killalla and *Achonry,* *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

It is *Ordered* by the Lords Spiritual and Temporal in Parliament aſſembled, That *John Pocklington*, Eſq. Second Baron of the Court of *Exchequer*, ſhall, for the ſaid Offences, be taken into the Cuſtody of the Gentleman-Uſher of the *Black-Rod* attending this Houſe.

Diſſentient.

Jo. Meath, *Fitz-Williams.* *Midleton,* Canc.
Welbore Kildare, *Donerayle.*
Henry Killalla and *Achonry,* *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

It is *Ordered* by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *John St. Leger*, Knt. Third Baron of the Court of *Exchequer*, ſhall, for the ſaid Offences, be taken into the Cuſtody of the Gentleman-Uſher of the *Black-Rod* attending this Houſe.

Diſſentient.

Jo. Meath, *Fitz-Williams.* *Midleton,* Canc.
Welbore Kildare, *Donerayle.*
Henry Killalla and *Achonry,* *Wm. Derry.*
Timo. Kilmore and *Ardagh.*

CXCI. *The Trial of* Hugh Reaſon *and* Robert Tranter, *at the* King's-Bench, *for the* Murder *of* Edward Lutterell, *Eſq.* Feb. 3. 1721. Hil. 8 Geo. I.

The Indictment was as follows:

In Banco Regis. *Dominus Rex verſ. Hugonem Reaſon & Robertum Tranter.*

" THE Jury preſent, That *Hugh Reaſon* and *Robert Tranter*, not " having the Fear of God before their Eyes, but being moved " and ſeduced by the Inſtigation of the Devil, the 17th Day of " *October* laſt, about the Hour of Ten of the Clock in the Forenoon of " the ſaid Day, by Force and Arms, at the Pariſh of St. *Clement Danes*, " in the County of *Middleſex*, in and upon one *Edward Lutterell*, Eſq. " in the Peace of God and of our Sovereign Lord the King, then and " there being, feloniouſly, voluntarily, and of their Malice afore-thought, " did make an Aſſault; and that the ſaid *Hugh Reaſon*, with a Piſtol of " the Value of five Shillings, then and there charged with Gunpowder " and leaden Bullets; which ſaid Piſtol the ſaid *Hugh Reaſon* in his " Right Hand, then and there had and held into and againſt the aforeſaid " *Edward Lutterell*, then and there feloniouſly and of his Malice afore-" thought did ſhoot off and diſcharge: And that the ſaid *Hugh Reaſon* " with leaden Bullets aforeſaid iſſuing and ſhot off out of the Piſtol afore-" ſaid, then and there by the Force of the ſaid Powder, the ſaid *Edward* " *Lutterell* in and upon the Right Part of the Body of the ſaid *Edward* " *Lutterell*, under the Right Pap of the ſaid *Edward Lutterell*, then and " there feloniouſly, voluntarily, and of his Malice afore-thought ſtruck: " and that the ſaid *Hugh Reaſon* then and there feloniouſly, voluntarily, " and of his Malice aforeſaid, gave to the ſaid *Edward Lutterell*, with the " leaden Bullets aforeſaid, out of the ſaid Piſtol then and there by Force of " the ſaid Powder ſhot off and diſcharged in and againſt the Right Part of " the Body of the ſaid *Edward Lutterell*, under the Right Pap of the ſaid " *Edward Lutterell*, one mortal Wound of the Breadth of one Inch, and " the Depth of nine Inches, of which ſaid mortal Wound the ſaid *Edward* " *Lutterell*, from the ſaid tenth Hour of the ſaid 17th Day of *October*, un-" til the tenth Hour in the Afternoon of the ſaid Day he languiſhed, and " languiſhing lived, at which ſaid Hour the ſaid *Edward Lutterell*, at the " Pariſh aforeſaid, of the Wound aforeſaid, died: And that the ſaid *Ro-" bert Tranter* at the Time of the Felony and Murder aforeſaid, by the " ſaid *Hugh Reaſon* in Manner and Form aforeſaid, feloniouſly, voluntа-" rily, and of his Malice aforeſaid, committed and perpetrated, feloni-" ouſly, voluntarily, and of his Malice aforeſaid there was preſent, aiding, " abetting, aſſiſting, comforting and maintaining the ſaid *Hugh Reaſon* to " commit the aforeſaid Felony and Murder in manner and form aforeſaid. " And the Jury ſay, that the ſaid *Hugh Reaſon* and *Robert Tranter* the " ſaid *Edward Lutterell* in manner and form aforeſaid, at the Pariſh and " County aforeſaid, feloniouſly, voluntarily, and of their Malice afore-" thought, did kill and murder, againſt his Majeſty's Peace, *&c.*

To this Indictment they ſeverally pleaded, *Not Guilty*, and on *Feb.* 3. were brought to the King's-Bench Bar to receive their Trial, which proceeded in the following manner:

Clerk of the Crown. You the Priſoners at the Bar, theſe Men which you ſhall hear called and perſonally appear, are to paſs between our Sovereign Lord the King and you upon the Trial of your ſeveral Lives and Deaths; if you will Challenge them or any of them, you muſt do it as they come to the Book to be ſworn, before they are ſworn.

Robert Dennes, Eſq; challeng'd.
Francis Lee, Eſq; challeng'd.
James Haley, Eſq; challeng'd.
Robert Sutton, challeng'd.
Benjamin Drake, challeng'd.
Edward Greſne, challeng'd.
Richard Newton, challeng'd.
1. *Giles Riddle*, Jur.
2. *William Pannett*, Jur.
John Mills, challeng'd.
3. *Thomas Beckington*, Jur.
4. *Abraham Harriſon*, Jur.
5. *Charles Maddock*, Jur.
6. *Edward Boſvile*, Jur.
7. *John Perſons*, Jur.
8. *Thomas Cuthbert*, Jur.
9. *Thomas Cliff*, Jur.
10. *Miles Harper*, Jur.
11. *Robert Kent*, Jur. And
12. *John Salt*, Jur.

Clerk of the Crown. Cryer, Make Proclamation.

Cryer. O yes, *&c.* If any one can inform our Sovereign Lord the King's Juſtices, the King's Serjeants, or the King's Attorney, of the Felony and Murder whereof the Priſoners ſtand indicted before this Inqueſt be taken between our Sovereign Lord the King, and the Priſoners at the Bar, let them come forth and they ſhall be heard, for the Priſoners now ſtand at the Bar upon their Deliverance.

Clerk of the Crown. *Hugh Reaſon*, hold up your Hand; *Robert Tranter*, hold up your Hand.

Gentlemen of the Jury, look upon the Priſoners and hearken to their Cauſe; they ſtand indicted, for that they not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, the 17th Day of *October* laſt, about the Hour of Ten of the Clock in the Forenoon of the ſaid Day, by Force and Arms, at the Pariſh of St. *Clement Danes* in the County of *Middleſex*, in and upon one *Edward Lutterell*, Eſq; in the Peace of God and of our Sovereign Lord the King, then and there being feloniouſly, voluntarily, and of their Malice afore-thought, did make an Aſſault; and that the ſaid *Hugh Reaſon*, with a Piſtol of the Value of 5*s.* then and there charged with Gunpowder and leaden Bullets; which ſaid Piſtol the ſaid *Hugh Reaſon* in his Right Hand then and there had and held into and againſt the aforeſaid *Edward Lutterell*, then and there feloniouſly, and of his Malice afore-thought, did ſhoot off and diſcharge: And that the ſaid *Hugh Reaſon* with the leaden Bullets aforeſaid, iſſuing and ſhot off out of the Piſtol aforeſaid, then and there by the Force of the ſaid Powder, the ſaid *Edward Lutterell* in and upon the right Part of the Body of the ſaid *Edward Lutterell*, under the right Pap of the ſaid *Edward Lutterell*, then and there feloniouſly, voluntarily, and of his Malice afore-thought ſtruck: And that the ſaid *Hugh Reaſon* then and there feloniouſly, voluntarily, and of his Malice aforeſaid, gave to the ſaid *Edward Lutterell*, with the leaden Bullets aforeſaid, out of the ſaid Piſtol then and there by Force of the ſaid Powder ſhot off and diſcharged in and againſt the right Part of the Body of the ſaid *Edward Lutterell*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches, of which ſaid mortal Wound the ſaid *Edward Lutterell*, from the ſaid tenth Hour of the ſaid 17th Day of *October*, until the tenth Hour in the Afternoon of the ſaid Day he languiſhed, and languiſhing lived, at which ſaid Hour the ſaid *Edward Lutterell*, at the Pariſh aforeſaid, of the Wound aforeſaid, died: And that the ſaid *Robert Tranter* at the time of the Felony and Murder aforeſaid, by the ſaid *Hugh Reaſon* in manner and form aforeſaid, feloniouſly, voluntarily, and of his Malice aforeſaid, committed and perpetrated, feloniouſly, voluntarily, and of his Malice aforeſaid there was preſent, aiding, abetting, aſſiſting, comforting and maintaining the ſaid *Hugh Reaſon* to commit the aforeſaid Felony and Murder in manner and form aforeſaid. And the Jury ſay, that the ſaid *Hugh Reaſon* and *Robert Tranter* the ſaid *Edward Lutterell* in manner and form aforeſaid, at the Pariſh and County aforeſaid, feloniouſly, voluntarily, and of their Malice afore-thought, did kill and murder againſt his Majeſty's Peace, *&c.*

They likewiſe ſtand charged on the Coroner's Inqueſt for the ſaid Murder.

Upon this Indictment they have been arraigned, and thereto have pleaded *Not Guilty*; and for their Trial have put themſelves upon God and their Country, which Country you are: Your Charge is to inquire whether they be guilty of this Felony and Murder in Manner and Form as they ſtand indicted, or not guilty; if you find them guilty, you ſhall inquire what Goods or Chattels, Lands or Tenements they had at the time of the ſaid Felony and Murder committed, or at any time ſince: If you find them not guilty, you ſhall inquire whether they fled for it: If you find that they did fly for it; you ſhall inquire of their Goods and Chattels as if you found them guilty; if you find them not guilty, and that they did not fly for it, ſay ſo and no more, and hear your Evidence.

Mr. *Strange.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel in this Caſe for the King. This is an Indictment againſt the Defendants *Hugh Reaſon* and *Robert Tranter* for the Murder of Mr. *Lutterell*. The Indictment ſets forth, that the Defendants not having the Fear of God before their Eyes, but being moved and ſeduced by the Inſtigation of the Devil, on the 17th of *October* laſt at Ten of the Clock in the Morning, in the Pariſh of St. *Clement Danes* in the County of *Middleſex*, did make an Aſſault on *Edward Lutterell*, Eſq; that the Defendant *Hugh*

Hugh Reason with a Piſtol charged with Gunpowder and Bullets, which he then and there held in his Right Hand, into and againſt the ſaid *Edward Lutterell* then and there feloniouſly, and of his Malice afore-thought, did ſhoot off and diſcharge, and that the Priſoner *Hugh Reaſon*, with the leaden Bullets aforeſaid, iſſuing and ſhot off out of the Piſtol aforeſaid, then and there by the Force of the ſaid Powder the ſaid *Edward Lutterell*, in and upon the right Part of the Body of the ſaid *Edward Lutterell*, under the right Pap of the ſaid *Edward Lutterell*, then and there feloniouſly, voluntarily, and of his Malice afore-thought ſtruck, and that the ſaid *Hugh Reaſon* then and there feloniouſly, wilfully, and of his Malice afore-thought did give to the ſaid *Edward Lutterell*, with the leaden Bullets aforeſaid, out of the ſaid Piſtol, then and there by Force of the Powder ſhot off and diſcharged in and againſt the right Part of the Body of the ſaid *Edward Lutterell*, under the right Pap of the ſaid *Edward Lutterell*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches, of which mortal Wound the ſaid *Edward Lutterell*, from the ſaid 10th Hour of the ſaid 17th of *October*, to the 10th Hour in the Afternoon of the ſaid Day languiſhed, and languiſhing lived, at which time the ſaid *Edward Lutterell* at the Pariſh aforeſaid, of the Wound aforeſaid, died: And that the other Defendant, *Robert Tranter*, was aiding and aſſiſting the ſaid *Hugh Reaſon* to commit the ſaid Felony and Murder in manner and form aforeſaid, and that they the ſaid *Hugh Reaſon* and *Robert Tranter*, the ſaid *Edward Lutterell* in manner and form aforeſaid, at the Pariſh and County aforeſaid, feloniouſly, wilfully, and of their Malice afore-thought did kill and murder, which is laid to be againſt the Peace of his Majeſty, his Crown and Dignity, to which the Defendants have ſeverally pleaded *Not Guilty*: they are likewiſe charged on the Coroner's Inqueſt for the ſaid Murder. We ſhall call our Witneſſes, and if we prove them guilty you will find them ſo.

Mr. Serj. *Cheſhire*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel in this Caſe for the King; the two Priſoners at the Bar, *Hugh Reaſon* and *Robert Tranter*, ſtand indicted before you, and are charged before you on the Coroner's Inqueſt, for the murder of *Edward Lutterell*, Eſq; and according to my Inſtructions, which I will keep exactly to, he came by his Death in this manner: On the 17th of *October* laſt this Gentleman coming out of his Lodgings in *Surrey-Street*, going towards the Water-ſide to take the Water at the Stairs there, the two Priſoners came to him and did arreſt him, and told him, they arreſted him at the Suit of one Mr. *Rous* for 10*l*. He ſubmitted to their Arreſt, deſired them to return with him to his Lodging and he would pay the Money: They conſented, and both returned to the Door with him; but *Reaſon* was the only Perſon that went up with him: *Tranter* ſaid, he would go and fetch the Attorney or Solicitor's Bill: The Deceaſed went up one Pair of Stairs, *Reaſon* went with him, they were together in the Dining-Room, Words happened between them, as will come from the Evidence; they called him *Rogue*, *Raſcal*, and *Minter*, charged him as a Perſon that refuſed to pay honeſt Debts, and ſheltered himſelf under reputed Places of Security. He directed his Lady, who was then in her Bed-chamber on the ſame Floor up one Pair of Stairs, to go and fetch the Money, by which it may be ſuppoſed that it was in order to pay the Debt; but the Witneſs did not hear the Sum; but it is reaſonable to preſume, he had told her what it did come to. The Defendant *Reaſon* ſaid, *You muſt order more than that, I muſt have three Guineas for my Civility: No*, ſays the Deceaſed, *you have not uſed me ſo as to deſerve three Guineas or any other Sum for Civility, without making any Demand you arreſted me publicly in the Street*. My Lord, according to my Inſtructions, the Deceaſed went up one Pair of Stairs and he returned down with a Caſe of Piſtols; the Maid-Servant, *Heſter Gerrard*, ſeeing him with thoſe Piſtols, ſaid to him, *For God ſake what buſineſs have you with thoſe Piſtols? Pray, lay the Piſtols away, Miſchief may happen*: Says he, *I deſign to do them no harm, they have uſed me ill, called me Rogue, Raſcal, and Minter, I do not deſign to hurt them, but will not be ill uſed by them*. The Maid preſs'd him, *for God ſake lay them down, your Lady will be frighted*. He went to the far end of the Room, laid down the Piſtols, and retreated to the Fire-place. By this time there was a knocking at the Door, and the Boy, *Thomas Hargrave*, went to let in the Perſon that knocked, and it proved the Defendant *Tranter*: *Tranter* run haſtily up Stairs, and the Boy was following him, and hearing a Noiſe in the Dining Room, as my Inſtructions are, he haſtened the earlier to ſee what the matter was; as ſoon as he came into the Dining Room, the firſt thing he ſaw was, *Tranter* holding the Deceaſed's Arm in his, and the other Defendant *Reaſon* ſtabbing him, and he ſaw the Stab: He was going to give the ſecond Stab, but the Boy took hold of the ſword-arm; *Reaſon* takes the Sword with his other Hand, and ſays to the Boy, *Damn you, if you don't get out of the Room, you ſhall die before your Maſter*: Upon this he ſaw a ſecond Paſs at the Gentleman; and he cried *Murder*; Upon his crying *Murder*, the Maid-Servant *Sarah* came, and ſhe ſays ſhe ſaw her Maſter upon his Back on the Floor with his Hands up begging for Mercy, and ſaw the Men ſtab him ſeveral times: ſhe likewiſe cries out *Murder*, and as ſhe went down Stairs, and not till then, ſhe heard a Piſtol go off, which muſt be after the poor, wounded, mangled Man lay upon the Floor. Some time after, not two Minutes, ſhe heard another Piſtol go off, by this time the Noiſe was ſo great that the Neighbourhood came in, particularly one *Waters* a Waterman; *Waters* runs up Stairs, and he finds the Deceaſed at the further end of the Room, lying there in a ſtrange mangled Condition; one of the Priſoners endeavoured to make his Eſcape, but he was ſeized, and ſo was the other.

It was thought proper in this dying Condition, as it was apprehended the poor Gentleman was in, that they ſhould ſend for the Curate of the Pariſh, Mr. *Peters*; Mr. *Peters* did come, and according to my Inſtructions, as they apprehended him to be dying, ſays a Friend of the Defendants, *Pray inquire of the Gentleman how this Accident happened?* He did ſo, and he will give you an Account of what paſs'd between him and the Deceaſed before the Juſtice of the Peace came. But Mr. *Vernon* and Mr. *Haynes*, the two Juſtices of the Peace, ſoon after came in, and at their Requeſt they having no Clerk with them, Mr. *Peters* was pleaſed to ſit down and take the Examination in writing; having given him his Oath, Mr. *Peters* was pleaſed to ſet it down; the Subſtance of what he did ſay was this, *The Bailiffs took the Piſtols from my Table and ſhot me twice, the fat Man run me thro', and then drew my Sword, which I broke myſelf in his Hand, and begg'd for my Life: I never fired a Piſtol, nor made one Puſh; they both run me thro', I offered to pay them the Money*. The Condition the Gentleman was in at that time was ſuch, as it was not thought reaſonable that he ſhould ſign it, but they will give you an account that he was perfectly ſenſible. My Lord, in the Afternoon ſomebody ſent for Mr. *Peters* the Clergyman again, and it was with an Intent that the Deceaſed might receive the Holy Sacrament; and Mr. *Peters*, like a prudent Man, ſays, *According to the Account you have given you have been hardly uſed: however it becomes me to hope and deſire, and you to expreſs, that you are in Charity, before I Adminiſter the Holy Sacrament*. Says he, *As I ſhall appear before the great God of Heaven, what I told you is true, I was barbarouſly murdered; however I am in Perfect Charity with them, I forgive them, and I pray Almighty God to forgive them their Indiſcretion*. My Lord, he did continue for ſome time in a languiſhing Way, tho' all Care was taken to ſave his Life. On Examination after his Death, (which is a ſad Circumſtance in the Caſe) there are found no leſs than ten Wounds on him, many of them mortal; he did continue till the 17th about Ten at Night and then he died. My Lord, here is a Caſe of great Conſideration; and as on the one Hand the Defendants are Officers and Miniſters of Juſtice, and muſt be protected in ſerving of their Proceſs, and as long as they do their Duty muſt not be abuſed; yet when People ſubmit to their Authority, they too muſt be protected, and the Law, that requires the one to ſubmit, requires the other to protect and preſerve their Lives; and if any Officer gives unreaſonable Correction, where they make no Reſiſtance in Caſes of Durance only, where Hardſhips and Difficulties are put upon them, ſo as to ſhorten their Lives. I ſubmit it to my Lord's Direction, whether they are not guilty of the Murder? To ſhew how careful the Law is of the Life of Man, my Lord *Coke* * ſays, *If any Man who is in Cuſtody of a Gaoler dies, the Coroner's Inqueſt muſt ſit upon him*; and it is for this Reaſon, that the King may be apprized that the Subject had no foul Play, but came to a natural Death; this Policy of Law is a good one. Theſe, Gentlemen, are the Bounds which will be taken into Conſideration, and when we have called our Witneſſes, it muſt be left to my Lord's Direction and your Conſideration, whether the Defendants Caſe is a Caſe to be juſtified, or whether or no they won't deſerve the Puniſhment due to Ruffians and Aſſaſſins?

Mr. *Reeve*. I am Counſel likewiſe in this Caſe for the King: The Facts have been fully opened in every particular Circumſtance, and I apprehend this is not a Matter proper for us to ſhew with its uſual Aggravations; for conſidering the Priſoners are not allowed Counſel, we are only to lay the Matter fairly before the Jury and the Court, both in relation to Matters of Fact and of Law.

True, the Defendants are Officers of Juſtice, and as ſuch are entitled to the Protection of the Law, ſo far as the Law authorizes them in what they do; but in caſe they exceed that Authority, and uſe Barbarity to their Priſoners, where there is no occaſion for it, they exceed the Bounds of their Authority, and what happens afterwards by a needleſs Quarrel, they themſelves are the occaſion of; and if a Perſon is killed, I ſubmit it to your Lordſhip if they are not guilty of Murder.

We agree, my Lord, if Reſiſtance is made by a Perſon arreſted, and it is neceſſary for the Preſervation of the Priſoner, or for the Life of the Officer, if his Life is attempted by the Priſoner, and in doing what is neceſſary for their Defence, and for the keeping of their Priſoner, there happens a Quarrel commenced by the Fault of the Priſoner, we agree the Officers are not to be blamed: But if a Quarrel is commenced by the Officers againſt a Priſoner ſubmitting to the Law, and to their Authority, and willing to do that which the Law requires, namely, to pay the Debt, then only for Civility Money they uſe Durance, and they uſed him ill, and they begin the Quarrel and Fight with the Man on that account, we muſt ſubmit it, whether it is not Murder. We muſt agree in our Evidence, that there was not any Perſon preſent at the time of the beginning of the Quarrel, nor who continued there during the Quarrel: But from the Circumſtances, and the Evidence we have to lay before the Jury, it will amount to a Proof, that this Quarrel was begun by the Officer. It is true, there were Piſtols fetch'd by the Deceaſed, but theſe Piſtols, if we ſhew they were not deſigned to be made uſe of to injure the Bailiffs, but were only for his own Preſervation, if he ſhould be ill uſed by them; if after he had taken theſe Piſtols he diſmiſs'd himſelf from the Cuſtody of theſe Piſtols, as we apprehend will appear from the Evidence, and they take up theſe Piſtols, and with one of theſe Piſtols ſhoot their Priſoner, we apprehend that will take off the Circumſtances, that would ſeem in favour of them. My Lord, we will call our Witneſſes, and prove all our Facts, and then we muſt ſubmit it to your Lordſhip's Direction to the Jury, whether on thoſe Facts it doth not appear that the Offence committed is Murder.

L. C. J. Call your Witneſſes. Sir *John Pratt*.

(*Thomas Hargrave* ſworn.)

Mr. *Hungerford*. My Lord, *Thomas Hargrave* was the Deceaſed's Servant, and he ſaw more than any Body; he will give your Lordſhip an account of the Matter.

Serj. *Cheſhire*. *Thomas Hargave*, do you tell my Lord and the Jury, what you know in relation to your late Maſter, Mr. *Lutterell*, what paſt between him and the Defendants, and either of them, tell from the beginning, and be ſure you tell the Truth.

[*At the Priſoners Deſire the other Witneſſes were ordered out of Court.*]

Hargrave. The firſt Beginning, my Lord, was, my Maſter ſent me out of the Houſe to call a Pair of Oars to go up to *Weſtminſter* on *Tueſday* between Nine and Ten o'Clock

L. C. J. What Day of the Month?

Hargrave. I don't know; with that I went and call'd a Pair of Oars, and came back and told him I had called them; ſays he, *Thomas get your Hat, and go along with me*; when he had got two or three Doors from our Lodging, a little Man, whoſe Name is *Tranter*, clapt him on the Shoulder,

* 3 *Inſt.* 52. 91.

Shoulder, and preſently after came another Man *Reaſon*, and ſaid they arreſted him; with that my Maſter ſays, *Gentlemen, if you will go with me, you ſhall have your Money, my Wife is with Child, and I am afraid ſhe will be frightened.*

No, Damn you, we will go with no ſuch Minter; with that, with great Perſuaſion, my Maſter got them to go to his Lodging; my Maſter ſaid, *fetch the Attorney and I will pay the Money: Reaſon* ſent *Tranter* for the Attorney, and *Reaſon* went up with my Maſter, who ſaid to my Miſtreſs, *My Dear, don't be frighten'd, here are two Raſcals who have abuſed me in the Street*; and my Miſtreſs ſaid to me, *Go to my Nephew*: I went, but he did not immediately come; when I returned I went into the Room, and there was no harm then, my Maſter was walking about the Room, and *Reaſon* ſtood with his Back to the Ceiling with his Face to the Piſtols. My Maſter ſaid, *Let me ſee your Warrant: Reaſon* ſhewed it him, and he ſaid, *wipe your Arſe with it*, and throw'd it down upon the Ground. *Reaſon* aſk'd for Civility Money; my Maſter ſaid, *No; he would give him none, for he had not uſed him well.* At laſt *Tranter* came; I opened the Door to him, he run up Stairs, I ſtaid to ſhut the Door, and I heard a Ruſtling or Noiſe; upon which I ran up Stairs after *Tranter*, and I ſaw *Tranter* cloſe with my Maſter and throw him againſt the Cloſet Door, and *Reaſon* took his Sword and run my Maſter through; I took *Reaſon* hold of the Sword Arm, and he ſa'd, *Damn me, if you don't go out of the Room you ſhall die before your Maſter*; I heard no Piſtol all that time.

Serj. *Cheſhire.* Did you go in after the Piſtol was ſhot off to ſee your Maſter?

Hargrave. No, I did not ſee him till after he was carried into t'other Room.

Serj. *Cheſhire.* Do you know of any Direction given by your Maſter about fetching the Money?

Hargrave. Yes, I heard my Maſter ſay to my Miſtreſs, *Fetch the Money, and I will pay theſe Raſcals.*

Mr. *Reeve.* I think you ſay upon hearing of a Scuffle you ran up Stairs, and you ſaw *Tranter* run your Maſter againſt the Cloſet Door.

Hargrave. Yes, Sir.

Mr. *Reeve.* Had your Maſter any Weapon?—*Hargrave.* No.

Mr. *Reeve.* Where were the Piſtols?

Hargrave. One was on the Table, and the other in the Window.

Mr. *Hungerford.* How far were the Piſtols from your Maſter, were they within his Reach?

Hargrave. No, Sir.

Mr. *Reeve.* You ſay you ſaw him ſtab your Maſter.—*Hargrave.* Yes.

Mr. *Reeve.* Was there any Attempt to give another Stab?

Hargrave. Yes, he went to give another Stab, I took him by the Sword-Arm, and he ſaid, *Damn you, you ſhall die before your Maſter*; upon that I went and cried out *Murder.*

L. C. J. You ſay that before that he demanded Civility Money?

Hargrave. Yes.

L. C. J. What ſaid your Maſter?

Hargrave. He ſaid, *I will give no Raſcals as you are Civility Money, for you have ſhow'd me no Civility.*

L. C. J. Then you went down by your Miſtreſs's Direction to call her Nephew; when you return'd, before you came up, what did you hear? Did you hear any Noiſe, or Buſtle, or Blow?

Hargrave. No.

L. C. J. None at all?

Hargrave. No; it was after *Tranter* came that I went up Stairs again.

L. C. J. When *Tranter* came, you opened the Door to him, and follow-him up Stairs?

Hargrave. Yes.

L. C. J. Did you hear before *Tranter* enter'd the Room any Noiſe, or Stroke?

Hargrave. Only two or three Words.

L. C. J. What were thoſe Words?—*Hargrave.* I don't know.

Mr. *Hungerford.* What ſaid *Reaſon*, when your Maſter told him he did not uſe him well?

Hargrave. Then he was mad, he ſwore and called him a great many Names, called him a Minter, and I don't know what.

Reaſon. Did not your Maſter requeſt us to go to the *Tilt-yard* Coffee-houſe?

Hargrave. No; he ſaid, *if you'll go with me I will pay the Money*; you ſaid, *I will go with no ſuch Minter.*

L. C. J. Did your Maſter deſire them to go to any particular Place?

Hargrave. He ſaid, *If they would go with him to* Weſtminſter, *he would pay them the Money*; but they refuſed and ſaid, *they would go with no ſuch Minter.*

L. C. J. Did your Maſter propoſe to go to his own Lodgings?

Hargrave. Yes, when they would not let him go there.

L. C. J. Why would he had them have gone to *Weſtminſter?*

Hargrave. Becauſe for fear of frightning his Wife, ſhe was great with Child; with great Perſuaſion he got them to go to his Lodging.

Reaſon. Did he not aſk us to go to his Lodging?

Hargrave. I don't know, I did not hear him.

L. C. J. You ſaid juſt now with much ado your Maſter perſuaded them to go to his Lodging, now you ſay you did not hear him aſk them to go; I only admoniſh you not to be too haſty in your Anſwers, but to conſider. Who propoſed going to your Maſter's Lodging?

Hargrave. Why my Maſter, when they would not go there.

Reaſon. Did not I aſk him to go to the Crown-Tavern?

Hargrave. Not that I heard; I heard *Reaſon* bid *Tranter* go for the Attorney.

L. C. J. Did you hear *Tranter* aſk Mr. *Lutterell* to go to the Crown-Tavern?

Hargrave. No, Sir.

Tranter. At whoſe Deſire did I go to the Attorney?

Hargrave. Why my Maſter ſaid, *fetch your Attorney, and I will pay you your Money.*

Tranter. Did not I deſire your Maſter to ſend you, and he ſaid, *Damn you, you ſhall go?*

Hargrave. No, I heard no ſuch thing.

(*Heſter Gerrard* ſworn.)

Mr. Serj. *Cheſhire.* Do you tell my Lord and the Jury what you know when the Defendants, or either of them were at Mr. *Lutterell*'s Lodgings, and what paſs'd there? Begin at the beginning, tell all you know.

Heſter. I happened to be in the Kitchen when my Maſter came in.

Serj. *Cheſhire.* Tell us the Time and the Day of the Month?

Heſter. I don't know indeed, it was of a *Tueſday.*

Serj. *Cheſhire.* Do you know what Month?

Heſter. I don't know. Being in the Kitchen I heard my Maſter return again, when he was but juſt gone out before; hearing his Tongue I ſtep'd to the Stairs, and wondered he ſhould come in again ſo ſoon; I ſaw him come in with another Man, I heard him go up Stairs, I liſtened, and I heard him ſpeak loud; I underſtood he was arreſted, I was ſurpriſed at it; I ſtaid a little while till he went up, then I went up to my Miſtreſs, becauſe ſhe was with Child; I was afraid ſhe would be frighted; when I came up ſhe was in the Dining-Room with my Maſter and Mr. *Reaſon*, and in a little time ſhe went out of the Dining-Room into the Bed-Chamber, and ſhe was heaving, and in ſome time my Maſter and Mr. *Reaſon* was in the Room together, my Maſter talk'd and walk'd about the Room; I ſtaid with my Miſtreſs ſome time, and at laſt I heard my Maſter go up Stairs, and he came down immediately again; upon this I went into the Room, my Maſter had two Piſtols, and he put them on each ſide of his Coat; I aſked him, *What do you do with thoſe Piſtols? if my Miſtreſs comes ſhe will be frighted:* Says he, *I do not deſign to do any hurt.* Then he told me how they had abuſed him in the Street, and called him *Minter*; this Man (pointing to *Reaſon*) was in the Room all the time. *Sir*, ſays I, *pray lay down the Piſtols*, and he came and lay down both the Piſtols on the Table at my Requeſt, and he had only his Cane in his Hand. I went into the Room again to my Miſtreſs, and when I came there ſhe was in her Cloſet taking out ſome Money: She got up, locked the Cloſet Door, and ſat down on the Bed-ſide, and was frighted. I perſuaded her not to be frighted: Afterwards I heard ſomebody knock at the Door, and I ſtep'd out to the Top of the Stairs to ſee who came in, and I ſaw I ſuppoſe that Man (pointing to *Tranter*): the Boy let him in, I ſaw him come along the Entry, and the Boy follow him: Upon that I went into my Miſtreſs, and ſaid there was a ſecond Perſon come, I don't like him, ſhall I ſtop him on the Stairs; he went into the Room, and I ſaw the Boy follow him; I went into my Miſtreſs again for fear ſhe ſhould be frightened; I heard a Noiſe, but did not know what it was; I heard the Noiſe grow greater; I ſtep'd ſoftly through the Paſſage, threw open the Dining-Room Door, and I ſaw this Gentleman (pointing to *Reaſon*) ſtabbing my Maſter with all his Might and Main, and he on his Back on the Floor, lifting up his Hands as if he begged for Mercy. The other Bailiff had his Back towards me, ſtanding by the ſide of my Maſter; I ran to the Door and cried out *Murder*; then off went the Piſtol: I was frightened, for I thought they had ſhot after me; and in about two Minutes there went off another.

Mr. *Hungerford.* In that Place where your Maſter was, could he come at the Piſtols?

Heſter. No, my Maſter had his two Hands lifted up thus.

Mr. *Hungerford.* Had your Maſter any thing in his Hand?—*Heſter.* No.

Serj. *Cheſhire.* What Condition did you leave your Maſter in when you went out of the Room?

Heſter. He was upon the Ground on his Back, and his two Hands lifted up thus, and Mr. *Reaſon* ſtabbing him when upon the Ground; he ſtabb'd him upon the left Side.

Serj. *Cheſhire.* I ask you, conſider, by the Oath you have taken, whether the Piſtol did go off till after you had left your Maſter, and he was ſtabbing of him?

Heſter. It was after that I ſaw him, within two Minutes after; upon my crying out Murder the People came up Stairs.

Reaſon. How long was this after *Tranter came?*

Heſter. Immediately.

Reaſon. How long was it after *Tranter* came in before you ſaw this?

Heſter. Not long, all the Action was not long.

Mr. *Strange.* You did not obſerve where the Piſtols lay?—*Heſter.* No.

Mr. *Strange.* Did you obſerve your Maſter had any thing in his Hand?

Heſter. No, I did not.

L. C. J. Did you ſee your Maſter when he went out in the Morning?

Heſter. No, I heard him.

L. C. J. You ſaw him when he returned?

Heſter. Not till he was up in the Dining-Room.

L. C. J. Had your Maſter any Sword on?

Heſter. I believe he had, I did not mind.

L. C. J. When your Maſter came in and *Reaſon* after him, you heard your Maſter talk of an Arreſt, and that you had the Curioſity of hearing what paſt between them; did you hear any Words of Heat or Paſſion?

Heſter. No, my Lord, I heard my Maſter talk ſomething, by which I underſtood my Maſter was arreſted.

L. J. C. Did your Maſter ſeem angry?

Heſter. Yes; becauſe they ſeemed ſo uncivil, that they did not come and give him Notice of it.

Mr. *Hungerford.* You ſay you ſaw your Miſtreſs telling Money, can you gueſs at the Quantity of it?

Heſter. No.

Mr. *Hungerford.* Can you tell for what Purpoſe ſhe was telling the Money?

Serj. *Cheſhire.* Did you hear Mr. *Lutterell* ſpeak to his Lady to fetch any Money?

Heſter. I was not in the Room.

Reaſon. Did I ſtay in the Room by myſelf when your Maſter went up Stairs?

Heſter. Yes, you did.

L. C. J. And when he came down he had a Caſe of Piſtols?

Heſter. When I ſaw him he had them in his Hand, and when I inſiſted upon his laying them down, he came and laid them down on the Table by me.

Hungerford. When did your Maſter die?

Heſter. He died the Night following, I was with him all the time.

(*Thomas Waters* the Waterman ſworn.)

Serj. *Cheſhire. Thomas Waters*, will you tell my Lord and the Jury what you know on the Occaſion of a Noiſe and crying out *Murder* at Mr *Lutterell*'s Lodging?

Waters. My Lord, I was at the Water-ſide when Capt. *Lutterel* came down to go by Water, I went down to carry him, there two Men croſſed over the Way to him; I was gone down to my Boat to wait for him, but he not coming down, I came back again, and ſeeing them go into the

Houſe, I went to the Water-ſide, and ſtaid there ſome time, and the Lad running out of the Houſe, and crying *Fire*, *Murder*, I run up, and run into the Door, and when I was about half way up Stairs, *Lord*, ſays the Boy, *they are murdering my Maſter*; I run to the Stair-head and heard the Piſtol go off, and then ſaid to the Boy, is there any more Piſtols? Then I opened the Door, and went in, and met *Reaſon* with his Sword drawn in his Hand, and as he was putting it in it ſtuck.

Mr. Serj. *Cheſhire.* Where was Captain *Lutterell?*

Waters. Laid down on the Floor, all in his Gore; when I came into the Room the young Man followed me in; I ſaw one Piſtol lay upon the Table; *Tranter* was behind *Reaſon*, *Reaſon* was putting his Sword into his Scabbard, and it ſtuck; and as I came in *Tranter* ſhew'd me his Hand, and ſaid, See how I am uſed; *Reaſon* was opening the Door; I took hold of him and ſaid, you muſt go no further, here is Murder done; then the Conſtable came in, and I charged the Conſtable with them. The Captain's Sword was in the Middle of the Room broke, he lay on his Right Side with his Arm on the Chair.

Mr. Serj. *Cheſhire.* How far was the Table off?

Waters. The whole Breadth of the Room; he lay juſt before the Fire-Place; I ſaw but one Piſtol; I came in when the laſt Piſtol went off, and I met Mr. *Reaſon*, and put him by with my Hand, to come into the Room.

Tranter. What Wound did you ſee me have?

Waters. No more than in your Hand; he ſhew'd me his Hand.

L. C. J. Did it appear to you upon looking on his Hand, that he had received a Wound in his Hand?

Waters. Yes, my Lord, I believe he was wounded, becauſe he ſhew'd me his Hand, and it was bloody.

Tranter. Was my Head broke?—*Waters.* I did not ſee that.

L. C. J. When you came into the Room you ſaw but one Piſtol?

Waters. I ſaw but one, and that upon the Table, juſt as I came into the Room.

L. C. J. How far from Mr. *Lutterell* was it?

Waters. I believe three Yards.

L. C. J. How far from the Priſoner, or either of them?

Waters. The Priſoner ſtood by the Table, as I came into the Room.

L. C. J. Was the Sword in the Scabbard that was broke?

Waters. It was out, and pleaſe you, my Lord.

L. C. J. Whoſe Sword was it?

Waters. It muſt be the Deceaſed's, becauſe the other had his Sword with him in his Hand drawn. I ſaw the Blood: I deſired the Conſtable to draw the Sword, and I ſaw it bloody a good way.

[*Mr.* Peters *ſworn.*]

Mr. Serj. *Cheſhire.* Mr. *Peters*, will you tell my Lord and the Jury, whether on the 17th of *October* laſt you was ſent for, and by whom?

Mr. *Peters.* On the 17th of *October* laſt, I think it was in the Forenoon, about 12 o'Clock, I was ſent for to viſit Mr. *Lutterell*; the Meſſenger told me he lay expiring: I came into his Room, where I found him on his Bed, in a wounded Condition, and languiſhing of his Wounds; he ſeem'd deſirous, that I would pray to Almighty God for his Soul, for he believed he had but a little time to continue in this World, and therefore he deſired to make the beſt Uſe of it; I was ready to aſſiſt him; and deſired him to conſider how far he might be inſtrumental in bringing this Misfortune on himſelf. I deſired him to conſider, that as a dying Man great Weight would be laid on his Words, therefore if he ſaid any thing not ſtrictly true, he might involve innocent People in the Guilt, and the Puniſhment: Therefore I deſired him to lay his Hand upon his Heart and conſider.

He told me, *As a dying Man, as he expected to be tried for this very Fact at the Bar of Heaven, as well as the Perſons who had injur'd him, he aſſur'd me he was murdered in a barbarous manner.* Afterwards came in one *Church*, a Bailiff in the ſame Street, and deſired me to put it home to him: I did; upon which he made me the ſame Anſwer, *That he was barbarouſly murder'd*; he wanted Spirits, or would have expreſs'd himſelf more fully: On this I pray'd by him, and when I had done, I took my leave of him. In about an Hour afterwards I was ſent for again; when I came there, I met Mr. *Vernon* and Mr. *Haynes*, Juſtices of the Peace; one of the Juſtices gave Mr. *Lutterell* his Oath, and there being no Clerk there, deſired me to take his Words in Writing, which I did; the Words were theſe; *The Bailiffs took the Piſtols from my Table; they fired them twice; the fat Man drew his Sword, and run me into the Body with his Sword; and then drew my Sword, which I broke in his Hand, and begg'd for Life; I neither fired a Piſtol nor made one Puſh; they both run me through; I offer'd to pay them the Money.* I think theſe are the very Words he ſaid. After this I pray'd by him again, and ſtill deſired, that he would not lay any thing to the Charge of People that were not guilty: I left him then, and came again a third Time, and as I was praying by him, he interrupted me, and aſk'd me, If it was not proper to receive the Holy Sacrament, which he was deſirous to do: I aſk'd him, if ever he had received the Sacrament; he told me he had; I deſired him to conſider, and to aſſiſt him I put him into a Method; I told him one Thing which was neceſſary, which perhaps he might come into with Reluctance, and that was Charity and forgiving his Enemies. I told him he had been hardly dealt with I believed, yet it did behove him, as he died a Chriſtian, to forgive them: he told me he did forgive them, and he hoped Almighty God at the laſt Day would forgive their Indiſcretion; he died ſome time afterwards, but then in ſo doſeing a Condition, that I could not attend him to any Purpoſe.

Mr. *Hungerford.* Did he ſay any thing about who fired the Piſtol?

Mr. *Peters.* I mentioned it to him; when I aſk'd him, if he had fired either of the Piſtols, I told him one of the Bailiffs was wounded, and that there were two Balls taken out of his Hand; he aſſured me, as he was a dying Man, he fired neither of the Piſtols.

Reaſon. Did not he confeſs that he had broke one of their Heads?

Mr. *Peters.* No, he did not ſay he broke one of their Heads, nor any thing like it; ſo far from that, that he ſaid he did not deſign to hurt a Hair of their Heads.

L. C. J. I think, Mr. *Peters*, you ſay, when you came there you met with two Juſtices of the Peace, Mr. *Vernon* and Mr. *Haynes*, and becauſe they had no Clerk there, they deſired you to take the Examination.

Mr. *Peters.* Yes, my Lord, I did take it.

Mr. Serj. *Cheſhire.* My Lord, I apprehended we had it ready to produce, or elſe I had not opened it; but upon my calling for it, I am told, to my Surprize, that Mr. *Vernon* hath it, and he is gone into the Country.

Mr. *Peters.* I have a Copy of it.

L. C. J. We muſt have the Original.

Mr. *Peters.* My Lord, there is a Copy of it in my Depoſition before the Coroner.

L. C. J. Is Mr. *Haynes* here?

[*Mr.* Haynes *called.*]

L. C. J. You have given an Account of the Examination of this Gentleman, firſt before the Clergyman, afterwards before two Juſtices of the Peace, his Examination is taken and reduced into Writing, and if it was reduced into Writing, by the Rule of Law, unleſs you ſhew you are diſabled to do it by ſome Accident or other, you muſt produce that Writing.

Mr. *Reeve.* I am very much ſurpriſed, I apprehended they had the Writing ready in Court to produce. My Lord, Mr. *Haynes* will inform you.

[*Mr.* Haynes *ſworn.*]

L. C. J. Mr. *Haynes*, we have been inform'd by that Gentleman that ſtands before you, the Miniſter, that upon hearing of this unhappy Accident, you and one of your Brethren, Mr. *Vernon*, came there in order to inquire into the Matter, and take the Examination of the Priſoners; did you do it?

Mr. *Haynes.* My Lord, on the 17th of *October* laſt, the Priſoners at the Bar were brought before me, and charged with the Murder of Mr. *Lutterell*; I underſtood Mr. *Lutterell* was not actually dead, ſo Mr. *Vernon*, another Juſtice of the Peace, went with me to Mr. *Lutterell*'s Lodging, and there we found him in a very weak Condition, but ſenſible; we adminiſter'd the Oath, in order to take the Information in Form; Mr. *Vernon* and the Miniſter were there; my Hearing not being good, Mr. *Vernon* examined him; but before they could perfect his Examination in form he fainted away, and could not go on: then we went to my Houſe, where the Priſoners were, and examined them, and afterwards committed them. What the Deceaſed ſaid to Mr. *Vernon* and the Miniſter I did not hear, ſo can give no Account of it.

Mr. *Reeve.* Had you a Paper taken?

Mr. *Haynes.* There was a Paper taken, but it was imperfect.

Mr. *Reeve.* And I think that is not in your Cuſtody, had you the Paper?—Mr. *Haynes.* No, I had it not.

Mr. *Reeve.* Do you know where it is?—Mr. *Haynes.* No, I do not.

Mr. *Peters.* I gave it to Mr. *Vernon*, and obtained it of him to ſhew the Coroner, and afterwards I gave it him again; I took a Copy of it.

L. C. J. The Copy you took is from the Paper produced to the Coroner.

Mr. *Reeve.* You was examined before the Coroner?

Mr. *Peters.* I brought the Original Paper to the Coroner.

Mr. *Reeve.* Whether that, which is mention'd in your Affidavit before the Coroner, was a Copy from the Original Paper?—Mr. *Peters.* Yes.

Mr. *Reeve.* And did you examine it?—Mr. *Peters.* Yes.

L. C. J. We muſt have the Original.

Mr. *Hungerford.* We hope we may have Liberty to read the Depoſition taken before the Coroner, if what the Gentleman ſays be ſo; he ſaw the Examination taken in the Preſence of the Juſtices of the Peace, and the very Paper, the Words of the Paper, are contained in the Depoſition taken before the Coroner.

L. C. J. That won't do, you have not the Examination of the Deceaſed. This is ill done of Mr. *Vernon*, he ought to have taken Care, and attended here, and had the Examination before the Court, and without that we can't arrive at the Truth of this Caſe; I doubt you muſt lay aſide all the Evidence of this Gentleman for want of the original Examination.

Mr. *Reeve.* We muſt ſubmit it to your Lordſhip, as to the Confeſſion, that Part of it that is not contained in the Examination, which was not propoſed to him at the Time of his Examination, whether that is not Evidence; there are two or three Things he gives an Account of, that he ſaid before it was reduced into Writing. But ſuppoſe we can't have the Benefit of the Examination, yet the Diſcourſe that was had with the Deceaſed at another Time, whether we may not be admitted to give that in Evidence, we muſt ſubmit it to your Lordſhip. But ſuppoſe no Examination had been taken, we humbly apprehend what he ſaid would be proper to lay before the Jury. Therefore when he gives an Account of what he ſaid at another Time than that of his Examination, though we can't produce what he ſaid at the Time of his Examination, yet we may give in Evidence what he ſaid at other Times. There were two other Times which he gives an Account of; the firſt was, when he was ſent for to pray by him, and one *Church* came in; he then declared on the Words of a dying Man, *He was barbarouſly murdered.*

L. C. J. You know in the Court of *Chancery*, when the Party is examined on his Oath, he gives in a firſt Anſwer; and on Examinations taken to it, he gives in a ſecond, and ſo a third; all theſe are taken but as one Anſwer and entire Confeſſion of the Party.

Mr. *Reeve.* Here is not an Examination before a proper Officer.

L. C. J. You are to be heard no more to it, becauſe you ought to produce it.

Mr. *Reeve.* I am ſure it is a Surprize on all of us.

Mr. *Hungerford.* As to us, we have the very Confeſſion in our Brief, and I believe, if we had thought it could not have been produced, we ſhould not have opened it.

L. C. J. And there is too an Examination in Print; that ought not to be, and the Perſon that did it ought to be cenſured; are Juries to be prepoſſeſſed; here is a printed Pamphlet, whereof the Title is, Mr. *Lutterell's Cry for Juſtice.*

Mr. *Hungerford.* I never ſaw it, but am told it is moſt in Favour of the Priſoners at the Bar.

L. C. J. If the Examination is true, it ought to be produced, and the Priſoners ought to come fairly to their Trial, and, if guilty, God forbid

forbid but they ſhould ſuffer, but not by paſſionate Inſinuations in Print; and it is an unprecedented Thing, and if it comes out who did it, I ſhall take a Courſe with them: It is a way of preventing all Manner of Juſtice.

Mr. *Hungerford.* No doubt it is a very unjuſt Thing, and unwarrantable, no more to be juſtified, than Officers are, when, under the Colour of Juſtice, they ſhall murder a Gentleman at his own Lodging: but as to the Caſe in *Chancery*, firſt, ſecond, and third Anſwers are but one Anſwer. I ſpeak it with all Deference, whether that be the ſame Caſe, the Words that he did deliver at other Times, when the Juſtices were not preſent, when he was a dying Perſon on the Brink of Eternity, and then ſaid the ſame Words; and now this Paper can't be produced, whether the Words of the Paper may not be admitted as Evidence, we humbly ſubmit it to your Lordſhip; and we believe the Witneſſes will give you an Account of what he ſaid at other Periods of Time, when there was no Examination in Writing, which was only when the Juſtices attended.

L. C. J. Give an Account how it comes to paſs, that you have not this Examination to produce, that was in Writing?

[Mr. *Mitchell* ſworn.]

Mr. *Reeve.* Will you give an Account of this Paper, and whether there hath been any Application made to get it, and why it is not here?

Mr. *Mitchell.* I called at Mr. *Vernon*'s, but they told me he was gone into the Country, and he had not fixed any one Place, which he not doing, they did not know where to ſend to him.

L. C. J. Here is a printed Narrative goes about the Town. Do you know who was the Author of that?

Mr. *Mitchell.* No, my Lord, we have been enquiring in order to proſecute the Perſon; I have aſked the Widow, and Mr. *Keat* her Nephew, and they ſay, they know nothing of it.

Mr. *Hungerford.* It ſets out with this Fact, that the Deceaſed ſtruck firſt; and if ſo, it is very reaſonable to ſuppoſe, that this Paper was done rather in Favour of the Priſoners at the Bar, than of the Proſecutors.

L. C. J. The Juſtice of Peace that had not the Examination doth appear, but he that hath it is out of the Way. Mr. *Peters*, how many Times was you with the Deceaſed?

Mr. *Peters.* Three Times; at 12 o'Clock, about an Hour after, and about and Hour after that, the third Time.

L. C. J. When was it you reduced what he ſaid into Writing?

Mr. *Peters.* The ſecond Time; the third Time I adminiſter'd the Sacrament.

L. C. J. And when you examined him the firſt Time, and afterwards a ſecond and third Time, the Deſign of that was to perfect the Examination which you took the firſt Time, and then it is all of a piece.

Mr. *Hungerford.* My Lord, the third Examination was after the taking any thing in Writing; when he took the Sacrament on the ſolemn Occaſion, he declared, *&c.*

Mr. J. *Powis.* The laſt examination, therefore, was an Advice to a forgiving Temper.

Mr. J. *Eyre.* Mr. *Peters* ſhould declare what he ſaid the firſt and third Time.

Mr. *Peters.* I preſs'd him to conſider and recollect whether what he had ſaid was true; he ſaid it was.

Mr. J. *Eyre.* What did he ſay the firſt Time?

Mr. *Peters.* The firſt Time he told me, *he was barbarouſly murdered:* As I told you before, there came in one *Church* a Bailiff, and then I put him to conſider, whether he was not Acceſſary to his own Misfortune; to which he returned the ſame Anſwer, *That he was barbarouſly murdered, that he did not draw his Sword, nor fire his Piſtol.*

L. C. J. Did you aſk him about any Blow, or Provocation given?

Mr. *Peters.* I aſk'd him, to which he ſaid, *He did not deſign to touch a Hair of their Heads.*

L. C. J. I muſt confeſs, for my Part, I am not entirely ſatisfied: Mr. *Peters* at his firſt coming examines him, and after that he comes to him a ſecond time, and then he is examined in the Preſence of two Juſtices of the Peace, and by their Authority; and he ſays the Intent of that was to perfect the firſt Examination; and being ſo examined a ſecond time, his Examination is taken in Writing; whether or no the firſt and ſecond do not make an entire Examination, and ſo that you can't produce the firſt without the ſecond; I make no doubt it might be produced, if there had not been a ſecond; but he that examines him firſt, examines him afterwards a ſecond time, in order to perfect that Examination, and when he doth it, it is reduced into Writing; to me it ſeems a Matter of great Conſequence, if the firſt is allowed without producing the ſecond.

Mr. J. *Eyre.* It can't properly be called an Examination.

Mr. *Hungerford.* The firſt time he examined him as a Chriſtian, as a Miniſter; as to the ſecond Examination, Mr. *Peters* had no more to do in it than a Juſtice's Clerk.

L. C. J. The Examination taken before the Juſtice, was to confirm the former Examination, and upon that Examination all was reduced into Writing.

Mr. J. *Eyre.* That which is ſet down in Writing, if it be an Examination taken in Writing of a Priſoner before a Juſtice of the Peace, you can't give Evidence of that Examination *vivâ voce*, unleſs the Examination be loſt; but what Declaration or Confeſſion was made at any other time, may be given in Evidence; the particular Examination of what he ſaid before the Juſtices, and was reduced into Writing, cannot be proved but by that Writing; but as to what he ſaid at any other Time, the firſt and third Time, and not before the Magiſtrates, that may be given in Evidence.

Mr. J. *Powis.* The great Matter I obſerve is, that Mr. *Peters* did ſay, he did look upon the ſecond Examination to perfect the firſt, the firſt was not ſo perfect, and then it was to be aſcertained by a ſecond, and which they not caring to truſt to their Memory put into Writing; that Writing indeed the Juſtice of Peace hath; it is not produced, but if it be agreed that it was put into Writing, and after it was reduced into Writing, it ſeemed to be all of a piece, ſo as plainly to relate to what was done the Time before, how will they aſcertain the whole, but by producing the Writing? Then this writing can't be ſeen, the Juſtice of Peace hath it, and doth not come here to produce it.

Mr. J. *Eyre.* I don't know how to call this perfecting the former Examination, you can't call the Diſcourſe between him and Mr. *Peters* an Examination, when there was no Juſtice of Peace preſent; it is not an Examination what paſs'd between Mr. *Peters* and this Gentleman. It is always taken ſo at the *Old-Bayley*, where Evidence is allowed to be given *vivâ voce*, of what was ſaid by People at other times beſides the time of Examination.

Mr. J. *Powis.* What doth Mr. *Peters* mean by perfecting the Examination?

Mr. *Peters.* I beg your Pardon, it was not my Word.

L. C. J. Not to differ about Words, whether this is an Examination before the Miniſter, when the Juſtices of Peace was not there; it is very likely this Miniſter came to inquire of this Gentleman about the Circumſtances of his Death: after that, the ſame Gentleman is preſent when the Juſtices of Peace come; thereupon the Juſtices of Peace deſire him to take it in Writing; he aſks the ſame Queſtions as he did before, and they are taken in Writing; he takes it, deſigning to make the firſt Examination more authentic to charge the Perſon that gives the Examination. Now, really, when all this is done, the Examination of him before the Juſtice, taken in Writing by the ſame Perſon that inquired of him before, and all this done in order to perfect and conſummate the Examination, whether you will not take them both together as one entire Account given by the Deceaſed? He gives the Account, he gives it as true in the Preſence of the Juſtice; they were not preſent the firſt time, but the ſame Perſon that aſked him the firſt time, he aſks him when the Juſtices were there, if what he ſaid before was true, and on that an Account is taken in Writing: Now upon this, when there is an Examination in Writing in the Preſence of the ſame Perſon, and when they give you no reaſonable Excuſe why they don't produce it, there ought to be the leſs Credit given to them.

Mr. J. *Eyre.* I think there is the leſs Credit given, becauſe the Examination is not produced; however it is Evidence.

Mr. J. *Powis.* If they were both of equal Validity you ſay ſomething, but it is confeſſed on all Hands, that the ſecond Examination was more ſolemn and valid, becauſe two Juſtices of the Peace were preſent, and there was the Awe of Magiſtracy over the Perſon; and the ſecond Examination relates to the firſt.

Mr. J. *Forteſcue.* It is a hard Caſe on the Priſoners at the Bar; it is the Confeſſion of Mr. *Lutterell*, and if they had that in Evidence, they might be compared together; but they not having that, I own, as to Point of Law, they cannot give it in Evidence: It is a great Hardſhip, but where it lies I cannot tell; I think it ought to be cenſured in a proper Time. The moſt material of what is ſaid by word of Mouth is detained from us, and not produced; but I think we ſhould allow what was ſaid at other times to be given in Evidence, becauſe the firſt is no Examination, becauſe no Juſtice of Peace then preſent; ſo that the Examination ſtands diſtinctly by itſelf, and that Evidence is to be laid aſide and not produced; but ſhall we not allow that to be Evidence which he ſaid at other times, becauſe he had an Examination taken in Writing? Therefore we ſhall hear no other Evidence, the firſt was no Examination, only what Mr. *Peters* will take upon him to ſay paſſed between them.

L. C. J. Go on with your Evidence.

Mr. *Hungerford.* There can be no doubt of the third Declaration; my Lord, the third Examination was certainly the moſt honeſt Examination; as to the ſecond Examination, it had the Solemnity of two Juſtices of the Peace, one happens to be deaf, the other to be abſent; whether what a Man ſays juſt as he is going to die, and on his receiving the Holy Sacrament, is not to be regarded?

Mr. J. *Eyre.* He ſhould diſtinguiſh between what paſſed in the firſt Diſcourſe, without any regard to what is contained in the ſecond Examination.

Mr. *Reeve.* Mr. *Peters*, you hear the Opinion of the Court, that what paſſed at the Writing of this Paper you muſt not take any Notice of, but give an Account of what paſſed at any other Time.

Mr. *Peters.* I told your Lordſhip before, I was ſent for to viſit him the firſt time, when I found him dangerouſly ill; after I had talked to him ſome time to put him in mind of Death, I deſired to know of him, how far he had been any way inſtrumental or acceſſary to bring this Misfortune upon himſelf; he ſaid, *As he was a dying Man, and expected to be judged at the laſt Day, they murdered him barbarouſly.* I repeated it to him again at the Requeſt of Mr. *Church* a Bailiff, and the laſt time I came to him, when he received the Sacrament.

L. C. J. Mr. *Peters*, I deſire you to conſider with yourſelf, Did you not aſk him whether he had ſtruck any of the Bailiffs?

Mr. *Peters.* I did not.

L. C. J. Did you aſk him if he had given them any Provocation.

Mr. *Peters.* I did; to which he anſwered, *He had given them no Provocation.*

L. C. J. Did you aſk who gave the firſt Blow?

Mr. *Peters.* No, I did not.

L. C. J. Did you ſee the Wound; did he ſay he gave that?

Mr. *Peters.* I told him, it appears one of the Bailiffs is wounded in the Hand, and it is probable he was the Perſon that diſcharged that Piſtol; upon which he aſſured me, *He fired neither of the Piſtols; he neither drew his Sword, nor fired either of the Piſtols.*

L. C. J. When you had this Diſcourſe with him, did you reduce it into Writing?

Mr. *Peters.* What I reduced into Writing, was only my Depoſition, which I writ with my own Hand, and which Mr. Juſtice *Harper* ſwore me to, and I believe he hath it in his Cuſtody.

L. C. J. Here this Gentleman is allowed to give an Account of what Diſcourſe paſſed between him and Mr. *Lutterell* the firſt time; the Juſtice of Peace can't be allowed to give an Account of what is ſaid at his other Examination, becauſe it was reduc'd into Writing, and that Writing can't be produced.

Mr. *Reeve.* I beg you would give an Account of what he ſaid at any other Time, when this Paper was not written: when you talked with him about this Matter, you ſay he ſaid, 'The Bailiffs did barbarouſly murder 'him without any Provocation;' that he ſaid, 'He gave them no Provo-'cation:' And when you asked him about the Wound that one of the Bailiffs had, he ſaid, 'He fired neither of the Piſtols, nor drew his Sword;' I deſire to know at any other Time, whether there was any Thing material paſſed between you at any other Time than at that Time when the Paper was wrote: Can you recollect?

L. C. J. You diſcourſed him three Times, the firſt you have given an Account of, the ſecond Time it was reduced into Writing, that Writing doth not appear; what paſſed the third Time, pray repeat it again?

Mr. *Peters.* As he was going to receive the Holy Sacrament, I begged of him to conſider whether what he had ſaid was true: he ſaid, 'Every 'Article he had ſaid, as he was a dying Man, and as he hoped to receive 'Benefit by the Sacrament, every Thing he had ſaid was ſtrictly true.'

Mr. *Reeve.* We ſhall trouble your Lordſhip with one Evidence more, that is the Surgeon, who will give you an Account of his Wounds.

[*Mr.* Sparham *ſworn.*]

Mr. *Reeve.* I think you was ſent for as a Surgeon; give an Account in what Condition you found the Deceaſed, how many Wounds, and of what Nature?

Mr. *Sparham.* I found him labouring with a Wound under the right Pap with a Shot; upon this I examined him, and putting him into a proper Poſture, found ſeveral other Wounds; one near the Liver, the lower Part of the eighth Rib, near the Back-bone; ſeveral other Wounds with a Sword, three or four on his Belly. Upon opening of his Body I found that the Wound with the Bullet had penetrated about nine Inches towards the Back, which Wound was mortal, the firſt to be of the Lungs, having a Hole through, and the ſecond to be torn, and the *Diaphragma* wounded: I found one other Wound with a Sword near the eighth Rib, three Inches and a half broad, penetrating the *Thorax*, and wounding the *Diaphragma*, which was alſo mortal; I found eight other Wounds with a Sword about a Quarter of an Inch wide each, and a Quarter of an Inch deep, one near the left Pap, four others on the right Side of the Belly, two more on each Side the Back-bone.

Mr. *Reeve.* So you looked upon two of the Wounds to be mortal, one whereof was with the Piſtol-ſhot.

Mr. *Sparham.* Yes; I ſaw two leaden Pieces taken out of his Body.

Mr. *Strange.* Who attended at the ſame Time?

Mr. *Sparham.* Mr. *Gifford.*

Strange. Did he or you take out thoſe Bullets?

Mr. *Sparham.* We both took them out, I think.

Mr. *Reeve.* My Lord, we have done.

L. C. J. What ſay the Priſoners? The Counſel for the King have called what Witneſſes they think proper, it is now your Time to anſwer for yourſelves.

Reaſon. If your Lordſhip pleaſe, we arreſted the Gentleman in *Surrey-ſtreet*, and he deſired me to go to his Lodging; when we came there, he ſaid he would pay the Money; ſays he, 'Go and ſee for the Attorney, and 'I will pay the Money;' upon that *Tranter* went to the Attorney for his Bill; I went up Stairs with the Gentleman into the Dining-room; when he came up, ſays he, 'My Dear, I am arreſted, it is for Mr. *Rous*'s Bill.' He began to look a little angry: with that he went to his Scrutore and took ſomething out of it, a Key, and he went up Stairs and fetched his Piſtols, and when he came down again, he clapped one to my Breaſt, and threatened to ſhoot me; I was ſurpriſed; his Lady runs out of the Room; with that I gave him good Words; ſays he, 'Sirrah, I will let you live a 'little till your Partner comes back, and then I will ſend all your Souls 'to Hell together;' then the Foot-boy came back and ſaid, the Gentleman was coming; he ordered the Boy out of the Room, and one knocked at the Door; when the Boy was gone, he clapped his Piſtols on one Side of his Boſom, and the other on the other, and my Partner came, and when he came into the Room he gave him a Blow over the Head; with that he cloſed in with him, and then one of the Piſtols went off and wounded him; then he drew his Sword, and I drew mine, and then the other Piſtol went off, which was the Occaſion of his Death.

L. C. J. Have you any Witneſſes?

[*Mr.* Twine *ſworn.*]

Mr. *Twine.* My Lord, I was employed by the Plaintiff, Mr. *Carr*, to take out a Writ againſt Mr. *Lutterell*, on an indorſed Note; I did take out a Writ and gave it to Mr. *Reaſon*, and he got the Warrant upon it, and afterwards came to me, and deſired to know where Mr. *Lutterel* was to be found, and that I would deſcribe him to him, whether young or old, *&c.*? I told him where to go, and deſcribed him to them; then they went and arreſted him, and after he was arreſted *Tranter* came to me, and told me the next Morning, they had taken the Captain: they ſaid they took him at the lower End of *Surrey-ſtreet*, and that he was very angry, and ſaid they had not uſed him civilly.

L. C. J. What *Tranter* ſaid is not Evidence.

Mr. *Twine.* I know no more, my Lord; *Tranter* came to me for the Bill, and I gave him a Bill of the Debt and Charges.

L. C. J. Did you give the Bill of the Debt and Charges to *Tranter?*

Mr. *Twine.* I did; he told me they had juſt taken the Captain, and then I gave it him; the Bill of Charges was one Pound thirteen Shillings.

[*Mr.* Tims *ſworn. The Warrant ſhewn to him.*]

Mr. *Tims.* This is the Warrant made out upon the Bill of *Middleſex*, at the Suit of Mr. *Carr*, to arreſt the deceaſed; [*The Warrant read, and alſo the Bill of* Middleſex *produced and read.*]

[*Mr.* Hickman *ſworn, and the Warrant ſhewn to him.*]

Mr. *Hickman.* This I know to be my Hand, I made out this Warrant all of it.

Mr. *Hungerford.* I would humbly offer it to your Lordſhip's Obſervation, here is a Fact we have omitted to prove; here is a Witneſs in Court, one *Lucas*, can prove that *Reaſon* ſhot off the Piſtol.

L. C. J. It is irregular; but although you have omitted it, and come out of Time, I would have the whole Fact, and if my Brothers pleaſe we will hear it.

[Conſtance Lucas *ſworn.*]

Mr. *Hungerford.* Mrs. *Lucas*, What do you know of ſhooting off the Piſtol?

Conſt. Lucas. I was oppoſite to the Captain's Lodging in *Surrey-ſtreet*, in a Room up two Pair of Stairs, and I heard a Piſtol go off, upon that I went to the Window, and I ſaw a luſty fat Man take a Piſtol out of the Window in the Captain's Lodging up one Pair of Stairs, and let it off towards the Fire-ſide.

Mr. *Strange.* Do you know Mr. *Lutterell?*---*Conſt. Lucas.* Yes.

Mr. *Strange.* Can you take upon you to ſay it was not Mr. *Lutterell?*

Conſt. Lucas. Yes, I am ſure it was not he.

L. C. J. When you ſaw a luſty fat Man take a Piſtol off from the Window, and diſcharge it, was any body by him at that Time?

Conſt. Lucas. Nobody that I ſaw.

L. C. J. What Sort of Man was Mr. *Lutterell?*

Conſt. Lucas. He was a little Man.

One of the Jury. Was there any Light in that Room to diſtinguiſh one Man from another?

L. C. J. What ſhe ſaid was, ſhe ſaw a luſty fat Man come to the Window, and take up a Piſtol and diſcharge it, and that ſhe ſaw nobody elſe at the Window.

Mr. *Hungerford.* The Coroner's Inqueſt came into this Room, and was ſatisfied, that from thence ſhe might ſee into this Window.

[*Mr.* Gifford *the Surgeon ſworn.*]

Mr. *Gifford.* On *Tueſday* the 17th of *October* laſt, about ten or eleven o'Clock, I was ſent for to a Gentleman, Mr. *Lutterell:* when I came to him, I found him ſitting on a Chair, and he leaned back with his Shirt and Clothes very bloody; Mr. *Sparham* was with him, in order to look to his Wound; we put him to bed, we found a Wound about an Inch below the right Pap, by Gun or Piſtol ſhot, and we dreſſed it, and all the other Wounds we could find; I went into the Parlour, and there were the two Priſoners at the Bar; I was told one of them was wounded; upon that I went to examine into it: upon coming into the Parlour I examined *Tranter*, and there I found two Pieces of Balls which were lodged in his Hand; we extracted the Balls; I found a ſmall Wound in his Wriſt, and a Razure on his Head; that was a ſmall Wound which was on the Wriſt; it ſeemed to be from a Prick, ſomething that had entered the Skin. Then I went to Mr. *Lutterell* again, as he was in a good State of Senſe: I asked Mr. *Lutterell*, 'Whether he had fired a Piſtol?' I asked him ſeveral Times; he denied it a firſt, ſecond and third Time, and he uſed this Expreſſion, 'I call God to Witneſs, I neither fired a Piſ-'tol, nor drew my Sword, but was barbarouſly murdered.' I was there again, when Mr. *Peters* gave him the Sacrament, when he was asked the ſame Queſtion; he then anſwered, 'He neither did the one or the other.' In the Afternoon Mr. *Keat* and I went together, he was then in a calm State, ſeemed reaſonable, and we asked him, 'Sir, you can give ſome 'Account of this Matter, your Reaſon and Judgment are ſtrong; I have 'heard that you fetched down the Piſtols;' He told me, 'He had, but 'with no malicious Deſign, only he would not be forced out of his Lodg-'ings.' I asked him, 'If there was any Blow given;' He ſaid, 'They 'had given him abuſive Language, which induced him to ſtrike one of 'them; upon that they immediately ſeized him, the luſty Man ſeized 'him and drew his Sword; he tumbled down, and he ſtabbed him; he 'often begged them to ſpare his Life; the other ſaid, Damn him, draw his 'own Sword and ſtab him.' Mr. *Lutterell's* Finger and Thumb were cut, as if it was with graſping of a Sword. Then he ſaid, 'The leſſer 'Man took a Piſtol and clapped it cloſe to his Breaſt, and ſhot him in the 'Body, and the luſty Man held the other Piſtol to his Head, and ſhot it 'off; which I the rather believe, becauſe he had ſome Powder Spots or Marks on his Face.---*Reaſon.* He owned to you that he ſtruck one of us.

Mr. *Gifford.* Yes; but it was upon your giving ſawcy Language.

L. C. J. When you asked him about bringing down the Piſtols, and upon what Account, what ſaid he?

Mr. *Gifford.* He acknowledged he brought down the Piſtols, but with no evil Intent; but as he was willing to pay his Debts, he was not willing to be forced out of his Lodging, and be expoſed.

[*Mr.* Bonner *ſworn.*]

Mr. *Bonner.* My Lord, juſt as Mr. *Lutterell* was got to Bed I came up Stairs, and asked him, if he had fired the Piſtol; he diſowned it, and ſaid, 'He had no deſign to do them any Harm, or make any Reſiſtance, but (ſaid he) they killed me cowardly and cruelly.'

Reaſon. After that he had declared to you that he had no Deſign to make any Reſiſtance, what followed?

Bonner. When I came out of the Room, ſays Mr. *Gifford* to me, Mr. *Bonner*, Mr. *Tranter* is ſhot in the Hand; it is certain Mr. *Lutterell* ſhot him in the Hand; therefore let us go back and ask him; we went and asked him both of us, and he ſaid, 'No, as God ſhould judge him, he did 'not, nor had he any Deſign of doing them any Harm, but he did threaten 'them ſeveral Times.' He ſpoke inwardly and ſeemed to be faint, and deſired we would leave him.

Reaſon. Pleaſe to take notice, that my Partner is ſhot in the right Hand.

Tranter. My Lord, I have loſt the Uſe of my Thumb.

[Blake *the Surgeon ſworn.*]

Blake. My Lord, Mr. *Tranter* was wounded in the Thumb of the right Hand, and in his left he had a Wound here in his Wriſt, I did not take the Ball out of his Hand, but I dreſſed it.

L. C. J. What was that Blow on his Head? what do you think it was done with?---Mr. *Blake.* It ſeemed to be done with a Cane.

L. C. J. Was it a Wound or a Bruiſe?

Mr. *Blake.* A Wound, the Skin was broke. Mr. *Reaſon* had a little Wound in one of his Fingers, which ſeemed to be done with the Point of a Sword.

[Thomas Hargrave *called again.*]

L. C. J. Hark you, young Man, hear the Queſtion, and conſider well; upon your former Examination you ſay, when *Tranter* knocked at the Door you went down to let him in; that *Tranter* made up to the Dining-Room, and you followed him; you heard a little Buſtle before you came in; but the firſt Thing you ſaw, when you came, was *Tranter* running your Maſter againſt the Cloſet Door, and *Reaſon* pricking him with a Sword:

a Sword: I aſk you this Queſtion, whether or no, when you was going up Stairs after *Tranter*, before you entered the Room, you did not hear a Blow?

Tho. Hargrave. I heard a Blow, but did not know who ſtruck it.

Mr. J. *Eyre.* Did you ſee to whom the Blow was given?

Hargrave. No, I ſaw nothing at all of it.

L. C. J. The Reaſon of my calling him again, was to be ſatisfied as to this Particular; for the Coroner informs me, that before him, he had ſwore to the ſame Effect; he anſwered haſtily before, but I believe not with any Deſign; he ſaid he did not hear any Blow, his Meaning then might be, tho' he did hear a Blow, yet not ſeeing who gave it, therefore he thought it not material; I did not believe he did it with any Deſign.

L. C. J. Have you any other Witneſſes?

Reaſon. My Lord, we had none but ourſelves, we are Officers of the Court; he aſſaulted us, and brought down his Piſtols and ſtuck them in his Boſom.

L. C. J. Did he not afterwards take them out and lay them on the Table?

Reaſon. No, my Lord.

Tranter. While I was gone, I did not know what happened, but when I came back, the Minute I entered the Room he ſtruck me over the Head with his Cane, and the Piſtol went off, and ſhot me in the Hand.

[*The Clothes were produced, and by the Hole in the Waiſtcoat it appeared, that the Wound given by the Piſtol under the Right Pap could no way happen by any Poſition of the Piſtols in the Boſom of the Deceaſed, by the Piſtol going off of itſelf.*]

Reaſon. My Lord, we are Officers of the Court, and what we did was for our own Security.

L. C. J. What ſays *Tranter?*

Tranter. My Lord, we have no more to ſay.

Mr. *Reeve.* My Lord, I beg leave to obſerve a few Things by way of Reply. They have endeavoured to differ the Caſe with reſpect to three Particulars; the firſt Particular is with relation to the Blow given by Mr. *Lutterell*; they ſay Mr. *Lutterell* himſelf being preſs'd very much, did own that he had given one of the Bailiffs a Blow on the Head; there appears Reaſon to think that to be true, becauſe the Surgeon ſays he dreſſed him of a Wound received by a Blow with a Cane; we ſubmit it, whether that is a ſufficent Juſtification of the Officers for what followed, to kill Mr. *Lutterell* in this manner, ſuppoſing it to be true. What the Boy ſays, he ſaw afterwards, immediately upon his coming into the Room, in an inſtant, as ſoon as he heard the Blow, he found Mr. *Tranter* running him up againſt the Wainſcot, and the other Bailiff ſtabbing him; he ſwears Mr. *Lutterell* had then no Sword or Stick in his Hand ſo that whether or no, after the Bailiff had received a Blow on his Head, it will be a Juſtification ſufficient for the Bailiffs to murder him? Another Part of the Evidence is in relation to the bringing down of the Piſtols; I beg leave to obſerve, my Lord, he did confeſs that the Piſtols were brought down, but not with an Intention to do them any Prejudice; that he laid them on the Table; they don't pretend Mr. *Lutterell* fired either of them, but in the Struggle, the Piſtols were in his Breaſt, and there they went off of themſelves. One Wounded the Priſoner, the other went into his own Breaſt. As to what is ſaid with relation to the Intention of Mr. *Lutterell*, he did own he did threaten them: If he did, yet he had not Power over the Piſtols, one was on the Table, and the other was in the Window, and they ſay the Piſtols were not fired by any of them: Our Witneſs, the Maid-Servant, juſt a little before the Piſtols were fired off, ſaw Mr. *Lutterell* on the Ground upon his Back, and his Hands liſted up, and them ſtabbing him, and this before any one of the Piſtols went off; there is another Witneſs ſwears expreſsly, ſhe ſaw a fat Man take a Piſtol out of the Window, and fire it towards the Chimney: Mr. *Lutterell* was not a fat Man, ſo it muſt be ſomebody elſe that fired the Piſtol, and not Mr. *Lutterell*, in all probability. It was Mr. *Reaſon*, as to the Evidence given in relation to the Cloaths, becauſe here is a Hole in the Waiſtcoat, the Piſtol that was in his Breaſt muſt go off of itſelf, and make that Hole. It can be no ſuch Thing, the Jury has ſeen the Cloaths, and where the Wound is given, and in what Poſition Mr. *Reaſon* himſelf hath attempted to place the Piſtols, and it is impoſſible the Piſtols ſhould go off, and give that mortal Wound. We ſubmit it to your Lordſhip's Diſcretion upon the whole, whether it is a ſufficient Juſtification, though they are Officers of Juſtice, and ought to be protected, yet ſuppoſe ſuch a Misbehaviour where there is no Neceſſity for it, they are not to be juſtified.

L. C. J. There will be two Points in Law; the one is, whether the Officers are to be juſtified in what they have done? If they have done nothing, but what was proper to ſecure their Priſoner, and their own Lives when they were aſſaulted, they are not guilty of Felony; and if they are guilty of Felony, then of what Degree, whether of *Murder* or *Manſlaughter*.

Mr. *Reeve.* My Lord, we muſt ſubmit it, whether a Man ſtriking another over the Head be a Juſtification for him immediately to kill him, and take it with this Circumſtance, that they had given him ill Language.

L. C. J. Is ill Language a Juſtification for Blows? Beſides you will conſider, whether there was not ill Language on the other Side.

Mr. *Hungerford.* My Lord, I won't take up much of your Lordſhip's Time, if your Lordſhip will ſpare me a Word or two. Here is a Man's Life taken away by two Perſons, that had a Precept from a Court of Juſtice to arreſt, the only thing they had to do, was to ſecure the Perſon, to make him anſwerable to Juſtice, whether that could not be done without this Outrage? Whether Officers of Juſtice may execute their Proceſs with ſo much Cruelty? It amounts to as great premeditated Malice as can be conceived. There is a Malice contained in Cruelty; I need not mention the Matter; it hath been fully laid before you; I ſhall only mention a Precedent or two; one is that of *(a) Holloway*'s Caſe: There was ſomething of a Provocation; but the Judge there in that Caſe did enter into the Fact, whether the Provocation was ſufficient to juſtify the killing of the Boy. The Boy was ſtealing Wood in his Park, and had a Rope about his Middle, and as he was up in a Tree, he bid him come down out of the Tree, and he took hold of the Rope and dragged him ſo, that he was killed; and this was not a ſufficient Provocation. Another Caſe is that of *Mawgridge (b)*, it is reported by my Lord Chief Juſtice *Holt*, there was a Provocation; *Cope* had deſired *Mawgridge* to go out of the Room, and then turned him out of the Room; and there the turning him out of the Room was not a ſufficient Provocation, and it is a very juſt Obſervation of my Lord Chief Juſtice *Holt*; when Caſes are attended with ſo much Cruelty and Barbarity (as appears to be here, here are nine Wounds, eight beſides that with the Piſtol on the the ſame Perſon, and certainly two luſty Men as the Priſoners at the Bar are, might have made him anſwerable to Juſtice without any ſuch barbarous Treatment). The Obſervation my Lord Chief Juſtice *Holt* made, is, that the Law ſhould be ſo conſtrued. As to the Buſineſs of the Cloaths, it ſeemed to be abſurd that the Piſtol went off, and made that Wound on the Right Side; by no Poſition he could put the Piſtols in, could their going off make that Wound.

Mr. *Strange.* My Lord, I would only obſerve two or three Things. If Mr. *Lutterell*, at the time they aſſaulted him with a Sword, had held his Piſtols in his Hand, and their own Lives had been in danger, the Caſe had been different: but when he had put the Piſtols out of his Hand, and they were between him and the Piſtols, ſo that it was impoſſible for him to do them any ſuch Harm (for I do admit if it was in Mr. *Lutterell*'s Power at that Time, and he had ſhew'd an Intention, that if they did not kill him, he would kill them, that might be ſomething of a Juſtification), they are the leſs excuſable in doing what they did. As to the Circumſtance of the Piſtols firing of themſelves, as they were in Mr. *Lutterell*'s Boſom, and ſo giving this Wound, it ſeems to be impoſſible it ſhould be ſo, and that this muſt be a Wound given by a Piſtol levelled directly at him.

L. C. J. I think you mentioned the Caſe that is in *Keilyng*, and if you have read that Caſe lately, you will remember, there a Blow is a Provocation, and if a Blow be firſt given, it will not be Murder, tho' Death do enſue upon it.

L. C. J. Gentlemen of the Jury, the Priſoners at the Bar, *Hugh Reaſon* and *Robert Tranter*, are charged by the Coroner's Inqueſt, and by an Indictment, with the Murder of Mr. *Lutterell*; they ſay they are not guilty of this Murder; and whether they are guilty or not is your Buſineſs to enquire, and receive Satisfaction in. In order to prove them guilty, they have called ſeveral Witneſſes for the King. The firſt is *Thomas Hargrave*, who it ſeems was a Servant to Mr. *Lutterell*; he tells you, that upon *Tueſday*, but he doth not remember the Month, or the Day of the Month, but it comes out from the other Witneſſes, that it was the 17th Day of *October*, he ſays his Maſter was going down to the Water-ſide in order to take Boat, for it ſeems he lodged in *Surry-Street*, and he ſays a little Man ran after him, and clapped him on the Back. He did not then know him, but now ſays his Name is *Tranter*; on that his Maſter told him, he would pay the Money. He did differ in the Evidence he gave, at firſt he did not remember that he deſired them to go to his Lodging, but he deſired them to go with him to *Weſtminſter*. But the Officers thought that was not reaſonable; then afterwards he ſays, that with much Perſuaſion he prevailed with them to carry him back to his Lodging: and that his Officers did carry him back to his own Lodging; he ſays, his Maſter went up Stairs, he followed after; when he came up Stairs his Maſter demanded of the Officer, that was with him, the fat Man, which is *Reaſon* (for *Tranter* was gone to get a Bill of Coſts from the Attorney), he demanded of the Officer his Warrant; the Officer did ſhew him his Warrant; he ſaid, he took the Warrant in his Hand, and afterwards threw it on the Ground, uſing a very indecent Expreſſion, *he ſhould take it and wipe his Back-ſide with it*. He tells you while he was there ſomebody knock'd at the Door; with that he went down to open the Door, and he ſays he let in *Tranter*, and he ran up to the Dining-Room, and he followed him. Now, he ſays, on his ſecond Examination, before he came into the Dining-Room, he did hear the Noiſe of a Blow given, formerly the Lad giving his Evidence haſtily, and not ſo well conſidering, he ſaid he did not hear any Blow given; but on his ſecond Examination, he doth ſay he heard a Blow given before he came into the Dining-Room. He ſays, when he came into the Dining-Room, *Tranter* had got hold of Mr. *Lutterell*, and was running of him againſt the Wainſcot, and that *Reaſon* had his Sword drawn and was ſtriking at him with his Sword; and he ſays, as he was preparing himſelf to make another Thruſt, he took hold of his Sword-Arm, and prevented that, and *Reaſon* with ſome Paſſion ſaid, *Damn you, get you out of the Room, or elſe you ſhall die before your Maſter.* With that the Boy went out of the Room, and went down Stairs and cried out *Fire and Murder*, in order to alarm the Neighbourhood; he tells you while he was there he heard a Piſtol go off, and before he could get up Stairs he heard another Piſtol go off; this is the Evidence given by *Hargrave*. They have called another Witneſs, *Heſter Gerrard*; ſhe ſays ſhe heard her Maſter go out in the Morning, and in a little time after ſhe heard him return again, and there came with him *Reaſon*, one of the Priſoners at the Bar. Obſerving this, that her Maſter came in ſo ſhort a Time after he went out, ſhe had the Curioſity to hearken what the Meaning or Occaſion of her Maſter's returning ſo ſoon was; ſhe ſays, ſhe heard her Maſter talking of an Arreſt, and he ſeemed to be in a Paſſion with the Bailiff that was with him, and ſaid he had not uſed him well, but ſhould have given him notice before he arreſted him in the Street; ſhe ſays, ſhe withdrew afterwards into her Miſtreſs's Bed-Chamber, which were near the Room where they were, and in a little time ſhe heard her Maſter go up Stairs, and in a ſhort time after return again; with that, ſhe had the Curioſity to go in, and ſee what was the Matter; her Miſtreſs being big with Child ſhe was therefore more curious than ordinary to prevent the Misfortune falling on her Miſtreſs; ſhe found her Maſter with two Piſtols in his Hand, he ſtuck one of the Piſtols on one Side, and the other on the other Side in his Coat; ſhe ſays, ſhe admoniſhed her Maſter, and deſired him to conſider the Condition of her Miſtreſs, and not to do any thing to fright her; upon that

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(a) *Croke Charles*, 131.

(b) *Keilyng*'s Reports, 119.

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he said the Bailiffs had affronted him, and abused him, and called him *Minter*, however he did not design to do them any harm with the Pistols, and her Master, at her Desire, laid down the Pistols on the Table; with that she went out of the Room; but soon after hearing a great Noise she came into the Room again, and found her Master on his Back on the Floor, and the Bailiffs stabbing him: She says she went out with an Intent to give notice of it to the Neighbourhood, and that she cried out *Murder*; that while she was doing this, she heard one Pistol go off, and presently after another; but before either went off, she saw her Master lying upon his Back, and the Prisoner at the Bar (*pointing at him*) stabbing him. Then they call *Thomas Waters*, a Waterman, he was standing by the Water-side, and seeing Mr. *Lutterell* coming down, who was one that usually employ'd him, he expected a Fare from him, and that he should carry him, as he usually did; he saw Mr. *Lutterell* make back again and go into his own Lodging; but still he said he expected his Master to come down, and go by Water; but he not coming in so short time as he expected, he made towards his Lodging, and as he came near he heard the Boy cry, *Fire* and *Murder*: He went up into the Room, where he found Mr. *Lutterell* lying in the Room wounded, all in Blood. The next Witness is Mr. *Peters*, who is a Reverend Divine, and came to do his Office and Duty on this melancholy Occasion; he hearing Mr. *Lutterell* was wounded, and in danger of dying, came to him to perform his Office on that Occasion: He says, that he requested and admonished him to tell him, if he was not accessary to his own Misfortune, and that it may be, if it was not discovered whilst he was living, it might be the Occasion of an innocent Person's Suffering. When he admonished him to tell the Truth, he did with the most solemn Asseveration, as he was to answer at the dreadful Day of Judgment, say, *That he was barbarously murder'd*; but did not you give any Provocation or Occasion for it? *No, I gave none.* With that, says he, I told him I understood one of the Bailiffs was wounded with a Pistol; did not you discharge either of the Pistols? *No, upon the Word of a dying Man, and as he was to answer it to Almighty God, he never discharged either of the Pistols, nor did he run his Sword at them, drew his Sword at them, or give them any Provocation.* The Minister says, he advised him to be very serious, and examined him as to the Fact, and said it would be of very dangerous Consequence, if he should die with any Falsity in a Case of this Nature, and it would draw present Ruin on innocent Persons; he said, *He never drew his Sword nor discharged either of the Pistols, but was barbarously murder'd.* Mr. *Peters* then went away, and a little time after came again, when Mr. *Vernon* and Mr. *Haynes*, two Justices of the Peace, came to take an Examination from Mr. *Lutterell* himself; he says he was present at that Time, that because they had no Clerk with them, he was desired to take an Account in Writing of what was said; he prest'd him as formerly, and having taken an Account in Writing, that ought to be produced, but it is not produced, and therefore no regard is to be had to it, for a Person is to give the best Evidence the Thing is capable of, especially where a Person's Life is concerned, and he of his own shewing, says, it was taken in Writing, and that Writing is not produced, and no Account is given that they are disabled to produce it, but the Justice of the Peace that hath it is out of the Way; and it doth not appear, that proper Endeavours have been taken to have him here, that this Examination might appear more perfect than the former. He tells you afterwards he came to him a third Time, and the End of his coming a third Time was to admonish him with respect to his Fate in the other World, and at that Time he desired to take the Sacrament; he told him what was necessary, that he might take the Sacrament worthily, and that it was proper above all Things that he should discharge himself and his Conscience, and give a true Account of what happen'd on this melancholy Occasion, that so no innocent Person might suffer. He still insisted, *That he was barbarously murder'd*, and said, *that every Article of what he had said was true.* He said to him further, before you receive the Holy Sacrament, and as you are going before God, and there hope to have Remission of your Sins, it is necessary for you to forgive even your Enemies; and with that says he, he told me, *He did heartily forgive all the World, and did forgive the Persons that had been guilty of this Indiscretion, and hoped God Almighty would forgive them:* He gives it a soft Term there, *their Indiscretion.* Indeed I should have been very glad if the Examination that was reduced into Writing was here, that it might be laid before you. Mr. *Peters* is a very worthy Person, there is no Reason to doubt; but he swears upon his Memory, and when a Man swears upon his Memory, he may mistake, and the Mistake of a few Words may alter the Sense; therefore it was very proper to have had the Examination here; that might possibly have corrected his Memory; and tho' he hath shew'd himself a Man of great Probity and Worth, yet he might be mistaken in some Particular; and it seems strange, that of two Justices of Peace the one appears, and the other, Mr. *Vernon*, with whom the Examination is left, doth not appear, nor any Endeavours used to have him here; and therefore it must be taken as an Objection, not as to his Veracity, but that the Prosecutor hath not produced the Evidence that is proper, and only relies on the Memory of the Witnesses, and this seems to affect the Evidence that is given by Mr. *Peters*. They have called another Witness, whom they called at last after they had closed their Evidence; she lived in an House over against Mr. *Lutterell*'s Lodgings; she was in a Chamber two Pair of Stairs, and she saw a lusty fat Man come to the Window, take up a Pistol, and as she thought discharged the Pistol; and she saw no other Person but this Man, and therefore concluded the fat Man fired the Pistol: This is the Evidence given for the King. The Prisoners are asked what they have to say for themselves, in answer to this Charge, which seems to be a weighty one given against them: They tell you they are Ministers of Justice, and they give you an Account, not only by their own opening, but by the Evidence they have produced, in what manner they behaved themselves; that upon the first Arrest, at the Request of the Prisoner that then was, they submitted to carry him back to his own Lodging: I must confess this doth seem to make some Impression, it is what Bailiffs are not bound to do, they are usually rough, and not easy to be intreated, unless well paid for it; this shews, that these Men went beyond the bounds of their own Duty; for when they had arrested him, they ought to have secured him by carrying him to Jail, or some Place of Safety; it was incumbent on them to give him an Opportunity of paying the Money, or sending for Bail, in Case he desired to be discharged that Way; but when a Bailiff hath arrested a Man, to carry him back to his own Lodging, is an unusual way of treating Prisoners, and ought not to have been; but still it is not to be imputed to the Bailiffs, as an Aggravation in the Charge, they were too favourable in trusting him in his own Lodging. What is next? When they had him there, *Tranter* is sent for the Attorney's Bill. This is pretty extraordinary, when they had taken him, not only to give him Leave to go to his own Lodgings, but one of them goes upon an Errand, which Mr. *Lutterell* might have sent his own Servant upon, and leaves none but *Reason*; this was extreme civil Usage, and not often done by Men of their Character. What then? *Lutterell* goes up Stairs. What did *Reason* then do? When he had carried him to his own Lodging and sent his Partner away, he gives him leave to go into another Chamber; this doth not seem to be ill Treatment of the Deceased, but shews excessive Favour to their Prisoner, which they could not in Strictness justify: He went up Stairs and returned again, and the Maid-Servant of Mr. *Lutterell* tells you, she saw him with a Case of Pistols, one stuck on one Side of his Coat, and the other on t'other; if their Treatment was so extraordinary and civil, this seems to be an untoward Return of Mr. *Lutterell*'s, when he was trusted to go out of the Room, for to Return with a Case of Pistols; but the Maid-Servant says, he said, *He had no Malice towards them, and would not hurt a Hair of their Heads, he only brought down the Pistols that he might not be imposed upon.* I don't know what he meant, when he was in Custody of the Officers, and had been so civilly used, to bring down a Case of Pistols to prevent his being ill used, seems an untoward Return, and to affright the Officers, that they might not carry him away. This is not all, Mr. *Gifford* says, that he being a Surgeon was called to give his Assistance on this very unhappy Accident; he gives an Account of the Wounds, and the Discourse that pass'd on that Occasion, and upon what he had done, and how the Bailiffs had treated him. Says he, *I confess*, although he says he had examined, and asked him several Times before, and that he refused to give any Account then, but did persist in it, that he did not give any Provocation, but at last when Mr. *Gifford* repeated it with some Earnestness, out it comes at last, *That he did give one of the Bailiffs a Stroke on his Head with a Stick.* He goes on, and ask'd him the Intent of bringing down the Pistols; he says, *I did not design any Harm; I have no Malice, but brought them down, that I might not be ill used*: This was ill Behaviour, where he had been treated civilly, to declare that he brought down his Pistols, that he might not be ill used: It was the Duty of the Bailiffs to carry him off, and he brought down his Pistols to prevent that; as to the Blow, says the Bailiffs, the Assault begun on his Side; the young Man hath told you he heard a Blow given: Mr. *Lutterell* declared, he brought down the Pistols to prevent their carrying him off, and that he did give one of the Bailiffs a Blow with a Cane; it is surprizing, that immediately when *Tranter* came back he should run him against the Wainscot, and the other assault him with a Sword; this Behaviour is not of a Piece with the other, that *Tranter* should come back, and without any Provocation run him against the Wall, and *Reason* should take his Sword and stab him: There must be a Provocation; the Boy says there was a Blow given, but he can't tell who gave it. Mr. *Lutterell* declares he gave a Blow, and another Surgeon confirms it; so that it appears beyond Contradiction, by the Evidence, that the Pistols were brought down with a Design to prevent his being carried off, and that he did give one of the Bailiffs a Blow with a Stick: Then Mr. *Bonner* hath given you an Account of several Matters; but that which is material is, that he did not discharge any of his Pistols, or draw his Sword; that he did not intend it, but did threaten it several Times. One *Blake*, who was another Witness, says, that upon Examination afterwards there appeared, that there had been a Blow on the Head of *Tranter*. This is the Nature of the Evidence given on the Side of the Prisoners. Upon the whole Matter, I think it is plain beyond Contradiction, that the Prisoners at the Bar did kill Mr. *Lutterell*. It is plain that first of all, when *Tranter* had him against the Wall, that *Reason* stabb'd him, and when lying upon the Floor, that *Reason* stabb'd him; and it appears afterwards by the Evidence of the Witness, who says she saw the fat Man take up the Pistol and discharge it, that *Reason* shot off the Pistol; so that I think there can be no doubt at all, but the Prisoners at the Bar did give these Wounds, of which he died. The Surgeons give an Account, and I think there are some eight or nine Wounds with a Sword, one of them only mortal; a Wound with a Bullet that is mortal; several other Wounds he speaks of, that are but slight. Then the Question will be, whether upon this Evidence the Defendants are guilty of Felony, and if guilty, then in what Degree, whether of *Murder* or *Manslaughter*? Gentlemen, it hath been opened truly, that the Bailiffs are Ministers of Justice; they are arm'd with the Authority of Law, and those who resist a Bailiff in the Execution of his Office, resist the Law. They are not bound to give way and let their Prisoner escape, but they being to execute their Warrant, if in doing what is necessary for this purpose, for obtaining their Prisoner, and the Security of their own Persons, Death doth ensue, the Bailiffs, having the Authority of the Law on their side, it is not so much as Felony; and it is very necessary it should be so, for without it all our Properties would be precarious. When any Man offers an Injury to another, there is no Remedy but by bringing an Action at Law, and in order to bring the Person to do Justice a proper Officer must be employed; and therefore it is highly reasonable that Bailiffs should have an Authority to carry off the Persons they have arrested, and if in doing of it Death ensues, the Party must thank himself. That being the Question, I would recommend to your Consideration these Circumstances; it appears in the beginning, that the Bailiffs treated Mr. *Lutterell* with all Civility,

gave him leave to go to his Lodging; one of them ſends his Companion away, and gives him leave to go up Stairs; but altho' they did do that, that will not juſtify them for being guilty of any Barbarity, without any juſt occaſion offer'd; therefore you are to conſider what happen'd afterwards: It appears Mr. *Lutterell* brought down the Piſtols, he did do this to prevent his being carried off; that is, to prevent the Bailiffs from carrying him from his Lodgings, which was their Duty to do in caſe the Money was not paid, or Bail given in; and if ſo, this is good introductory Evidence to that, which they offer to prove, namely, that he endeavour'd to reſcue himſelf: He ſays, he did not diſcharge either of the Piſtols, or draw his Sword upon them; that he did not intend to do any Miſchief, but he threaten'd them; then ſee how this is when taken together: Here is Mr. *Lutterell* under an Arreſt, fetches down his Piſtols with an Intent to prevent his being carried off; I doubt his threatening muſt have reference, that he threaten'd to diſcharge his Piſtols, or draw his Sword upon them; then when his Piſtols are brought down with that Intent, when he threatens what Uſe he would make of his Piſtols or Sword, what is done afterwards? Mr. *Luttrell* gives one of the Bailiffs a Blow with his Cane; it is proved undeniably that there was a Blow given, that is proved by the Boy, that the Blow was given by Mr. *Lutterell*; that appears by what he own'd himſelf. Then conſider, here are Piſtols brought down with a Deſign to make Oppoſition; that he threatened them, and not only ſo, but gave one of them a Blow with his Cane; what is the Conſequence? *Tranter* runs him againſt the Wall, and *Reaſon* ſtabs him: If this were all that was in the caſe, when Piſtols are brought down, and Threatenings uſed, and a Blow given, the Officers are not to ſtand ſtill till they are murdered, nor could they tell what Mr. *Lutterell*'s Intention was: As he had made an Appearance of Reſiſtance, and had made an Aſſault, you are to conſider whether this was not a neceſſary Defence of the Officers to ſecure their Priſoner. It is of no weight what Mr. *Lutterell* ſaid, that he intended to do them no harm; if he made an Appearance of Reſiſtance, and actually aſſaulted them, the Queſtion is, whether the Bailiffs, in this caſe, are not juſtified in what they have done? You will conſider their Circumſtances. The Maid tells you, when the Piſtols were brought down, at her Perſuaſion her Maſter laid them on the Table; ſo one would think that was an Indication that no ill uſe was intended to be made of them: It doth not appear whether one or both were in the Reach of Mr. *Lutterell*. Then it appears, that notwithſtanding the running him againſt the Wall, he had in ſome meaſure reſcued himſelf from that Force, and there was a ſtruggling, and throwing down, which ſhews this Man was not ſo in the Power of the Bailiffs, ſo as they could be ſecure of preſerving their Priſoner, or their own Lives. It muſt be left to your Conſideration, whether there was any Deſign of Mr. *Lutterell* to reſcue himſelf; but if you think they had a juſt Provocation, and they had Reaſon to be apprehenſive of loſing their Priſoner, the Law does allow them to do what is neceſſary for their own Security, and the Security of their Priſoner. This is what I recommend to your Conſideration, whether or no it appears to you that this was done out of Heat, and out of a Paſſion by the Bailiffs, when there was no juſt Cauſe for them to apprehend the Priſoner's being reſcued; if you believe that, then the Priſoners will be guilty of Felony: But if you believe there was juſt occaſion for the Priſoners to be apprehenſive they were in danger of their Lives, and of loſing their Priſoner, then whatever is done in their own Defence to ſecure their Priſoner, and their own Lives, it will not be Felony. I muſt confeſs it looks barbarous to think, that when a Man was in his Blood on the Ground, they ſhould follow their Blows, giving him more Wounds; this is carrying the thing a great way, and it looks like ſome Barbarity; but if Mr. *Lutterell* gave the firſt occaſion, whatever happened after, if done for the Security of their own Lives, and of their Priſoner, won't make them guilty of Felony; but ſuppoſe you ſhould be of Opinion that the Bailiffs have done more than they ſhould, then the next thing to conſider is, in what degree they are guilty: It appears a Blow was given, and that by the Boy, before he came up Stairs; it appears by Mr. *Lutterell* that he gave the Blow; Gentlemen, I don't know, Men of Honour are not to juſtify themſelves by ſaying, ſaucy Language is given them, and therefore I am to be my own Avenger; Mr. *Lutterell* gave one of them a Blow over the Head, afterwards the reſt fell out as you have heard.

The Queſtion is, whether it be *Murder?* It muſt be done maliciouſly, and without Provocation, or elſe it is not Murder: Blows have always been allow'd to be Provocations, and here this is accompanied with fetching down the Piſtols, threatening the Bailiffs what he would do, and afterwards giving one of them a Blow; and if ſo, the Defendants will not be guilty of *Murder*, but only of *Manſlaughter:* Firſt, you are to aſſert a juſt and true Authority of the Bailiffs; on the other Side you muſt not encourage the Bailiffs on a few angry Words immediately to fall into a Paſſion, and take away the Life of a Man. Here it appears, that a Blow was given under untoward Circumſtances, after the Bailiffs had been threatened with a Deſign to prevent his being carried off by them; and if it be ſo, the moſt you make of it will be *Manſlaughter*.

They did behave themſelves civilly at firſt, ſhew'd him their Warrant, which he threw down and bid them wipe their Back-ſide with it; that is a Matter which if this Gentleman had not ſuffered in the manner he hath done, muſt have been reſented in its place; then two or three times they are called *Rogues* and *Raſcals*, and that might provoke the Bailiffs: I think this unhappy Buſineſs was occaſioned by too great a Lenity of the Bailiffs in carrying back their Priſoner to his own Lodging; that was not well done of them. However, I muſt leave it to your Conſideration, whether or no they are guilty of Felony, and if they be guilty of Felony, then in what degree, whether of *Murder* or *Manſlaughter*. I forgot one thing, the Surgeon hid ſwear that one of the Bailiffs had a Wound in his Hand by a Bullet, each of them had a Wound, tho' it doth not appear how; all this is likewiſe to be conſider'd: you will conſider the whole, and give your Verdict accordingly.

Reaſon, as hath been proved, ſaid, he hoped he would give him Civility Money; he ſaid he would give nothing to ſuch Rogues as they were, for they had given him no Notice, but had arreſted him in the Street; that is the great Ground of Complaint, and at that the Offence is taken; they did not give him due Notice, therefore it was not civilly done, which if they had done, and it had come before us, we ſhould have puniſhed with great Severity.

Upon this the Jury withdrew, and after ſtaying out about an Hour, brought them both in *Guilty of Manſlaughter:* Upon which they prayed the Benefit of the Clergy, and were immediately burnt in the Hand.

CXCII. *The Trial of* John Woodburne *and* Arundel Coke, *Eſq. at* Suffolk *Aſſizes, for* Felony, *in wilfully ſlitting the Noſe of* Edward Crispe, *Gent.* March 13, 1721. 8 Geo. I.

ON *Tueſday* the 13th of *March* 1721, at the Aſſizes held at *Bury St. Edmonds*, in the County of *Suffolk*, *John Woodburne* and *Arundel Coke* were arraigned upon an Indictment found by the Grand Jury: And the Court proceeded thus:

Clerk of the Arraignments, *John Woodburne*, Hold up thy Hand; *Arundel Coke* alias *Cooke*, Hold up thy Hand. (*Which they ſeverally did.*)

You ſtand indicted by the Names of *John Woodburne*, late of the Borough of *Bury St. Edmonds*, in the County of *Suffolk*, Labourer; and *Arundel Coke* alias *Cooke*, of the Borough aforeſaid, Eſq; for that you, after the twenty-fourth Day of *June*, in the Year of our Lord one thouſand ſeven hundred and twenty, *viz.* the firſt Day of *January* in the Eighth Year of our Sovereign Lord *George*, of *Great Britain*, &c. intending one *Edward Criſpe*, Gent. then and yet being a Subject of our ſaid Sovereign Lord the King, to maim and diſfigure at the Borough aforeſaid, in the County aforeſaid, by Force and Arms, *&c.* in and upon the ſaid *Edward Criſpe*, in the Peace of God, and of our ſaid Sovereign Lord the King, then and there being, on purpoſe, and of Malice afore-thought, and by lying in wait, did unlawfully and felonioufly make an Aſſault. And that you the ſaid *John Woodburne*, with a certain Bill value a Penny, which you the ſaid *John* then had and held in your right Hand, the Noſe of the ſaid *Edward Criſpe*, on Purpoſe, and of your Malice fore-thought, and by lying in wait, did then and there unlawfully and felonioufly ſlit, with an Intent by ſo doing, the ſaid *Edward Criſpe* to maim and diſfigure. And that you the ſaid *Arundel Coke*, at the time of the Felony aforeſaid, by the ſaid *John Woodburne* in manner aforeſaid, unlawfully and felonioufly done and committed, to wit, the ſaid firſt Day of *January*, in the eighth Year aforeſaid, at the Borough aforeſaid, in the County aforeſaid, on Purpoſe, and of your Malice fore-thought, and by lying in wait, unlawfully and felonioufly was preſent, aiding and abetting the ſaid *John Woodburne* the Felony aforeſaid, in manner aforeſaid, felonioufly to commit and do. And ſo the Jury aforeſaid, upon their Oaths ſay, that you the ſaid *John Woodburne* and *Arundel Coke*, the ſaid firſt Day of *January*, in the eighth Year aforeſaid, at the Borough aforeſaid, in the County aforeſaid, by Force and Arms, *&c.* on Purpoſe, and of your Malice fore-thought, and by lying in wait, the Felony aforeſaid, in manner aforeſaid, did, and each of you did, commit and do againſt the Peace of our Sovereign Lord the King, his Crown and Dignities, and alſo againſt the Form of the Statute in that Caſe made and provided. [Vid. *A true Copy of the Indictment itſelf in* Latin, *at the End of this Volume.*]

Clerk of the Arraigns. How ſay'ſt thou, *John Woodburne?* Art thou guilty of the Felony whereof thou ſtand'ſt Indicted, or not Guilty?

Priſoner. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Priſoner. By God and my Country.

Cl. Arr. God ſend thee a good Deliverance. How ſay'ſt thou, *Arundel Coke* alias *Cooke*, art thou guilty of the Felony whereof thou ſtandeſt Indicted, or not Guilty?

Priſoner. Not Guilty.

Cl. Arr. Culprit, How wilt thou be tried?

Priſoner. By God and my Country.

Cl. Arr. God ſend thee a good Deliverance. You *John Woodburne*, and *Arundel Coke* alias *Cooke* the Priſoners at the Bar, hearken to what is ſaid to you. Thoſe good Men that are now called and do here appear, are thoſe that are to paſs between our Sovereign Lord the King and you, upon your ſeveral Lives or Deaths; if therefore you, or either of you, will challenge them or any of them, you muſt challenge them as they come to the Book to be ſworn, before they are ſworn, and you ſhall be heard.

Cl. Arr. Cryer, give the Book to

Thomas Buckingham,	*Robert Gall*,	*Jonathan Clements*,
Nicholas Alger,	*William Scott*,	*Thomas Taylor*,
Ambroſe Gallant,	*George Creſs*,	*Simon Reeve*,
George Goddard,	*Samuel Bridge*,	*William May*.

Cl. Arr. Count theſe.

Cryer. Are you all ſworn, Gentlemen?

Jury. Yes.

Cl. Arr. Make a Proclamation.

Cryer. O Yes! If any of you can inform my Lord the King's Juſtice, the King's Attorney or Solicitor General, of any Treaſon, Murder, Felony, or other Miſdemeanour committed by the Priſoners at the Bar, or either of them, come forth, and you ſhall be heard, for the Priſoners at the Bar now ſtand upon their Deliverance: And all Perſons bound by Recognizance to proſecute them, or either of them, come forth and proſecute, or you'll forfeit your Recognizances.

Cl. of Arr. John Woodburne, and *Arundel Coke* alias *Cook*, hold up your Hands. Gentlemen of the Jury, look upon the Priſoners, and hearken to their Charge: They ſtand indicted by the Names of *John Woodburne*, late of the Borough of *Bury St. Edmonds*, in the County of *Suffolk*, Labourer, and *Arundel Coke* alias *Cooke*, of the Borough aforeſaid, Eſq; for that they (as in the Indictment before-mentioned) upon which Indictment they have been arraigned, and pleaded ſeverally Not Guilty: Your Charge is to enquire whether they, or either of them, are Guilty of the Felony whereof they ſtand indicted, or Not Guilty.

Mr. *Lee*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the King againſt the Priſoners at the Bar, who are indicted for Felony on the 22° and 23° *Car.* II. entitled, *An Act to prevent malicious Maiming and Wounding*. And the Indictment ſets forth, that the Priſoners, the firſt Day of *January*, in the Eighth Year of his preſent Majeſty, at *Bury St. Edmonds* in this County, did on Purpoſe, and of Malice fore-thought, and by lying in wait, make an Aſſualt unlawfully and felonioufly upon *Edward Criſpe*, Gent. and that the Priſoner, *John Woodburne*, with a Bill which he then had in his Right Hand, did on Purpoſe, of Malice fore-thought, and by lying in wait, ſlit the Noſe of the ſaid *Edward Criſpe*, with an Intent in ſo doing to diſfigure the ſaid *Edward Criſpe*; and that the Priſoner, *Arundel Coke*, at the Time of committing the ſaid Felony, on Purpoſe, and of his Malice fore-thought, and by lying in wait, was unlawfully and felonioufly preſent, aiding and abetting the ſaid *John Woodburne* to commit the ſaid Felony: All which is laid to be done contrary to the Form of the Statute. If we who are Counſel for the King prove this Matter, you will find them Guilty.

Serj. *Selby*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel, *pro hac Vice*, for the King againſt the Priſoners at the Bar, who ſtand indicted upon the Statute of the 22° of King *Charles* II. the one for maliciouſly maiming and diſfiguring of *Edward Criſpe*, the other for abetting that Fact, which by that Act is made one and the ſame Offence; I ſaid, Gentlemen, I was Counſel for the King, for that his Majeſty, as the Father of his People, and for their Safety, out of his natural Goodneſs, hath been graciouſly pleaſed particularly to regard this Proſecution for ſo horrid and bloody an Aſſaſſination. And though, Gentlemen, 'tis difficult to ſtand in this Place without the greateſt Tenderneſs to our Fellow-Creatures, yet theſe, who have diveſted themſelves of all Humanity, now ceaſe to be ſuch; 'tis even Cruelty to the King's People not to ſtand up againſt them ſo far as is conſiſtent with Law and Juſtice. Their Proſecution is become the common Concern of Mankind; for ſo long as theſe Priſoners have a being here, the Life of every Man is precarious, and but at the Will of ſo infernal a Contriver as the one, and ſo helliſh an Executioner as the other. We ſhall firſt, Gentlemen, prove the Fact committed, and that by Mr. *Criſpe* himſelf, who by a particular Providence hath ſurvived this horrid Attempt, and is here to give Evidence of it, and that he was invited with his Wife by Mr. *Coke* (who married Mr. *Criſpe*'s Siſter, and who was to have Mr. *Criſpe*'s Eſtate by his Deceaſe) to ſup at his Houſe; that Mr. *Coke* propoſe to him to go after Supper to make a Viſit to Mrs. *Monke* (whoſe name we mention without any the leaſt Imputation) to which Mr. *Criſpe* conſented; that Mrs. *Monke*'s Houſe opens into the Church-yard, which is but croſs the Way from Mr. *Coke*'s Houſe; that Mr. *Coke* took Mr. *Criſpe* along with him about ten or eleven at Night, it being dark, into the Church-yard, and walked him about near Mrs. *Monke*'s Door without going in, and then making ſome Noiſe or Whiſtling, a Perſon came up to him and knocked him down, after which he was not ſenſible; that being left for dead, after ſome Time he got up, and returned, he did not know how, to Mr. *Coke*'s Houſe, where the Company received him with great Conſternation, as did Mr. *Coke* himſelf, who ſoon returned after walking out with Mr. *Criſpe*, out of Breath, and call'd for a Glaſs of Wine; and being aſked what was become of Mr. *Criſpe*, ſaid he was ſtumbling home in the dark. This we ſhall prove by Mr. *Brown*, another Relation. We ſhall prove by Mr. *Sturgeon*, who was called as his Surgeon, the Condition of his Wounds; and by *Carter*, a Blackſmith, that Mr. *Coke* about the *Friday* before the Fact was committed, ſent for him, and aſked (after a previous Diſcourſe of *Carter*'s Poverty, and how he might live well in the World) if he would cut off ten Men's Heads without Remorſe; which, when *Carter* ſaid he could not, If he would cut off one Man's Head, and lay it before *Coke*; which *Carter* refuſing, Mr. *Coke* bid him conſider on't, and come again; then gave him a Glaſs of Brandy, and diſmiſſed him, bidding him ſend *Woodburne* to him. We ſhall prove by one *Moone*, a Taylor, that Mr. *Coke* about three Years ſince ſollicited him to the like Effect. We ſhall prove by *Willet* the Conſtable, that after *Woodburne* was taken up, he confeſſed the Fact, ſaid he did it with a Hedging-Bill, and gave him Directions where to find it, and he found it accordingly; which *Woodburne*, when ſhewed him, acknowledged to be the ſame, and which we have here to produce. We ſhall prove by Mr. *Wetherell* the Gaoler, that Mr. *Coke*, ſince he was in his Cuſtody, confeſſed the whole Fact, and that *Woodburne* was placed in a Porch of an empty Houſe near Mr. *Coke*'s, to come out on a Whiſtle to do the Fact; and that he delivered Mr. *Criſpe* to *Woodburne*, and was preſent when the Fact was committed. And after this Evidence, there can be no doubt, Gentlemen, but you will find the Priſoners at the Bar guilty of this Indictment.

Serj. *Branthw.* My Lord, the Defendants are indicted of Felony, upon an Act of Parliament made 22° & 23° *Car.* II. by which Act, if any Perſon or Perſons on Purpoſe, and of Malice fore-thought, and by lying-in-wait, ſhall unlawfully cut or diſable the Tongue, put out the Eye, ſlit the Noſe, *&c.* with an Intention in ſo doing to maim or diſfigure; the Perſon or Perſons ſo offending, their Counſellors, Aiders, and Abettors, knowing thereof, are Felons without Benefit of Clergy. The Indictment charges the Defendants with felonioufly making an Aſſault on Mr. *Criſpe*; that *Woodburne* ſlit his noſe with a Bill or Hook; that *Coke* was aiding and aſſiſting therein. We ſhall be able by undoubted Evidence to prove and make clear the Charge of the Indictment, and every Particular thereof; as has been opened to you, and that the manner of doing it was attended with ſuch Circumſtances of Inhumanity, Baſeneſs, and Villany, as no Inſtance can parallel. Mr. *Criſpe* is Brother-in-Law to Mr. *Coke*, who on the firſt Day of *January* laſt, under the Colour of Friendſhip and Affection, invites Mr. *Criſpe* and Family to Supper at *Coke*'s Houſe. Before this Invitation he had agreed with *Woodburne* for Hire, to lie in wait on Purpoſe to effect the deſigned Miſchief. When *Woodburne* was lying in wait, *Coke* came ſeveral times to him to encourage him in his vile purpoſe. After Supper, Mr. *Coke*, unmindful of all the Obligations of brotherly Love, of Hoſpitality, and of the Protection due to Mr. *Criſpe*, by falſe and vile Arts and Perſuaſions entices him into the Church-Yard, the Place deſigned and agreed upon for the Execution of their wicked Purpoſes. When he had got Mr. *Criſpe* into this Place, by Sign he gave notice of it to *Woodburne*, who had follow'd at ſome diſtance; and then delivered him into the Poſſeſſion of *Woodburne*, and was preſent at the ſtriking ſeveral Blows with the Hook. By the Nature of the Inſtrument every blow muſt maim and diſfigure; and the Blows being given by the Order and Direction of Mr. *Coke* by *Woodburne*, Mr. *Criſpe*'s Noſe was ſlit on purpoſe to maim and diſfigure by one lying in wait: Which are all the Circumſtances required by the Act of Parliament to make them guilty of the Felony with which they are charged. Which ſeveral Facts we ſhall call our Witneſſes to make out, and doubt not but the Jury will find them guilty.

Serj. *Selby*. We deſire in the firſt Place, Mr. *Edward Criſpe* himſelf may be ſworn, *(which was done accordingly)*. Mr. *Criſpe*, give an Account to my Lord and the Jury of the whole Matter.

Criſpe. On *New-Year's-Day* laſt I was invited to ſup at Mr. *Coke*'s, and being there, he propoſed to me to go to Mrs. *Fanny Monke*'s.

L. C. J. Was this before or after Supper? Sir *Peter King*.

Criſpe. This was before Supper: We ſupped about ſeven, and after Supper about ten o'Clock he called me out of his Parlour, I follow'd him; we went into the Church-yard: It was then very dark, the Moon did not ſhine. He took three or four Turns before the Houſe where Mrs. *Monke* dwelt, then he ſtood ſtill and made Noiſe.

L. C. J. What kind of Noiſe did he make?

Criſpe. It was like a Hallooing.

L. C. J. Were you under any Fear or Apprehenſion from that Noiſe?

Criſpe. Yes, my Lord, I was afraid, and made up towards the Wall; but in a Quarter of a Minute ſomebody came behind me, and knocked me down.

L. C. J. Did you know then who that Man was?

Criſpe. I did not.

L. C. J. Can you tell what was done to you afterwards?

Criſpe. My Lord, I cannot, for on that Blow I loſt my Senſes for ſome time.

L. C. J. How long was it before your Senſes returned?

Criſpe. My Lord, I cannot tell; but in ſome time I got up, and returned to Mr. *Coke*'s.

Serj. *Selby*. In what Condition did you find yourſelf?

Criſpe. I was ready to die and faint, and I was found very much wounded.

Serj. *Branthw.* Did any Surgeon come to you at Mr. *Coke*'s?

Criſpe. Yes, Sir, Mr. *Sturgeon*.

L. C. J. After the Perſon came up who knocked you down, did you hear Mr. *Coke* ſay any thing?

Criſpe. No, my Lord.

L. C. J. Can you tell whether he ſtaid any time, or what became of him?

Criſpe. No, I cannot.

L. C. J. Was he there when the firſt Blow was given?

Criſpe. Yes, he was.

L. C. J. Will the Priſoners aſk Mr. *Criſpe* any Queſtions?

Coke. Mr. *Criſpe*, was I preſent when you were knocked down.

Criſpe. Yes, Sir.

Coke. Do you remember that you ſaw me?

Criſpe. Yes.

Coke. How near was I to you?

Criſpe. You were cloſe by me when I was knocked down.

Serj. *Selby*. Call Mr. *Brown* and ſwear him. *(Which was accordingly done.)* I think you are a Relation of Mr. *Coke*'s.

Brown. Yes, Sir, I maried his own Siſter, and he married Mr. *Criſpe*'s Siſter.

Serj. *Selby*. Was you at Mr. *Coke*'s Houſe laſt *New-Year's-Day* at Night?

Brown. A Day or two before laſt *New-Year's-Day*, I and my Wife and Daughter were invited to ſup with him, and accordingly we went. I came about ſix o'Clock, and found Mr. *Coke* and Mr. *Criſpe* drinking a Glaſs of Wine in the Parlour before Supper.

Serj. *Selby*. Was there any other Company with them?

Brown. No, the Women were above Stairs. I ſat down with them, and we three ſtaid in the Parlour till Supper-time. When Supper was ready, we went up Stairs. Then after Supper, between eight and nine, we three came down into the Parlour again. Some time after, *Coke* went out of the Room, and then came back again and gave a Call, or beckoned to Mr. *Criſpe*, who follow'd him out of the Room.

Serj. *Selby*. At what Time of Night was this?

Brown. After nine o'Clock at Night.

Serj. *Branthw.* How long was it before Mr. *Coke* returned?

Brown. He was gone about ten Minutes and then returned.

Serj. *Branthw.* Was he in any Diſorder when he returned?

Brown. He ſeemed to be out of Breath, as if he had been walking faſter than ordinary.

Serj. *Branthw.* How far diſtant is the Church-yard, where this Gentlewoman dwelt, from Mr. *Coke*'s Houſe?

Brown. The Church-yard is about twice the Length of this Shire-Houſe from Mr. *Coke*'s Houſe.

Serj. *Branthw.* What did *Coke* do when he came in?

Brown. Immediately he drank a Glaſs of Wine to me, and after he had ſat ſome time, he went out of the Room. I heard a Noiſe up Stairs, and being told my Daughter was ill, I went up, and in a little time came down again into the Parlour, where I found Mr. *Coke*.

Serj.

Serj. *Branthw.* Did you ask him what was become of Mr. *Crispe?*

Brown. I did then ask him what was become of Mr. *Crispe*, and he told me that he believed he was gone home in the dark. In about two or three Minutes after, Mr *Crispe* came in. He was very much wounded and bloody. I was so surprised that I could not take particular notice of him.

Mr. *Raby.* How long was it from *Crispe*'s going out to his coming in again?—*Brown.* It was near half an Hour.

L. C. J. So then *Coke* returned in about ten Minutes, and *Crispe* in near half an Hour.

Brown, Yes, my Lord.

Serj. *Selby.* Did Mr. *Coke* see Mr. *Crispe* when he came back to his House?—*Brown.* Yes.

Serj. *Selby.* What did he say?

Brown. He seemed to be in a great Consternation.

Mr. *Raby.* Do you know of any Estate that would have come to Mr. *Coke* after Mr. *Crispe*'s Death?

Brown. I cannot positively say it of my own Knowledge.

Mr. *Raby.* We will ask Mr. *Crispe* that Question. Pray Mr. *Crispe*, would any Estate have come by your Death to Mr. *Coke?*

Crispe. In case I had died, one hundred Pounds *per Annum* would have come to his Wife, as one of my Sisters.

L. C. J. Have you then no Children, nor Brothers?

Crispe. No, my Lord; my next of Kin are three Sisters, one of which is Mr. *Coke*'s Wife, she would have been one of my Heirs.

Serj. *Selby.* Call Mr. *Sturgeon.* (*Who appeared, and was sworn.*) What do you know concerning this wounding of Mr. *Crispe?*

Sturg. I am a Surgeon by Profession; and the first Day of *January* last at Night, about eleven o'Clock, I was sent for to Mr. *Crispe* at Mr. *Coke*'s House: When I came, I found him very much wounded and cut, and in a very weak Condition, and that he had lost a great deal of Blood. I examined his Wounds: One Wound began at his Right Ear, divided the fleshy Part of his Cheek, and ended on his upper Lip just under his Right Nostril; the Flesh was all divided, and the Jaw left naked. Another Wound divided the Right Side of the Nostril, and made an oblique Cross over the Wound, and ended near the Right Under-Jaw.

Serj. *Selby.* Was his Nose slit?

Sturg. Yes, Sir, the Nose was cut from without into the Nostril; the Edge of the Nose was not cut through, but there was a Cut or Slit in the Nose that went through: I sew'd it up: It was indeed but with one Stitch; it is yet visible, and the Nose was cut through.

Serj. *Selby.* Were there any other Wounds?

Sturg. There was another deep Wound under his Chin, that reached from one Jaw to the other. There was another Wound, which began at his Chin, crossed the Left Under-Jaw, and tended towards his Ear. There was also a small Wound on his Left Cheek, another on his upper Lip, and another on his Left Temple.

Serj. *Selby.* How many Wounds had he in all?—*Sturg.* Seven.

Serj. *Selby.* Do you think there were seven distinct Wounds, that had seven distinct Blows?

Sturg. I take it, that every one of the seven Wounds had a distinct Blow.

Serj. *Selby.* With what Instrument did you apprehend those Blows were given?—*Sturg.* It was cut so clean, that I thought it was done either by a Knife or Razor.

L. C. J. Let the Jury see Mr. *Crispe*'s Wounds.

[*Then his Face and Wounds were shewn to the Jury for their Observation.*]

Serj. *Branthw.* Swear *Charles Willet.* (*Which was done accordingly.*) I think you are a Constable in *Bury St. Emonds?*—*Willet.* I am.

Serj. *Branthw.* Had you any Occasion to speak to *Woodburne* concerning this Matter; and what did he say?

Will. I had a Warrant from Alderman *Wright* and Mr. Serjeant *Reynolds* to apprehend *Coke* upon *Woodburne*'s Examination.

Serj. *Branthw.* The Question asked you is, What you know of *Woodburne*'s Confession, and what he said to you about this Matter?

Will. After *Woodburne* was committed, I was with him, and asked him, Whether he was concerned in the wounding of Mr. *Crispe?* He told me, Yes, he was. I asked him how long *Coke* staid with him? He said that he had struck *Crispe* three or four Blows before *Coke* left him.

Serj. *Branthw.* What else did you ask him, or did he say to you?

Will. He told me, that he was walking up and down in the Church-yard when *Coke* whistled to him, and that on that Signal he went up and assaulted Mr. *Crispe.*

Serj. *Branthw.* Did he give you any Account how long and where he waited before the Fact was done?

Will. He told me, that he was desired by Mr. *Coke* to be up and down in the Church-yard about nine o'Clock that Night; and that being a cold Night, *Coke* gave him a Bottle of Brandy, and told him he could not tell what time *Crispe* would come home, but desired him to be ready, and to stay, let it be never so long.

Serj. *Branthw.* Did he tell you with what Instrument he did it?

Will. He told me, he did it with an Hook or Bill, that was new ground for the Purpose, and that it was in his House at the Right Hand of his Door. I went according to his Direction, and found it, and brought it to him; and he said, that was the Hook——The Hook I have brought with me, and this is the Hook that I have now in my Hand.

Mr. *Raby.* Call *William Wetherel.* (*Who was sworn.*) Give my Lord and the Jury an Account what you know of this Matter.

Weth. I am the Goaler; and the Day after Mr. *Coke* was committed to me, about five Minutes after One, he sent for me up into his Chamber, where his Wife was crying and in great Disorder, as he seemed to be likewise. She was desiring her Husband to discover. When he came to himself, he told me, that he and *Woodburne* had had a Design to murder Mr. *Crispe*, and had attempted it several Times; and desired me to go and secure *Woodburne.* I went to the Alderman, and told him of it, and he gave me the like Orders. Coming from the Alderman I met Mr. *Coke*'s Man, who asked me, whether I had found him? On which I asked him, who, and what he meant, thinking him to be ignorant of his Master's Confession: But he told me, that his Master had discovered it to him, and had sent him to take up *Woodburne.* Whilst we were talking, we saw *Woodburne* coming up, and we desired one *John Carter*, a Smith, who was shoeing a Horse, to assist us; which he did, and we secured *Woodburne.*

L. C. J. Did Mr. *Coke* confess any thing to you concerning this Fact, and the Manner of doing it?

Weth. Yes, my Lord, he did. He told me several Times, that he had a Design to murder *Crispe*, and that he employed *Woodburne*, and deliver'd *Crispe* into his Hands.

L. C. J. Did he tell you that?

Weth. He did tell me so: He told me also, that it was done with an Hook; and that he bid *Woodburne* to cut his Weasand or Wind-pipe; and that if *Woodburne* had not been a cow-hearted Dog, he would have so done, and secured *Crispe* from telling Tales.

Mr. *Raby.* Did *Coke* tell you what Means he used to do this to Mr. *Crispe?*

Weth. He said, that he called him out of his House, went into the Church-yard with him, and there he delivered him into *Woodburne*'s Hands.

Mr. *Raby.* Did he say what Signal was given?

Weth. Not that I remember; but he said, that *Woodburne* was placed there by his Appointment.

Mr. *Raby.* For what Design?

Weth. With an Intent to murder him. When *Woodburne* struck him, *Coke* said, he went away immediately.

Mr. *Raby.* What have you heard *Woodburne* say concerning this Fact?

Weth. I have heard *Woodburne* say, that he and *Coke* had lain in wait several Times, and at several Places, to murder Mr. *Crispe.*

Mr. *Raby.* Did *Woodburne* give you any Account what he did at this Time to Mr. *Crispe?*

Weth. Yes he did; he said that he struck him a Blow with his Hook, and that not quite striking him down, he gave him a second Blow, which did; and that *Crispe*, as he was falling, (who was never used to swear) cried out, God damn him; and that then it went to his very Heart to think that he should kill a Man with an Oath in his Mouth.

Mr. *Raby.* Did he say he gave him several Blows?

Weth. He said he gave him several Blows, and that he thought he was dead.

Mr. *Lee.* Call *Robert Moon.* (*Who appeared, and was sworn.*) What did you know of this Matter?

Moon. When I heard what happened to *Crispe*, I said, I knew the Person who did it, or the Person who employed him to do it; and the Reason was, because three Years, or three Years and a half ago, Mr. *Coke* sent for me, and said to me, at first I thought it to be in a jesting Way, that he wish'd Mr. *Crispe* out of the World, he was a good-for-nothing Fellow; his Wife had a Trick of playing away his Estate, and he wish'd somebody would knock him on the Head. Sir, said I to him, what Advantage would that be to you? He shook his Head, and said, a very good Estate. Said I, I thought *Crispe* had but a small Estate. Yes, said he, a very good one. Then I began to think there was something in it. After some little time, said he, I do not value ten or twenty Guineas to knock him on the Head. Then I began a little to reflect that he should have such an Opinion of me, that I should be such a Sort of a Person.

Mr. *Lee.* What then did you say to him?

Moon. I told him, that I would not kill the greatest Villain in the World for ten such Towns as *Bury.*

Mr. *Lee.* What did he say afterwards?

Moon. I do not remember, I have forgot if there was any thing else.

Mr. *Lee.* How came you to remember this?

Moon. When I heard of this Fact committed on Mr. *Crispe*, then it came fresh into my Memory.

Serj. *Selby.* Call *John Carter.* (*Who appeared, and was sworn.*) What Trade are you of?

Carter. A Blacksmith.

Serj. *Selby.* Did *Coke* at any time send *Woodburne* for you, and what past thereon?

Carter. On the *Friday* before *New-Year's-Day* last, which was on a *Monday*, Mr. *Coke* sent *Woodburne* to me, who told me his Master *Coke* wanted to speak with me.

Serj. *Selby.* Did you go?

Carter. Yes; I went to his House, and he ordered me to come up to him in his Chamber. When I came up, he told me that he wanted a good strong Horse to carry his Weight. I told him I did not know of any one then; but when I did, I would let him know. Upon that he said, By God, how do you go on, Boy? I hear you have lost most of your Business, you have got no Iron nor Coals, and you are afraid of a Goal; I have a Thing now in Agitation that will make a Man of you as long as you live. I said I should be very glad of that. Said he, can you keep a Secret? Yes, said I, as well as any one, to serve myself and my Friend. Said he, Can you keep one of the biggest Secrets in the World? I told him, as well as any body. Said he, You are pretty much in Debt, and if you will serve me in this, I can make a Man of you as long as you live: Do you think you could cut five or six Men's Heads off without Scruple of Conscience? I told him, No; it was too much for a Man's Conscience to bear. Said he, What, a Scruple of Conscience to do such a Thing as that? There are those above who have done ten times worse. I suppose, Sir, said I, you mean the *South-Sea* Gentlemen. Yes, said he, so I do; they have ruined Families, and beggar'd Gentlemen: To cut Men's Heads off is but a Trifle to them. Said I, Mr. *Coke*, I believe you speak only in Joke, by way of Merriment. Said he, What, do you think I sent for you by way of Joke? I told him I could not do any such Thing. Then, said he, do you think you can cut off one Man's Head without Scruple of Conscience? I told him, No. Then, said he, if you can't cut off a Man's Head, and lay it down upon the Table before me, you are not for my Turn: On that he fetched a Bottle of Brandy, and gave me a Glass or two, and then said to me, *Carter*, I would have you go home, and consider of it for two or three Days, and if you can cut off a Man's Head without Scruple of Conscience, you shall have Plenty of Gold and Silver, and any thing else you ask. I told him, I needed

no Conſideration, for I could not do it. Then, ſaid he, ſend *Woodburne* to me. And as I went out, I ſaw *Woodburne* at the Door, and ſent him in to Mr. *Coke*.

Serj. *Selby*. Did he ſay any thing elſe to you, or any thing about Mr. *Criſpe*?

Carter. I live in a Houſe of Mr. *Criſpe*'s, and Mr. *Coke* had been formerly his Steward. and *Woodburne* acted under him. And Mr. *Coke* ſaid, that he heard my Houſe was out of Repair, that it would be his after Mr. *Criſpe*, and whether I ſhould not like it better for him to keep it in Repair, as he had done before.

Serj. *Selby*. I think, my Lord, we have done with our Evidence, and have ſufficiently proved Mr. *Coke* and *Woodburne* to be guilty not only within the Intention, but the Letter of the Statute of the 22d of *Car*. II. upon which they ſtand indicted. We have proved the Malice premeditated and fore-thought, the Intention to maim and diſfigure, by ſlitting the Noſe (for Men's Intentions muſt be conſtrued by their Actions) and the maiming and diſfiguring accordingly; and that Mr. *Cole* was privy to, and the Aider and Abettor of the Offence: And therefore, Gentlemen of the Jury, we can't doubt but that you will find them both guilty; and that your Verdict and their Conviction will be with the Suffrage of all Mankind.

Mr. *Raby*. My Lord, having gone through our Evidence, you will now permit me to make ſome few Obſervations upon what has been offer'd, and from which we humbly apprehend it will moſt clearly appear, that we have fully prov'd and made out every thing neceſſary to maintain this Indictment.

My Lord, it muſt be agreed, that this is an Offence created by a particular Act of Parliament, uſually call'd Sir *John Coventry*'s Act, made on the Occaſion of the like barbarous Uſage he met with, to puniſh that Offence, and to prevent the like for the future: And I alſo agree, that the Priſoners muſt appear to be guilty of thoſe very Facts, which by that Act are made Felony, or otherwiſe they cannot be puniſhed by that Law. But we humbly apprehend, that when that Law, and the Evidence which has been given againſt the Priſoners are conſidered, they will appear to be guilty within the expreſs Words of that Law; for which End I beg leave to mention that Act, which is the 22 and 23 *Car*. II. *cap*. 1. The Words are theſe: "That if any Perſon or Perſons, on Purpoſe, and of Malice "fore-thought, and by lying in wait, ſhall unlawfully cut or diſable the "Tongue, put out an Eye, ſlit the Noſe, *&c*. with an Intention in ſo "doing to maim or diſfigure, in any the Manners before-mentioned, the "Perſon or Perſons ſo offending, their Counſellors, Aiders, and Abettors "(knowing of, and privy to the Offence aforeſaid) ſhall be *Felons*, *&c*."

From this Clauſe it appears the Offence muſt be done;

1. Of Malice fore-thought.
2. By lying in wait.
3. By ſlitting the Noſe, *&c*.
4. With an Intention to maim or diſfigure.

And we humbly ſubmit it, that from the Evidence which has been given againſt the Priſoners, it moſt plainly appears, that the Defendants are guilty of this Offence in every Circumſtance deſcribed by this Act of Parliament.

1. For certainly there cannot be the leaſt Queſtion, but that this was done of Malice fore-thought, when it appears from the Evidence to have been under Conſideration, and premeditated for three Years and an half: And Mr. *Coke* had tried ſeveral Perſons, before he could find any ſo hardy as to execute his baſe Purpoſe, or comply with ſo inhuman an Attempt: And therefore we apprehend there cannot be any Colour to ſay, this was not of Malice fore-thought.

2. And that this Offence was alſo done with lying in wait is as clear: For does it not fully appear upon the Evidence of Mr. *Criſpe*, that when he came out of Mr. *Coke*'s Houſe, Mr. *Coke* gave a Whiſtle or Signal? In vain had Mr. *Coke* given that Signal, if no Perſon had been in waiting to have heard it: To what end had that Signal been given, if Mr. *Coke* had not known there was ſome Perſon to have heard it? It appears plainly *Woodburne* came upon the Signal given; and what enſued you have heard, I need not repeat.

3. The third Thing made material by this Act, is, *That the Noſe ſhould be ſlit*; and that the Noſe was ſlit appears from the Surgeon's Evidence, who has given a very particular Account of the ſeven Wounds Mr. *Criſpe* received in his Face and Head: And he ſays, the Noſe (the Noſtril) was cut through.

4. Whether the other Circumſtance, that this was done with an Intent to maim and diſfigure, does ſufficiently appear, or not, is the only Queſtion that remains? And we ſubmit it to your Conſideration, as that which is very clear from this Evidence.

Men's Acts are the beſt Interpreters of their Intents: If a Man kills another without Provocation, tho' no expreſs Malice or malicious Intent appears, yet the very Act of the Party has always been taken to be a ſufficient Proof of his Intent and Malice fore-thought. The Intent is latent in the Mind, and can ſeldom be known otherwiſe than by the Act which is done: And as there the malicious Intent is collected from the Act of the Party, ſo here 'tis as reaſonable to collect his Intent to diſfigure from the Act which is done, the maiming and diſfiguring Mr. *Criſpe*; and the very Manner of doing it ſpeaks it.

Whoever looks upon this Gentleman (Mr. *Criſpe*) ſees too plainly how much he is diſfigur'd. And could a Man cut another ſeven Times on the Head and Face with this Iron Bill, with this Weapon, without diſfiguring him? Is it to be imagined? And when he has done the very Act, when he has diſfigured him, ſhall he ſay, he had no ſuch Intent? The Act done, and the Manner of doing it, ſpeak it too plainly. 'Tis confeſs'd the Intent was to murder; this is what both the Priſoners admit to be the End deſign'd; but did they not alſo intend the Means? It would be in vain to intend the End, and reject the Means to effect it: The Means choſen to effect it have appear'd to be to cut him to death, by ſtriking him with a Bill on the Head and Face: Is it poſſible to expect to cut him to Death on the Face with the Weapon produced, and not to diſfigure him? This is the Act *Woodburne* has done, and *Coke* was preſent when *Woodburne* ſtruck, even when he did this Fact, and *Coke* was a Counſellor, Aider and Abettor; he was preſent, and, in the Words of the Act of Parliament, knowing of the Offence. And therefore upon this Evidence we ſubmit it, whether we have not given Satisfaction to the Court and Jury, that the Priſoners are guilty.

This is not a Proſecution of the Party injured, ariſing from Revenge or Reſentment, but is carrried on by the Public, by the Crown, for the ſake only of Public Juſtice, that by the Puniſhment of this Offence, the Subjects may have that Protection they ought to have by a due Execution of the Laws: And all we pray is, that the Jury will give ſuch a Verdict as is agreeable to Juſtice.

L. C. J. Woodburne, what have you to ſay for yourſelf?

Woodburne. May it pleaſe your Honour, my Lord, the firſt Time that *Coke* began with me about this Matter, was on a *Wedneſday* in laſt Barley-Harveſt. He ſent for me to mend his Copper, and after I had done it, he bid me go to the further End of the *Mill-Lane*, and there he muſt ſpeak with me, and which came firſt ſhould ſtay for the other. I was there before him; when he came he was on Horſe-back, and his Horſe kick'd about in a furious Manner, that the People took notice of it. When they were gone, he told me, that he had a Thing for me to do, but not to be done preſently, and that if I did it I ſhould want for nothing. I ask'd him what it was? He ſaid about Mr. *Criſpe*, to ſet him aſide, that is, to kill him: But he ſaid, it was not to be done preſently: So he put his Hand in his Pocket and gave me Eighteen Pence. I told him, I never did ſuch a Thing in my Life; I could not do it. Said he, it is not to be done preſently, we have Time to conſider. A while after he ſent for me again, and ask'd me, whether I had conſider'd of it? I told him I could not do it. Said he, we muſt ſet *Criſpe* aſide; for Mrs. *Criſpe* hath got a Trick to play; ſhe will make away what there is from me and my Child. I ſaid, I never did any ſuch Thing; I could not do it: and deſired him to forbear. I went away and left him in his Chamber. Within a while after he came to my Houſe; ſaid he, *John*, what is the Reaſon you can't do this for me? Said I, I cannot do it. Said he, what ſignifies it, I would do it for you. I ſaid, I could not do it. Then he went away very uneaſy, and in a Week or Fortnight ſent for me again to his Chamber, and there was at me again. I told him I could do no ſuch Work. Said he, why can't you do this Work? I have been a good Maſter to you, I made myſelf look little to bail you when you were in Gaol. I turned about and cried. Said he, what makes you cry? Your crying ſignifies nothing; the Money that I ſhall give you will do you and your Family a Kindneſs. Said I, I can do no ſuch thing. Said he, it ſignifies no more the killing of him, than to kill a Dog, for they do no good with what they have. Yes, ſaid I, Mr. *Criſpe* is a very good Maſter; I work'd for him, and his Father before him: And ſo I went away. Afterwards my Wife died three Days before *Gunpowder-Treaſon* laſt: She was buried on that Day, and being very poor, I ſent my Daughter to deſire a little Money of him to have the Bell toll'd for my Wife; but he ſent me none. My Wife was buried on a *Sunday*, then on the *Monday* he ſent his Boy for me; I went down to him, and when I came, I fell a weeping for the Loſs of my Wife, and having ten Children. Said he, What makes you cry? You muſt pull up a good Heart; tho your Wife be dead, you may have Friends; here is that which will do you a Kindneſs hereafter. Said I, I am very ſorry for the Loſs of my Wife. Said he, what ſignifies that? She was carried well into the Church, and is, no doubt, happy; ſhe is gone before you; we muſt all go in our Time: I was a Friend to you in her Illneſs, I ſent her a good Doctor at my own Charge: This twenty Pounds that I will give you will be a brave Eſtate for you.

L. C. J. What were you to have this twenty Pounds for?

Woodburne. It was to kill Mr. *Criſpe*; he told me that I muſt ſet aſide Mr. *Criſpe*; he offer'd me twenty Pounds to do it; but I then refus'd it.

On *Monday*, *New-year's-day*, in the Morning, *Coke* ſent his Boy for me to come to him; and between eight and nine in the Morning I went to him. He was in his Green-Room. Now, ſaid he, *John*, we ſhall have the faireſt Opportunity to kill Mr. *Criſpe*. I told him, I was loth to do it; it was very cold, and I had an Ague. Said he, I will give you that which ſhall warm you. He went to the Cloſet, and gave me, out of the Bottle that he uſed to carry in his Pocket, half a Pint of Brandy, and told me, that happen how it will, I muſt not come near his Houſe any more that Day, leſt afterwards there ſhould be ſome Suſpicion; but, ſaid he, whether Ague or not, you muſt be at Mr. *Morrice*'s Porch, which is in the Church-yard, about eight o'Clock in the Evening. I went there between eight and nine; about nine *Coke* came out, and gave me a Whiſtle: On that I went up to him; he told me, Mr. *Criſpe* was very jolly, and he believed it would be late before he came out. I told him, I did not care to ſtay. Said he, you muſt ſtay now; this is the Time that will do it. I ſtaid till ten o'Clock; then he came to me again in Mr. *Morrice*'s Porch, and told me, that he believed *Criſpe* would not go till eleven o'Clock; but the later the better. Then he went from me again, and a little Time after ten *Coke* and *Criſpe* came out together, and on *Coke*'s Whiſtling I came up to them; *Criſpe* was then before, and coming to get againſt the Wall. I came up to *Coke*; he bid me have care not to hit him inſtead of *Criſpe*, being very dark; ſo he took me by the Sleeve to lead me up to *Criſpe*; and ſaid to *Criſpe*, Brother, ſtand ſtill; on that I hit him two Strokes with my Hook; tho' I never heard him ſwear before, yet he now ſwore, God damn him: On that *Coke* ſaid, what! doth he ſwear? Secure him, down with him. He ſtood by him till I gave him ſeveral Blows, and then he went away. *Coke* deſired me to take away his Watch; for, ſaith he, as to his Money, he don't carry above half a Crown or three Shillings in his Pocket; and when I go to *London*, I will ſell the Watch for you.

L. C. J. What *Woodburne* ſaith againſt *Coke*, is no Evidence againſt *Coke*, and ſhould not have been mentioned by him; but what he ſaith relating to himſelf before the Fact, is ſo twiſted with *Coke*, that without the Whole it is not ſo intelligible as to himſelf. However, the Jury are to take notice, that what *Woodburne* ſaith, is only Evidence againſt himſelf, and not againſt Mr. *Coke*.

L. C. J. After you had given him thoſe ſeveral Blows with your Hook, what did you next?

Woodburne. I began immediately to reflect on what I had done, and went away forthwith to my own Houſe, where I was about to take a Line to hang myſelf.

L. C. J. Have you any Witneſſes, or any body to ſpeak for you?

Woodburne. My Lord, here are my two Daughters in the Court; I deſire your Lordſhip would be pleaſed to hear them, *Ann Woodburne* and *Sarah Woodburne*, *(Who being called, appeared, and were ſworn.)*

L. C. J. What ſay you, *Ann Woodburne?*

Ann Woodburne. On the *Wedneſday* before *New-Year's-Day Coke* ſent for my Father by his Boy; I told the Boy my Father was in Bed, and ſick of an Ague, and could not come. The Boy came again, and ſaid, My Father muſt by all Means come; but he would not then go; but he went to him on *New-Year's-Day* in the Morning, and came Home again. About five or ſix a-Clock in the Evening, my Father went out with a Hook in his Hand; and he ſaid, he ſhould not be at home till eleven or twelve at Night; and if any body came for him, he bid us not take any Notice but that he was at home. We thought he took the Hook to cut ſome Wood with.

L. C. J. Have you any thing more to ſay?

Ann Woodburne. When my Mother died, I went to Mr. *Coke*'s to borrow five Shillings of him, to have the great Bell toll for my Mother, and told him, that my Father would pay him again. He ſaid, What ſignified the ringing of the great Bell? her Soul would be never the better for it; but if he will ſatisfy me in my Requeſt, he ſhall have five times five Shillings.

L. C. J. What ſay you, *Sarah Woodburne?*

Sarah Woodburne. Coke did frequently ſend for my Father at all times, both of Day and Night; and he would often come to my Father, and when he came, they would go out, and walk down the Back-ſide, and talk together. After this Fact was done, *Coke* ſent his Boy for my Father, and the Boy ſaid, they muſt not go together; for if they did, People would take Notice of them.

L. C. J. Woodburne, have you any thing more to ſay?

Woodburne. This Day nine Weeks, which was a Week after the Fact committed, *Coke* ſent for me, and ſaid, *John*, I wiſh you would have done the thing I ordered you; but you have been before Alderman *Wright* and the Recorder, and have told your Story well; but hold you faſt, they will examine you again; I ſhall----

L. C. J. This is ſubſequent to the Fact, and is not Evidence againſt *Coke*. If you, *Woodburne*, have done, then Mr. *Coke* what have you to ſay for yourſelf?

Coke. May it pleaſe your Lordſhip, I am much aſham'd, and very unable to defend myſelf; I am aſham'd to think I ſhould be concerned in ſo heinous a Crime againſt Mr. *Criſpe*'s Life; I am even confounded at it; it is indeed a very great Crime, and I know not what to ſay for myſelf. As for *Woodburne*, he hath aſſerted againſt me ſeveral things that are falſe.

L. C. J. I have told the Jury, that what he hath ſaid is no Evidence againſt you.

Coke. When I firſt ſpoke of this Matter to *Woodburne*, he ſaid, he ſhould value it no more than the cutting off the Head of a Dog. I did, indeed, go out with Mr. *Criſpe* that Night, but I was not near him when *Woodburne* ſtruck him, but retreated to my own Houſe in a Moment. My Lord, I am very ſenſible that a Point of Law may ariſe on the Statute whereon I am indicted.

L. C. J. Whereon?

Coke. With reſpect to my Intention.

L. C. J. Your Intention is Matter of Fact, and muſt be tried by the Jury, whether your Intent was to maim and disfigure; this doth not ſeem to me to be a Point of Law; if there be any Point of Law that ſhall ariſe, you ſhall have Counſel to ſpeak to it; but whether you ſlit Mr. *Criſpe*'s Noſe with an Intention to diſfigure him, is a Matter of Fact.

Coke. My Intent was to kill Mr. *Criſpe*, and not to maim or disfigure him.

L. C. J. But that is the Queſtion the Jury are to try, whether you did not of Malice ſlit his Noſe, with an Intent to disfigure him? If the Jury do not find that you ſo did, you muſt be acquitted on this Indictment. Suppoſing your Deſign was to kill, yet your Deſign might be likewiſe to maim; and this the Jury muſt try; this is Matter of Fact for their Conſideration.

Coke. This is a very penal Statute, and I am unable to plead my own Cauſe; I beg your Lordſhip to aſſign me Counſel.

L. C. J. If any Point of Law doth ariſe upon the Statute, you ſhall have Counſel; but as yet there is nothing but Matter of Fact; whether the Fact proved doth ſupport the Charge in the Indictment; or, in other Words, whether the Evidence be ſufficient to make good the Charge; this muſt be left to the Jury; I will ſtate the Fact to them, and they are on their Oaths to give in their Verdict.

Coke. This is a very penal Statute, and I cannot argue it for myſelf; I hope your Lordſhip will aſſign me Counſel; this is the firſt Indictment that ever was upon this Statute.

L. C. J. What do the King's Counſel ſay to it?

Serj. *Selby.* After ſo full an Anſwer as your Lordſhip has given, I think it but vain to ſay any thing; I always thought that no Matter of Law could ariſe upon this Fact and Indictment; for *Woodburne* did the Fact of Malice fore-thought, by lying in wait, and with an Intention to maim; Mr. *Coke* was aiding, abetting, and privy to the Fact: Therefore, though it was an Intent to kill, it muſt be to maim alſo; he could not intend to kill him with ſuch an Inſtrument, without intending to maim him firſt; and therefore, if there were two Intentions, and but one executed, there is no Pretence to ſay, that what was executed was not intended. Mr. *Coke* ſays, that never was any Indictment before upon this Statute; if not, it muſt be becauſe no Man before ever thought of being guilty of ſo horrid an Action.

L. C. J. If any Point in Law doth ariſe you ſhall have Counſel: but the Fact muſt be agreed and ſtated, before the Law can come in Debate. You ſay, your Intent was only to murder; but that is not yet agreed or found to be the Fact: It is the Point now in Trial, whether you did it not with an Intention to maim or disfigure; and according as that Intention ſhall appear to the Jury, ſo will they either acquit or convict you; therefore, if you have any thing more to ſay, I deſire you to go on.

Coke. I ſubmit to your Lordſhip's Judgment.

L. C. J. Gentlemen of the Jury, this is an Indictment of the Priſoners at the Bar, *John Woodburne* and *Arundel Coke*, for Felony, by lying in wait, and purpoſely and maliciouſly ſlitting the Noſe of *Edward Criſpe*, with Intention, in ſo doing, to maim or diſfigure the ſaid *Edward Criſpe*. *John Woodburne* is indicted for the principal Actor, or the Perſon who did the Fact; and *Arundel Coke* is indicted for being preſent, aiding and abetting. This Indictment is founded on a Statute made in the two-and-twentieth Year of King *Charles* the Second, intitled, *An Act to prevent malicious maiming and wounding*; whereby it is enacted, That if any Perſon or Perſons, from and after the twenty-fourth Day of *June*, in the Year of our Lord 1671, on Purpoſe, and of Malice fore-thought, and by lying in wait, ſhould unlawfully cut out, or diſable the Tongue, put out an Eye, ſlit the Noſe, cut off a Noſe or Lip, or diſable any Limb or Member of any Subject of his Majeſty, with Intention in ſo doing to maim or disfigure, in any the Manners before-mentioned, ſuch his Majeſty's Subject, that then, and in every ſuch Caſe, the Perſon or Perſons ſo offending, their Counſellors, Aiders and Abettors (knowing of, and privy to the Offence, as aforeſaid) ſhall be, and are thereby declared to be Felons, and ſhall ſuffer as in Caſes of Felony, without Benefit of the Clergy. Now the Queſtion on this Indictment is, whether *John Woodburne* did on Purpoſe, and of Malice fore-thought, and by lying in wait, unlawfully ſlit the Noſe of *Edward Criſpe*, with an Intention to maim or disfigure him therein? and, whether *Arundel Coke* was feloniouſly preſent at the Fact, aiding and abetting *Woodburne* in the Commiſſion and Perpetration of it? To make out this Matter, ſeveral Witneſſes have been called; the firſt Witneſs was *Edward Criſpe* himſelf, who informs you, that *Arundel Coke* married his Siſter, and Mr. *Brown*, *Coke*'s Siſter; and that laſt *New-Year's-Day* they were invited to ſup at Mr. *Coke*'s; and that before Supper Mr. *Coke* propoſed to go to Mrs. *Monke*'s; and that after Supper, about ten a-clock at Night, Mr. *Coke* called Mr. *Criſpe* out of the Parlour to go to this Mrs. *Monke*'s; and that when they had walked three or four Turns before the Houſe where Mrs. *Monke* dwelt, *Coke* ſtood ſtill, and made a Noiſe like a hallooing, which made Mr. *Criſpe* afraid, being dark, ſo he made toward the Wall; but in a Quarter of a Minute's time, a Man came and knocked him down: Who that Man was, nor what was then further done to him, he could not then tell, becauſe by the Blow he loſt his Senſes for ſome time; but afterwards he got up again, and returned to Mr. *Coke*'s Houſe, from whence he came, but in a ſad Condition, much wounded and bloody, where Mr. *Sturgeon* the Surgeon came to him, from whom you have the Particulars of his Caſe. He ſays, that *Coke* was cloſe by him when he was knocked down; but did not hear *Coke* ſay any thing. He alſo ſays, that upon his Death, one hundred Pounds *per Annum* would have gone to *Coke*'s Wife, as one of his Siſters and Co-heir.

The next Witneſs is Mr. *Brown*, who married *Coke*'s Siſter; and he ſays, that he, his Wife and Daughter were invited to ſup at Mr. *Coke*'s the Evening of *New-Year's-Day*; that he came about ſix a-clock, and found Mr. *Coke* and Mr. *Criſpe* drinking a Glaſs of Wine in the Parlour before Supper; that he ſat down and drank with them till Supper; that after Supper they three came into the Parlour again, and ſome time after *Coke* went out of the Room, and then came back again, and called Mr. *Criſpe* out of the Room, who followed him; that *Coke* returned again in about ten Minutes, and ſeemed to be out of Breath, as if he had been walking faſter than ordinary; that *Coke*'s Houſe is diſtant from the Church-yard about twice the length of the Shire-houſe; that *Coke*, after he came in, drank a Glaſs of Wine; and that *Brown* aſked *Coke* what was become of Mr. *Criſpe*; and that *Coke* ſaid, He believed he was gone home in the Dark; and that in about two or three Minutes after Mr. *Criſpe* came in much wounded and bloody; and that it was about half an Hour between the Time of Mr. *Criſpe*'s going out and returning again.

Mr. *Sturgeon* the Surgeon ſwears, that being ſent for, he came to Mr. *Criſpe* about eleven a-clock that Night; that he had loſt a great deal of Blood, and was very much wounded; and that in the whole he had received ſeven diſtinct Wounds, which he apprehends were by ſo many ſeveral Blows. He hath given you a particular Deſcription of the ſeveral Wounds; the ſecond Wound is that which is alledged to be within this Statute. He tells you, That this Wound divided the right Side of the Noſtril; and that though the Edge of the Noſe was not cut through, yet it was cut through in another Place; the Noſe was ſlit; there was a Cut from without into the Noſtril; indeed the Slit was not very great, for he ſewed it up with one Stitch; but he is ſure that a Slit there was, and you have ſeen Mr. *Criſpe*'s Noſe. Now the ſlitting of the Noſe is one of the particular Facts mentioned in the Statute.

Mr. *Willet* the Conſtable ſwears, That he was with *Woodburne* after his Commitment, and that he told him, he was concerned in the wounding Mr. *Criſpe*; that he had been there waiting for that Purpoſe; and that when *Coke* whiſtled to him, he went up and made the Aſſault upon Mr. *Criſpe* with an Hook or Bill, that was new-ground for that purpoſe, and directed him where to find it at his Houſe, which he accordingly did, and brought it to *Woodburne*, who ſaid that was the Hook; and the Hook hath been now produced before you, and you have ſeen it.

The next Witneſs is Mr. *Wetherell* the Gaoler, who ſwears, That the Day after *Coke* was committed to his Cuſtody, *Coke* ſent for him up into his Chamber, and told him, That he and *Woodburne* had had a Deſign to murder Mr. *Criſpe*, and had attempted it ſeveral times, and deſired him to go and ſecure *Woodburne*; which he accordingly did. He hath given you an Account how and in what manner he ſecured him; and he ſwears moreover, that *Coke* told him ſeveral times, that he had a deſign to murder *Criſpe*, and that he employed *Woodburne*, and delivered *Criſpe* into his Hands; that *Woodburne* did it with an Hook, and that he bade *Woodburne* to cut his Windpipe; and that if *Woodburne* had not been a Cow-hearted Dog, he would have ſo done, and ſecured *Criſpe* from telling Tales. *Wetherell* likewiſe ſwears, that *Coke* told him, that he called *Criſpe* out of his Houſe, went into the Church-yard with him, and there de-

livered him into *Woodburne*'s Hands; and he farther ſwears, as to *Woodburne*, That *Woodburne* own'd that he and *Coke* had lain in wait ſeveral Times, and at ſeveral Places, to murder Mr. *Criſpe*; and as to this particular Fact, he gave him this Account, That he ſtruck him a Blow with a Hook, and that not quite ſtriking him down, he gave him a ſecond Blow; and that as *Criſpe* was falling, he cried out, God damn him; and that then it griev'd him to kill a Man with an Oath in his Mouth.

Robert Moon ſwears, That when he heard what was befallen Mr. *Criſpe*, he ſaid, that he knew the Perſon that did the Fact, or him who employ'd the Perſon; and the Reaſon was, becauſe about three Years and a half before Mr. *Coke* ſent for him, and told him, That he wiſh'd Mr. *Criſpe* out of the World, and that ſome body would knock him on the Head; and that when he aſk'd him what Advantage that wou'd be to him? He replied, A very good Eſtate; and afterwards told him, he did not value ten or twenty Guineas to knock him in the Head: This made *Moon* reflect upon himſelf, and was concerned that he ſhould have ſuch an Opinion of him; and thereon told him, that he would not kill the greateſt Villain in the World for ten ſuch Towns as *Bury*.

John Carter ſwears, That on *Friday* before *New-year's-day* laſt, *Coke* ſent *Woodburne* to him, to tell him that his Maſter *Coke* wanted to ſpeak with him; that thereon he went to his Houſe, and was ordered to come up to him in his Chamber, which he did; and there *Coke* firſt enquired, whether he could help him to a good ſtrong Horſe? And then told him, that he heard he had loſt much of his Buſineſs; he had no Iron, nor Coal; and that he had a thing in Agitation that would make a man of him as long as he lived; and thereon aſk'd him, whether he could keep a Secret, and of one of the biggeſt Secrets in the World? And upon his telling him that he could, he aſk'd him whether he could cut five or ſix Men's Heads off without Scruple of Conſcience? And when he told him that that was too much for a Man's Conſcience to bear, he told him, there were thoſe above, meaning the *South-Sea* Gentlemen, who had done ten times worſe, ruin'd Families, and beggar'd Gentlemen; and that to cut Men's Heads off was but a Trifle to them. That hereon *Carter* told him, he believed he ſpoke only in Joke, and by way of Merriment; but *Coke* aſk'd him, Whether he thought he ſent for him only by way of Joke? And then aſk'd him, whether he could cut off one Man's Head without Scruple of Conſcience? And when *Carter* told him, No: Then *Coke* told him, if he could not cut off a Man's Head, and lay it down on a Table before him, he was not for his Turn; and then gave him a Glaſs of Brandy, and bid him conſider of it for a Day or two, and if he could cut off a Man's Head without Scruple of Conſcience, he ſhould have plenty of Gold and Silver, and any thing elſe he ſhould aſk: Whereto *Carter* replying, that he needed no Conſideration, he could not do it; then he bid him ſend *Woodburne* to him; which he did.

In all this Diſcourſe between *Carter* and *Coke* I do not find that *Criſpe* was the Perſon named on whom this Outrage ſhould be committed; but *Carter*, who is a Tenant of a Houſe of Mr. *Criſpe*'s, ſays, That *Coke* told him he heard the Houſe was out of Repair; that it would be his after Mr. *Criſpe*; and aſk'd him, Whether he would not like it better for *Coke* to keep it in Repair, as he had done before, whilſt he was *Criſpe*'s Steward?

This is the Subſtance of the Evidence given againſt the Priſoners at the Bar, to prove that they maliciouſly, and by lying in wait, have ſlit Mr. *Criſpe*'s Noſe, with an Intent to diſfigure him therein.

Woodburne doth not deny the general Fact, that is, the deſigned lying in wait to aſſault Mr. *Criſpe*, nor the cutting or knocking him down with his Hook; his Confeſſion is not Evidence againſt *Coke*, but it is againſt himſelf; and you hear what he hath own'd; that laſt Barley-Harveſt *Coke* ſent for him to mend his Copper, and then ordered him to meet him at another Place; which was accordingly done; where *Coke* told him, That he had a thing for him to do, but it was not to be done preſently; and if he would do it, he ſhould want for nothing. And when he aſk'd him what it was? He ſaid, To ſet *Criſpe* aſide, that is, to kill him; and *Coke* gave him eighteen Pence. That then he told him, he could not do it; that *Coke* ſolicited him ſeveral times afterwards to murder *Criſpe*; the Particulars whereof I do not enumerate, becauſe they principally relate to *Coke*, againſt whom it is not Evidence; but yet they ſo far relate to *Woodburne*, as to ſhew his Knowledge and Deliberation in this Matter; therefore to come to the Day whereon this Fact was done, *Woodburne* ſaith, That about eight or nine in the Morning *Coke* ſent for him, and told him, that that Day they ſhould have the faireſt Opportunity to kill Mr. *Criſpe*; and it was agreed between them, that *Woodburne* ſhould be in the Church-yard, at Mr. *Merrice*'s Porch, about eight a-Clock in the Evening. He accordingly went with his Hedge-Hook or Bill, which hath been here produced. *Coke* came out to him twice by himſelf, and the third time a little after ten a-Clock, *Coke* and *Criſpe* came out together; and then *Coke* whiſtled, which was the Signal between them; and thereon *Woodburne* came up, and owns, that with his Hook he cut and knock'd down *Criſpe*, and that though he never heard *Criſpe* ſwear before, yet that now, as *Criſpe* was falling, he ſwore God damn him; whereon he gave him thoſe ſeveral other Wounds and Blows that *Criſpe* received; and then reflecting on what he had done, immediately went to his own Houſe, where he was about to take a Rope to hang himſelf.

By this Defence of *Woodburne*, you ſee that he doth not deny the aſſaulting and wounding of Mr. *Criſpe*; but that that he chiefly inſiſts on is, that what he did was by the Solicitation and Procurement of Mr. *Coke*; which is no Juſtification or Excuſe. However, he hath call'd two Witneſſes, *Ann* and *Sarah Woodburne*, his two Daughters, to prove that *Coke* did frequently ſend for their Father, and often came to him at his own Houſe, and would be in private Conference together, which probably was about this Matter; but if it were, this only confirms what *Woodburne* inſiſts on, that he was ſolicited and hired by *Coke* to do this Fact; which, as I ſaid, will neither juſtify nor excuſe him; for no Man is to obey the unlawful Commands, or hearken to the illegal Advices of any other Perſon whatſoever.

As for Mr. *Coke*, that which he principally puts his Defence upon is, that his Intent was to kill and murther Mr. *Criſpe*, but not to maim him, or to ſlit his Noſe, or to diſfigure him in ſo doing; and therefore, tho' in Purſuance and Execution of the Attempt to murther Mr. *Criſpe*, they ſlit his Noſe, or might thereby diſfigure him, yet that not being their Intention and Deſign, he is to be acquitted on this Indictment, wherein the Intent of the Party is one of the principal Ingredients to make him guilty. This ſame Defence will ſerve alſo for *Woodburne*, that they intended to murther, but not to maim; and if they did maim, it was with an Intention to kill, and not to diſfigure. Now this Indictment is, as I told you, founded on the 22d and 23d *Car.* II. *c.* 1. for that on Purpoſe, of Malice fore-thought, and by lying in wait, the Priſoners did unlawfully and feloniouſly ſlit the Noſe of *Edward Criſpe*, with Intention in ſo doing to maim or diſfigure him. *Woodburne* is charged as the Actor or principal Agent, *Coke* as being preſent, aiding, and abetting; which, in Point of Law, is the ſame, as to the Guilt and Conſcience, both being in Law Principals.

That this Attempt on Mr. *Criſpe* was deſigned, malicious, and by lying in wait, the Evidence is very ſtrong; there hath been alſo very ſtrong Evidence given, that the Noſe of Mr. *Criſpe* was ſlit by *Woodburne*, and that *Coke* was preſent on the ſame Deſign with *Woodburne*.

But the Thing chiefly inſiſted on is, that the ſlitting of Mr. *Criſpe*'s Noſe was not with an Intention in ſo doing to maim or diſfigure him; and if it were not with that Intent, then the Priſoners will not be guilty upon this Indictment.

Now, Gentlemen, what the Intent of theſe Perſons was in ſlitting Mr. *Criſpe*'s Noſe, you are to try; this is a Matter of Fact for your Conſideration and Determination: It is the ſame in other Felonies, where the Intent of the Party makes the Crime. Burglary is breaking open an Houſe in the Night-time, with an Intent to commit a Felony; though no Felony be committed, yet if there was an Intent to do it, it is Burglary; which Intent is to be tried by the Jury. Larceny or Theft, is taking away another Man's Goods, with an Intent to ſteal; if it were without ſuch an Intent, it would only be a Treſpaſs, and no Larceny; but whether it were or were not with ſuch an Intent, is a Matter of Fact to be inquired into and determined by the Jury. Nay, the Intent is ſo neceſſary in all Felonies, that a Perſon who hath no Intent or Deſign, as a Madman, Lunatick, Infant, *&c.* cannot commit Felony for that very Reaſon; becauſe he cannot have any Intent or Deſign in his Actions. So that in this Caſe you are to try no other Matter than what is tried in other Felonies, *viz.* The Intent of the Party.

Now, how is the Intent of the Party diſcovered in other Caſes? By the Facts themſelves, by the precedent, concomitant and ſubſequent Circumſtances of the Facts, by the Manner of doing, and the like.

There are ſome Caſes where an unlawful or felonious Intent to do one Act, may be carried over to another Act, done in Proſecution thereof; and ſuch other Act will be Felony, becauſe done in Proſecution of an unlawful or felonious Intent: As, if a Man ſhoots at a wild Fowl, wherein no Man hath any Property, and by ſuch ſhooting happens unawares to kill a Man; this Homicide is not Felony, but only a Miſadventure or Chance-Medley, becauſe it was an Accident that happened in the doing of a lawful Act: But if this Man had ſhot at a tame Fowl, wherein another had Property, but not with Intention to ſteal it, and by ſuch ſhooting had accidentally kill'd a Man, he would then have been guilty of Manſlaughter, becauſe done in Proſecution of an unlawful Action, *viz.* committing a Treſpaſs on another's Property: But if he had had an Intention of ſtealing this tame Fowl, then ſuch accidental killing of a Man would have been Murder, becauſe done in Proſecution of a felonious Intent, *viz.* an Intent to ſteal. So a Man of Malice intends to burn one Houſe, in Execution thereof he happens to burn another Houſe; this is a malicious and felonious burning of this other Houſe, becauſe ſprung out of a malicious and felonious Intent. The like may be inſtanced where Poiſon is intended to be given to one Perſon, and another takes and eats it, and thereby dies. And other Caſes there are of the like Nature, where Acts done in Proſecution of felonious Intents, participate of the Nature of their Original from whence they ſpring.

But now the Indictment on this Statute is for a certain particular Intent; for purpoſely, maliciouſly, and by lying in wait, ſlitting Mr. *Criſpe*'s Noſe, with an Intention in ſo doing to maim or diſfigure: And you are to conſider, whether the Ingredients neceſſary to make this a Felony within the Statute, have been proved to your Satisfaction. The Facts neceſſary to be proved on this Indictment are, that on Purpoſe, and of Malice fore-thought, and by lying in wait, then unlawfully ſlit the Noſe of Mr. *Criſpe*, with Intention in ſo doing to maim or diſfigure. As to the Fact of ſlitting the Noſe, that is directly and poſitively ſworn: There can be no doubt but that it was an unlawful ſlitting. Then the next Thing for your Conſideration will be, whether this unlawful ſlitting was on Purpoſe, of Malice fore-thought, and by lying in wait? As to this, a great deal of Evidence hath been given; and what paſs'd before, and at the Time of the Fact, will guide you herein. And if on a Review of the Evidence, you ſhall be of Opinion, that this unlawful ſlitting of the Noſe was on Purpoſe, of Malice fore-thought, and by lying in wait; then the next Queſtion will be, whether this was an Intention to diſfigure? Facts do in ſome meaſure explain themſelves; and the Circumſtances preceding and accompanying thoſe Facts, and the Manner of doing them, do many times more fully explain and declare the Intent of the Party. The Priſoner, Mr. *Coke*, (which Defence goes both to him and *Woodburne*) inſiſts, that their Intention was to murder, and not to maim; and that if they did maim or ſlit the Noſe, it was with an Intention to kill, and not with an Intention to maim or diſfigure. On the other Side, it is inſiſted on by the King's Counſel, that though the ultimate Intention might be to murder, yet there might be alſo an Intention to maim and diſfigure; and though the one did not take effect, yet the other might: An Intention to kill, doth not exclude an Intention to maim and diſfigure. The Inſtrument made uſe of in this Attempt was a Bill or Hedging-hook, which in its own Nature is proper for cutting and maiming; and where it doth cut or maim, doth neceſſarily, and by conſequence dis-

disfigure. The Attempt intended on Mr. *Crispe* was immediately to his Person, to do him a personal Injury. Besides, the Manner of doing and perpetrating this Fact is proper to be considered; That it was done by Violence, and in the dark, where the Assailant could not well make any Distinction of Blows; but knocked and cut on any Part of Mr. *Crispe*'s Body, where he could, till he had sunk him down, and done to him whatever else he pleased. And if the Intention was to murder, you are to consider, whether the Means made use of in order to effect and accomplish that Murder, and the Consequences of those Means were not in the Intention and Design of the Party; and whether every Blow and Cut, and the Consequences thereof, were not intended, as well as the End for which it is alledg'd those Blows and Cuts were given?

All these several Things, which I have mentioned, are proper for your Consideration: You will add to them your own Observations; and if, upon the whole, you are satisfied from the Evidence, that *Woodburne* did on Purpose, and of Malice fore-thought, and by lying in wait, unlawfully slit the Noise of *Edward Crispe*, with Intention, in so doing, to maim or disfigure; and that *Arundel Coke* was feloniously present at the Commission of this Fact, and aiding and abetting therein; then you will find them Guilty: But if this hath not been prov'd to your Satisfaction, then you are to acquit them, and find them Not Guilty.

[*Then the Jury withdrew to consider of their Verdict, and in about half an Hour return'd again.*]

Cl. of the Arr. Gentlemen, answer to your Names.

Here, (*and so the rest.*)

Cl. of the Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of the Arr. Who shall say for you?

Jury. Our Foreman.

Cl of the Arr. John Woodburne, hold up thy Hand. (*Which he did.*) Look upon the Prisoner, How say you? Is *John Woodburne* Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?

Foreman. None to our Knowledge.

Cl. of the Arr. Arundel Coke alias *Cooke*, hold up thy Hand. (*Which he did.*) How say you? Is *Arundel Coke* alias *Cooke* Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of the Arr. What Goods or Chattels, Lands or Tenements?

Foreman. None to our Knowledge.

Cl. of the Arr. Then hearken to your Verdict, as the Court hath recorded it. You say, that *John Woodburne* is Guilty of the Felony whereof he stands indicted: You say, that *Arundel Coke* alias *Cooke* is Guilty of the Felony whereof he stands indicted; and that neither they, nor either of them, had any Goods or Chattels, Lands or Tenements at the Time of the Felony committed, or at any Time since, to your Knowledge. And so you say all.

Jury. Yes.

Mr. *Coke.* I desire to know of your Lordship, whether the Nose can be said to be slit within the Meaning of this Statute, when the Edge of it was not cut through?

L. C. J. It is true, the Edge of the Nose was not slit, but the Cut was athwart the Nose; which Cut separated the Flesh of the Nose, and cut it quite through into the Nostril: This I take to be a Slitting of the Nose; and the Surgeon swore the Nose was slit.

On Wednesday *the* 14*th of* March, John Woodburne, Arundel Coke *alias* Cooke, *and one* Edward Shorter, *who was convicted of Burglary, were brought to the Bar, in order to receive their Sentence; and the Court proceeded thus:*

Clerk of the Arr. John Woodburne, hold up thy Hand. [*Which he did.*] Thou hast been indicted of Felony, on the Statute, for purposely, maliciously, and by lying in wait, slitting the Nose of *Edward Crispe*, Gent. with Intention in so doing to maim or disfigure him. Thou hast been thereupon arraigned, thou hast pleaded thereunto Not Guilty, and for thy Trial thou hast put thyself upon God and thy Country; which Country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

To which *Woodburne* said nothing.

Cl. of the Arr. Arundel Coke alias *Cooke*, hold up thy Hand. (*Which he did.*) Thou hast been indicted of Felony, on the Statute; for being feloniously present, aiding and abetting *John Woodburne*, in purposely, maliciously, and by lying in wait, slitting the Nose of *Edward Crispe*, Gent. with Intention in so doing, to maim or disfigure him. Thou hast been thereupon arraigned, thou hast pleaded thereunto Not Guilty, and for thy Trial thou hast put thyself upon God and thy Country, which Country hath found thee Guilty; what hast thou to say for thyself, why the Court should not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

Mr. *Coke.* Tho' your Lordship did not think it proper Yesterday to assign me Counsel, yet I hope your Lordship will now give me leave to speak for myself; especially, since I am the first unhappy Instance of an Indictment on this Statute; no Indictment, as far as it appears by the Law-Books, was ever yet founded on this Statute, and therefore ought to be very well weighed.

L. C. J. Call the King's Counsel, that they may hear what is said.

(*Then the King's Counsel were sent for, and being come:*)

L. C. J. Mr. *Coke*, you may now go on with what you have to offer.

Mr. *Coke.* My Lord, I was saying, that I am the first unhappy Instance of an Indictment on this Statute; no Indictment, as far as appears by the Law-Books, was ever yet founded on this Statute; and therefore it ought to be very well weigh'd, especially in the first Instance to which it appears to have been ever applied. It is a very penal Statute, and consequently, by the known Rule of Law, not to be carried beyond the express Letter of it; consequently no Crime, of what Nature or Magnitude soever, can fall within the Purview of it, but such as is identically the same in every Circumstance with that described by the Words of the Statute itself.

The Crime describ'd by the Statute is the unlawful cutting out, or disabling the Tongue, putting out an Eye, slitting the Nose, cutting off a Nose or Lip, or disabling any Limb or Member, attended with these particular Circumstances:

First, On Purpose and of Malice fore-thought.

Secondly, By lying in wait.

Thirdly, With Intention in so doing to maim or disfigure, in any of the Manners beforementioned in the Statute.

These Circumstances must all concur to constitute that particular Crime described by the Statute; and where any of them are wanting, of what Magnitude soever the Offence may be, it is not the Offence which the Statute has specified.

If the first Circumstance be wanting, no Man can say that any Offence, though attended with the two other, can fall within the Statute; this is sufficiently plain of itself.

As to the second; *A* and *B*, of Malice fore-thought, appoint and meet to fight a Duel; *A* in the Rencounter runs *B* into the Eye, and puts it out; no Body has ever imagined this to be within the Statute, because the Circumstance of lying in wait is here wanting.

As to the third; suppose *A* lies in wait to rob *B*, *B* resists, and in the Scuffle is wounded, as the Statute describes, but gets off. This is a Case which very frequently happens, yet no one ever thought it to be within the Statute, nor was any one ever indicted for this upon it: The only Reason of which must be, because the Intention was to rob, and not to maim and disfigure the Person.

In my Case, if it be taken upon the Evidence of Mr. *Crispe*, nothing more appears than the Assault itself: If my Confession be read, the lying in wait, and the Malice fore-thought will be proved; but then it will be likewise proved, that I had no other Intention but to kill, and had no other part, but by giving Orders to *Woodburne* for that Purpose; and my Confession must be taken together.

Nor is it an Objection to say, that the Crime which is proved by the Evidence is much worse than that which is described by the Statute; for if it is worse, then it cannot be the same. Even in Cases of Crimes by the common Law, if upon an Indictment for a Crime of inferior Nature, the Evidence proves the Fact attended with Circumstances which brings it within the Description of a Crime of a superior Nature, the Person indicted must be acquitted. At Summer Assizes at *Dorchester*, *Anno* 1712, a Woman was indicted before Mr. Justice *Eyre*, for the Murder of another Woman; upon this Evidence it appeared, that the Person murdered was her Mistress, which made the Crime Petty-Treason. The Judge directed this Matter to be specially found, and upon Conference with all the Judges it was held, she ought to be acquitted upon this Indictment, as she accordingly was; and was afterwards indicted for Petty-Treason, and convicted and executed thereupon.

Where a new Offence has been created by Statute, or an old one made more penal, the utmost Strictness has always been us'd to comply with the Letter of the Statute, whatever Inconveniencies might result from such a Restraint.

As for Example:

By the Statute of the 39 *Eliz. cap.* 14. Clergy is taken away from any Person or Persons who shall be convicted of taking any Money, Goods or Chattels out of any Dwelling-house, *&c.* in the Day time, to the Value of five Shillings. One *Evans* and one *Finch* were indicted on this Statute, 1 *Croke* 473. *Evans* and *Finch*'s Case: The Case was thus upon the Evidence, That *Evans* by a Ladder climbed to the upper Window of one *Audley*'s House, and took out thereof forty Pounds; and that *Finch* stood upon the Ladder in view of *Evans*, and saw *Evans* in the Chamber; and was assisting and helping to the committing of the Robbery, and took Part of the Money: Upon a special Verdict it was adjudged, that because *Finch* did not actually enter the Chamber, and take the Money, though what he did amounted to a taking by Construction of Law, and was such a taking as made him a Felon; yet the very Letter of all penal Statutes must be pursued, and therefore he, *id est*, *Finch*, had his Clergy, and *Evans* was hanged.

Numerous Cases might be put of this kind of Nicety in the Construction of penal Statutes.

To mention but one more: By the Statute of 1 *Edw.* VI. *cap.* 12. Clergy is taken away from such Persons as shall be convicted for the felonious stealing of Horses, Geldings or Mares.——So scrupulously did the Judges adhere to the Letter of this Law, that there was forced to be another Statute made, *viz.* 2 & 3 *Edw.* VI. *cap.* 33. to enact, That a Person convicted for feloniously stealing one Horse, should be ousted of his Clergy in the same manner as if he stole two.

Nor is it in this Case enough to say, the Jury are Judges of all this: For as the Evidence now appears, and is admitted, it is Matter of Law, how far this Evidence, thus admitted on all Hands, is sufficient to support this Indictment. If it were in a civil Case, the Party might demur to the Evidence. But if he is not allowed that Liberty in criminal Cases, it is upon the common Notion, that the Judges are the Prisoner's Counsel; and are obliged to determine all the Matters in Law arising upon the Evidence, as much as if the Persons had demurred to that Evidence.

And, as in this Case, the Prisoner admits the Evidence given to be true, and insists upon it, that it doth not support the Indictment; and therefore has a Right to have the Opinion of the Judges thereupon, as much as if the Evidence were stated at length upon the Record (as it must be in the Case of a Demurrer to Evidence), and nothing ought to be left to the Jury, but under the Judges Directions as to Point of Law.

In all these Cases, therefore, my Lord, it has been usual to allow the Fact to be specially found; which gives the Prisoner the Advantage he might have had by the Demurrer of the Evidence.

Serj. *Selby.* My Lord, I do agree with the Prisoner at the Bar, that this is a very penal Statute, and that these Facts must be made out to bring his Case within the Letter of the Act, *viz.* An Intention or Purpose, of Malice fore-thought, to maim or disfigure in such a Man-

ner as the Statute deſcribes; a lying in wait for that Purpoſe; a maiming, or diſfiguring accordingly; and an abetting and being privy to theſe Facts: Theſe are all Facts which the Jury only could determine, either by poſitive, preſumptive, or circumſtantial Evidence, for no Man's Thoughts or Intentions can be otherwiſe proved than by his Actions. My Lord Chief Juſtice hath left the whole Evidence of all theſe Facts to the Jury, who by their Verdict have found all theſe Facts as laid in the Indictment, againſt which nobody can now open his Mouth: We apprehend, therefore, that no Matter of Law hath ariſen, and that what hath been inſiſted on by the Priſoner, is beſide his Caſe, and needs no Anſwer.

Serj. *Branthwait.* My Lord, the Jury have found him Guilty. I apprehend nothing can properly be alledged now by Mr. *Coke*, that is contrary to the Verdict: If there is any Fault in the Indictment, we are ready to anſwer any Objections he ſhall make againſt it. That he does not pretend to. What is now offered by him is againſt the Verdict, and contrary to what is found by the Jury. I beg your Lordſhip's Leave to give an Anſwer to the Objections he is pleaſed to make againſt the Verdict, however improperly and out of Time made, for the Satisfaction of himſelf, and of the Perſons here preſent. I agree a penal Act ſhall not be conſtrued by Equity, or carried further than the Words or Letter of the Act, as the Caſes mentioned by him do prove; but affirm, that this preſent Caſe is within the Words and Meaning of the Act: For though the ultimate Intent of Mr. *Coke* might be to murder Mr. *Criſpe* (as by him is alledged in Excuſe for himſelf) all the Means made uſe of to effect that Intent were alſo on Purpoſe, and ſuch Blows could not be given by an Inſtrument, without an Intent to maim and diſfigure. They were given by one lying in wait on Purpoſe; and the Fact and Manner of doing the ſame ſufficiently prove, and are a certain and neceſſary Indication of the Intent. The Defendants might have an Intent to cut off, or ſlit the Noſe; put out an Eye, or diſmember; and an Intent alſo to kill and deſtroy; one Intent did take effect, the other not. The Defendants ought not to anſwer for what was not done, but ought to anſwer for what was done, which was the ſlitting of Mr. *Criſpe*'s Noſe, on Purpoſe to maim and diſfigure him, by one lying in wait; which is all that is required by the Act.

As to the Objection; that if *A* and *B* go together to fight a Duel, if *A* ſlit the Noſe of *B*, this is not within the Act; the Reaſon is, becauſe there is no lying in wait.

As to the Caſe of *A* lying in wait to rob *B*, I with great Submiſſion do ſay, that if *A* lie in wait to rob *B*, and to effect that Purpoſe with the greater Eaſe, *A* on purpoſe diſmembers *B*, or puts out his Eyes, or does any other Fact prohibited by the Act; though *A* be hindered from robbing *B*, he is within the Act of Parliament; for the Intent and Purpoſe to rob, will be no Excuſe to one who ſhall commit the Facts prohibited by the Act.

As to the Caſe of *Evans* and *Finch*, *Cr. Car.* 473. on 39 *El.* which takes away the Clergy from him that enters and ſteals: *Finch* was not within the Statute, and had his Clergy; for the expreſs Words of the Statute take away the Clergy from him that enters the Houſe, which *Finch* did not. As to the Indictment of a Servant for Murder, in killing her Miſtreſs; it is plain, that it is a Crime of a higher Degree than Murder, it is an Offence of another Species, it is Petty-Treaſon and not Murder.

The ſame Anſwer may be given to the other Caſes mentioned, where the Words of an Act of Parliament are expreſs. No Caſe ſhall be conſtrued within a penal Act, but what is within the Words: But as to the preſent Caſe, the Jury have found every Fact that the Act of Parliament requires, that an unlawful Aſſault was made on Mr. *Criſpe* by the Priſoners; that his Noſe was ſlit on Purpoſe to maim and diſfigure him, by lying in wait. And all theſe Facts are proved by plain, clear, and I believe convincing Evidence, to every Perſon that heard the Trial. I am ſure the Priſoners can't complain of any Hardſhip done them; the Proſecution was carried on for the Sake of Juſtice, for the Safety of his Majeſty's Subjects. This being the firſt Inſtance of a Crime ſo heinous, cruel, barbarous and inhuman, that has been committed ſince the making the Act of Parliament, it is hoped by this Proſecution a ſecond will never be committed; for which Reaſon, I pray your Lordſhip's Judgment for the King againſt the Priſoners.

Mr. *Raby.* My Lord, I did expect at this time I ſhould have heard, from this unhappy Gentleman, ſomething in Arreſt of Judgment: Something to ſhew that this Indictment and Record now before your Lordſhip in Judgment, had been inſufficient, and ſuch as your Lordſhip could not have proceeded upon to give Judgment againſt the Priſoners: I don't perceive any thing has been objected to this Indictment or Record; and therefore ſince nothing appears, or is objected, they muſt be taken to be ſufficient, and ſuch as your Lordſhip ought by Law to give Judgment upon againſt the Priſoners now at the Bar.

But this Gentleman has been pleaſed to take Notice of the Act of Parliament on which this Proſecution is founded: He has alſo made ſome mention of the Facts which have been given in Evidence againſt him; and cited ſome Caſes (as I apprehend) to ſhew, that penal Statutes, and criminal Acts of Parliament, ought not in Conſtruction to be carried beyond the Letter and Words of the Act. This which he has offered (as I take it) is now meant to ſhew (or at leaſt that he apprehends) that from the Evidence given, it has not fully appeared he is guilty of the Offence with which he ſtands charged, within the ſtrict Words and Meaning of this Act of Parliament: And for this End he has been pleaſed to make ſome Obſervations from the Words of the Statute, what Things he apprehends to be neceſſary to bring him within the Compaſs of this Act, *viz.* That ſuch Wound or Maiming, as is deſcribed by the Statute, ought to be,

1. On Purpoſe, and of Malice fore-thought.
2. By lying in wait.
3. With an Intention to diſfigure.

All theſe have been already admitted to him; and he will ſee every one of theſe Circumſtances not only taken Notice of by us in our Obſervations upon the Evidence, but alſo more fully by your Lordſhip, before the Jury gave their Verdict.

But with what Intent this Fact was done, whether of Malice fore-thought, by lying in wait, and with an Intent to diſfigure, are Circumſtances only to be collected from the Evidence and the Facts themſelves; of which neither we nor the Court can determine, but can only be enquired of, and determined by the Jury; and therefore, though it would be a full Anſwer to what is now objected, to ſay, that the Jury have conſidered of the Evidence, have determined upon it, and found you guilty of the Indictment, with all thoſe Circumſtances which the Priſoner objects are neceſſary to bring the Offence within the Statute; though this, I ſay, might be Anſwer; yet for the Juſtice of this Proceeding, and to ſatisfy the Priſoner in his own Objections, your Lordſhip will permit me to take Notice of the Caſes cited, and alſo to recollect the Evidence, ſo far as the Priſoner hath made it neceſſary to repeat it.

I confeſs it is with Concern I mention it again; for I would not do any thing which might add to the Weight of thoſe Afflictions which this unhappy Gentleman is under, had not he himſelf made it neceſſary to take farther Notice of it.

As to the Caſes cited, only two of them which he mentions are cited to be adjudged; that at *Dorcheſter* by Mr. Juſtice *Eyre*, that a Woman was indicted for Murder, and upon Evidence it appeared to be a different Offence, *viz.* Petit-Treaſon, for ſhe had killed her Miſtreſs; and that thereupon Mr. Juſtice *Eyre* cauſed her to be indicted for Petit-Treaſon; and ſhe was convicted. Certainly, my Lord, that Judgment was right, and very juſt; for when it appeared upon Evidence that ſhe was guilty of a diſtinct and different Offence than that of which ſhe ſtood indicted, could any Thing be more juſt, than to cauſe her to be indicted for that Offence, of which, upon the Nature of the Evidence, ſhe appeared to be guilty? The ſecond Caſe cited of *Evans* and *Finch* (which is reported in *Cro. Car.*) is no more than this: *Evans* went up a Ladder, opened a Chamber Window in the *Temple*, went in and robbed the Chamber in the Day-time; *Finch* held the Ladder, and ſtood at the Foot of it when *Evans* enter'd: *Evans* was hang'd, *Finch* had his Clergy, and was only burnt in the Hand; and with great Reaſon: For the Statute, 39 *Eliz.* which takes away Clergy, takes the Clergy only from him that enters; and therefore to have taken the Clergy from *Finch*, who did not enter, had been unjuſt and unreaſonable. And as to what is mentioned of the Statute 2 & 3 *Ed.* VI. *cap.* 33. made in Explanation of the Statute which took Clergy from him who ſtole Horſes, and to take Clergy from him who ſtole only one Horſe; there is ſuch an Act of Parliament; but this Act and the Caſes cited, only ſhew that Regard has always been had, not to extend penal Statutes beyond the Words of them. But before theſe Caſes were mentioned (and indeed had they never been cited) this Rule of Conſtruction had been allowed to the Priſoner; for all the Particulars now inſiſted on by the Priſoner were before taken Notice of by the Court, as Circumſtances neceſſary to make out the Offence againſt the Priſoner: Nor has one of thoſe Circumſtances paſſed without Obſervation; but the Court did with great Juſtice before declare thoſe Circumſtances to be neceſſary Ingredients to prove this Offence. And as to the other Caſes, they are to the ſame Purpoſe, and not cited as Caſes adjudged; and therefore I need not take further Notice of them. But certainly no Inferences can be drawn from the Caſes cited, or any the leaſt Colour to ſay, thoſe Caſes prove that the Priſoner is not guilty of the Offence he ſtands charged with, and of which he is convicted.

I am ſorry he has given this Occaſion to mention again the Fact which has been proved, from whence it appears that the Jury have given an impartial and juſt Verdict.

It cannot be forgot, that this was conſulted and premeditated for three Years and more before it was put in execution; and therefore it was certainly purpoſed and of Malice fore-thought; alſo that it was by lying in wait. Certainly this unhappy Gentleman cannot have forgot the Signal he gave: And to what Purpoſe was that Signal, if none was in waiting to hear it? And that this was with an Intent to diſfigure, muſt be ſubmitted upon the Fact and the Evidence. A Man uſes a Weapon fit to maim and to diſfigure, he cuts another on the Face and does diſfigure him, ſhall he afterwards be at Liberty to ſay, it was not his Intent ſo to do? How dangerous that would be, is obvious to every one; this Act would then be eaſily eluded, if it ſhould be ſufficient, if it ſhould avail an Offender, who has maim'd and diſfigur'd another, to ſay, Prove that I intended it: It would be eaſy then to be out of the Reach of this Act of Parliament; indeed if that prevailed, none would be within it, it would be an eaſy Repeal of this Law. 'Tis objected, his Intent was to kill: He that intends the End, certainly intends the Means, eſpecially thoſe Means which he uſes; and the Means uſed were cutting Mr. *Criſpe* on the Face, and diſfiguring him; and the Weapon is ſuch, that by cutting him on the Face with that Weapon, could leſs be intended or expected: And if the Intent does not appear from this Fact, ſure it never can from any: The Intent of a Man's Mind cannot appear but from the Act which proceeds from his Mind.

It is ſaid, this is the firſt Indictment on this Statute: I believe there hath not been many; for this is an Offence ſo barbarous, that I muſt agree it is ſuch as ſeldom happens, and that by the general Laws of our Country, there was not a Puniſhment provided equal to this Offence: For our Laws, (as the Laws of moſt Nations alſo do) provide againſt Offences which moſt frequently happen: But this is an Attempt ſo barbarous, that it was ſcarce imagined any Man could be ſo baſe and wicked as to attempt any thing like it, until it happened in the Caſe of Sir *John Coventry*; and then ſuch an Abhorrence was ſhewn by the Parliament, that this Law was made to puniſh it, and to prevent the like for the future: And as this is the like Offence, it ought in Juſtice to have the like Puniſhment.

I ſhall add no more, but pray your Lordſhip's Judgment.

Mr. *Lee.* My Lord, the Obſervations made at the Bar being after a Verdict, and therefore out of Time, I ſhall not trouble your Lordſhip with a Repetiton of the Facts that have been proved, further than the Priſoner has made it neceſſary for me to mention ſome Particulars, in order to make the Anſwers to what he hath inſiſted on the more clear and plain.

I believe it has been truly ſaid by the Priſoner, that the preſent Proſecution is the firſt Inſtance of any Proceeding on this Statute, and I hope it will be the laſt; becauſe it is to be hoped there never will be found any other Perſon ſo wicked, as to give Occaſion for a Proſecution on this Statute.

I believe likewiſe, that the true Deſign of making this Statute was to ſubject Perſons to Death, who intended to maim only, where the maiming was in ſuch manner as is mentioned in the Statute; but I can't think that it does from thence follow, that a Perſon who intends to murder, and only maims, is not within this Statute; for though it ſhould be taken that there was an Intention to murder, yet from the Fact done, from the manner of doing it, and from the Weapon made uſe of, it ſeems apparent that the Priſoner intended to maim; and the Jury have now found that he did ſo intend.

As to the Caſes which the Priſoner has cited, I beg leave to conſider each of them, and offer ſuch Anſwers to them as now occur.

The firſt Caſe he has been pleaſed to cite, is thus put:

A and *B*, of Malice fore-thought, appoint to meet and fight a Duel, *A* in the Recounter runs *B* into the Eye, and puts it out: The Priſoner ſays, ſuch a Caſe would not be within this Statute.

I agree it would not, becauſe this Caſe has not the Circumſtances which the Statute requires; for in the Caſe thus put there is no lying in wait, which is a Circumſtance required by the Statute.

It is ſaid, that if *A* lies in wait to rob *B*, *B* reſiſts, and in the Scuffle is maim'd in the Manner deſcribed by the Statute, that ſuch Maiming would not be puniſhable by this Statute; but I don't obſerve any Caſe is cited to prove this Aſſertion: And I am, with ſubmiſſion to your Lordſhip, inclin'd to think, that if there are a lying in wait, with Malice fore-thought, with Intent to rob, and in proſecuting this Intent the Robbers ſhould aſſault and maim in the Manner deſcribed by the Statute, that ſuch Maiming would be within this Statute.

It is ſaid, that though the Intent to murder makes the Offence worſe than if the Intent had been only to maim, yet ſuch Intent proves it not to be the ſame Offence which is mentioned in the Statute: And if a Man be indicted of an Offence of an inferior Nature, and upon the Evidence it appears that he is guilty of an Offence of a ſuperior Nature, the Perſon indicted muſt be acquitted; and to prove this, a Caſe is cited, which is ſaid to have been before Mr. Juſtice *Eyre*, at *Dorcheſter* Aſſizes. The Caſe, as put, is this: A Woman is indicted for the Murder of another Woman; on the Evidence it appeared, that the Perſon murdered was her Miſtreſs, which made the Crime Petty-Treaſon: This was found ſpecially, and upon Conference with the Judges, they were of Opinion, that the Woman ought to be acquitted upon this Indictment.

Admitting this Caſe to have been adjudged, I apprehend it does not affect the preſent Caſe.

The Law has diſtinguiſhed Crimes under different Denominations; and as Offences are rank'd under different Species, ſo the Indictment muſt be ſuited to that Sort of Crime whereof the Party is guilty; and therefore proving a Perſon guilty of a Fact, known in the Law by the Name of Petty-Treaſon, does not prove him guilty of an Indictment for Murder; Murder being an Offence which the Law has diſtinguiſhed from Petty-Treaſon, and to which it has aſſigned a different Puniſhment.

But in the preſent Caſe, that Offence which is charged in the Indictment, is proved in every Circumſtance, and the Facts proved do conſtitute that Crime which is made Felony without Clergy by the Statute. The Statute requires lying in wait, it requires Malice fore-thought, it requires ſlitting the Noſe, *&c.* with Intent to maim, *&c.* The Indictment charges theſe Facts, the Witneſſes have proved theſe Facts to the Satisfaction of a Jury, which have found the Defendant guilty of the Charge as laid.

The Priſoner ſays farther, that this is a very penal Statute, and that penal Statutes are always taken with the utmoſt Strictneſs; and to prove this, cites a Caſe adjudged on the Statute 39 *Eliz.* by which Statute Clergy is taken away from any Perſon or Perſons, who ſhall be convicted of taking away Money, *&c.* in any Dwelling-houſe, *&c.* in the Day-time, to the Value of five Shillings: And to prove the ſame Matter, an Inſtance is likewiſe put of the Conſtruction on the Statute, 1 *Eliz. cap.* 12. which takes away Clergy from ſuch Perſons as ſhall be convict of felonioufly ſtealing Horſes, *&c.* The Caſe in the Statute 39 *Eliz.* is the Caſe of *Evans* and *Finch*, *Cro. Car.* 473. in which Caſe *Finch* had his Clergy, becauſe he did not actually enter the Chamber and take the Money. The Conſtruction on *Ed.* VI. was, that Clergy was not taken away from a Perſon who felonioufly ſtole one Horſe.

But I apprehend neither of theſe Caſes come up to the Caſe now before your Lordſhip. As to the Caſe of *Evans* and *Finch*, which was a Caſe upon the Statute 39 *Eliz.* By that Statute a Perſon is ouſted of Clergy who takes away Money to the Value of five Shillings in any Dwelling-houſe, *&c.* *Finch* did not enter into the Houſe, for he only ſtood on the Ladder; and therefore he was not within the Words of that Statute, which ſpoke only of Perſons who took away Goods in an Houſe, *&c.*

As to the Conſtruction upon the Statute 1 *Ed.* VI. it is plain that the felonious ſtealing one Horſe could not be within an Act of Parliament, which took away Clergy only from ſuch Perſons as felonioufly ſtole Horſes. The Reaſon, therefore, of theſe Caſes was, that the Facts proved did not bring the Perſons accuſed within the Words of the Statute.

But it is not ſo in the Caſe now before your Lordſhip; for the Priſoner is found guilty of a Fact, which is within the Words of the Statute upon which he is indicted; and every Circumſtance required to make him guilty of the Felony mentioned in the Statute has been very fully proved.

My Lord, I am very ſenſible that the Objections taken at the Bar being after Verdict, did not require theſe particular Anſwers; but this being a Caſe wherein Life is concerned, I hope the Impropriety will be excus'd.

L. C. J. I do agree with the Priſoner, that this is a penal Law, and not to be extended by Equity: That he that is guilty within this Statute, muſt be guilty of all the Circumſtances within it; and if any one of the Circumſtances preſcribed by the Statute be wanting, he is not guilty. And therefore in all thoſe Caſes put by you, if any one of the Circumſtances preſcribed by the Statute be wanting in any one of them, ſuch Caſe is out of the Statute. But whether all the Circumſtances required by the Statute did not concur in your Caſe, was a Matter of Fact, which the Jury, who are the proper Judges, have tried; and on ſuch Trial they have found them all to concur. You ſeem to argue upon a Suppoſition of this Fact to be otherwiſe than the Jury have found it. The Jury have found you guilty of all the Circumſtances within the Statute. There was no Matter of Law in this Caſe, but Matter of Fact; whether on Purpoſe, and of Malice fore-thought, and by lying in wait, the Noſe of Mr. *Criſpe* was not ſlit, with Intention, in ſo doing, to maim or diſfigure? and whether you were not felonioufly preſent, aiding and abetting? The Jury had the whole Evidence before them; they conſidered of the whole Matter, of the Preparation and lying in wait to do the Fact, of the Fact itſelf, of the Means and Inſtrument made uſe of to do it; of the Manner of doing it, and of all the other Circumſtances and Particulars relating to the Fact: And on the whole, after they had withdrawn, and conſidered amongſt themſelves for ſome time, they have found you guilty within the Terms and Circumſtances of the Statute; ſo that tho' all the Caſes put by you ſhould be very good Law, yet they do not any wiſe affect yours, becauſe you are actually found guilty of the Crime itſelf: Have you therefore any thing to ſay againſt the Indictment itſelf?

Mr. *Coke.* No, my Lord; I hope I have one Glimpſe more from the King's moſt gracious Pardon, that was publiſhed in the *Gazette*.

L. C. J. If you offer any Pardon by Act of Parliament, or under the Great Seal, I muſt take notice of it, and allow it to you; but if you mean only a Promiſe of a Pardon in the *Gazette*, or other public Advertiſement, you muſt apply for that in another Place; this doth not belong to me.

Mr. *Coke.* I hope that I ſhall have the Benefit of the Pardon that was promiſed; and that his Majeſty will be graciouſly pleaſed to grant it me.

L. C. J. If you have a Right to it, you need not doubt but you will have it: His Majeſty is ſo juſt, that he will make good whatſoever he hath promiſed; but for this, your Application muſt be immediately to his Majeſty.

Mr. *Coke.* I beg of your Lordſhip that you will give me Time, that I may not be hurried out of the Word preſently.

L. C. J. I ſhall conſider of it, and give you a convenient Time.

Cl. of the Arr. Cryer, make an *O Yes*.

Cryer. Our Sovereign Lord the King doth ſtraitly charge and command all manner of Perſons to keep Silence, whilſt Judgment is giving upon the Priſoners convicted, upon Pain of Impriſonment.

L. C. J. You that are the Priſoners at the Bar, you have been indicted and convicted of very great and heinous Offences; I am very ſorry that you have been the Occaſion of bringing yourſelves to unfortunate Ends, and that there is this melancholy Neceſſity on me to pronounce the Sentence of Death upon you: But on fair Trials the Jury have found you guilty, and by the Law you have forfeited your Lives.

Mr. *Coke.* My Lord, I am aſhamed of myſelf; I did not expect to appear at this Time in this Place, where I have appeared in another manner.

L. C. J. I am ſure, Mr. *Coke*, you ought ſeriouſly to reflect on your paſt Life: You cannot but own that you have been a great Sinner; you have had Malice in your Heart againſt this Gentleman above three Years.

Mr. *Coke.* Indeed, my Lord, I know nothing of it.

L. C. J. Moon hath ſworn, that three Years, or three Years and a Half ago, you ſent to him, and propoſed to him the knocking Mr. *Criſpe* on the Head.

Mr. *Coke.* I do declare it, my Lord, as I ſhall anſwer it at the Great Day, I never ſpoke to *Moon* about any ſuch Thing.

L. C. J. Suppoſing what *Moon* had ſaid to be too much, yet the Crimes you own and cannot deny are exceeding heinous. You own that you invited your Brother to ſup at your Houſe, on purpoſe that you might have an Opportunity of murdering him. This is ſuch a Crime as ſhocks human Nature: The bare mentioning of it is frightful and terrible. The deeper therefore your Crime is, the deeper your Repentance ought to be. You have need to humble yourſelves before Almighty God. Beſides the Judgment of the Law, there is alſo his Judgment-Seat, before which you muſt likewiſe appear: There all Things are naked and bare, without Colour or Diſguiſe; every Man muſt there appear, and receive according to the Truth of his Actions, as they were good or bad. How far it may pleaſe God to extend his Mercy to you, I know not; he is infinite in Mercy as well as in every other Perfection: And this we are ſure, that he never denies it to any who are prepared to receive it. Endeavour therefore to reconcile yourſelves to him; improve with Diligence the little Time that may be allotted you: Send for proper Perſons who may adviſe and aſſiſt you: For as to the Judgment of the Law which is to be now pronounced upon you all, it is this:

> That you, and each of you, go from hence to the Place from whence you came, and from thence to the Place of Execution, where you ſhall be ſeverally hanged by the Neck till you be ſeverally and reſpectively dead; and the Lord have Mercy upon your Souls.

Then the Keeper carried away the Priſoners to the Gaol to be reſerved till their Execution. And on Saturday the 31ſt of *March*, 1722. they were executed at *Bury St. Edmond*'s.

CXCIII. *The Trial of* Chriſtopher Layer, *Esq; at the* King's-Bench *for* High-Treaſon, Nov. 21. 1722. Mich. 9 Geo. I.

Die Mercurii, 31° Die Octobris, 1722.

ON *Wedneſday* the 31ſt of *October*, *Chriſtopher Layer*, Eſq; was brought to the Bar of the Court of *King's-Bench* at *Weſtminſter*, upon a *Habeas Corpus*, directed to the Lieutenant of the *Tower* of *London*, in order to be arraigned on an Indictment for *High-Treaſon* in compaſſing and imagining the Death of the King, found by the Grand Jury for the County of *Eſſex* before ſpecial Commiſſioners of *Oyer* and *Terminer*.

Mr. Ser. *Pengelly*. My Lord, we pray the Return of the *Hebeas Corpus* may be read.

Mr. Harcourt *Clerk of the Crown reads the Return of the* Habeas Corpus, *by which it appear'd that the Priſoner was committed to the* Tower *for High-Treaſon.*

Mr. Serj. *Pengelly*. We pray that the Return may be filed.

Sir *John Pratt*. *L. C. J.* Let it be filed.

Mr. Serj. *Pengelly*. My Lord, there is an Indictment of High Treaſon found in the County of *Eſſex* againſt Mr. *Chriſtopher Layer*, which hath been removed into this Court by *Certiorari*; the *Certiorari*, and the Return thereof hath been filed, and the Priſoner is now brought into Court in order to be arraigned.

L. C. J. Read the Indictment.

Cl. of the Cr. *Chriſtopher Layer*, hold up your Hand.

'YOU ſtand indicted by the Name of *Chriſtopher Layer*, late of the 'Pariſh of St. *Andrew's*, *Holbourn*, in the County of *Middleſex*, Eſq; 'For that you being a Subject of our moſt ſerene Lord *GEORGE*, now 'King of *Great Britain*, *France* and *Ireland*, Defender of the Fath, *&c.* 'not having the Fear of God in your Heart, nor weighing the Duty 'of your Allegiance, but being moved and ſeduced by the Inſtigation of 'the Devil, as a falſe Traytor againſt our ſaid Lord the King, your 'Supreme, True, Lawful, and Undoubted Lord; withdrawing that 'cordial Love, and true and due Obedience, Fidelity, and Allegiance, 'which every Subject of our ſaid Lord the King towards Him ſhould, 'and of Right ought to bear; and deſigning, and with all your Might 'traitorouſly intending the Government of this Kingdom, under our 'ſaid Lord the King duly and happily eſtabliſh'd, to change, alter, 'and ſubvert; and our ſaid Lord the King of and from the Title, Ho'nour, Royal Eſtate, Empire and Government of this Kingdom to de'poſe and deprive; and our ſaid Lord the King to Death and final De'ſtruction to bring and draw; and the Perſon during the Life of the late 'King *James* the Second, pretended to be Prince of *Wales*; and after 'the Deceaſe of the ſaid late King, pretending to be, and taking upon 'himſelf the Stile and Title of King of *England*, by the Name of *James* 'the Third, to the Crown, Royal State and Dignity of King of this 'Kingdom, and to the Empire, Government, and Poſſeſſion of the 'ſame, to exalt and bring, the twenty-fifth Day of *Auguſt*, in the Ninth 'Year of the Reign of our ſaid Sovereign Lord the King that now is; 'and at divers other Days and Times, as well before as after, at *Lay'tonſtone* in the ſaid County of *Eſſex*, falſely, maliciouſly, deviliſhly, 'and traitorouſly did compaſs, imagine, and intend, our ſaid Lord the 'King, your ſupreme, true, lawful, and undoubted Lord, of and from 'the Title, Honour, Royal Eſtate, Empire and Government of this 'Kingdom to depoſe and deprive; and our ſaid Lord the King to Death 'and final Deſtruction to put and bring. And that you the ſaid *Chriſtopher* '*Layer*, to accompliſh and bring about your ſaid Treaſon, and deviliſh 'and traitorous Intents and Purpoſes, did, with divers other falſe Trai'tors to the Jurors unknown, on the ſaid twenty-fifth Day of *Auguſt*, 'in the ſaid Ninth Year of the Reign of our ſaid Lord the King, and 'at divers other Days and Times, as well before as after, at *Laytonſtone* 'aforeſaid, in the ſaid County of *Eſſex*, by Force and Arms, *&c.* falſely, 'maliciouſly, deviliſhly, and traitorouſly did meet, propoſe, conſult, con'ſpire, conſent and agree, to move, raiſe, and levy Inſurrection, Re'bellion, and War, within this Kingdom againſt our ſaid Lord the 'King, for the traitorous Purpoſes aforeſaid. And that you the ſaid '*Chriſtopher Layer*, for the more effectual compleating and perfecting 'the ſaid Treaſon and traitorous Intentions and Purpoſes, on the ſaid 'twenty-fifth Day of *Auguſt*, in the Ninth Year aforeſaid, at *Layton'ſtone* aforeſaid, in the ſaid County of *Eſſex*, by Force and Arms, *&c.* 'maliciouſly and traitorouſly did publiſh a certain malicious, ſeditious, 'and traitorous Writing, containing and purporting (amongſt other 'Things) an Exhortation, Incitement, and Promiſes of Rewards, the 'faithful Subjects of our ſaid Lord the King to perſuade, move and 'excite, to take up Arms, and to levy and make War within this Realm, 'againſt our ſaid Sovereign Lord the King, for the traitorous Purpoſes 'and Intentions aforeſaid. And that you the ſaid *Chriſtopher Layer*, for 'the more effectual compleating and perfecting the ſaid Treaſon and 'traitorous Intentions and Purpoſes, with other falſe Traytors, to the 'Jurors unknown, on the ſaid twenty-fifth Day of Auguſt, in the 'Ninth Year aforeſaid, and at divers other Days and Times, as well 'before as after, at *Laytonſtone* aforeſaid, in the ſaid County of *Eſſex*, 'by Force and Arms, *&c.* Falſely, Maliciouſly, Deviliſhly, and Trai'torouſly did meet, propoſe, conſult, conſpire, conſent, and agree, by 'an armed Force, and by Soldiers to be raiſed and got ready for the 'traitorous Purpoſes aforeſaid; the ſaid Perſon, during the Life of the 'ſaid late King *James* the Second, pretended to be Prince of *Wales*, 'and ſince the Deceaſe of the ſaid late King, pretending to be, and 'taking upon himſelf the Stile and Title of King of *England*, by the 'Name of *James* the Third, to the Crown, Royal Eſtate, and Dignity 'of King of this Kingdom, and to the Empire, Government, and Poſ'ſeſſion of the ſame to exalt and bring, and that you the ſaid *Chriſtopher* '*Layer*, for the more effectual compleating and perfecting the ſaid 'Treaſon, and traitorous Intentions and Purpoſes aforeſaid, on the 'ſaid twenty-fifth Day of *Auguſt*, in the Ninth Year aforeſaid, and at 'divers other Days and Times, as well before as after, at *Laytonſtone* 'aforeſaid, in the ſaid County of *Eſſex*, by Force and Arms, *&c.* Ma'liciouſly and Traitorouſly did get ready, raiſe, and retain ſeveral Men, 'to the Jurors unknown, to take up Arms, and to levy and wage War 'within this Kingdom, againſt our ſaid Sovereign Lord the King, for 'the traitorous Purpoſes aforeſaid: and that you the ſaid *Chriſtopher* '*Layer*, for the more effectual compleating and perfecting the ſaid 'Treaſon, and traitorous Intentions and Purpoſes aforeſaid, on the 'ſaid twenty-fifth Day of Auguſt, in the Ninth Year aforeſaid, and at 'divers other Days and Times, as well before as after, at *Laytonſtone* 'aforeſaid, in the ſaid County of *Eſſex*, with other falſe Traitors, to 'the Jurors unknown, by Force and Arms, *&c.* Maliciouſly, Deviliſh'ly, and Traitorouſly did meet, propoſe, conſult, conſpire, conſent 'and agree, the ſacred Perſon of our now Sovereign Lord King '*GEORGE*, for the traitorous Purpoſes aforeſaid, moſt wickedly 'to take, ſeize, impriſon, and detain in Cuſtody againſt the Duty of 'your Allegiance, againſt the Peace of our ſaid Sovereign Lord the 'King, his Crown and Dignity, and againſt the Form of the Statute 'in that Caſe made and provided.'

Priſoner. If your Lordſhip will pleaſe to indulge me;

My Lord, I am brought here in Chains, in Fetters and in Chains. My Lord, I have been uſed more like an *Algerine* Captive than a Free-born *Engliſhman*: I have been dragged through the Streets by the Hands of Gaolers, and have been made a Shew and a Spectacle of.

I am now in a Court of Juſtice before your Lordſhip, and hope the Time will come when I ſhall have a candid and fair Trial, and not be made a Sacrifice to the Rage and Fury of any Party, or the Neceſſity of the Times. My Lord, I had not ſaid this, but I have been inſulted ſince I came into the Hall: A Gentleman came and told me, Either you muſt die, or the Plot muſt die. My Lord, this is Uſage inſufferable in a Chriſtian Nation; and I think I can lay my Hand upon my Heart and ſay, I have done nothing againſt my Conſcience.

Mr. Serj. *Pengelly*. If Mr. *Layer* hath any Objections to the Indictment he may make them, but ſhould not go on in this Manner.

Priſoner. My Lord, I hope I ſhall have theſe Chains taken off, that I may have the free Uſe of that Reaſon and Underſtanding which God hath given me. They have given me the Stranguary to that Degree that is very painful, and I am told your Lordſhip is afflicted with that Diſtemper.

I hope theſe Chains ſhall be taken off in the firſt Place, and then I hope I ſhall have a fair and tender Trial.

L. C. J. There have been a great many Things ſaid, by which we cannot examine into. You have given a general Charge of ſome People uſing you ill, your Expreſſions are not juſt and right; you charge no particular Perſon; we can take no Notice of them.

As to the Chains you complain of, it muſt be left to thoſe to whom the Cuſtody of you is committed by Law, to take Care that you may not make your Eſcape; when you come to your Trial then your Chains may be taken off. Conſider the Matter of this Day; if you have any Objections to the Indictment the Court will hear them; if not, you muſt plead.

Mr. Att. Gen. I am ſure nothing is intended but that he ſhould have a fair Trial; but to complain here of hard Uſage, of Chains and Impriſonment, carries with it a Reflection of Cruelty, and we know what Effect theſe Things may have Abroad. Sir *Robert Raymond.*

My Lord, I don't believe there is any Occaſion for ſaying any thing more in anſwer to this, than that the Priſoner hath been kept, as all Perſons in his Circumſtances are, when they have been attempting to make an Eſcape; there was an Attempt of that Nature made by him, and I believe Nobody will ſay, but on ſuch an Occaſion, there is Reaſon to take particular Care that he may not eſcape. My Lord, as to any other Matters of Hardſhip, I hope what he ſays is not ſo; I verily believe it is not, but that he has as much Freedom and Liberty as is proper and uſual. And as to what is ſaid in reſpect to the Man that inſulted him in the Hall, I know nothing of it, nor heard of it before; but can't but obſerve, that it is an eaſy Matter for People to contrive ſuch a Thing in concert together, with ſome particular views; and I don't know but if the Fact was ſo, it might be ſome body ſet on by himſelf that did it.

L. C. J. Alas! If there hath been an Attempt to eſcape, there can be no Pretenſion to complain of Hardſhip: He that hath attempted an Eſcape once, if true, ought to be ſecured in ſuch Manner as to prevent his eſcaping a ſecond time. The Gentleman Gaoler, what doth he ſay?

Gentleman Gaoler. My Lord, he never attempted to eſcape ſince he was in my Cuſtody.

Mr. Att. Gen. No, it was before.

Mr. Sol. Gen. My Lord, This Complaint is made for no other Purpoſe but to captivate the Minds of the By-ſtanders, without any juſt Grounds in the World; for if the whole of the Complaint made and aggravated in this ſolemn Manner be conſider'd, it amounts only to this, That a Priſoner who ſtands charged with ſo great an Offence as High-Treaſon (who I admit, notwithſtanding the Weight of that Charge, ought to have all the Juſtice and all the Opportunity of defending himſelf which the Law allows) I ſay Sir *Philip York.*

it amounts to no more than this, that a Prisoner in these Circumstances is brought up hither under a Guard, and in Fetters, as Persons in that Condition usually are. It is very well known that when this Gentleman was in the Custody of a Messenger, he not only made an Attempt to escape, but actually escaped, got out of a Window two Pair of Stairs high, and from thence over the Water into *Southwark*; and since that is so, can there be any Colour to say that what was done afterwards was unwarrantable? I cannot help saying on this Occasion, that it does not become the Candor a Person in the Prisoner's Circumstances ought to shew, to aggravate and make such a Misrepresentation of the Usage he has received. As to what has happened in the Hall we know nothing of it, nor can possibly tell how true it is. If any such thing was said, it is not impossible to have been by somebody that was set there on Purpose by the Friends of this Gentleman. I say thus much, my Lord, not because I think it material to the Business of this Day, but because I would not have it gone away with that there has been any Hardship put upon the Prisoner contrary to Law. No, his Majesty, who makes the Laws of the Land the Rule and Measure of all his Actions, though he will have Justice done to himself and his Government against any Person that shall conspire to overthrow it, yet he will suffer no Hardships to be done even to such Persons, contrary to Law; and nothing has been done in this Case but what was legal and absolutely necessary.

Mr. *Hungerford.* My Lord, I beg to be indulged a few Words; That he is in Chains now is demonstrable; and he hath told me, when in the *Tower* with him, that they are so grievous to him that he cannot sleep but in one Posture, *viz.* upon his Back; and that he hath not attempted to escape out of the *Tower*, is given in Evidence by the Gentleman Gaoler, who hath, and will, I verily believe, execute his Authority with all Humanity, for he now helps to hold up his Chains, otherwise the Prisoner could not stand. My Lord, it is said it is nothing but what is usual in Cases of this Nature. My Lord, I believe I might challenge them to give an Instance where any Prisoner was shackled with Irons in the *Tower* before Mr. *Layer*; his Majesty's Prisoners of the *Tower* are such Strangers to this Usage, that they had not the very Materials there, they were sent for from *Newgate*, and I hope they will be carried back again thither. Your Lordship hath hinted it as an Indulgence intended to him when he comes to his Trial, that his Irons shall be taken off: But I humbly insist upon it that by Law he ought not to be called upon, even to plead, till his Fettrrs are off: My Lord *Coke* * is clearly of that Opinion in his Pleas of the Crown; and is admitted on all Hands, that when he comes to be tried his Shackles must be off, and upon a Debate it was so determined in *Cranburne*'s † Case. The only Reason assigned for putting off Irons at all upon a Prisoner is to keep him in safe Custody (for the Laws of *England* allow of no Tortures) and the Reason why they are taken off in the Course of Proceeding against him in a Court of Justice, it seems to be, that his Mind should not be disturbed by any Uneasiness his Body or Limbs should be under; and as to the Distinction that his Chains should be on when he Pleads, because but for a Moment, or a short Time, and off when he is Tried, because that will be of longer Duration; it is possible that what we have now to say may be as long as some Trials. I should (with Submission) think that something of the Dignity of the Court might be considered in this Matter, for a Court of Justice, the highest in the Kingdom for criminal Matters, where the King himself is supposed to be personally present, to have a Man plead for his Life before them in Chains, seems to be very unsuitable. He is now before the same aweful and just Tribunal which he will be before when he is tried, and why not therefore without Chains as well now as then; and as to the safe Custody intended by the Irons, Is the Man like to run away here? Is he not here too well guarded to escape?

* 3 *Inst.* 35.

† *Trial* 154.

Mr. *Ketelbey.* If your Lordship please to favour me a few Words. My Lord, What hath been his Usage in bringing him up hither I cannot tell; what the Usage of the Tower is with respect to the putting Chains upon Prisoners, I am ignorant of; but this I must beg Leave to say, that he is entitled to have his Chains off before he pleads * in point of Law: The Authorities for it are my Lord *Coke* in his third *Instit. Fol.* 34. who says, that 'When Prisoners come in Judgment to answer, they shall be out of 'Irons, and all manner of Bonds, that their Pain may not take away their 'Reason, nor constrain them to answer, but at their 'Free-Will §;' and in *Fol.* 35. he cites the Words out of the *Mirrour*; Chap. V. Sect. 1. 'It is an Abuse 'that Prisoners be charged with Irons, or put to any Pain before they be 'Attainted.' At the Trial of *Cranburne*, when he was brought up here before my Lord Chief Justice *Holt*, he insisted that his Chains should be taken off before he pleaded, and it was ordered. This was likewise mentioned in the Trials of *Dorrel*, *Gorden*, and *Kerr*; when they came up in their Irons to plead, it was moved at first that those Irons ought to be taken off. The Court declared, that *if the Prisoners insisted on it, it ought to be done:* But they did not insist on it, they rather chose to wave that Privilege than undergo the Trouble of having them knock'd off in Court. There is a Resolution in this Case. In the 10th *Fol.* of *Kelyng*, it is expresly declared on a Consultation of all the Judges in *England*, *That a Prisoner ought to have his Irons taken off before he pleads.*

§ *Brit. c 5 fol.* 14.

L. C. J. The Case of *Cranburne*, you will find that Authority is when the Party was called upon to plead, and was tried at the same Time.

No doubt when he comes upon his Trial, the Authority is that he is not to be *in Vinculis* during his Trial, but should be so far free, that he should have the Use of his Reason, and all Advantages to clear his Innocence. Here he is only called upon to plead by Advice of his Counsel; he is not to be tried now; when he comes to be tried, if he makes that Complaint, the Court will take Care he shall be in a Condition proper to make his Defence; but when he is only called upon to plead, and his Counsel by him to advise him what to plead, why are his Chains to be taken off this Minute, and to be put on again the next? It hath been said (I cannot understand the Meaning of it) he is too well guarded, I don't think a Man charged with High-Treason of this Nature, can be said justly to be too well guarded, especially if it be true what hath been suggested, that he hath endeavour'd to make his Escape; that will justify more than what the Law allows in other Cases.

Mr. *Hungerford.* My Lord, I beg leave to explain myself, what I mean by saying too well guarded, I mean sufficiently guarded.

L. C. J. Have you any thing more to offer? This is nothing but to captivate the People, and to make Impressions upon them that are not just, or else what signifies his Chains being taken off this Minute, and afterwards put on again the next? This is nothing but to bring the People to have an unjust Sense of the Crime with which he is charged.

Mr. *Hungerford.* My Lord, we might humbly apprehend and hope that the better to prepare himself for his Trial, he might continue without his Chains 'till after that Time.

L. C. J. I am of another Opinion; and if we should order his Chains to be taken off, and he escape, I don't know but we are guilty of his Escape. As your Client hath said, he shall have a fair and a just Trial; but to make Objections in Matters of this Nature, is to cast a Reflection on the Court, for not doing that which is not in their Power to do.

Mr. *Hungerford.* I am, my Lord, of Counsel with the Prisoner, I have been so appointed by your Lordship, and I assure your Lordship that I, and I dare answer for the other Gentleman that is concerned in the same Service with me, shall make use of that Power and Privilege you are pleased to give us, as we ought.

My Lord, I have read over the Record and the Indictment, we have a Copy of both, according to the Direction of the Act of Parliament: I know we have at present a Right to object to four sorts of Things, *viz.* miswriting, mispelling, false or improper *Latin:* We are confined to make whatever Objections occur to us on these Heads at this Time, and have not the Liberty to make it afterwards; but there are likewise some Objections of another Nature, which we may have Liberty to make at another Time.

I have here in my Hand the whole Record delivered to the Prisoner, in which, not only the Indictment is set forth, but the Commission of *Oyer* and *Terminer*. After the Commission hath enumerated the Names of the Commissioners, it goes on and says, what are the Offences that they are authorized to enquire of, as High-Treason, Misprisions of Treason, and other Offences of a lesser Degree; then it goes on and says what the Persons shall be, concerning whom this Enquiry shall be made, *Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, & de aliis Articulis & Circumstantiis, præmissa & eorum quodlibet seu eorum aliquod vel aliqua, qualitercunq; concernen', plenius veritat'.* My Lord, I have look'd into this Form, and considered the Words with all the Accuracy I can, and have endeavoured to render them into *English*, but cannot; I must say I look upon those two Words *plenius veritat'*, as placed in this Record, to be Nonsense, and not capable of being rendered into *English*, for they import no meaning at all. It is a Blemish in the Commission itself, and if so, the Enquiry taken by Virtue of that Commission must fall to nothing, and consequently this Indictment must be naught. I have been so exact, I have looked into the Forms of these Indictments, taken by Virtue of Commissions of *Oyer* and *Terminer*. My Lord Chief Justice *Coke* hath, for the sake of Posterity, I suppose, given us the Form of the Commission of *Oyer* and *Terminer* in his Time; in that Form of his these Words are entirely left out; they seem to me to be Words of no Signification, therefore we hope there shall be no further Proceedings till this is set right, and that the Indictment shall be quash'd.

Mr. *Ketelbey.* My Lord, there are other Objections, whether it is your Lordship's Pleasure that we should go on this first, or that we should mention the others, and so go upon them all together?

L. C. J. Make all your Objections together.

Mr. *Hungerford.* Then, my Lord, in the Close of this Commission it is said the Jury were charged to enquire, but doth not say for what; but that Objection may be made another Time, and therefore I will not trouble your Lordship with it now. My Lord, the first Thing that occurs to me in the Indictment itself, and which certainly, if we prevail in, the whole Proceedings are wrong; this Gentleman's Name is not writ nor spelt right, *Jurator' pro Dno' Rege*, &c. *super Sacramentum*, &c. *quod Christopherus Layer*, *Christopherus* is there writ with an E, whereas is should be *Christophorus* with an O; and if the Dictionaries and Lexicons are any Authority we are right.

These are the Objections which have occurred to me, the Gentleman joined with me in this Service, hath some other Remarks to make.

Mr. *Ketelbey.* My Lord, As it is your Lordship's Pleasure to appoint us to be Counsel for this Gentleman, I shall not make any Apology for our appearing on his Behalf, lest I receive the same Reproof from the Court, which a Gentleman in my Station once received upon a like Occasion.

My Lord, we think it proper at this Time to lay these four Points under your Lordship's Consideration, which if we had staid till after Plea pleaded by the Prisoner, would have been too late; that Matter hath been often settled and determined by your Lordship, and I shall say no more to that, I believe they don't object to it; now therefore it is the only Time to make these Objections.

My Lord, The first that hath been mentioned by Mr. *Hungerford* is in the Caption of the Indictment as to these Words *plenius Veritatem*; in our Copy, it is *plenius Veritat'* with a Dash, that it may be taken in any Case, but I submit it to your Lordship whether it can be made Sense, or is proper *Latin* in any of the Cases either of the singular or plural Number, that there can be made any Grammar of it, or that there is any

* *Cum autem capti in judicio produci debeant, non producantur armati, sed ut judicium recepturi, nec* ligati, *ne videantur* respondere *coacti,* Fleet. Lib. I. cap. 1.
The Prisoner at the time of his *Arraignment* ought not to be in *Irons. Hale's, P. C. p.* 212.
Tit. *Arraignment.* See *H. P. C.* in folio, second part. *cap.* 28.
See *Hawkins's* Pleas of the Crown. *Part.* 2. *p.* 308.

regular or preceding *Verb* that can govern it in any Case whatsoever; they might have put in any Words entirely inconsistent with respect to the Part preceding or subsequent; leave out these Words, and the other Part of the Sentence is plain and intelligible; but put in the Words, and it is otherwise.

And especially since we have the Authority of my Lord *Coke*, where these Words are not in; how they came to be put in, or of what Use they are, your Lordship will observe on reading the Caption of the Indictment, *Ad Inquirend'*, *&c. plenius Veritat'*.

Taking Exceptions to the Caption of the Indictment hath formerly been objected to; but I believe that Right cannot be disputed at this Time.

As to the second Exception, that in relation to *Christopherus*, we submit it to your Lordship, if that be not expressly within the Defects mentioned in the Act of Parliament Mis-writing, Mis-spelling, false and improper *Latin*; nay, whether it is not subject to censure under each of these four Heads.

My Lord, it was impossible to bring all my Authorities, upon this Point, along with me; but I have here in Court several of the best Dictionaries and Lexicons which shew the true Word to be *Christophorus*; and I believe the Gentlemen of the other Side can't produce one Instance in any authentic Book either *Greek* or *Latin*, but it is always spelt with an *O* and not with an *E*; it is *Christopherus* from φέρω, the *Præteritum Medium* of the *Greek* Verb φέρω; and the Rules of Etymology and Formation of *Greek Verbals* evince that it must be so, and cannot be otherwise; and by all the *Latin* Dictionaries, the *Latin* Word for *Christopher* is *Christophorus*.

L. C. J. How do we know what his Name is? You must plead it in Abatement; we don't know his Name; he might be christened *Christopherus* for aught we know.

Mr. *Ketelbey*. My Lord, for false Spelling———

L. C. J. How doth that appear to us? You are wrong in making your Objection at this Time, we can't take notice what his Name is; in the Record of the Indictment he is called *Christopherus*. Can we enquire what his true Name is, whether in *English* it is *Christopher* or *Christopherus*? We can't tell what his Name is, perchance his Name may be *Christopherus*, and the Name by which he might be christen'd; I desire I may not be understood as if I would prevent you from offering any thing that is material for your Client; but if I can satisfy you that you are improper in Form, it may save the Time of the Court; but if you can offer any thing material, we are ready to hear it.

Mr. *Ketelbey*. My Lord, I hope your Lordship will pardon me, here is the Life of a Man concern'd, and as I would not willingly offer any thing to your Lordship that in the like Cases hath been over-ruled, so neither would I omit any thing that may be material for the Prisoner, whose Defence the Court has intrusted us with; therefore I will go on to the other Objections that we think to be improper *Latin*; *compassavit*, *imaginatus fuit*, & *intendebat*. These are the Words, I don't know whether this *Latin* will go down in *Westminster-Hall*, but I am satisfied it would not in *Westminster-School*.

Here is the *Et Intendebat*, *Et*, a Conjunction Copulative between Verbs in several Tenses; here is *Compassavit* the Preterperfect Tense, *Imaginatus fuit* the Preterperfect Tense, and *Intendebat* the Preterimperfect Tense: Why should not the last Verb have been put into the Preterperfect Tense, according to the Rules of Classical *Latin*, as well as the two former? Therefore we submit it how far it will go as to vitiating the Indictment in Point of false *Latin*.

My Lord, there is one Word more, (*Seisiend'*) the Overt-Act, as laid in the Indictment, is, that the Prisoner *Conspiravit ad sacram Personam Domini Regis capiend'*, *seisiend'*, & *imprisonand'*; by the Words that are coupled with it, I suppose *Seisiend'* is intended to mean, the taking or laying violent Hands upon his Majesty's Person; but sure there was never such a Word in any Indictment before, nor to be found in any Author whatsoever; 'tis neither Classical *Latin*, Law *Latin*, nor to be met with among *Littleton*'s Barbarisms, never naturalized nor inoculated into ancient or modern Use; 'tis a mere fictitious Word Coin'd for this very Purpose without any Precedent, any one Instance to warrant it.

My Lord *Coke*, in his *1st Instit. Fol.* 17. says, That the Word *Seisitus* cometh of the *French* Word *Seisin*, and that in the Common Law 'tis properly applied to Freehold, in Contradistinction to *Possessionatus*, which relates to Chattels: For *Seisitus* and *Possessionatus* are mentioned as Terms of Art, Technical Words in the Law, that by long Use have acquired to themselves one peculiar and determined Signification; for that Reason I don't object against the Word *Compassavit* in this Indictment, it having been always used in Indictments of High-Treason to express compassing the Death of the King, ever since the Statute of *Edward* the Third; so *Murdrare*, *Felonia*, and several others, are known Terms of Art in the Law. But, where did they meet with the Word *Seisiend'*? And if they would fancy it to be a Gerund of some unknow Active Verb, how came they to give it this Sense, to make it signify the same as *Capiendum*?

My Lord, I must beg leave to say, that I apprehend the very Gist of this Indictment, (at least so much of it as relates to this Overt-Act) entirely depends upon this Word *Seisiend'*; and if it does appear to your Lordship to be insignificant, barbarous, false or improper *Latin*, I hope we are proper under the Authority of the late Act of Parliament, humbly to insist upon this Objection, and that it is sufficient to overthrow the whole Indictment.

My Lord *Coke*, in *Calvin*'s Case, says, that Indictments for High-Treason ought to be drawn with the greatest Accuracy and Nicety; but if Mr. *Attorney* will please to shew me, that this Word was ever once used to this Purpose, I will wave my Objection, and admit it to be as elegant a Word as any in the whole Indictment.

L. C. J. I think before the King's Counsel make any Answer to that, we had best have that Part of the Indictment read, that we may the better judge of it.

Cl. of the Cr. reads, *Quod tu* Christopherus Layer, *&c. ad Capiend' Seisiend' & Imprisonand'*, &c.

L. C. J. Ad Capiend' & Imprisonand'. Won't these Words do, suppose the other Word *ad Seisiend'* insignificant?

Mr. Serj. *Pengelly*. My Lord, these Objections have been made with so much Ceremony, and usher'd in with such Pomp, as if something else was meant, than the quashing this Indictment.

We apprehend some of them are improper, and others which may be proper at this Time, are of no Force.

The Objections to the Commission, we apprehend are, improper; it is not in the Power of the Court to quash the Commission, and therefore to make mention of Mis-spelling, and of false and improper *Latin* therein, signifies nothing. As to the Indictment itself, the Court hath a Power, and if they think proper, if there be sufficient Cause may quash it; but the Commission issues under the Great Seal, and that Part of it returned here, is not under the Power of this Court to destroy; but upon reading it, we think this Objection will quite vanish; these Words are used in all Commissions of the like Nature, and are inserted in the very Form of the Commission, and the Caption of the Indictment published in the Treatise, allowed by all the Judges of *England*, call'd, *A Collection of Statutes relating to High-Treason, compos'd for the Assistance of the Justices in* Scotland; and because of the supposed Difficulty of understanding these Words, I will, for the Sake of the Gentlemen of the other Side, read them in the Order they are to be construed, thus, *Ad Inquirend' plenius Veritatem per sacram' probor' & legal' Hom' &c. de quibuscunq; Proditionibus, Misprisionib', &c. per quoscunq; & qualitercunq; Hit' Fact', &c. ac de aliis Articulis, &c. & ad easdem Prodition' & al' Premiss' audiend' & terminand'*; here they are to enquire more fully the Truth, of and concerning all Treasons, Misprisions of Treason by any Person whomsoever committed, *&c.* And if the Words (*plenius Veritat'*) had immediately followed the Word (*Inquirend'*) every Body at first reading must be satisfied that no Objection could be made thereto; and the Objection now is only made on Account of the placing these Words at the End of the Sentence. But it makes no Difference in the Construction or Sense; how otherwise can it be construed or understood? But to enquire more fully the Truth of those Offences there enumerated, and what Persons are guilty, *&c.* And therefore I take it, that the Form of the Commission is proper, and will be justified, not only by the Sense of it, but by the usual and common Course of Proceedings.———As to the next Objection, we apprehend that hath been already over-ruled; the Word (*Christopherus*) with an *E*, and not with an *O*: And if there be any Difference in the Name, that must be pleaded in Abatement; because if they would take Advantage of it, they must plead that his Name is otherwise than is expressed in the Indictment. This Man's Name *Christopherus* may be with an *E* as well as an *O*, for aught appears: But we apprehend, that the Name *Christopher* is seldom writ in *Latin* with an *O*, but usually with an *E*; if they think there is any thing material in the Objection, let them plead it in Abatement, and we are ready to answer them.

My Lord, as to the next Objection, that the three Verbs which charge the High-Treason, *viz. Compassavit*, *Imaginatus fuit*, & *Intendebat*, that they are not in the same Tenses; we submit that in the strictest *Latin*, there is no Necessity the last Verb should be of the same Tense with those that go before the Copulative (*Et*): Sure, though *Compassavit* and *Imaginatus fuit* be in the Preterperfect Tense, yet *Intendebat* may be well added in the Preterimperfect Tense, and that will make no Difference, they being all three alledged and found in the Time past, before the Indictment exhibited.

My Lord, the next Objection which they seem to rely upon, is at the Conclusion of the Indictment, and that is to the Word (*Seisiend'*, *&c.*) They say, the Precedents have been look'd into, and there is no such Word to be found in any Indictment of High-Treason; I beg leave to say in Answer, that since the Assassination-Plot against King *William*, there hath been no such villainous Attempt of this Nature; therefore no Wonder if it cannot be found in other Indictments where there has been no Occasion for the Word. This is an Overt-Act of conspiring and agreeing to take, seize, and imprison the very Person of the King; and it must be laid according to the Fact itself; but if this be not a proper Word, though I think the Word is proper and significant, yet because this is not made use of in alledging the Treason itself, but the Overt-Act or Evidence of the Treason, it will not vitiate that Part of the Indictment: For if any one of these Words alledged is proved upon the Trial, the Prisoner ought to be found Guilty, whether he compassed to take the Person of the King, or to seize his Majesty, or to imprison and detain him; any one of these Attempts is sufficient, if proved, and the Prisoner ought to be convicted. There was an Objection of this Nature taken upon one of the Trials for High-Treason, before my Lord Chief Justice *Holt*; but he was pleased to say, that in alledging the Overt-Acts, where several Overt-Acts are alledged, or several Words are used to express the same Overt-Act, if they were mistaken in one of the Words, yet if there were other Words sufficient in the Indictment to express the Overt-Act; or although one entire Overt-Act was insufficiently alledged, yet if there was another Overt-Act well laid, the Court would not quash the Indictment, because this would be to deprive the Crown of the Right of giving Evidence to prove any other Part of the same Overt-Act, or any other Overt-Act alledged in the Indictment; so that we hope this is not a proper Objection, because the Court cannot quash the whole Indictment if any other Overt-Act is sufficiently expressed, but the Indictment must stand.———But the Word is proper, because the Words *Seisire ad Seisiend'* are Terms known in the Law, and it is frequently used in Actions of Trespass, *Quod cepit*, *seisivit*, & *abduxit*, or *asportavit*. My Lord, we think the Word *ad seisiend'* is a proper Expression in this Case, to signify the Attempt or Design to seize and apprehend the Person of his Majesty; and we hope there is nothing in these Objections.

Mr. Att. Gen. My Lord, we are not against the Gentlemen of the other Side's insisting upon every thing that may be for their Client's Service. But sure these Objections have nothing in them; there is no Colour of Reason to support them. My Lord, as to the Exception taken to the Commission, let us consider, if there was any Weight in it, how it can possibly be taken at this Time?———By Virtue of the Act of Parliament passed in the 7th Year of the Reign of his late Majesty King *William*, it is provided, That no Indictment for any of the Offences aforementioned

mentioned in that Act, which are Treasons, &c. nor any Process or Return thereupon, shall be quashed on the Motion of the Prisoner or his Counsel for mis-writing, mis-pelling, or false or improper *Latin* (under which last words the Counsel for the Prisoner would entitle themselves to take this Objection) unless such Exception shall be taken and made in the respective Court, where such Trial shall be, by the Prisoner or his Counsel assigned, before any Evidence given in open Court upon such Indictment.——But the Commission is a Thing distinct, and neither Indictment, Process, or Return thereupon; and by Consequence no Objection can be made to the Commission at this Time by Virtue of that Act: but however, because they may not trouble us with these Objections at another Time, we beg Leave to answer them now.

My Lord, these Words (*plenius Veritatem*) are the very Point of the Enquiry of the Commissioners of *Oyer* and *Terminer*, for they are to enquire, by the Oaths of lawful Men of the Country, fully of the Truth of all Treasons, Misprisions of Treasons, &c. committed in that County, and that is the Tenour of the Commission. In the Book printed by the Approbation of all the Judges of *England*, soon after the Union of the two Kingdoms, all the Rules and Methods of Trial in Cases of High-Treason are laid down, there is the Commission of *Oyer* and *Terminer* printed at large; and it is exactly in the same Words with this; and your Lordship may please to observe, that immediately after those Words *plenius Veritatem* there is a Comma, and none before; the whole Sentence before is entire, and therefore in Construction these Words, *plenius Veritatem*, refer to the Words *ad inquirendum*, at the Beginning of the Sentence; and the Sense is plain, that the Commissioners are to enquire by the Oaths of good and lawful Men of the Country, and by other Ways and Means, &c. *plenius Veritatem, de quibuscunque Proditionibus, Misprisionibus*, &c. and then the Commission goes on, and there comes after the Comma, & *ad easdem Proditiores & alia Præmissa hac vice audiend' & terminand' secund' leges*, &c. In our legal Proceedings in *Latin*, we are not so nice as to confine ourselves to the *Latin* of the Classicks; but this is very proper *Latin*, and the disjoining of the Words *plenius Veritatem* from the Words *ad inquirendum*, by which they are governed by the Interposition of so many Words, is no Objection; for nothing is more common in the best Authors, than placing the most material Words at the Close of a very long Sentence, which in point of Construction must refer to others at the Beginning. And therefore I hope we shall hear no more of this Objection.

As to the *Christopherus* being with an *E* instead of an *O*, that is not a proper Objection at this Time. No Man will pretend to say, he may not be christened by that Name, as *Henry* is the usual Name, *Harry* is the common Nick-name for *Henry*, yet a Person may be christened *Harry*, and so have many Persons been.

But, my Lord, we say this is a Word used in all the Law Proceedings for *Christopher*, and spelt in this very Manner with an *E*.

As to the other Objection; as to the Alteration of the Tense in the Words *compassavit, imaginatus fuit, & intendebat:* the Objection is made as if we were tied down to those exact Forms of Grammar; if the sense is plain, if the facts are explained by proper *Latin* Words, it is enough for us, whether they are carried on sometimes in one Tense, and sometimes in another, provided they sufficiently charge the Fact to be done.

The last Objection is the Word *seisiend'*, that it is not a Word known in the Law; if that would hold, it would not quash the Indictment, because there are several other Words to the same Effect, which sufficiently express this villainous Overt-Act, without this Word *seisiend'*; for it is laid, that the Prisoner did propose, consult, and agree, *ad sacram Personam dicti Domini Georgii nunc Regis*, &c. *capiend', seisiend', imprisonand', & in Custod' detinend'*. But we insist, that this is a very proper Word. In the Court of Exchequer the Words used in Cases of Seizure is *seisivit*. Writs issue commanding the Sheriff *seisire* such Lands, &c. into the King's Hands, and the Sheriff returns *seisiri feci*: so that if this Word was looked upon as an unknown and unintelligible Word, what must become of many Judgments and Proceedings in that Court? It is a Law-Word that is here applied to the Person of our Sovereign, and as it is in the Proceedings before-mentioned applied to seizing Lands, &c. Why may it not be applied to the seizing of a Person? And then if *seisire* be proper, the Gerund from that must be *seisiendum*, And therefore we apprehend, my Lord, that this is a plain Answer, and that there is no Colour of Reason for this Objection.

Mr. *Soll. Gen.* My Lord, as I apprehend these Exceptions have no real Foundation, nor scarce any Colour in themselves, so I don't know whether it would not be giving too much Credit to them, for so many of the King's Counsel as attend your Lordship on this Occasion, to spend the Time of the Court in giving Answers to them. The true Answers, and all the Answers which can be given, have been already offered and very fully enforced; and therefore I shall not trouble your Lordship with any thing further.

Mr. *Hungerford.* My Lord, I beg a few Words by way of Reply. As to the first Objection, we hope it is not answered: we object against the Words *plenius Veritat'*, as Words of no Sense or Meaning, as ranged or placed in this Indictment. Mr. *Attorney* hath endeavoured to make them Sense by transposing them, and inserting *plenius Veritat'* ten Lines before what the Indictment hath. We must take the Words as they are in the Indictment: and if they are not Grammar, or intelligible there, the Objection still holds. I know not what Liberty the King's Counsel hath to transpose the Words. I know School-boys sometimes pick up Words without Regard to Grammar, to make what they call Nonsense-verses; but I never knew an Attempt before by transposing of Words, to make Nonsense Grammar, Prose, or Poetry. There is one Thing that hath been mentioned, that the Judges have settled the Forms of Proceedings in Cases of High-Treason by Direction of the House of Lords, and this *plenius Veritat'* is got into the Form inserted in that Treatise: that book, my Lord, notwithstanding the solemn Allowance of it by the Judges, is not, with Submission, a conclusive Authority: It was denied to be so in the Case of *Matthews*; which Case I can the better speak to, because I was of Counsel in it. The Objection taken in the Case of *Matthews* was to the Pannel of the Jury, for that the Addition and Places of Abode of the Jurymen were not inserted in the Pannel, according to the Directions of that Book, the better to guide the Prisoner in his Challenges. My Lord Chief Justice *King*, who presided at that Trial, assisted by all the then Judges of *England*, (except your Lordship, who was absent) over-ruled that Exception; and I think the rest of my Lords the Judges, now present, concurred in that Resolution. Wherefore, if we have no Authority to combat with, but the Authority of that Book, which hath been solemnly denied to be a good Authority, we hope this Objection shall stand.

My Lord, as to the Word *Christophorus*, without Doubt the Etymology of the Word is as Mr. *Ketelbey* hath opened; and there is this further to justify that Way of Spelling which we contend for, even the two first Syllables of the Word in the Indictment are *Christo*, as the *Greek* with an O, and not *Christu*; and in Conformity with the *Greek* Spelling in the two first Syllables of the Word, we hope the next Syllable must be spelt so too: but since it is contended, that the Substance of this Objection must be put into a Plea in Abatement, we shall wait the Direction of the Court as to that Matter. As to the Words *compassavit, imaginatus fuit, & intendebat*, there is something in that Objection too; they all relate to a Time past, but they are in different Tenses or Time; there is the Preterperfect and Preterimperfect Tense, and there is the Conjunction Copulative between them, as if both Tenses implied the same Times, which it is certain they do not, and therefore they charge naught; for a Thing cannot be done lately and formerly, and both at the same Time.

As to the other Words *ad capiend', seisiend' & imprisonand'*, we are upon the Forms of an Indictment, and must be governed by the usual Forms: I believe there is no Instance on Record, where these Words are made use of in any Acquisition of this Kind; for which Reasons we humbly hope this Indictment shall be quashed.

Mr. *Ketelbey.* My Lord, I beg Leave to offer a Word or two by Way of Reply: Mr. Serjeant *Pengelly* is pleased to say, that Sense may be made of these Words, and that *plenius Veritatem* as it is, is good *Latin*, by lifting these Words from the Bottom of the Sentence to the Top, and making them follow *ad inquirendum*. I believe four Parts in five of the Caption interfere between the *inquirendum* and the *plenius Veritatem*, a whole Catalogue of Offences, several independent Sentences, different Times, Persons, Places, Things all stationed between, and yet these Words are to be united: I would be glad to know by what Rule of Grammar this can be done?

As to the Word *Christopherus*, I shall not further insist upon that as a proper Objection under this Head, because your Lordship seems to be of an Opinion that we ought to have pleaded it in Abatement.

As to the Word *seisiend'*, it hath been said it is a Word well known in the Exchequer, but they don't shew one Instance where-ever it was used: indeed they mention a Precept to the Sheriff *seisiri facias*, and the Return *seisiri feci*, but what is that to *seisiendum*; the one is justified by Usage, the *seisitus* as *seisiri*; besides *seisiri* is there used in the very same Sense which the Law hath imposed upon it; it is to be put into Possession, the Lands are so delivered by the Sheriff into the Hands of the King, that he becomes seized thereof, *ut de feodo & in jure Coronæ*, till an *Amoveas manus* be obtained: but if ever that Word was put into any Indictment to signify to seize and imprison the King, 'tis entirely unknown to me.

Indeed here is one Piece of Doctrine offered, that if it holds good puts an End to all our Objections, and even to the Act of Parliament on which they are founded; but I must own it is entirely new to me: we are told there are other Words in the Indictment, and other Overt-Acts, and if one Act is sufficiently expressed by any one Word, though there be Words that are improper and false *Latin*, yet it shall not vitiate the Indictment; what avails then this Act that empowers us to make Objections to Mis-writing, Mis-pelling, false and improper *Latin*? 'Tis impossible to suppose, that whoever hath the Drawing of an Indictment should make Faults, and blunder on from first to last: no, in an Indictment for High-Treason the greatest Care is, or ought to be taken in the Drawing of it; and where the Life of a Person, and all that is valuable is at Stake, the Law will not subject any one to such dreadful Penalties and Forfeiture for an Offence expressed only by Words of an unknown or dubious Signification; and therefore, we hope that this goes to the whole, and that the Indictment shall be quashed, or else it would be nugatory for us to be allowed to take Exceptions to one Part of the Indictment, if the other were good.

I believe Mr. *Attorney* won't shew any Instance (I submit it to his greater Experience), where he ever knew one Overt-Act in an Indictment set aside, and the rest of the Indictment held good: Exceptions have, ever since the making this Act, been taken and argued by Counsel, and determined; but if this be a sufficient Answer, surely they spent the Time of the Court to very little Purpose, in debating whether there were any Faults in the Indictment, when it was so easy to shew it was not faulty throughout. Mr. Serjeant *Pengelly* has been pleased to mention the Opinion of my Lord Chief Justice *Holt*, upon one of the Trials before him, that although one entire Overt-Act was insufficiently alledged, yet if there was any other well laid, the Court would not quash the Indictment; I wish he had told us in what Trial, or where it is to be found, for I don't remember it in any of the printed Trials: as to what was mentioned, with Regard to the Authority of that Book, for the Words *plenius Veritatem*, Mr. *Hungerford* rightly observed, that the Authority of that Book was utterly denied at the Trial of *Matthews*; your Lordship was not there, my Lord Chief Justice *King* presided then upon the Bench, that Book particularly directed, that not only the Names of the Jurors should be inserted in the Pannel, but also their Additions, and the Places where they lived; instead of that, the Copy of the Pannel delivered consisted only of a long List of bare Names, no Additions, nor where they lived; whereupon we made our Objection, and insisted on the Authority of that Book. Notwithstanding which, the Objection was then over-ruled, and consequently we hope we shall not be pinn'd down to the Authority of this Book any more in this Case, than the other; for these Reasons we hope your Lordship will be

of Opinion that the King's Counsel have not given a full Answer to our Objections, and that the Indictment shall be quashed.

Mr. *Hungerford.* My Lord, I beg leave to hand up this Precedent of my Lord *Coke*'s, where these Words are entirely left out.

L. C. J. What is the use you would make of setting up an extrajudicial Opinion of my Lord *Coke*'s, as you call it, against the Opinion of all the Judges? Because it is not in my Lord *Coke*'s Form, therefore it is not necessary or right; but at the same time you would have us governed by my Lord *Coke*'s Opinion, you would have us reject the Opinion of all the Judges. My Lord *Coke* may be wrong; the Opinion of all the Judges in an extrajudicial Case may be wrong: but it would be very strange to give a greater Weight to the extrajudicial Opinion of my Lord *Coke*, because he hath left the Words out, than to the Opinion of all the Judges that have put the Words in; neither is conclusive; but certainly the Opinion of all the Judges of later Times, must have more Weight than the extrajudicial Opinion of a single Judge at any former Time.

As to the Matter of this Objection, you say that in the Recital of the Commission of *Oyer* and *Terminer*, in the Caption of the Indictment, it is said the Commissioners had Authority to inquire *de quibuscunq*; *Proditionibus*, &c. *plenius veritatem*; *plenius veritatem* comes in afterwards: We have been told of *Classical* and *Ciceronian Latin*; and if there be any Regard to be had to that, is any thing more common in every Part of *Cicero*, than to put Words last, that in Construction must come first? I don't know any Rule that is laid down when the Words coming last, are in Construction to be taken first, but only this, that the Construction is to be according to the natural Sense and Import of the Words; and if so, then in the Authority of the Commissioners, where it is said they were to inquire *de quibuscunq*; *Proditionibus*, &c. *plenius veritatem*, in Construction the last Words must be taken first. You say as they stand it is Nonsense, and signifies nothing, and the Words are nugatory; 'tis not material where they stand, they must be taken in that manner of Construction as would make them significant, that is, by taking the last Words, *plenius veritatem*, to go first in Construction; then it is very proper and just, and all will be well.

As to the Matter of the Misnomer that you have given up, and very justly, for you are proper to plead that in Abatement.

The next Objection is, you say here is improper *Latin*, *Compassavit* in the *Preterperfect Tense*, *Imaginatus fuit* in the same *Tense*, and *Intendebat* in the *Preterimperfect Tense*; take these Words by themselves, suppose it had been *Compassavit* only, *Imaginatus fuit* only, or *Intendebat* only, would not either of these Words, whether in the Preterperfect or Preterimperfect Tense, have been sufficient to have charged Mr. *Layer* with having some Time before compass'd and imagin'd the Death of the King? Every one of these Words charge him with the Intent of Compassing and Imagining, and that relates to a Time that is past, whether *Preterperfect Tense*, or *Preterimperfect*, that is not material: Then as to one of the Overt-Acts, as here be a great many to which no Objection is made, the High-Treason is compassing and imagining the Death of the King; the Overt-Acts are several, either is sufficient to maintain the Treason of compassing and imagining the Death of the King. One of the Overt-Acts is, that he did design, consult, and agree *ad Capiend'*, *Seisiend'*, *& Imprisonand'*, the Person of the King. Suppose it had been *ad Capiend' & Imprisonand'*, then you say it had been well enough; but the putting in this Word *Seisiend'*, will vitiate the whole, because it is an improper and vicious Word. I don't know that, nor dare not say in a Court of Law that it is an improper and vicious Word: You are told of a Court of Law where the Word is used, and hath the same Signification as in the Indictment; as to seize Lands into the Hands of the King, to seize Lands, or to seize the King's Person, the Word is the same, and if *Seisire* is good, and enough to signify to seize Lands, *Seisire* is enough to signify to seize the King's Person; therefore I think it is a proper Word; but whether it is or not, there is sufficient in the Indictment to maintain the Charge against Mr. *Layer*, for he is charged with a Consultation and Agreement to take the King, with a Consultation and Agreement to imprison and detain the King in Prison: These are sufficient without the Word *Seisiend'*, but the Word *Seisiend'* hath been a Law-Word, and used in our Proceedings at Law, never objected to; but if we say it would not signify a Seizing, we must set aside half the Proceedings in the Court of *Exchequer*. These are all the objections you have made, and in my Apprehension they can be of no Use or Service to your Client; they signify nothing.

Mr. Just. *Powys.* I am of the same Opinion, Not the least Doubt remains with me.

Mr. Just. *Eyre.* I think the Caption of the Indictment is in common Form, and the Exceptions to the Indictment itself are fully answer'd.

Mr. Just. *Fortescue Aland.* I am of the same Opinion, and think the Objections to be of no Weight.

L. C. J. The Objections being all over-ruled: Demand of him what he hath to plead.

Cl. of the Cr. Christopher Layer, hold up your Hand. How say you, *Christopher Layer*, are you Guilty of the High-Treason whereof you stand indicted, or Not Guilty?

Prisoner. I desire my Plea of Misnomer may be received. And I plead Not Guilty as to the Fact.

Cl. of the Cr. Reads the Plea.

Et Christopherus Layer ad Barram hic duct. in propria persona sua venit, & habito auditu Indictament. prædict. dicit quod ipse est persona in Indictament. prædict. mentionat. & intens. per nomen Christopheri Layer, nuper de paroch. Sti. Andræi Holborne in Com. Mid. Ar. & versus quem Indictament. prædict. prolat. existit pro alt. Proditione prædict. & dicit quod ipse ad Indictament. illud respondere compelli non debet, quia dic. quod ipse diu ante tempus caption. Indictament. prædict. necnon ante tempus offensi in Indictament. ill. specificat. & fieri supposit. Baptizatus fuit per nomen Christophori, & per id nomen Christophori semper a tempore Baptization. suo hujusque vocat. nuncupat. & cognit. fuit, & hoc parat. est verificare; unde ex quo ipse non nominatur in Indictament. prædict. per nomen Christophori, petit judicium de Indictament. illo, & si ipse ad Indictament. prædict. ulterius respondere compelli debeat, &c. & quoad prodition. in Indictament. prædict. mentionat. ipse prædict. Christopherus Layer dicit quod ipse in nullo est inde culpabilis, & inde de bono & malo ponit se super Patriam, &c. *

J. Hungerford.
Abel Ketelbey.

L. C. J. Your Plea is received. He hath pleaded in Abatement first, and then pleads over to the Treason. What say you to it?

Mr. Serj. *Pengelly.* It can't be expected that we should have a Replication ready to their Plea in Abatement: We were not aware of this; therefore we ought to have time to draw up a Replication.

L. C. J. What say you to it?

Mr. *Hungerford* and Mr. *Ketelbey.* My Lord, we have no Objection to it.

L. C. J. Well, the Plea is recorded. Consider now the Question on this Plea is, whether he was baptized by the Name of *Christ'phorus* or *Christopherus?*

Mr. Serj. *Pengelly.* My Lord, To-morrow and next Day being Holidays (else we should have been ready by To-morrow) we therefore pray, that he may be brought up again on *Saturday* by Rule of this Court.

Mr. *Hungerford.* I have some doubt whether it can be by Rule, or by *Habeas Corpus.*

L. C. J. When once a *Habeas Corpus* hath been granted, and he is brought before us, we can order him to be brought again by Rule. He must be taken back again, and brought up here on *Saturday* next.

Die Sabbati 3° die Novembris 1722.

The Prisoner was this Day brought to the King's-Bench-Bar *by the Lieutenant of the* Tower, *in Obedience to the Rule of Court made the 31st of* October.

Mr. Att. Gen. My Lord, I have demurred to the Prisoner's Plea in Abatement, and pray the Demurrer may be read.

Cl. of the Cr. reads the Demurrer.

Et Robertus Raymond Mil. Attorn. Dom. Regis Generalis qui pro eodem Dom. Rege in hac parte sequitur habito audit. placiti præd. in cessation. Indictament. præd. superius placitat. pro eodem Dom. Rege dicit quod idem placit. materiaque in eodem content. minus sufficien. in lege exist. ad ipsum Christopherum a respondend. ad Indictament. ill. excusand. ad quod quidem placit. idem Attorn. General. necesse non habet, nec per legem terræ tenetur aliquo modo respondere. Et hoc idem Attorn. General. pro eodem Dom. Rege parat. est verificare prout Cur' &c. Unde pro insufficient. placit. ill. idem, Attorn. Dom. Regis General. pro eodem Dom. Rege petit judic. & quod Indictament. prædict. bon. & sufficiens adjudicetur, &c.

Rob. Raymond.

Mr. Att. Gen. We pray they may join in the Demurrer immediately.

Mr. *Hungerford.* My Lord, it is altogether a Surprize to us, and as the Clerk hath read it, it is impossible for us to take the Substance of this Demurrer. We therefore hope we shall be allowed a few Days to consider of this Matter of joining in Demurrer. We shall not ask many. The Precedents are so, the Prisoner was always indulged with some time in a Case of this Nature. Before the Act of Parliament for regulating of Trials, where Matters of Law were started, or any special Pleading did arise, the Prisoner was indulged with a great Number of Counsel. *Fitzharris* had five, a greater Number than I ever knew engaged on one Side in Deliberations of this kind, unless it were that Number of learned Counsel which met to advise upon, and adjust this Demurrer. But I think in the ordinary Course of the Court we are proper to desire two or three Days. Two or three Days is but a little time, especially when the Life of a Man is concerned. Mr. *Attorney* took from *Wednesday* to *Saturday* to consider of our Plea, we hope at least the same time shall be allowed to us to consider of this Demurrer. I have in my Hand the Arraignment of, and Proceedings against *Fitzharris*, he was indulged several Days.

Mr. *Ketelbey.* My Lord, I have brought the Book along with me relating to *Fitzharris:* As to the Matter of having time to join in Demurrer, whether we are not entitled to it by the Rules of the Court, I must submit to your Lordship. It is a Case of great Consequence; and, as I take it, the constant Practice is, that a four Days Rule is always given to join in Demurrer. This is always done, as I am informed, on the Crown-side as well as the Plea-side. The Tenor of the Rule is either to join in Demurrer within four Days, or to wave the Plea; but Mr. *Attorney* requires to do it immediately. In *Fitzharris*'s Case the *Attorney-General* demurred in Court, and the Counsel on the othe other side refused to join in Demurrer immediately, and they had from *Wednesday* to *Saturday*. We hope therefore there shall be a four Days Rule for us to join in Demurrer as in all other Cases. If we are not regular in insisting upon four Days, we hope at least your Lordship will indulge us with some Time; or if we do immediately join in Demurrer, that we shall have some time to prepare ourselves to argue it.

L. C. J. How say you, Mr. *Harcourt?* how is the Course of the Court?

Mr. *Harcourt.* My Lord, in criminal Prosecutions for Misdemeanours, two four Day Rules to plead are given, and a peremptory Rule moved for; and then if there be a Demurrer, one four Days Rule to join in Demurrer is given, and a peremptory Rule moved for: But in capital Cases there is no Rule given, either to plead or join in Demurrer; all Proceedings in such Cases being at Bar, the Prisoner is oblig'd on all Occasions to answer immediately, nor can there be any Instance shewn to the contrary.

L. C. J. The Course of the Court is against you.

Mr. *Hungerford.* As to the Course of the Court, I know no better Description of it, than that it is the uninterrupted Usage of the Court warranted by Reason, or at least not contradicted by it. The Officer tells you that in criminal Cases which are not capital there are Rules for four

* The right Way seems to be, that *ph* should be followed with an *o*, and *f* with an *e*, the first being derived from the *Greek*, and the other from the *Latin*. See *Lowick*'s Indictment, Trial 155. where it is *Christophorus Knightley*. See also *Co. Entr.* 51. a. 55. b. 215. c. 309. c. d. 310. a. b. 319. a. 321. b.

Days, and four Days to plead, and likewiſe a four Days Rule to join in Demurrer; and ſurely, if in a criminal Caſe, which is not capital, a Man is indulged four Days; ſurely in a criminal Caſe as this is, which is capital, and doth touch a Man's Life, his Poſterity, and his Eſtate, by Parity of Reaſon, the Indulgence ought to be more than four Days. I beg leave to obſerve one thing in the Caſe of *Fitzharris*, now in my Hand. My Lord Chief Juſtice there aſks the Priſoner, Will you plead over? If you will, you may have any Time in Reaſon. Now, my Lord, we have pleaded over, we have pleaded Not Guilty as to the Offence; ſo that for that Reaſon we might have till *Hilary Term* next, becauſe we have forwarded them in their Journey already by pleading Not Guilty as to the High-Treaſon. And we hope, therefore, the Gentlemen of the other Side won't contend with us for two or three Days in a Caſe of this Nature.

Mr. *Ketelbey*. My Lord, I only beg leave to mention this ſingle Word, that we don't inſiſt upon this for Delay, or to put off the Trial; we have pleaded over to the Treaſon, and in caſe we ſhould join in Demurrer, whatever Time is taken up in arguing it, cannot obſtruct the Proceedings in order to the Trial; Nay, the Trial may be had before the Matter of the Demurrer be determined.

L. C. J. In caſe you ſhould join in the Demurrer, what can you do elſe?

Mr. *Ketelbey*. I believe we ſhall. If we had not thought our Plea would have ſtood a Demurrer, we had not made uſe of it.

Mr. Serj. *Pengelly*. My Lord, what he prays is againſt the Rules of the Court; in all capital Caſes there are no Rules given to plead or join in Demurrer, but the Proceedings are all *Inſtanter*, the Priſoner being preſent in Perſon, and therefore, my Lord, there is nothing in what they aſk. When they put in a Plea in Abatement here at the Bar, which cannot be expected or thought of, it is reaſonable that there ſhould be ſome time to conſider of that, to ſee the Nature of it, and conſider what to anſwer to it. We have demurred to their Plea; no doubt they had conſidered of their Plea whether it was a good Plea in Law, or not; if it be not good, can they amend their Plea in Abatement? It was never allowed: If they can make no Alteration in that, what can they do? They can do nothing elſe but join in Demurrer; it is all they can do; and when they have joined in Demurrer, we ſhall ſee if they have any Reaſon for further Time. But as to what they ſay, that as to the Sufficiency of the Plea, it may be argued another Time; and as they have pleaded over to the Treaſon, there needs be no Delay as to the Trial; I would be glad to ſee whether by this they do not deprive the Crown of the Election, to proceed in ſuch manner as ſhall be thought moſt advantageous for the carrying on the Proſecution: But is it adviſeable to leave a Plea in Abatement to the whole undetermined, and to try the Iſſue firſt? I believe they can ſhew no ſuch Inſtance, and therefore in all capital Caſes, as well as in criminal, the Plea in Abatement goes to the whole, to deſtroy the whole Indictment, and indeed ought to be determined before the Court goes on with the Trial. My Lord, we are ſurprized at what they mean by this, when they can do nothing elſe but join in Demurrer, and therefore we hope they ſhall join immediately.

Mr. Att. Gen. My Lord, what we inſiſt upon is not a new Thing; the conſtant Practice in Caſes of this Nature has been, that if a Demurrer is put into the Priſoner's Plea, he muſt join in Demurrer *inſtanter*. I believe the Gentlemen of the other Side can't ſhew one Inſtance to the contrary. The Priſoner can do nothing but join in Demurrer. As to what has been ſaid about our having Time from *Wedneſday* to *Saturday*, the Reaſon was becauſe *Thurſday* and *Friday* were no *Weſtminſter-Hall* Days, for which Reaſon we could not have the Priſoner brought up before this Day. The putting in a Demurrer to this Plea can be no Surprize to the Counſel for the Priſoner; for Yeſterday we ſent Copies of our Demurrer to them. Mr. *Pember*, the Priſoner's Clerk in Court, had a Copy of it by two of the Clock in the Afternoon; and the Priſoner himſelf had one about four o'Clock. As to the Caſe of *Fitzharris* which has been cited, it was a Plea looked upon to contain Things of very great Difficulty; the Time aſked for there was not to join in Demurrer, but the time applied for was for ſettling the Plea; but as ſoon as Mr. *Fitzharris* had pleaded, and the *Attorney-General* had demurred to it, the Court ordered the Priſoner to join in Demurrer *inſtanter*. As to what has been ſaid, that we may proceed to Trial on the Plea of Not Guilty before the Demurrer to the Plea in Abatement is determined, that is by no Means adviſeable; the Conſequence of that may be very miſchievous; for if the Court ſhould be of Opinion that the Plea in Abatement is good, after we have diſcloſed the whole Evidence againſt the Priſoner upon the Trial, though we obtained a Verdict for his Majeſty, the whole muſt be ſet aſide; and therefore we hope your Lordſhip will not break into the common Method of Proceedings, but make the ſame Rule for the Priſoner, as always has been made in Caſes of the like Nature; which is, that he ſhall join in Demurrer immediately.

Mr. Sol. Gen. My Lord, I agree with the Counſel for the Priſoner that we are in a Caſe of Life, and that is the Reaſon why their Client ſhould have all the Indulgence the Law will allow him. But I beg leave to obſerve, that we are not now on a Queſtion that directly concerns the Merits of the Caſe, nor whether a Priſoner who is to anſwer for his Life at this Bar, ſhould have time to ſend for his Witneſſes, or prepare for his Defence. That indeed might be of a different Conſideration. But we are now barely upon a frivolous, dilatory Plea, as frivolous a Plea as ever was offered in any Caſe whatſoever; and the Queſtion is, whether they, who have prepared and put in this dilatory Plea, ſhall have time given them to conſider, whether they will join in Demurrer upon it or not? As to the Caſe of *Fitzharris*, whatever they have inferred from it, I think it rather turns againſt them. Was that a Plea of *Miſnomer?* A Letter pretended to be miſtaken in a Name, which I beg leave to ſay, when conſidered, will appear to have been always ſo written in legal Proceedings: No; it was a Plea of the Pendency of an Impeachment for the ſame Offence, ſent up by the *Houſe of Commons* to the *Houſe of Lords*, and by Conſequence, in that Caſe, the Prerogative of the Crown, the Juriſdiction of the Lords and the Privileges of the Commons were highly concerned. This was a Queſtion of as great Weight, and perhaps of as great Difficulty, as could come before the Court, and therefore the Priſoner had time given him to plead that Matter; but when the *Attorney General* demurred to it, the Priſoner joined in Demurrer inſtantly: And as Mr. *Harcourt* acquaints your Lordſhip, the Practice is, that there is no ſuch Rule for proceeding upon Demurrers in capital Proſecutions as in other Caſes; and this appears by their never being ſet down in the Paper to be argued, as Demurrers always are in other Cauſes. So it was in the Caſe of *Fitzharris*. That was argued by four or five Counſel of a Side, without being ſet down in the Paper. In the Caſe of the Priſoner, which is your preſent Conſideration, more hath been done for him than was done for *Fitzharris*. Here is not only a Demurrer given in by Mr. *Attorney* at the Bar, but the Priſoner's Attorney had a Copy of the Demurrer at Noon the Day before, and conſequently they could not want Notice that we intended to demur, nor be under any Surprize from it. What then would they take Time for? Can they do any Thing but join in Demurrer? Can they amend in capital Caſes? Or could they amend a Plea in Abatement in any Caſe? They know very well that they cannot. Can they withdraw their Plea? I believe they cannot do that neither without the Conſent of Mr. *Attorney General*. If this be ſo, would they take time to conſider whether they ſhall join in Demurrer, when they have no Choice, when it is impoſſible for them to do any thing elſe? But, my Lord, the Method of proceeding we are now inſiſting upon, hath been always taken in capital Caſes. I agree, when the Queſtion has concerned the Merits of the Priſoner's Caſe, or when he has been to prepare and conſider of ſome Matter which has been, ſtrictly ſpeaking, his Defence, Time hath been allowed, but not in other Inſtances. Where the Exception taken hath been to the Juriſdiction of the Court, and time has been deſired to make it good, it hath been denied; as in the Caſe of my Lord *Preſton*, who was tried before my Lord Chief Juſtice *Holt*, and other Judges at the *Old-Bailey*. My Lord *Preſton* inſiſted that he was a Peer created by Letters Patent of King *James* the Second, and conſequently that the Court at the *Old-Bailey* had no Juriſdiction to try him, and he prayed time to produce his Letters Patent in order to prepare and make good his Plea; but the Court refuſed to give him time for that Purpoſe. And I believe it will be found, that in all Inſtances where Pleas have appeared on the firſt View of them to be merely dilatory, and offered for no other Reaſon but to delay that Juſtice which ought to be done to the Crown, the Judges have refuſed to aſſiſt the Priſoner with any time beyond the ordinary Rules of the Court.

Mr. *Reeve*. I ſhall not take up your Lordſhip's time much in this Caſe. My Lord, we think in Civil Actions the Court on Motion would ſet this Plea aſide, but in a Caſe of Life it is received; and Mr. *Attorney* has thought fit to demur to it. Is any Advantage loſt, for the Priſoner to join in Demurrer inſtantly? I apprehend what they move for is to have Time to join in Demurrer. Are they not as ready to do that now, as if they had a Week or ten Days time given them? Is there any thing elſe can be done? And is there any Occaſion for time to do that which muſt be done? And cannot they as well join in Demurrer now, as if they had more time to do it? Certainly they may, my Lord, ſince by the Rules of the Court (as Mr. *Harcourt* informs your Lordſhip), there is no Rule given, but they are to join inſtantly. There is no Reaſon to allow them Time, ſince they can loſe no Benefit or Advantage by joining inſtantly. So then, as we apprehend, we are in the Courſe of the Court, and there is no Reaſon why the Courſe of the Court ſhould be altered in this Caſe; we therefore hope that they ſhall join in Demurrer immediately.

Mr. *Weſt*. My Lord, I think there is nothing in the Exception of his Counſel not being ready to argue his Plea: No doubt they conſidered of it before they brought it in; and when they had produced their Plea, Mr. *Attorney* demurred to it. I can't ſee why they ſhould inſiſt ſo much for Time, when they can do nothing elſe but join in Demurrer; therefore we hope that they ſhall inſtantly join in Demurrer.

Mr. *Hungerford*. My Lord, I beg leave to ſet a Matter of Fact right, that is as to the Caſe of *Fizharris*, which was mentioned as an Authority againſt us by Mr. *Attorney*, but in truth is not ſo; for though *Fitzharris*'s Counſel did join in Demurrer immediately (or *inſtanter*, as 'tis called) yet that was not by the Coercion of the Court; but they voluntarily offered to join in Demurrer, upon an Opinion (as I preſume) of their own great Abilities and Self-ſufficiency in the Matter. But we have not that Opinion of our *extempore* Performances, but deſire time to conſider of this Matter. As to my Lord *Preſton*'s Caſe, quoted by Mr. *Sollicitor*, it is true the Court did not give him leave to ſend for his Letters Patent, becauſe, as my Lord himſelf had opened them, and the Truth was, his Letters Patent were dated at St. *Germains*, and granted by K. *James* there, after his Abdication; and it would have been the higheſt Indignity both to the Court and the Government, to have ſuch Letters Patent pleaded, or inſiſted on; and I believe no Gentlemen at the Bar then, or now, would have ſigned ſuch a Plea, which if allowed would have implied that the Government was not well ſettled in their Majeſties King *William* and Queen *Mary*, and that King *James* (though at St. *Germains*) had a Right to create Peers, and conſequently was really King. But if my Lord *Preſton* had had Letters Patent regularly granted by King *James* or King *William*, in his Chambers, can any one ſay they would not have given him leave to ſend for them? Moſt certainly they would; but it appeared they were dated at St. *Germains*, and granted to him there; that, with humble Submiſſion, was the Reaſon why they would not indulge him with Time, and that Precedent, therefore, I hope, is of no Weight in this Caſe. It is ſaid we are tied down by our Plea; we knew our own Strength when we pleaded it, and therefore ought to be ready to argue it: But if my Memory doth not fail me (and therefore I ſpeak it with ſome Doubt), I believe there are Inſtances where even in a criminal Caſe a Plea hath been amended. I believe it was ſo done in the Caſe of my Lord *Banbury*, which

was

was a Plea to the Juriſdiction of the Court. My Lord, we ſhall deſire but a very little Time, which I hope will be granted us.

Mr. *Ketelbey*. My Lord, as to *Fitzharris*'s Caſe, the Plea was amended there: The firſt time it was brought in by Mr. *Fitzharris* himſelf to the Bar, the Plea was brought in and read in Court; after the Plea was read the Court aſſign'd him Counſel, and gave him from *Saturday* to *Wedneſday* to put the Plea in a regular and legal Method; and it was altered and brought in again on *Wedneſday*. As to what the *Attorney* ſays, that the Court compelled him to join in Demurrer inſtantly, the Words of the Book which I have in my Hand are; "We that are aſſign'd Counſel for "the Gentleman at the Bar, we don't deſign to delay the Proceedings, "but to declare that we will join in Demurrer with them immediately." Theſe are the Words of the Book; ſo that it was the voluntary Act of the Counſel, and they were not at all compelled to it by the Court. As to what Mr. *Harcourt* obſerves to be the Courſe of the Court, and that we can't ſhew one Inſtance to the contrary; I don't know whether they can ſhew one Inſtance for it, except in the Caſe of *Fitzharris*; if they can ſhew in any capital Caſe one Inſtance, we ſhall ſubmit.

It is called a frivolous Plea, the Variation of one Letter, and never writ otherwiſe. Whether it is frivolous or not will appear when it comes before your Lordſhip in Judgment: As to its never being wrote otherwiſe than with an *E*, I don't believe they can find it in any Book either great or ſmall ſpelt ſo, unleſs they have met with it in *Inſtructor Clericalis*: All the Books of Authority are otherwiſe; I believe that one carries with it but little Weight. As to my Lord *Preſton*'s Caſe, which Mr. *Sollicitor* is pleaſed to cite againſt us, that the Court would not allow him time to make out his Plea, Mr. *Hungerford* hath given an ample Anſwer to that, and a true one as to the Circumſtances; but if the Caſe of that Lord had been ſuch as the Gentlemen of the other ſide are pleaſed to ſtate it, What doth it prove, but the contrary to what the Court did in *Fitzharris*'s Caſe, and therefore the moſt that can be made of it is one Authority againſt another? and where Authorities are equal, we hope the Indulgence of the Court will interpoſe in favour of Life, and grant us ſuch reaſonable time as the Nature of the Thing requires, and not compel us inſtantly to join in Demurrer.

Mr. Att. Gen. My Lord, I beg leave to ſtate one Fact right, and that is as to *Fitzharris*'s Caſe: They ſay the Plea was put in, and afterwards amended; that is a Miſtake; the Fact was, that his Wife brought a Plea into Court, and offer'd it to the Court, and preſs'd it might be received; but Mr. *Fitzharris* was adviſ'd to conſider what he did, and thereupon he took it back, and afterwards brought a Plea in, which was receiv'd, and after that it was never alter'd.

L. C. J. I dare ſay it is the firſt time that ever in a capital Caſe, when a Plea in Abatement was pleaded, and the *Attorney-General* thought fit to demur to it, that the Party deſir'd Time to join in Demurrer. You are not entitled to any Time by the Courſe of the Court, you can't ſhew any Inſtance to prove it: The Queſtion then is, Whether you have given any Reaſon for us to indulge you with Time, that never was granted in a Caſe of this Nature.

You have pleaded in Abatement; you were enabled ſo to do by having a Copy of the Indictment; you brought your Plea ready engroſs'd, and put it in. Mr. *Attorney* not being aware of any ſuch Plea, it could not be expected he ſhould be ready with a Demurrer in his Hand to this Plea, and therefore he deſired time to conſider of it. The next Day it could not be, nor the next after that, they being Holy-Days; but then the very firſt time that he had an Opportunity to come, he comes and demurrs to your Plea: But you deſire time, and why ſhould you not have time, when they had time, to conſider whether you ſhall join in Demurrer.

Do you want time to conſider whether you ſhall join in Demurrer, after you had time to plead and draw up your Plea, and have brought it into Court? Why ſhould you have time? Can you do any thing elſe but join in Demurrer? You can do nothing elſe: and unleſs you can ſhew any Reaſon why the Court ſhould indulge you, if you don't think fit to join, we muſt give Judgment againſt your Plea. You tell us of the Caſe of *Fitzharris*; that is as widely different from this Caſe as any thing can be. It was a Caſe of great difficulty, that required great Conſideration, when a Party comes and informs this Court, and inſiſts he is not within the Juriſdiction of the Court. When a Matter is urged to us as a Queſtion of Law, if we were not bound as we are by Act of Parliament, we would certainly aſſign Counſel to the Priſoner to plead a Matter of that Nature; and when the Court in *Fitzharris*'s Caſe had aſſigned him Counſel, were thoſe Counſel to argue immediately? It was nothing but Juſtice to give them time after they were aſſigned, to argue a Plea of that Nature; a Plea in which the Prerogative of the Crown, the Juriſdiction of the Houſe of Lords, and the Rights of the Commons were concerned. The Court would not run haſtily into the determining of that Matter, without hearing it debated by Counſel, and therefore they gave the Counſel time, upon which they might be able to give a juſt Judgment. Is there any thing in this Caſe like it? You have pleaded in Abatement. Mr. *Attorney* hath demurred to your Plea, and you deſire we would give you time to do that which you muſt do, or do nothing at all. Is there any Pretence? Could you in this Caſe come, with any Colour or Pretence of Juſtice, and deſire of us to amend your Plea? Is there any thing elſe you can do? This is nothing but a pure dilatory Plea, and he puts in this Plea. The Queſtion is, whether it ſhould be an *O* inſtead of an *E*? You are not entitled to any thing of this Nature, it is nothing but an affected Delay; and it cannot be thought to be for any other Reaſon; therefore you muſt join in Demurrer immediately: If not, we muſt give Judgment againſt your Plea.

Mr. Juſt. *Powys*. My Lord Chief Juſtice hath given ſo full and clear an Account of the Matter, that I am ſatisfied, and do think you muſt inſtantly join in Demurrer.

Mr. Juſt. *Eyre*. I am of the ſame Opinion. In capital Caſes the Party is obliged to plead *inſtanter*; for the Proceedings are carried on at the Bar without giving Rules: This is the conſtant Courſe; and the Courſe and Practice muſt be the ſame, in regard to the time for joining in Demurrer: But the Court is ſtill at liberty to allow further time, if it be neceſſary to the Juſtice of the Cauſe; and if it could be of any Uſe to the Priſoner in the next Step he is to make, I ſhould not be againſt it: But as the Caſe now ſtands, that he has nothing to deliberate upon, that he can lay no new Matter before the Court, but is obliged to abide by his Plea, and can neither withdraw nor amend it without Conſent, but muſt neceſſarily join in Demurrer, and has no other Choice; I think it would be a manifeſt Delay of Juſtice to allow further time; and am therefore of Opinion, that he ought to join in Demurrer immediately.

Mr. Juſt. *Forteſcue Aland*. I am of the ſame Opinion. The Priſoner can have no Benefit by our giving him time to join in Demurrer, except it be to put off the Trial: The Court makes a Difference in all Caſes, both Civil and Criminal, between dilatory Pleas and other Pleas. An affected Delay is never to be ſuffered, more eſpecially in a capital Caſe; and here it is plain, that when the Counſel for the Priſoner brought in this Plea, that they had conſider'd it before, and thought it of Service to the Priſoner, and nothing more remains than now to join in Demurrer. The *Attorney General*, by his Demurrer, ſays it is not a good Plea; and the Priſoner has nothing further to ſay, but that it is a good Plea; and if he does not think fit to ſay that, we muſt give Judgment againſt him. I remember in the Caſe of the King and *Gordon*, when the Priſoner came to the Bar, having lapſed the time of taking Exceptions, in order to quaſh the Indictment, he moved the Court for time to plead in Abatement; but the Court refuſed it, alledging they would give no Opportunity for a dilatory Plea: and I think there is the ſame Reaſon, if not ſtronger, in this Caſe, where the Priſoner hath nothing to do but to join in Demurrer; that is to ſay, to ſubmit to the Judgment of the Court, whether this be a good Plea or not; and that may be done immediately, as well as if the Priſoner had never ſo much time for it.

Priſoner. My Lord, I know not how inconſiſtent this Rule of Court may be, that in a capital Caſe of the higheſt Nature whatſoever, that I ſhould not be allowed time to join in Demurrer, when in criminal Caſes of an inferior Nature there is a Four-days Rule given. The Counſel for the King were indulged from *Wedneſday* to *Saturday*: I hope I ſhall have the ſame Indulgence on my Part, to conſider whether I ſhall join in Demurrer or not.

I am ſo far from deſiring to give any Delay, tho' I am ſatisfied how maliciouſly this Proſecution is carried on, and am pretty well acquainted with every Step taken in the Management in *Eſſex*; and I am willing, rather than to continue to be thus hunted up and down the World, to retract my Plea, and plead generally Not Guilty.

L. C. J. If Mr. *Attorney* conſents to it.

Priſoner. I am obliged to my Counſel for the Care they have taken of me, and have here in my Hand a Joinder in Demurrer engroſſed and ſigned by them, and ready to deliver in; but I won't offer it, becauſe I won't give any Delay to the Juſtice of the Court.

Mr. *Hungerford*. He ſtands upon his Plea of Not Guilty to the Indictment.

L. C. J. You have pleaded Not guilty; you have likewiſe pleaded a *Miſnomer*, which hath been demurred to: Your Plea therefore now muſt be as pleaded in chief, and as put in at the time when it was firſt pleaded; you don't deſire you may plead the ſame Matter again this Day?

Mr. *Hungerford* and Mr. *Ketelbey*. We do not.

Mr. Att. Gen. If I underſtand the Priſoner right, he pretends to be deſirous that his Trial may come on, and therefore he is willing to withdraw his Plea in Abatement, and abide by his Plea of Not Guilty: 'Tis what we deſire likewiſe; and I wiſh we could go on in this Caſe as we ought, in a decent Manner, without having groundleſs Reflections continually made. Something hath been ſaid of the Maliciouſneſs of this Proſecution, and indirect Management by ſome Body, 'tis not ſaid whom, in the County of *Eſſex*. My Lord, I defy any Man to ſhew any ſingle Step taken in carrying on this Cauſe, but what is perfectly right and juſtifiable.

I wiſh, out of Charity, that the Priſoner would conſider the Circumſtances he is in; if he did, he would not ſay this Proſecution is carried on by Malice; for if I know any thing of Evidence, I have no Reaſon to doubt, but at the proper time there will enough appear againſt him to convict him.

Mr. *Hungerford*. I dare ſay the Priſoner did not entertain a Thought of reflecting upon any of the Profeſſion concern'd in carrying on this Proſecution. But, pray, my Lord, give me leave humbly to repreſent that the Man's Caſe is hard; he tells you he is in Chains, and I ſee he is in great Pain even now; and I earneſtly wiſh that he were eaſed in that Matter. I do not pronounce theſe Words out of any Affectation of Popularity, or to captivate the Auditory, as was inſinuated in the Beginning of this Proceeding, but in mere Compaſſion I have to the Priſoner, and to all Mankind, which Temper I have ſhewn thro' all the Stages of my Life.

L. C. J. You have been told by the Court already our Opinion, that it is not in our Power. We were told, and I perceive it is not denied, that he did once eſcape after he was taken; and if ſo, for the better ſecuring him he was put in Chains: Do you aſk us to take thoſe Chains off? Can we do it? Or ſhould we do it? If he ſhould eſcape out of the *Tower*, ſhall we not be guilty of that Eſcape? The Circumſtances of the Caſe ought and muſt govern. He ſays he is Innocent, and I hope he is; and if he be, he takes the propereſt Meaſures to knock his Chains off, let him make his Innocence appear; and it will appear whether he is Innocent or not, when we come to try the Cauſe.

Priſoner. If I thought it was contrary to Law to take off theſe Chains I ſhould not mention it. I deſire to obſerve, that theſe Chains were not put on till after a fourth or fifth Examination.

As to the Eſcape out of the Meſſenger's Hands, he never ſhew'd me his Warrant, and I did not know any Authority he had to keep me. As to eſcaping out of the *Tower*, it is not in my Power, neither is it my Inclination. I deſire therefore to be eaſed of theſe Chains.

And another thing I deſire is, that I might have an Opportunity to ſee my Relations, my Wife, that ſhe might come to me.

Mr. *Ketelbey*. That was granted in *Fitzharris*'s Caſe.

L. C. J. As to the taking off the Chains you have had the Opinion of the Court, we cannot; we ought not to do it, it is a Breach of our Duty; as to the other Matter, he desires to see his Relations, what do you say to it?

Mr. Att. Gen. My Lord, as to *Fitzharris*'s Case, there was a great Deal of Caution used as to the Persons permitted to see the Prisoner; before they went in they were to be searched, and they were to be with him only in the Presence of the Keeper.

Mr. *Ketelbey.* It is mentioned there, that the Wife had misbehaved herself, and that a particular Caution ought to be taken with respect to her; but the Access of a Wife to her Husband under such unfortunate Circumstances was never denied, I believe, in any Case whatsoever.

L. C. J. Upon a proper Application to the Court, the Court hath sometimes ordered that Persons named in their Rule may have Access to the Prisoner in the Presence of the Jaylor, and not otherwise, and that they should be searched before they come in. If you think fit to desire it on those Terms, the Court will consider of it.

Prisoner. My Lord, I must desire upon those Terms as the Court thinks fit, and that my Sister may have Liberty to come with my Wife.

L. C. J. Your Wife and Sister: It may be reasonable for them to have Access to you, but they are not to be with you but in the Presence of the Jaylor *.

Mr. Serj. *Pengelly.* My Lord, I beg leave to observe whether it is usual for the Court to make such Rule: On the Trial of Sir *John Freind*, there it was only intimated by my Lord Chief Justice *Holt*, but the Court did not order it by making any Rule; they know they may apply properly, and there may be Directions given to the Lieutenant of the *Tower:* As to the Counsel that is allowed in the Act of Parliament; and as the Court hath a Power to assign Counsel, it is proper for the Court to give Directions for them to be admitted at all Seasons, and at all times.

L. C. J. Why the Wife and the Sister?

Prisoner. Yes, my Lord, my Wife and Sister. I don't put in a Number of Relations.

L. C. J. I do think, Brother *Pengelly*, that the Court are trusted in a Matter of this Nature, and may regularly give Directions with what proper Cautions they think fit. Why, he says he is denied the Comfort of his Wife; he desires that his Wife and Sister may be admitted to come to him. You say it hath been sometimes intimated, but not ordered; if it was intimated by us, and not complied with, I believe I should make no Difficulty to order it, provided it be with a reasonable Caution, and no Inconvenience in it.

Whether is it the Wife or Sister you desire? I think one is enough, and she must submit to be searched †.

Mr. Serj. *Pengelly.* Before your Lordship makes any Rule in this Case for the Prisoner, I beg that he may be obliged to amend his Plea of Not guilty, and that he may plead by the Name of *Christopherus*, by which he is indicted. You have been brought to the Bar, and have put in a Plea by the Name of *Christopherus*; if you are in Earnest, that you desire to wave your Plea in Abatement and have it withdrawn, you must change the Name wrote in the Commencement of the Plea, and make it as it is in the Indictment, that there may be no Embarrassment in the Proceedings at the End.

L. C. J. You consent to have it amended?

Mr. *Hungerford.* The Prisoner at the Bar hath consented to withdraw his Plea in Abatement; and though the Plea were such that he might have prevailed upon it, yetafter his pleading *Not Guilty* in general, there is not, in the Course of this Proceeding, any Period of time wherein he can avail himself with the Matter of this Plea in Abatement; and therefore we submit it to the Court, and to the King's Counsel themselves, to put this Matter into such a Form, that the Prisoner may come to a fair Trial upon the Issue of *Guilty* or *Not Guilty*.

Mr. *Ketelbey.* I believe the Prisoner is willing to come into the Method offered; and though this Plea hath been called a frivolous Plea, yet the Precaution taken by the Gentlemen of the other Side seems to give a Sanction to it, and makes it not so frivolous as hath been represented.

L. C. J. What do you mean, Mr. *Ketelbey?* Here is nothing asked of you: You do desire to wave and withdraw your Plea; we desire to know, if you do, whether you will plead by the Name as it is in the Indictment?

Mr. *Ketelbey.* My Lord, we do.

Mr. Att. Gen. We desire the Plea of Not Guilty may be amended, upon the Consent of the Prisoner.

Mr. *Hungerford.* We offer now, let the Piece of Parchment be entirely abolished, take it entirely out of the way, and we plead Not Guilty.

L. C. J. Your Plea must be now *& prædict' Christopherus ductus hic ad barram*, &c.

Mr. *Ketelbey.* We submit it.

Prisoner. I desire to withdraw and retract the other Plea, and do plead Not Guilty.

L. C. J. No, it must be mended; you will hear how it is when it is struck out and amended, and then you will tell us whether it is mended according to your Intent, or no.

Cl. of the Cr. *Et prædictus Christopherus Layer allocutus existens per Cur' hic de alt' predition' prædicta per Indictament' prædict' ei superius imposit' qualiter se velit inde acquietari, Idem Christopherus Layer dicit quod ipse in nullo est inde culpabilis & inde de bono & malo ponit se super Patriam.*

L. C. J. Is this according to your Intention?

Prisoner. Yes.

Mr. Serj. *Pengelly.* My Lord, I believe it is usual in these Cases for the Court to appoint a Time for the Trial; the last Return but one in this Term is the 19th of *November*, so if you please it may be the *quarto die post*, which I think is *Wednesday*, if that be suitable and convenient to the Court:

L. C. J. What say you to it?

Prisoner. I desire your Lordship would give me a longer Day to prepare for my Trial: I have a great Number of Witnesses, twenty or more, most of them People of the first Quality. I hope I shall have the common Processes of the Court to bring them here; and, my Lord, another thing I desire is, that I may have a *Habeas Corpus ad testificand'*, to bring my Lord *North* and *Grey*, and my Lord *Orrery* at my Trial. That, my Lord, you would please to give me as long a Day as you can to prepare for my Trial; if your Lordship please it may be *Monday* the 26th, and then your Lordship will have a Day of Rest between.

L. C. J. That will be out of the Return.

Mr. *Hungerford.* They must appear, and then may be adjourned.

L. C. J. It cannot be adjourned over beyond the Return.

Mr. *Ketelbey.* My Lord, the Prisoner hath shewn that he hath in no Respect affected Delay.

L. C. J. It cannot be.——God forbid that we should deny the Prisoner to have a reasonable time to prepare for his Defence; it is three Weeks from hence; you have been aware of it long before; you have known the Indictment was found; you have had a Copy of it; you have known your Charge; and is not all this Time enough? Consider, the Term draws toward an End, and it interferes with the common Business of the Term if we carry it to a further Day: we do agree the *Venire* to be returned *Octab. Martini*, and the Trial then must be the *quarto die post*, which will be *Wednesday* the 21st. And it is proper for us to give you an intimation now, not to expect any further time, or the Jury to be adjourned; do but consider what a Multitude must be brought up, eighty at least: The Prisoner hath a Privilege to challenge thirty-five peremptorily, and after, for Cause, as many as he pleases; so that a great Number must be brought up; and for them to be forced to attend here the 21st, and still the Trial to be put off, it will be a great Inconvenience and a great Charge, therefore that must be the Day; we shall not consider to put it off till any farther Time.

Prisoner. I beg leave for one Word more; I have a Witness that is to come from *Edinburgh*, and I can hardly have him here by the 21st. If I could but be indulged a few Days longer——

L. C. J. We cannot do it without making an Error in the Proceedings.

Prisoner. Is there no other Return for a *Venire* to be returnable?

L. C. J. No; there is none but that, and the last Return of the Term; and it is impossible to try him that Day, without doing a manifest Wrong and Injustice to the People of *England*.

Prisoner. My Lord, where a Man's Life is at Stake, if I should not be indulged over till the last Day of the Term, for want of a Witness I may be in danger of my Life: I hope therefore your Lordship will please to indulge me.

L. C. J. You have had a great deal of Time already, Time sufficient to bring your Witness from *Edinburgh*, or any other Place, and we cannot do it. To put you off to the last Day of the Term, is to do a manifest Wrong to the People of *England*.

Prisoner. The Reason why I mention it over and over again, is, because I would not give your Lordship the Trouble to be turned over to another Day, on troubling your Lordship with Affidavits.

L. C. J. In what you lay before us as Matter proper for Consideration, we shall do what is just. It is not proper for you to tell us what we have to do, and to make Bargains with us. That is the Day of Trial; it must be on *Wednesday* the 21st: Your Counsel will tell you it is impossible to comply with your Request, without doing the manifestest Injustice in the World. Or else, whether to try you upon the 21st, or in two, or three, or four Days after, I don't think the Consequence worth disputing; but we can't do it without doing Wrong and Injustice to the People of *England*.

Prisoner. I hope I shall be indulged two or three Days.

L. C. J. We can say no more. The Time you have had for Preparation for your Trial we think abundantly sufficient to prepare yourself, therefore we are of Opinion that the Trial go on at that Day; and we order it accordingly.

Mr. *Ketelbey.* Your Lordship will please to order a Rule for his Wife and Sister to come to him.

L. C. J. No; not for his Wife and Sister.

Prisoner. My Lord for a single Woman to come thro' the Courts and the Guards, to be examin'd by herself, it's not so proper, my Lord.

L. C. J. You shall have a Rule from the Court for your Wife to come; as for your Sister, we must leave that to the Direction from another Place. We must not be too forward in granting Women to come, we remember an Escape occasion'd by a Woman coming thither.

Mr. Att. Gen. There must be a Rule to bring him up at the Day of his Trial.

Mr. *Ketelbey.* My Lord, as to having his *Habeas Corpus ad Testificand'* for my Lord *North* and *Grey*, and my Lord *Orrery*.

L. C. J. You must give Notice, and then move what you please.

Mr. *Hungerford.* By what was said, I did understand, I must confess, that though the Rule was made for the Wife only, yet that it might be in the Power of the Gentleman Jaylor to permit her Sister to come with her.

L. C. J. We give no Direction concerning it. He will have a Rule from the Court that will be his Direction, unless he receives any additional Direction from any other Place; but the Court names his Wife only.

Mr. *Ketelbey.* There was another thing mentioned, that he may have Copies of his Papers that were seized.

L. C. J. Give Notice for what you think fit, and move it.

Die Mercurii 21 *die Novembris*, 1722.

THIS Day *Christopher Layer*, Esq. was brought to the Bar, in Custody of the Lieutenant of the *Tower*, in pursuance of the Rule of Court made for that Purpose, in order to his Trial.

Cl. of the Cr. You *Christopher Layer*, now Prisoner at the Bar, these Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death: If you will challenge them, or any of them, your time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Heneage Norton, Esq.

Mr. *Hungerford.* My Lord, we desire that his Irons may be taken off.

L. C. J. The Irons must be taken off; we will not stir till the Irons are taken off.

Prisoner. I hope, my Lord, that the Irons shall be now taken off.

* See *Hamden*'s Trial, N°. 136. and *Rookwood*'s Trial, N°. 153.

† See the Proceedings against *Fitzharris*, N°. 102.

L. C. J.

L. C. J. They ſhall be taken off.

Mr. *Hungerford.* The poor Man hath been ſo oppreſs'd by theſe Chains, that he was not able to prepare his Brief. I had it not till late laſt Night; and it is ten Sheets of Paper.

Mr. Att. Gen. Whoſe Fault is that? You have had Time enough.

Mr. *Hungerford.* It is the Fault of the Irons, Mr. *Attorney*; the Brief was not brought to me till Eleven of the Clock laſt Night.

L. C. J. It was an Omiſſion; they ſhould have been taken off before he came to the Bar.

Mr. Att. Gen. There was Direction given for their being taken off before; how they came not to be taken off, I can't tell.

L. C. J. Are the Irons taken off?—*Gent. Jaylor.* Yes.

L. C. J. Go on.

Cl. of the Cr. Heneage Norton, Eſq.

L. C. J. You muſt call over all the Jury.

Mr. *Hungerford.* I thought they would be all called over once, before any one is endeavoured to be ſworn.

Cl. of the Cr. They have been called over already.

Mr. *Hungerford.* When? Not ſince the Court ſate, I am ſure. I would know whether the Intention is, that all the Pannel be called over before any one of them is ſworn, or that the Pannel is to be called over but once, and the Jury-men ſworn as they then appear? What I have obſerved is, the Clerk calls over the whole Pannel firſt, to ſee how many appear; and then calls it over again, and ſwears them as they anſwer to their Names, if not challenged.

L. C. J. What you obſerve is what hath been done at the *Old-Bailey*; there they call them over firſt; and then they call them over again, and as they appear they are ſworn preſently. But by the Courſe of the Court here they are called over before the Court is ſitting, and they mark thoſe that appear. That is not ſufficient; but they are called over again in Court, and then their Appearance and Non-appearance being marked, they do call thoſe over again that did appear; and as one appears, if there is no Objection to him, he muſt be ſworn.

Mr. *Hungerford.* I have obſerved them to be called over when nobody is by, in civil Caſes; but in ſuch a Caſe as this, a Caſe of High-Treaſon, where peremptory Challenge is allowed, it is ſome Guide to the Priſoner in making his Challenges, to know before-hand who do and who do not appear.

Mr. *Ketelbey.* My Lord, with Submiſſion, in all criminal Caſes, there is no other Method than calling over the Pannel according as it is tranſmitted into Court. 'Tis probable ſeveral of the Jurors who did not appear at their being called over before the ſitting of the Court will now appear; and therefore what we pray is, that the whole Pannel may be now called over in the Order as it ſtands, not only thoſe who anſwered to the firſt Call, but thoſe alſo who then made Default.

Mr. Att. Gen. I can't imagine what they mean.

L. C. J. This Debate ariſes from not underſtanding one another: You have the Direction of the Court; the Pannel is to be called over, if any Man doth not appear, his Default is marked and recorded. When any one doth appear, and he is not challenged, he is to be ſworn.

Mr. *Ketelbey.* I came thro' the Hall juſt now, and there is ſuch a Crowd that it is almoſt impoſſible for any one to hear when they are called.

Priſoner. My Lord, I hope they ſhall be once called over before they come to be ſworn; for as to their being called before, that was before I came; it will ſpend but a little time to read over forty or fifty Names.

L. C. J. Call them over. I would not deny any thing that is deſired in Reaſon by or on the Priſoner's Behalf; conſider what you are doing; the Priſoner hath had a Copy of the Pannel, he hath examined it, and conſidered who are proper for him to challenge peremptorily, and he hath conſidered who they are that he may challenge with Cauſe.

I can't imagine; it was never done in this World: We have aſked our Officer: They ought to call over all the Pannel; but if they do not appear, their Default is marked; if they do appear, the Priſoner knows whether he likes them or not.

Therefore, when they come to the Bar, if not challenged they muſt be ſworn.

Conſider what this Demand is; we ſhall be an Hour calling them over the firſt time, that it may appear to the Priſoner whether they appear or not; then afterwards you are to call them over again, and to have them brought up again when they come to be ſworn. But if it ever hath been done, it is fit it ſhould be done now; but our Officer tells us it never was done, and why ſhould you inſiſt upon it now? you have had all the Indulgence the Law allows you.

Priſoner. I have not had a Copy of the Pannel above two Days before. Here hath been in this Cauſe all the vile Practices ——.

L. C. J. You muſt keep within due and proper Bounds. You are come now to be tried for an Offence you are charged withal; but you are not to arraign and challenge every body elſe; you have no Right to do it. If in proper time it appears you have been ill uſed, the Court will do you Juſtice, and puniſh thoſe that have been guilty of any Miſbehaviour.

Mr. Serj. *Pengely.* My Lord, if they have any Objection to the Jury, they are to challenge them peremptorily, when the Jury come to be ſworn. Then is their time; they are not to entertain the Court with Speeches before.

L. C. J. No, it is not proper.

Conſider how unreaſonable it is for the Priſoner to arraign ſomebody's Miſbehaviour without naming him. But in this Method he is inſinuating Objections, which we can't examine whether they are true or falſe, on purpoſe to captivate People; and, it may be, miſlead them in the Trial of the Cauſe.

Mr. *Ketelbey.* As I came in, I obſerved that all the Avenues to the Court are barricadoed up, and only a narrow Place left on the Stone Steps, and a Guard kept there to keep out whom they don't think fit to let in.

Mr. Att. Gen. I know nothing of it; and I dare ſay nobody will give any Countenance to hindering either Jury-men or Witneſſes coming into Court, when their Attendance is required here.

Mr. *Ketelbey.* I had much ado to get in myſelf.

L. C. J. There ſhall be due Care taken, that any of the Jury that appear, we will order Way to be made for them.

Mr. *Hungerford.* My Lord, I will take up but very little of your Time in this Matter; I find I was not underſtood before; that which I contend for is, that the Pannel be read thro' once in the Priſoner's Preſence; to ſee what Jury-men appear, before any Jury-man is ſworn. The Priſoner hath a Right to challenge thirty-five peremptorily, or without aſſigning any Cauſe at all. Now, my Lord, this is a Favour, an Indulgence granted to him by Law, and he is therefore entitled to it in Juſtice. It is of great Uſe to the Priſoner, in order to enjoy the true Benefit of this Indulgence that the Law gives him, that he knows who doth and who doth not appear; for this Reaſon perhaps, if he did know that ſuch an one appears he will take him, and if he knows that ſuch an one appears he will challenge him. And if he know that ſuch an one, who perhaps ſtands low in the Pannel, and of whom he has a good Opinion for being an honeſt Man, will appear, he will challenge as many as he can of the preceding Perſons, in order to have him, that honeſt Man, of his Jury. And as to the Time the reading of the Pannel will take us, (though by the way it might have been over by this time) I am ſure your Lordſhip and the Court will not regard what Proportion of Time you ſpare us, to let the Priſoner enjoy the Benefit of the Law in this Caſe, and to have a full Enjoyment of the Indulgence of the Act of Parliament in its full Latitude, that he may know and judge (as far as the Law hath enabled him), who is to paſs upon him as to his Life and Death. I beg therefore, my Lord, that the whole Pannel may be called over once before the Priſoner is put to challenge.

Priſoner. My Lord, What we humbly move for is what is every Day done at the *Old-Bailey*, that they may be once called over.

All I deſire is what is done there, and by the ſame Reaſon ought to be done here in the ſame Caſe where a Man's Life is concerned. I humbly move it that they may be called over.

L. C. J. We ſhall grudge no Time to do the King and you Juſtice. It is dangerous to make a Precedent, an Innovation: But if you deſire it, I don't find the King's Counſel object to it.

[*Call over the Pannel.*]

You don't expect all ſhould be brought into Court; but only to know if they do appear?—Mr. *Hungerford* and Mr. *Ketelbey*. No, no.

L. C. J. The Priſoner hath a Sollicitor; let ſomebody go down upon the Steps, the Sollicitor be preſent, and then he will hear who do and who do not appear.

Mr. *Hungerford.* We humbly thank your Lordſhip; this is a real Indulgence, and we humbly thank your Lordſhip for it.

[*Cl. of the Cr. Calls over the whole Pannel.*]

You the Priſoner at the Bar, theſe Men which, *&c.*

Mr. *Ketelbey.* If your Lordſhip pleaſes to ſtay till the Sollicitor comes in, becauſe he went out to obſerve who did appear, and who did not appear.

Cl. of the Cr. Heneage Norton. Have you ten Pounds a-Year Freehold and Copyhold in the County of *Eſſex?*

Norton. I have no Freehold, only Copyhold. [*Then he was ſet aſide.*

John Wilks. [Aſk'd the ſame Queſtion, as were all the others who apared, before they were either challenged or ſworn.]

Priſoner. I challenge him.—*Mark Froſt.*

Priſoner. I challenge him.—*Thomas Clarke.*

Priſoner. I don't challenge him.

Crier. Thomas Clarke. [Sworn.

Henry Longbotham.

Priſoner. I ſay, I think his Name is wrong ſpelt.

Mr. Sol. Gen. We are not now upon Exceptions for Miſ-ſpelling. If his Name is written as he is uſually called, it is right.

Priſoner. He ſays his Name is with an *o*, and it is written here with an *a*.

L. C. J. Doth the Copy delivered to you agree with the Pannel? if it doth, as long as it hath the ſame Sound it will do.

Priſoner. With humble Submiſſion in the Caſe of *Francia* there it was allowed.

Mr. *Hungerford.* My Lord, it is not the ſame Sound *Longbotham* and *Longbothom*, and in *Francia*'s Caſe the Difference of a Letter was allowed to be a good Exception.

L. C. J. You are by Law to have a Copy of the Pannel delivered to you; if that Pannel varies from the other, it is a juſt Exception; but if you object againſt a Jury-man becauſe his Name is not right ſpelt, and that hath the ſame Pronunciation, and he may be called ſometimes one and ſometimes another, it is well enough.

Mr. *Ketelbey.* My Lord, as to this Objection, whether the *Longbotham* is right, or the *Longbothom*, whether it is with an *A* or an *O?*——

Cl. of the Cr. You miſtake, it is *Longbotham*, and not *Longbothom*.

Priſoner. The laſt ſhould be an *O* inſtead of an *A*, *Longbothom*.

L. C. J. Therefore we will aſk the Gentleman how his Name is uſually pronounced, whether it is not pronounced ſometimes *Longbothom* as well as *Longbotham?*

Mr. *Longbothom.* Yes, my Lord, it is.

Priſ. He ſays he ſpells his Name with an *O*, and here it is with an *A*.

Longbothom. I always ſpell my Name with an *O*, but my Letters are generally directed to me with an *A*.

Mr. *Hungerford.* He hath a Copy of the Pannel delivered him by virtue of the Act of Parliament; if the Copy be not a true Copy, it is not right according to the Direction of the Act.

L. C. J. Right.

Mr. *Hungerford.* Now the Pannel which the Priſoner hath is ſpelt with an *A*, and the Pannel of which this is a pretended Copy, is, I take it, ſpelt with an *O*.

Cl. of the Cr. No, they are both ſpelt alike.

L. C. J. You know it, Gentlemen, as well as can be. Don't let us ſpend Time where there is nothing in it; we will hear what is proper for our Conſideration.

Suppoſe a Man is called and writ ſometimes *Longbothom*, and ſometimes *Longbotham*; and ſuppoſe he was called by either of theſe Names, may he not therefore be called by one as well as the other? Is that an Objection to ſay he writ with an *O*, but People write to him with an *A*? there is nothing at all in it.

Priſoner. Then I challenge him—*Cl. of the Cr. Iſaac Buxton.*

Priſoner. I challenge him.—*Cl. of the Cr. Richard Scot.*

Priſoner

Priſoner. I challenge him.
Cl. of the Cr. John Wormlayton.----*Priſoner.* I challenge him.
Cl. of the Cr. John Andrews.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.
Cl of the Cr. Thomas Waterhouſe, Stephen Huff, John Thorowgood, Chriſtopher Baily. Challenged by the Priſoner.
Cl. of the Cr. Iſaac Potter. [Sworn.
Cl. of the Cr. William Lord.----*Priſoner.* I challenge him.
Cl. of the Cr. Hezekiah Haynes. [Sworn.
Cl. of the Cr. Thomas Heckford, jun.----*Priſoner.* I challenge him.
Cl. of the Cr. Richard Waglett.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.

Mr. *Ketelbey.* Mr. *Attorney* is pleaſed to challenge him for the King; we humbly inſiſt on it, that Mr. *Attorney* is to ſhew his Cauſe of Challenge immediately. I own it has been otherwiſe in one or two late Inſtances; but I ſubmit it, if that Practice ſhould prevail, whether the Act of Parliament made on that Occaſion would not be in Effect thereby abrogated. The Act is the 33 *Ed.* I. and the Words of it are: "If they "that ſue for the King will challenge any Juror, they ſhall aſſign of "their Challenge a Cauſe certain, and the Truth of the ſame ſhall be "inquired of according to the Cuſtom of the Court." Now, my Lord, I beg leave to obſerve, upon this Pannel there are a hundred and odd Perſons; if Mr. *Attorney* is not obliged to ſhew his Cauſe of Challenge, when he challenges for the King, till all the Pannel is gone through, this Act of Parliament will be of no Validity whatſoever. If there had been but a few returned (twenty-four, or ſuch a Number) then there might have been ſome Colour for going through the Pannel before there was any Cauſe aſſigned for the Challenge; but ſince this modern Practice has obtained to make ſo numerous a Pannel, if they are not obliged to ſhew Cauſe till the Pannel is gone through, that Law is intirely a dead Letter, and of no Significancy

L. C. J. You know your Objection is of no Validity; you cite an Act of Parliament, and you know the conſtant Practice is againſt you.

Mr. Juſt. *Eyre.* Though the Counſel for the King muſt aſſign their Cauſe of Challenge, yet they are not obliged to do it till the Pannel is gone thro', and the Jury-men returned, who are not challenged, are all ſworn: This is a Rule laid down in *Hale*'s Pleas of the Crown, and has been always the conſtant Practice in Caſes of this kind.

Mr. *Hungerford.* What your Lordſhip directed in the laſt Caſe is certainly precedented; but I would propoſe it as a Convenience that the *Attorney* ſhould, as he is every ways entitled, have the Precedence, and might challenge firſt, and then we will determine after him.

L. C. J. No, we muſt not do that.
Cl. of the Cr. John Lowry. [Sworn.
Cl. of the Cr. John How. Set aſide for want of Freehold.
Cl. of the Cr. Thomas Pratt. [Sworn.
Cl. of the Cr. Richard Rogers.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.
Cl. of the Cr. Edward Pierſon, Thomas Bland, William Spilltimber, Alexander Weller, Thomas Rand, John Engliſh, Joſeph Unwin, George Frye. Challenged by the Priſoner.
Cl. of the Cr. Weſton Stileman.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.
Cl. of the Cr. John Cruſh.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.
Cl. of the Cr. Thomas Howlett.----*Priſoner.* I challenge him.

Mr. Serj. *Pengelly.* I don't know this Method of proceeding: If the Priſoner makes any Challenge, it muſt be before he comes to the Book to be ſworn; but when he comes to lay his Hand upon the Book, he is too late to challenge then.

Priſoner. Whenever I make a full Stop and don't ſay I challenge, you do.

Mr. Att. Gen. My Lord, the Priſoner is to declare whether he challenges or not; afterwards the King's Counſel are to declare whether they challenge for the King, and the Jury-man is not to put his hand on the Book till then.

L. C. J. He ought not to put his Hand on the Book till he is allowed a Jury-man; that if the King or the Priſoner challenge him, they may do it before he lay his Hand on the Book.

Cl. of the Cr. Joſeph Capon.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.

Mr. *Hungerford.* More have been challenged for the King, than hath been known in any public Trial in my Remembrance.

Mr. Att. Gen. I am ſurprized at this Obſervation, when the King has an undoubted Right of challenging whom he pleaſes, without ſhewing Cauſe till the Pannel is gone through.

L. C. J. It is always done.
Cl. of the Cr. John Clarke.------*Priſoner.* I challenge him.
Cl. of the Cr. William Chandler. Set aſide for want of Freehold.
Cl. of the Cr. William Burrows.-----*Priſoner.* I challenge him.
Cl. of the Cr. Francis Aylett, Sen. [Sworn.
Cl. of the Cr. George Bailey, John Weekes, Thomas Ruggle. Challenged by the Priſoner. [*The Priſoner ſpoke to the Jury-man.*]

Mr. Sol. Gen. My Lord, it hath been intimated to the Priſoner once already, that he ought to propoſe his Queſtions to the Court.

L. C. J. You are to aſk no Queſtions yourſelf, if you will tell us the Queſtion, we will propoſe it.

Priſoner. Only to know how he ſpells his Name.

Cl. of the Cr. William May, Abraham Lake. Challenged by the Priſoner.

Mr. *Hungerford.* My Lord, it will be of ſome little Uſe to know for certainty how many he hath challenged; they differ here in the Computation.

Cl. of the Crown. He hath challenged twenty-eight peremptorily.

Cl. of the Cr. Nathaniel Weſley.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.

Cl. of the Cr. Benjamin Rutland.

Priſoner. My Lord, I deſire he may be aſked whether he doth not farm ſomething under the King, or on the Foreſt.

L. C. J. If it was of any Service to you it ſhould be done; but if it is ſo, it is no Objection.

Mr. *Ketelbey.* The Objection was once made in the Caſe of Sir *William Perkins.* It was recommended to the King's Counſel.

L. C. J. I deny it. It was not recommended to the King's Counſel, but the King's Counſel did not inſiſt upon it.

Mr. Juſt. *Forteſcue Aland.* The Court in that Caſe gave their Opinion, that to be a Servant to the King is no good Cauſe of Challenge, and my Lord Chief Juſtice *Holt* and *Treby* were preſent, and Mr. *Attorney-General* did not inſiſt on the Jury-man ſo challenged, but waved the Matter without any Recommendation of the Court.

Mr. *Ketelbey.* I know no other ways, than if Mr. *Attorney* will do it, as it was done in that Caſe.

Mr. Att. Gen. I know nothing of the Fact.

L. C. J. What do you do, do you challenge him or no?

Priſoner. I challenge him.

Cl. of the Cr. Alexander Marſhall, Thomas Selby. Challenged by the Priſoner.

Cl. of the Cr. John Milligande.

Mr. *Hungerford.* My Lord, he is ſearching for a Paper; he challenges him for Cauſe.

Priſoner. My Lord, what I have to offer is, that this Mr. *Milligande* hath been heard to ſay, before he came here, that I ought to be hanged; and I apprehend that is good Cauſe for challenging him, if I make it out.

[*David Martin* called.]

Cryer. You ſhall true Anſwer make, *&c.*

Mr. *Hungerford.* Do you know Mr. *Milligande?*-----*Martin.* Yes.

Mr. *Hungerford.* What have you heard him declare concerning the Priſoner at the Bar?

Martin. I heard him in Converſation ſay, that he hoped he ſhould be hanged, for he believed he was Guilty.

Mr. *Hungerford.* This Objection ſure is right. [Mr. *Milligande* was not ſworn.]

Cl. of the Cr. Robert Walker.
Priſoner. I challenge him.
Cl. of the Cr. William Nicholſon. [Sworn.

Priſoner. My Lord, I have very near all my Challenges, I think they may go on as they are called, if Mr. *Attorney* will challenge no more.

Mr. Att. Gen. You may go on your own way, I ſhall make no Bargains with you.

Mr. *Ketelbey.* We don't offer any Bargain, but only an Expedient to ſave the Time of the Court.

Cl. of the Cr. Nicholas Freeman.----*Priſoner.* I challenge him.
Cl. of the Cr. Chriſtopher Hill. [Sworn.
Cl. of the Cr. Stephen Wood.
Priſoner. I think I have done all my Challenges.
Cl. of the Cr. You have two more.
Priſoner. Let them take them then as they come.
Mr. Att. Gen. I challenge him for the King.
Cl. of the Cr. Richard Bridge.---*Priſoner.* I challenge him.
John Baines, ſet aſide by Conſent, by Reaſon of Infirmity.
Cl. of the Cr. Robert Barnard. [Sworn.
Cl. of the Cr. Leonard Bennet.
Priſoner. I don't challenge him.
Mr. Att. Gen. I challenge him for the King.
Cl. of the Cr. William Sandford.

Priſoner. My Lord, I have the ſame Objection to this Gentleman as to the other; he hath declared his Opinion before-hand, and that he muſt make a Sacriſice of me.

L. C. J. Call your Witneſs.

[Mr. *Martin* ſworn.]

Mr. *Ketelbey.* Mr. *Martin*, do you know *William Sandford* of *Rumford?*

Martin. Yes.

Mr. *Ketelbey.* Have you had any Diſcourſe with him about the Priſoner at the Bar?

Martin. He ſaid, before he was ſummoned on the Jury, that if he was one of the Jury he would be for hanging of him. [*Set aſide.*

Cl. of the Crown. Thomas Waters.
Priſoner. Sir, I apprehend I have challenged thirty-five.
Cl. of the Cr. You have one more.
Priſoner. I will challenge no more, let them go on.
Cl. of the Cr. Thomas Waters, Richard Gray. [Sworn.
William Wheatley.

Mr. *Hungerford.* I hope that what I am going to offer is proper. There is ſome little doubt how far he is gone in his Challenges, it is ſaid he hath one more, if the Court would indulge us ſo far as to let the Perſons challenged be called over.

Cl. of the Cr. It is impoſſible that we ſhould miſtake.

Mr. *Hungerford.* You ſay he thath one more?---*Cl. of the Cr.* Yes.

Cl. of the Cr. William Wheatly. [Sworn.

Then the twelve Jurors who were ſworn were counted, and their Names were as follow, *viz.*

Thomas Clarke, Gent.	*Thomas Pratt*, Gent.	*Robert Barnard*, Gent.
Iſaac Potter, Gent.	*Francis Aylett*, Gent.	*Thomas Waters*, Gent.
Hezekiah Haynes, Gent.	*William Nicholſon*, Eſq;	*Richard Gray*, Gent.
John Lowry, Gent.	*Chriſtopher Hill*, Gent.	*William Wheatly*, Gent.

Cl. of the Cr. Cryer, make Proclamation.

Cryer. O yes! If any one can inform, *&c.*

Cl. of the Cr. Chriſtopher Layer, Hold up your Hand. Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe.

He ſtands indicted by the Name of *Chriſtopher Layer*, late of the Pariſh of St. *Andrew's Holborn*, in the County of *Middleſex*, Eſq; For that he, *&c.* ——Upon this Indictment he hath been lately arraigned, and thereunto hath pleaded Not Guilt, and for his Trial hath put himſelf upon God and the Country, which Country you are. Your Charge is to enquire whether he be guilty of this High Treaſon, in Manner and Form as

he ſtands indicted, or Not Guilty. If you find him Guilty, you ſhall enquire what Goods or Chattels, Lands or Tenements he had, at the Time of the ſaid High-Treaſon committed, or at any Time ſince. If you find him not Guilty, you ſhall enquire whether he fled for it. If you find that he did fly for it, you ſhall enquire of his Goods and Chattels, as if you had found him Guilty. If you find him not Guilty, and that he did not fly for it, ſay ſo, and no more, and hear your Evidence.

Mr. *Wearg*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment againſt the Priſoner for High-Treaſon. The Indictment ſets forth, That he being a Subject of his preſent Majeſty King *George*, but not having the Fear of God in his Heart, nor conſidering the Duty of his Allegiance, as a falſe Traitor againſt his ſupreme, true, lawful, and undoubted Lord, contriving and to the utmoſt of his Power intending to change, alter and ſubvert the Government of this Kingdom, lawfully and happily eſtabliſhed under his preſent Majeſty, and to depoſe and deprive his ſaid Majeſty of his Title, Honour, Royal Eſtate and Government of this Kingdom; and to advance to the Crown and Government of this Realm, the Perſon in the Life of the late King *James* II. pretended to be Prince of *Wales*, and after the Deceaſe of the ſaid King *James* pretending to be, and taking upon himſelf the Stile and Title of King of *England*, by the Name of *James* III. did upon the twenty-fifth Day of *Auguſt*, in the ninth Year of his preſent Majeſty's Reign, and at ſeveral other Days and Times, at *Layton-Stone*, in the County of *Eſſex*, falſely, maliciouſly, and traitorouſly, compaſs, imagine, and intend to depoſe our ſaid Sovereign Lord King *George*, from his Title, regal State and Government, and the ſaid King to kill and bring to utter Deſtruction.

The Indictment further ſets forth, That he the ſaid *Chriſtopher Layer*, to perfect and bring to Effect his Treaſon and traitorous Purpoſes, on the ſaid twenty-fifth Day of *Auguſt*, and at ſeveral other Days and Times, at *Layton-Stone* aforeſaid, together with divers other falſe Traitors, to the Jury unknown, did falſely, maliciouſly, and traitorouſly meet, conſult, conſpire and agree, to move and ſtir up an Inſurrection and Rebellion in this Kingdom, againſt our ſaid Sovereign Lord the King.

The Indictment further ſets forth, That he the ſaid *Chriſtopher Layer*, to perfect and compleat his Treaſon and traitorous Purpoſes, on the ſaid twenty-fifth of *Auguſt*, at *Layton-Stone* aforeſaid, with Force and Arms, did falſely, maliciouſly, and traitorouſly publiſh a certain malicious, ſeditious, and traitorous Writing, containing in itſelf, and purporting to be, an Exhortation and Promiſe of Rewards to the Subjects of his ſaid Majeſty, to perſuade and excite them to take up Arms and levy War againſt our ſaid Sovereign King *George*.

The Indictment further ſets forth, That the ſaid *Chriſtopher Layer*, together with other falſe Traitors to the Jury unknown, to compleat and bring to Effect his traitorous Purpoſes, on the ſaid twenty-fifth Day of *Auguſt*, at *Layton-Stone* aforeſaid, with Force and Arms, did falſely, maliciouſly, and traitorouſly meet, conſult, conſpire and agree, to exalt to the Crown and Royal Dignity of this Realm the Perſon in the Life of the late King *James* II. pretended to be Prince of *Wales*, by means of an armed Force and Troops of Soldiers, for that Purpoſe to be raiſed and levied.

The Indictment further ſets forth, That the ſaid *Chriſtopher Layer*, to perfect his ſaid Treaſon, on the ſaid twenty-fifth Day of *Auguſt*, at *Layton-Stone* aforeſaid, maliciouſly and traitorouſly did raiſe, levy, and retain ſeveral Men, to the Jury unknown, to take up Arms and levy War within this Kingdom, againſt our ſaid Sovereign Lord the King.

That the ſaid *Chriſtopher Layer*, to perfect his treaſonable Purpoſes, on the ſaid twenty-fifth Day of *Auguſt*, at *Layton-Stone* aforeſaid, together with divers other falſe Traitors, to the Jury unknown, did falſely, maliciouſly, and traitorouſly meet, conſpire and agree, to take, ſeize, impriſon and detain in Cuſtody the ſacred Perſon of our ſaid Sovereign Lord the King, againſt the Duty of his Allegiance, againſt the Peace of the King, his Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. To this Indictment the Priſoner hath pleaded, Not Guilty.

Mr. Serj. *Pengelly*. May it pleaſe your Lordſhip, and you Gentlemen of the Jury; the Priſoner at the Bar, Mr. *Layer*, comes now to be tried before you, for a wicked and deteſtable Conſpiracy againſt the Perſon of his Majeſty, and againſt his Government; and this in favour of an attainted and abjured Pretender; a Pretender whom the Priſoner himſelf has abjured in Words, and ought to have renounced in his Heart.

The Indictment contains a Charge of High-Treaſon againſt the Priſoner at the Bar, for compaſſing and intending the depoſing the King, and alſo his Death and Deſtruction.

The particular Facts laid to prove this traitorous Imagination and Intent, and which the Priſoner put in Execution, in order to bring to Effect his treaſonable Purpoſes, are five.

The firſt is; That the Priſoner, with other Traitors, did conſult, conſpire, and agree to raiſe a general Inſurrection and Rebellion in this Nation againſt his Majeſty.

The next; That he did publiſh a ſeditious and treaſonable Declaration, containing Incitements, and Promiſes of Reward, whereby to excite and ſtir up his Majeſty's Subjects to take up Arms, and to levy War againſt his Majeſty within this Realm.

And farther; That he, with other Traitors, conſpired, conſulted and agreed, by an armed Force, to exalt, and bring the Pretender to his Majeſty's Crown, to the Throne of theſe Kingdoms, and put him into the Poſſeſſion of the Government thereof.

That he hath provided, levied, and retained ſeveral Perſons to take up Arms, and to levy War againſt his Majeſty within this Kingdom, for the executing theſe traitorous Purpoſes.

The laſt Overt-Act alledged, and to finiſh this Conſpiracy, is, That he, with the other Traitors, conſulted, conſpired, and agreed to ſeize upon, and to impriſon the ſacred Perſon of his Majeſty.

Gentlemen, it is unneceſſary, when theſe Facts are opened to you, to acquaint you, that an Attempt of this Nature, if it had ſucceeded, would have been the Subverſion of the preſent happy Eſtabliſhment, and the Proteſtant Succeſſion, ſo often confirmed by the Conſent of the whole Nation, and the only Security of your religious and civil Rights and Liberties; they would all have been expoſed to the Arbitrary Power of a Popiſh Faction, under the Tyranny of the Pretender.

Gentlemen, having ſaid this to ſhew the Nature of the Offence; we (who are Counſel for his Majeſty) ſhall proceed to lay before you the particular Evidence againſt the Priſoner at the Bar: Gentlemen, we have been ſo fortunate as to diſcover, and ſhall produce before you, the very Plan itſelf upon which theſe Conſpirators proceeded, and which was to be put in Execution.

We ſhall produce the Plan under the Priſoner's own Hand-writing, and ſhew his acting correſpondent to that Plan, and in the Execution thereof; this Plan is a complete Scheme of a treaſonable Inſurrection, if that may be called compleat which tends to utter Deſtruction; for if the ſeveral Parts therein contained had been executed, it would have been a total Overturning of the Government and Conſtitution.

But you may obſerve a Regularity going thro' the whole Scheme.

The Place of Action, and the Scene where this Conſpiracy was firſt to be put in Execution, was in the City of *London*, and tho' in the Plan itſelf the Day is not mentioned, yet we ſhall ſhew to you, by the Priſoner's own Declaration and Diſcovery, the Time when it was to be executed; it was at the breaking up of the Camp of his Majeſty's Forces in *Hyde-Park*.

Gentlemen, the Plan contains a Diſpoſition of ſeveral Officers, who were appointed to their particular Stations, and were to be ſupplied with Men deſigned to be procured for the Execution of this Plan; and, as the Conſpirators hoped to debauch part of the Army, theſe Officers were to be diſpoſed at ſeveral Places, to receive the private Men, who, to the Number of about two Hundred (towards the Evening of the Day agreed upon for Execution) were to go ſingly out of the Camp, without their Arms, that they might more eaſily paſs without Obſervation, and were to be collected together at a Place of Rendezvous appointed them.

Gentlemen, from the Management of the Conſpiracy, and the Method they had taken to carry it on, and the Hopes they had entertained, the Conſpirators concluded, they ſhould have that Number of two hundred Men ready in one Body, to be commanded by proper Officers, to make the firſt Attempt, and the firſt Stand.

At the Place of Rendezvous they were to be ſupplied with Muskets ready loaded, and to receive their Arms, which were to be diſtributed to them a little before the Hour of Nine; at which Hour exactly, they were to march directly to the *Tower* of *London*, (as the Plan propoſes, and as the Priſoner agreed and declared) where they might expect to be admitted, by the Help and Aſſiſtance of their Friend, the Officer upon the Guard; and as ſoon as they had entered, they were to ſhut up the *Tower* Gates, and ſeize the Arms.

Their General was to make his Stand in Perſon at the *Royal Exchange*; at the ſame time, it is directed by the Plan, and was conſulted upon, and agreed by the Priſoner himſelf, they were to attempt to arreſt the Perſons of ſeveral great Men; and although the Plan doth not name the Perſons, yet the Priſoner hath explain'd it fully, and from his own Mouth we ſhall prove, who the particular Perſons are, thus intended to be ſeized.

A Declaration was to be diſperſed to excite People to come in to the Rebels; the Gates of the City of *London* were to be ſhut up, and Cannon brought down againſt them: They were then to ſet a Guard over the *Bank*; but in the firſt Place, they were to take out Money ſufficient to pay their Men, ſuch as they hoped would appear in their Intereſt: Their ſeveral other Parties were to ſecure the Artillery in the *Camp*, the Guns in the *Privy-Garden*, the Cannon and Ammunition near the *Horſe-Guards* in St. *James's Park*.

Theſe were the firſt Operations: But to finiſh this villainous and execrable Deſign, at the Time the *Tower* was ſeized, and the City in Arms, they were to ſend a Detachment to ſeize the Perſon of his Majeſty; and this they expreſſed in their Plan to be, for the ſecuring his Perſon from the Mob. But our King was to be delivered to their General at the *Tower*, and to be put under his Cuſtody. Thus the Life of his Majeſty was to be in their Power.

After this, there are ſeveral other Diſpoſitions of Officers, and other Perſons, in order to excite and carry on the Rebellion: Some were to appear in *Tothill-Fields*, ſome in *Southwark*, who were to give Arms to the *Minters*; ſome at *Greenwich* to engage the Watermen, and ſeize the Magazine and Powder there, and others at other Places.

Gentlemen, you will find in this Plan a Preparation to make an entire Conqueſt of the Cities of *London* and *Weſtminſter*; upon which the Conſpirators hoped the reſt of the Kingdom would declare for the Pretender; And there is one particular Proviſion in the Plan, that as they proceeded here, and found Succeſs, the General ſhould immediately diſpatch Meſſengers into the ſeveral Counties of *England*, to give Intelligence of their Progreſs, and to perſuade thoſe, who they looked upon to be in their Intereſt, to declare for the Pretender, and to riſe in their reſpective Counties with their Adherents.

This is the Plan upon which the Conſpiracy is carried on; and as we ſhall produce this Plan, which the Priſoner hath ſupplied himſelf with, and written with his own Hand, we beg leave to inſiſt upon that, as ſtrong Evidence againſt the Priſoner, upon the Overt-Acts alledged in the Indictment, of his conſulting and conſpiring to raiſe a Rebellion and Inſurrection in the Nation, and to ſeize the King's Perſon.

Gentlemen, upon this Plan, which the Priſoner at the Bar had thus furniſhed himſelf with, you will find, on the Examination of our Witneſſes, that he conſtantly acted; he declared for, and promoted the Execution of the principal Parts of it.

Gentlemen, the Witneſſes we ſhall call who were engaged with the Priſoner at the Bar, in this Deſign, are *Stephen Lynch* and *Matthew Plunkett*; (which laſt had been a Serjeant in the Army) with whom the Priſoner conſulted, and whom he engaged in this deſperate Attempt; and we ſhall call ſome other Witneſſes to confirm ſeveral Circumſtances in their Evidence.

Mr. *Lynch* is a Perſon the Priſoner might have reaſonable Hopes of engaging in this Service: He had been formerly acquainted with one Dr. *Murphey*,

phey, who (I am inſtructed) was in the Rebellion that broke out in the Beginning of his Majeſty's Reign: Mr. *Lynch* having been abroad, and abſent for ſome time, returned into *England* in *April* laſt: Upon his Return, Dr. *Murphey*, his old Acquaintance, meets with him, bids him welcome to *England*, and tells him that an Affair was going on by which he might make his Fortune, and adviſes him not to go out of *England:* That there was an Intention to riſe in Favour of the Pretender, whom he called his King, and he would take care to recommend Mr. *Lynch* to a Perſon who had a great Part in that Affair.

Mr. *Lynch* having ſuffered before, and run a great Hazard, was unwilling immediately to enter into any Engagement, but propoſed, that if he could have ſufficient Encouragement, and what he expected as a Reward, he ſhould be willing to ſtay. Some time after Dr. *Murphey* introduces *Lynch* to the Priſoner at the Bar: The firſt time they met, I think it was the Beginning of *June* laſt, they went to the Priſoner's Lodgings, which were then at the upper End of *Chancery-Lane*; and he being about to remove his Goods, deſired them to go to a Tavern hard by, the *Griffin* Tavern in *Holbourn*. To this Place the Priſoner at the Bar came, where Dr. *Murphey* preſented *Lynch* to Mr. *Layer*, as the Gentleman Dr. *Murphey* had before recommended to him; Mr. *Layer* received Mr. *Lynch* at that time with great Civility, and tells him, that the Recommendation he had received of *Lynch* from Dr. *Murphey*, made him not to doubt of his Integrity and Ability. Then they entered upon a Conſultation as to the carrying on of this Deſign; Mr. *Layer* introduced it with repreſenting an Uneaſineſs in the Nation in general, and how fair an Opportunity there was to bring about a Revolution: But Mr. *Layer* tells him, that one of the firſt and principal Steps was to ſeize upon a General, or other great Man, (which you will obſerve is one Part of the Scheme) and upon Dr. *Murphey*'s Recommendation of him as a fit Man for that Service, *Layer* propoſes to *Lynch* to undertake it. At this time *Lynch* acquainted *Layer* with the Difficulties he had been in, and that an Affair of this Nature would take up ſome time before it could be put in Execution, and he could not well engage in it without ſome farther Encouragement, and a Reward in Money, in order that he might live eaſy and well while he ſtaid here. Upon that, the Priſoner at the Bar promiſed him Supplies of Money for his Subſiſtence and Expences, what ſhould be neceſſary, beſides future Rewards; and in purſuance of that Promiſe, *Layer* hath ſeveral Times ſupplied *Lynch* with Money, to engage him more effectually in this Deſign, and to ſupport him in it. By theſe Aſſurances *Lynch* was prevailed upon, and then agreed to enter into this Conſpiracy, and to take upon him the Part therein that ſhould be ſignified to him.

Gentlemen, the Priſoner did not then make a full Diſcovery of the Perſon that was to be ſeized; but they were to meet again, as they did, about the latter end of *June*, at the ſame Tavern: There the Priſoner diſcloſed to the Witneſs the particular Perſon who was deſigned to be firſt ſeized. He acquaints the Witneſs, that the Perſon he (the Priſoner) intended at their former Meeting, and whom he deſigned the Witneſs ſhould ſeize, is the General of the Army, the Earl *Cadogan*; and *Lynch* was to find out ſuch other Perſons as he could rely upon, for the aſſiſting in, and effecting that Enterprize; whereunto *Lynch* agreed. *Layer* then acquainted him what Steps were already made in the Conſpiracy, and that they were to be headed and commanded by a General, who had Wit, and Courage and Reſolution, and who were ſupported by a great many Friends, who had full Power and Authority from the Pretender (whom he called King) to act, and who was intruſted with a Commiſſion as his General, and whoſe Orders *Lynch* was to obey.

The Priſoner and *Lynch* had ſeveral other Meetings, ſome at the *Griffin* Tavern, and others at the Priſoner's own Houſe in *Old Southampton Buildings*, where the Priſoner always encouraged *Lynch* to perſiſt in the Undertaking, by aſſuring him that all Things went on well, and that the Deſign was ſo well laid, that it could not probably miſcarry: That they ſhould be aſſiſted by a great many Officers, as ſoon as any Motion was made, and that the common Soldiers would declare upon the firſt Opportunity: and being aſked by *Lynch*, whether they had no Foreign Aſſiſtance to depend on? The Priſoner anſwered, When we begin the Buſineſs, we ſhall not want Relief, if requiſite. At one of theſe Meetings the Priſoner revealed to the Witneſs, that, upon the Riſing, the *Tower* would be delivered up to them, by means of an Officer who was to be upon the Guard there on the Day of Execution; and that the People in the *Mint* in *Southwark* would come in to them; who, and all others that ſhould repair to their Party, ſhould have Arms delivered to them; and that the whole Deſign ſhould be put in Execution at the Breaking up of the Camp, which would be the moſt proper Time for the ſpeaking with the Soldiers in the Army.

But at a Meeting they had, ſome time in *Auguſt*, at the *Queen's Head* Tavern in *Great Queen Street*, near *Lincoln's Inn Fields*, *Lynch* complaining of the Delay in putting their Deſign in Execution, and repreſenting the Danger of it, and withal preſſing to know his intended General and Commander, the Priſoner gave him great Encouragement, from the good Proſpect of their Affairs, and the Vigilance of the Noble-Man at the Helm, who would loſe no Opportunity, when a convenient Time ſhould offer; and promiſed the Witneſs, that he ſhould be preſented to this noble Perſon in due time, from whom *Lynch* ſhould receive his Orders, or Commiſſion for executing his Part, and entering upon his Enterprize.

And accordingly, upon the twenty-fourth Day of *Auguſt*, Mr. *Layer* invites *Lynch* to ride out of Town with him the next Day to take the Air, which *Lynch* comply'd with; and on the twenty-fifth of *Auguſt* in the Morning, *Lynch* went to the Priſoner's Houſe, who appointed *Lynch* to go before, and to ſtay without *Aldgate*.

At that Time the Priſoner aſked the Witneſs, whether he mounted with Furniture or Piſtols; who anſwered that he did not, but that he had a Double-Barrel Fowling-Piece, which the Priſoner's Servant might carry; the Priſoner directed him to get his Piece ready loaden, becauſe he (*Layer*) ſhould carry ſomething with him, which he would not loſe for all the World. *Lynch* and the Priſoner met without *Aldgate* at eleven before Noon, and the Priſoner's Servant carried the Gun, and they rode together towards *Epping* in *Eſſex*, which was the Place they were going to.

Upon the way as they proceeded, Mr. *Layer* told the Witneſs, that they were going to the Houſe of the Lord *North* and *Grey*, where he would preſent *Lynch* to his Lordſhip as a particular Friend of his (the Priſoner's). When they came to the *Green Man* at *Layton-Stone*, at the Entrance upon *Epping-Foreſt*, the Priſoner ſaid, it might be beſt to eat ſomething there, becauſe they ſhould be too late for the Lord *North* and *Grey*'s Dinner; and accordingly they ſtopt at this Houſe to Dine.

Gentlemen, You will hear from the Witneſs that at this Place, the Priſoner and *Lynch* had another Conſultation, wherein there was a Repetition and Confirmation of the whole Deſign and Conſpiracy. At this *Green-Man*, in your County, Gentlemen, you will find every principal Part of the Conſpiracy, which was to be executed, conſulted upon, and agreed unto by them both: The Time and Manner of the Inſurrection, the Preparations making for it, the Aſſiſtance to be provided and expected from the Army, from many in the City of *London*, and from the Generality of the Nation, as was then ſuggeſted; the Seizing the Earl of *Cadogan* as the firſt Step, and the Surprizing the *Tower* in the Manner mentioned in the Plan, by the Help of the Officer upon the Guard; and then they proceeded to conſider and approve the moſt daring and execrable Part of the Plan, which was then expreſly repeated by the Priſoner, the making a ſtrong Detachment to Seize on his Majeſty's Perſon.

The Priſoner then declared his great Satisfaction, in having engaged a Perſon of ſuch Courage and Conduct as Mr. *Lynch*, in the Attempt of Seizing the Earl *Cadogan*; and likewiſe named the ſeveral other great Men, hinted at in the Scheme, whoſe Perſons were to be ſeized, and of whom he had made up his Collection in purſuance of the Plan; and then expreſs'd his Wiſhes ſo to bring Matters to bear, that Mr. *Lynch* might likewiſe have the ſole Direction in apprehending the Perſons of ſome of his Majeſty's Miniſters, the Lords *Townſhend* and *Carteret*, his Majeſty's principal Secretaries of State, and Mr. *Walpole*, firſt Lord Commiſſioner of the Treaſury.

Theſe Perſons, moſt immediately intruſted in his Majeſty's Service, were in the firſt Place to be ſeized, in order to facilitate the Deſign, and to make it ſucceſsful. By this means the Conſpirators were to weaken his Majeſty's Power of Defending himſelf, when they had deprived him of his General, who was to command and conduct his Army; of his two Secretaries, who were to maintain and carry on his Intelligence; and of the firſt Commiſſioner of his Treaſury, who was to take Care for his Supply.

At this Place theſe things were debated and conſidered between them: Mr. *Lynch* then again complained of the long Delay, and wiſhed that the Affair might be carried on with more Expedition: The Priſoner thought no Time ſo proper as the Breaking up of the Camp, when they might be ſupplied with Soldiers; yet he was willing to hear any Propoſal from Mr. *Lynch*, and deſired Mr. *Lynch*, that if he could think of any ſpeedier Method, or better Scheme, to let him know it: But the Witneſs was not capable to propoſe any way more proper, than what had been agreed upon the Foot of the Plan, as it had been explained by the Priſoner himſelf, and therefore Mr. *Lynch* acquieſced therein.

Gentlemen, at that Time, and at the ſame Place, the Overt-Act laid in the Indictment, of publiſhing the treaſonable Writing, was committed; which was a Declaration framed in the Hand-writing of the Priſoner, to be publiſhed immediately on the firſt Breaking out of the Conſpiracy, to excite the King's Subjects to take up Arms, and to enter into a Rebellion againſt him; and that it might have an Influence on the Army, where their Hopes were placed, it took Notice, that the King's General was ſeized, and in their Cuſtody.

In this Declaration particular Rewards are promiſed to the Horſe and Foot in the Army; different Allowances are made; to every Horſe-man and Serjeant three Guineas; two Guineas to every Corporal, and one Guinea to every common Soldier: All had Promiſes of Encouragement, Favour, and future Reward.

Gentlemen, after this was read, the Priſoner put this Declaration up into his Pocket again; and afterwards (as he acquainted the Witneſs) he himſelf made an Alteration therein; it containing at firſt a general Invitation to a Revolt, but was not directed in the Name of any particular Perſon, therefore the Priſoner thought fit afterwards to alter it, (as he informed *Lynch*) and to make it in the Name of the Pretender, as King.

Gentlemen, though their Hopes and Expectations were founded on corrupting and debauching the Army; I mention it only, as it was their Expectation and Deſign, without any Imputation on the Honour or Fidelity of the Gentlemen of the Army: But Perſons who undertake an Affair of this Nature, are always forward to expect their Deſigns will be ſucceſsful.

This, Gentlemen, which I have mentioned to you, which will be more fully and particularly given in Evidence to you, againſt the Priſoner at the Bar, was tranſacted and committed in the County of *Eſſex*.

My Lord, this will be Evidence of moſt of the Overt-Acts alledged in the Indictment in the County of *Eſſex*; but we ſhall confirm this Evidence by the Confeſſion of the Priſoner, proved by two Witneſſes, in whoſe Preſence he acknowledged the ſeveral Facts which will be charged upon him in the County of *Eſſex*, by the Teſtimony of Mr. *Lynch*; and ſhall make Proof of other Overt-Acts in the County of *Middleſex*: for it was impoſſible a Deſign ſo extenſive ſhould be confined to one or two particular Places within the ſame County: Their Conſultations muſt be transferred from Place to Place, as Opportunity offered, and as they thought moſt conducive to the Purpoſe they were engaged in.

But the Facts I have mentioned were tranſacted, Gentlemen, in your County. After the Priſoner and Mr. *Lynch* had ſettled theſe Affairs at the *Green Man*, they went to the Houſe of my Lord *North* and *Grey* at *Epping:* They ſtaid there all Night, and dined there the next Day; the Witneſs was introduced and preſented to his Lordſhip by *Layer*, and was civilly received and entertained; and the Priſoner at the Bar, as he and *Lynch* returned home, aſked the Witneſs how he liked his Lordſhip, and aſſured Mr. *Lynch* for his Encouragement, that he had greatly recommended him (the Witneſs) to his Lordſhip.

The Priſoner and *Lynch* met a ſecond Time at the Lord *North* and *Grey*'s Houſe, where *Lynch* declared he would withdraw himſelf, if things were

were not put in Execution; to which *Layer* replied, They would be ſooner put in Execution than *Lynch* imagined.

Gentlemen, you may perceive, by this Evidence, the Priſoner's Explanation of the whole Scheme, and his Execution of it, ſo far as was in his Power; though, bleſſed be God, theſe, or any farther Attempts of this Kind, have not hitherto prevailed.

The Priſoner proceeds farther; and the next Witneſs who will be produced againſt him, is one who had been a Servant in the Army, *Matthew Plunkett*. *Plunkett* had been formerly acquainted with the Priſoner, and done him a Piece of Service; he was made uſe of to reſcue ſome Goods, when they were taken in Execution at the Houſe where *Layer* lodged, which was the Beginning of their Acquaintance: this, with ſome other Recommendations from Perſons engaged in this Deſign, induced the Priſoner at the Bar to make Offers to him, as you will hear from the Witneſs.

In *June* 1722, another Perſon of the ſame Name, one *James Plunkett*, was directed by Mr. *Layer* to go to this Serjeant *Plunkett*, and deſire him to meet *Layer* at the *Italian* Coffee-houſe in *Ruſſel-Court*. The Witneſs could not at that Time, at leaſt did not think it proper to go to the Place appointed; but a Day or two after, Mr. *Layer* meets him in *Lincoln's-Inn-Fields*, and takes him aſide under a Gate-way near *Turn-Stile*: *Layer* then told *Plunkett*, he would inform him of a Matter that would be of great Advantage and Benefit to him; there *Layer* let him into this Conſpiracy, and engaged the Witneſs in it, not only by Aſſurance and Promiſe of Reward, but by actual Reward and Money given him; and to induce and to encourage *Plunkett* the more, *Layer* acquainted him, that there were ſeveral Perſons of great Eſtates, who were reſolved to reſcue themſelves and the Nation from the Calamities and Slavery that they then endured; and that they intended to bring about a Revolution, and reſtore their King the Pretender; *Plunkett* objected, that the Pretender was a Papiſt; but the Priſoner replied, there was no Difference between a Papiſt and a Lutheran King, and therefore, that ought to make no Impreſſion upon *Plunkett*, to hinder him in joining to bring in a Papiſt.

The Priſoner enquired of *Plunkett*, whether he had not an Acquaintance in the Army with ſome Officers, and the common Soldiers; and then engaged *Plunkett* to levy what Perſons he could into their Service; and when the Witneſs told *Layer* he knew twenty or thirty Serjeants in the Army, proper Perſons to be applied to, the Priſoner gave *Plunkett* Directions to make Application to them, and to have them enrolled; and at that Meeting the Priſoner gave the Witneſs Money for his Encouragement; and as they had ſeveral other Meetings after this, to provide and levy Men, the Direction and Employment given by *Layer* to the Witneſs, was, to take care to find out their Lodgings, and to make Liſts of the Men, of their Names, and Places of Abode, that they might be ready upon Notice.

The Priſoner not only employed *Plunkett* to procure and inroll as many as he could get; but gave him Money for one particular Perſon, one *Child*, who had ſerved in the Army, and who was recommended to *Layer* by *Plunkett*, as a Perſon that had been diſobliged by having been turned out of the Service; *Layer* himſelf gave *Plunkett* Half a Guinea, for to give to this Perſon, to engage him in this Conſpiracy, which *Plunkett* accordingly paid *Child*: *Layer* likewiſe ordered Money at other Times to be given to *Plunkett*, and at one Time particularly acquainted him, that the Priſoner had left a Guinea with one *Jefferies* a Non-juring Parſon, to give to him, who had given *Plunkett* but Half a Guinea.

The Priſoner at the Bar, to encourage *Plunkett*, acquainted him with the Perſons whom *Layer* expected to join in this Conſpiracy; and asked the Witneſs his Opinion of ſeveral; the Witneſs will tell you the Names of the Perſons, and what Anſwers he gave; particularly that *Layer* asked him what he thought of the Lord *North* and *Grey* for an Officer to be at their Head? The Witneſs anſwered, Though he had never ſerved under him, he looked upon his Lordſhip as a great Man.

They had Meetings at ſeveral Times, when *Layer* informed him, that Things were in a great Forwardneſs, though it was not yet a Time to put their Deſign in Execution: but it went on ſo well, that it could not miſcarry; that the Duke of *Ormond* was to come with a ſingle Ship, with ſome Officers; and that the Deſign had been diſcovered to the *French* Embaſſador, who had given Intelligence thereof to his Majeſty, or elſe the Affair had been done before that Time.

This *Plunkett* was employed, from Time to Time, to prepare Liſts of, and to collect and inroll fit Perſons to go on with this Deſign; and particularly a Number of Serjeants, about twenty-five, being diſmiſſed from the Army, the Priſoner engaged *Plunkett* to go immediately to thoſe Perſons, and take care to ſecure them.

Gentlemen, theſe traitorous Conſults and Tranſactions were in *July* and *Auguſt*: and the Witneſs will acquaint you more fully with the ſeveral Particulars. There was one Encouragement which the Priſoner gave to this Witneſs, which he did not mention to the other: he told *Plunkett* there would be an Army of *Dutch* to come over in Aid of his Majeſty; but the Witneſs ſhould ſee a Number of Half-pay Officers, eſpecially thoſe of the Name of *Fitzgerald*, on the Side of his King (the Pretender), that they could not doubt of Succeſs.

Gentlemen, Under theſe Encouragements and Promiſes, and with theſe Rewards, both theſe Perſons, the two Witneſſes, were engaged by the Priſoner to enter into, and go on with, this Conſpiracy: the Priſoner met them apart from Time to Time; they concerted and carried on ſuch Meaſures as they thought proper to execute this Deſign, upon the Foot of the Plan, which hath been mentioned, and will be produced to you.

After we have produced the Scheme, and likewiſe examined theſe two Witneſſes, who will give you an Account of the Progreſs which the Priſoner made in this Treaſon; we ſhall give you other plain and evident Proof, which will demonſtrate the treaſonable Intent of the Priſoner at the Bar, and his Hopes of Succeſs.

We ſhall prove that the Priſoner had been at *Rome*, and by his own Confeſſion, that he had ſeen the Pretender, and had Conferences with him.

We ſhall prove that the Priſoner had blank promiſſory Notes, or Receipts for Money, ſigned with the Pretender's own Hand, by the aſſumed Title of *James Rex*, found amongſt *Layer*'s Papers, which were remitted to him from *Rome*, and which he has acknowledged were ſent over to him, for raiſing of Money to carry on the Cauſe of the Pretender. This is a ſtrong Evidence of the Truſt and Credit repoſed in him to execute this Conſpiracy; that the Priſoner is a Perſon fully intruſted; the Receipts are in Blank, and the Priſoner had power to raiſe Money on them, and to fill them up with ſuch Sums, as he thought proper and neceſſary.

Gentlemen, on the Examination of our Witneſſes it will appear that Mr. *Layer* declared he had expended great Sums of Money in this Affair, and that he has made it an Excuſe, why he had not Money to ſupply ſome Demands, becauſe he had diſburſed ſo much.

This therefore was to be his full Power to raiſe Money towards bringing the Pretender to the Throne.

Beſides theſe Receipts, he had furniſhed himſelf with Liſts of the Officers of the Army, in order to know the Situation and Condition of the Army, and to conſider what Advantage he could make by any of thoſe in the Liſts: he had provided himſelf with Liſts of the Officers of the *Tower*, which we apprehend was to render the Deſign of ſeizing the *Tower*, when their Friend the Officer was on the Guard, more probable and hopeful.

Beſides this, we have Letters which will be produced, that paſſed between Sir *William Ellis*, an Adherent of the Pretender's at *Rome*, and and Mr. *Layer*, by the Name of *Fountaine*, (a Name he went by) encouraging him to go on with this Deſign: we have the Cypher, and the Explanation of the Cant Words uſed in thoſe Letters. In one Letter *Ellis* ſays, the beſt Method of carrying on the Manufactory (which is the Inſurrection) is to get good Workmen, (by which is meant Soldiers) and particularly to gain ſome of the ableſt of Mrs. *Barbara Smith*'s, (by Mrs. *Barbara Smith* is ſignified the Army) and this would be very agreeable to all concerned, particularly to Mr. *Atkins* (which by their Cypher or Key is a Name for the Pretender).

And in another Letter there is particular Mention of Mr. *Layer*'s intended General; you will find in the Letter an Explanation of him, thus; that he, who the Priſoner in his Letter called *Simons*, and deſcribed as a Tenant, though his Name was not then found in the Rental, this Writer believed he ſhould be called *Simmes*, and ſays he is of the *North*, a grey haired antient Man, for whom his Friend has a particular Eſteem and Value, as a very good Tenant. This is the Deſcription, and this is the Cant that paſſed between them; the Explanation you will apprehend, by the Cyphers that were found amongſt the Priſoners Papers.

Mr. *Layer* was not wanting in other Preparations for this Attempt; for he had provided Arms in his own Houſe, more than he could have Occaſion for, as a private Subject; he had ſeveral Muſquets and other Fire-Arms; he had forty or fifty Cartridges, loaded with Bullets, ready made up for ſo many Diſcharges, which might be delivered out to the People who ſhould come in to them: if he had any Uſe for ſuch a Quantity he will ſhew upon what Occaſion.

The Diſcovery of the Facts made by the Witneſſes occaſioned the apprehending Mr. *Layer*, in whoſe Houſe theſe Arms were likewiſe ſeized.

Mr. *Layer* was ſo conſcious of his own Guilt, that after he was apprehended, he made his Eſcape out of the Cuſtody of the Meſſenger, in whoſe Houſe he was placed; he offered a great Reward to Watermen to carry him off: this is a Demonſtration of his Guilt, from the Conviction of his own Conſcience.

Gentlemen, there are ſome other Matters and Papers which it will be proper to offer to your Conſideration; and moſt of theſe particular Facts, which I have mentioned, or the moſt material of them, have been confirmed by Mr. *Layer*'s own Confeſſion which he made upon his Examination before the Lords of the Privy Council. And when we have laid before you this Evidence, as according to my Inſtructions we ſhall very fully, I don't doubt but that you will do your Duty as honeſt Men.

We don't apply to your Zeal, as you are Proteſtants and Engliſhmen; but upon the Weight of the Evidence, we ſhall appeal to your Juſtice, to your Oaths, and to your Conſciences, whether upon the whole Proof to be laid before you, you will not remain fully ſatisfied, that the Priſoner at the Bar is guilty of the High-Treaſon whereof he ſtands indicted, and then that you do find him ſo.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am Counſel on the ſame Side for his Majeſty againſt the Priſoner at the Bar, who ſtands indicted for High-Treaſon, in compaſſing and imagining the Death of the King. The Preſervation of the Life of the King is of that great Importance to the Safety and Proſperity of his Subjects, that even Imaginations and Intentions (which are but Acts of the Heart) to take it away, manifeſted by Overt-Acts, are an Offence of the higheſt Nature which the Law takes Notice of; but as Imaginations and Intentions of Men are ſecret, and cannot be diſcovered but by their Actions, there muſt be Proof of ſome Fact done in order to carry ſuch Intentions into Execution, to make the Offenders guilty of Treaſon: therefore in this Indictment five ſeveral Overt-Acts are laid; the firſt is, that the Priſoner at the Bar propoſed, conſulted and agreed with divers Perſons unknown to the Grand Jury, to raiſe an Inſurrection and Rebellion within this Kingdom againſt his Majeſty; the ſecond, that he publiſhed a traitorous Writing, purporting an Exhortation, Encouragement and Promiſe of Rewards, to perſuade his Majeſty's faithful Subjects to take up Arms againſt him; the third, that he propoſed, conſulted and agreed to ſet the Pretender on the Throne by armed Force; the fourth, that he liſted Men to levy War againſt the King; and the fifth, that he propoſed, conſulted and agreed to ſeize and impriſon his Majeſty's ſacred Perſon.

Gentlemen of the Jury, you will readily agree with me that nothing can be more dreadful to a true *Briton* who hath any Regard to himſelf or his Poſterity, or Love to his Country, than the fatal Conſequences that muſt have inevitably attended ſuch wicked Deſigns, had they been carried into Execution with Succeſs: ſuppoſe a Rebellion had been only raiſed, what could any Man have expected from a Rebellion in the Heart of the Kingdom, but Plunder and Rapin and Murder, a total Suſpenſion of all Civil Right, and as long as the Storm had continued, a juſt

but

but terrible Apprehenſions of ſomething yet worſe to come: This would certainly have been the Caſe, though the Attempt ſhould have been diſappointed at laſt. But had it been attended with Succeſs, had his Majeſty's ſacred Perſon been ſeized and impriſoned, and had the Pretender been placed on the Throne, what a Scene of Miſery had open'd! A mild Adminiſtration, govern'd by the Law of the Land under an excellent Prince, and as juſt and merciful as ever wore the Crown, muſt have given way to Arbitrary Power; all your Eſtates and Properties muſt have been at the Will of a provok'd and exaſperated Uſurper; Liberty muſt have given Way to Slavery, and the beſt of Religions to Popiſh Idolatry and Superſtition; and this, humanly ſpeaking, without any Proſpect or Hopes of Relief: Nor would theſe dreadful Calamities have been confin'd within the Bounds of the King's Dominions, for ſhould the preſent happy Eſtabliſhment in his Majeſty and his Royal Family (the chief Bulwark and Support of the Proteſtant Intereſt) be deſtroyed, the Proteſtant Religion in general muſt be reduced to the loweſt Ebb, if not totally extinguiſhed.

This is the Nature of the Crime, and theſe ſome of the fatal Conſequences that muſt have enſued, if the Deſigns charged upon the Priſoner by the Indictment had took Effect. But whether he is guilty of this great Offence, is what you, Gentlemen of the Jury, are now to try.

My Lord, 'tis my part to open the Nature of the Evidence that we ſhall produce to prove the ſeveral Overt-Acts laid in the Indictment; and in ſtating it to your Lordſhip and the Jury, I ſhall follow the Courſe of Time in which the Facts were done, that the Caſe may be more eaſily apprehended, and ſhall open nothing but what I believe will be clearly verified by Proof.

This Priſoner at the Bar, tho' brought up to the Profeſſion of the Law, and a Practiſer in it, went beyond Sea in the Year 1720, and at the Cloſe of that Year, according to our Stile, or the Beginning of the Year 1721, arrived at *Rome*, where the Pretender then was; while the Priſoner was there, he procured himſelf to be introduced to the Pretender, and had two private Conferences with him, in which (but by what Methods or Repreſentation is beſt known to himſelf) 'tis plain he obtained the Pretender's good Opinion ſo far, that he thought him a fit Perſon in whom a Confidence for carrying on any Deſigns againſt his Majeſty, and for ſetting himſelf on the Throne, might be ſafely repos'd: For this Purpoſe a Correſpondence was then ſettled between the Priſoner and ſome Perſons of Diſtinction about the Pretender, and a Cypher of Names, of Perſons and Things was agreed on, in order to carry this Correſpondence on. The Priſoner returned to *England* about *July* 1721, after which he writ Letters to his Correſpondent at *Rome*, and Anſwers to them came from thence, whereby it will appear, that the Priſoner had undertook a conſiderable Part in the Deſign then carrying on to bring the Pretender in; and altho' theſe Letters are in obſcure and cant Terms, and fictitious Names, yet by the Help of the Cypher, and from the Nature of the Letters themſelves, it will eaſily appear to a common Underſtanding for what Purpoſe they were writ: This Cypher and Letters we ſhall prove to have been found among the Priſoner's Papers, which were ſeized ſoon after his Commitment, and your Lordſhip and the Jury will ſee, when they come to be read, that notwithſtanding the obſcure Terms, and the myſterious Expreſſions inſerted to dazzle the Eye of the Reader, when compar'd with the Cypher they will be ſo intelligible, that they will be a plain Evidence that a Deſign was carrying on of raiſing a general Rebellion in favour of the Pretender; for which Purpoſe a Scheme in Writing was prepared, which we ſhall lay before your Lordſhip and the Gentlemen of the Jury, that was likewiſe found among the Priſoner's Papers; we ſhall prove it to be writ with his own Hand.

Mr. Serjeant *Pengelly* opened the Nature of the Scheme very fully, I ſhall not trouble your Lordſhips with a Repetition of what he ſaid; when it comes to be read it will appear to be calculated for a general Riſing, it will prove a form'd Deſign to ſeize the *Tower*, to ſeize Perſons in great Stations, to ſeize the Bank, and then at laſt to ſeize the Perſon of the King himſelf, and to ſeize his Royal Highneſs the Prince of *Wales*. This, we apprehend, will be a ſtrong Evidence of the Overt-Acts laid in the Indictment, and will confirm the Teſtimonies of the Witneſſes which we ſhall produce.

There are two Witneſſes we ſhall call to prove the Overt-Acts laid in the Indictment, they have already been mentioned to your Lordſhip, Mr. *Stephen Lynch*, and Serjeant *Matthew Plunkett*. Mr. *Lynch* will prove the ſeveral Overt-Acts laid in the Indictment to have been committed by the Priſoner in the County of *Eſſex*, where this Indictment was found; as alſo Overt-Acts of the ſame Nature committed by him in the County of *Middleſex*. But as 'tis improper to fall directly upon the Proof of thoſe Facts, without firſt proving ſome other Facts by way of Introduction, as how the Acquaintance between Mr. *Lynch* and the Priſoner at the Bar began, and how they came to be ſo intimate as to enter into a Deſign of this Nature, Mr. *Lynch* will give your Lordſhips and the Jury an Account; that there had been an Acquaintance between this Mr. *Lynch* and one Dr. *Murphey* eight or nine Years ago; that they had agreed to join in the Rebellion which was in the Beginning of his Majeſty's Reign; after that was over Mr. *Lynch* went beyond Sea, and continued there ſome time, and arrived in *England* in *April* laſt; that their Acquaintance continued, and their Principles were not altered; Mr. *Lynch* meeting Dr. *Murphey*, Dr. *Murphey* (who hath been mentioned to your Lordſhips on a late Occaſion in this Court and is not now to be found, but had a great Acquaintance with the Priſoner at the Bar) told him he had ſomething advantageous to communicate to him, and appointed a Meeting next Morning at a Coffee-Houſe in *Cornhill*, where they accordingly met; and *Murphey* then adviſed him not to go out of *England*, becauſe he had an Opportunity of making his Fortune, telling him there would be a general Riſing in Favour of the Pretender (whom he called King) and that it was carry'd on by Gentlemen of Note and Credit; and if he would accept of the Service, he would recommend him to one greatly concern'd in that Affair; Mr. *Lynch*, after Conſideration, agreed to ſtay.—After ſeveral other Meetings between this Dr. *Murphey* and Mr. *Lynch*, at which their Diſcourſe generally turned upon this intended Riſing; about the Beginning of *June*, Dr. *Murphey* introduced Mr. *Lynch* to the Priſoner, as a Perſon fit to be entruſted in the intended Enterprize; they went to the *Griffin* Tavern in *Holborn*; Mr. *Layer* there expreſſed the good Opinion he had of Mr. *Lynch* upon the Character he had received of him from ſo good a Friend as this Dr. *Murphey*. They ſoon enter'd upon Buſineſs, and the Priſoner, after having made a Repreſentation of the Uneaſineſs of the Nation in general, and of the fair Opportunity there was to bring about a Revolution, propos'd to Mr. *Lynch* to ſeize ſome General; to which the Witneſs agreed. After this they had ſeveral other Meetings, at which the Diſcourſe turn'd upon the ſame Subject of a general Riſing in order to ſet the Pretender on the Throne, and at one of them the Priſoner declared he intended *Lynch* ſhould ſeize the Earl of *Cadogan*, and that the Scheme was laid on a ſound Foundation, having a great Man at the Head of Affairs, who wanted neither Wit, Courage nor Reſolution, and he would be backed by his Friends. Several other Propoſitions were made by the Priſoner tending to the ſame End; to all which Mr. *Lynch* agreed, and they conſulted how they might put thoſe things in Execution. In *July* laſt, Mr. *Layer* went into the Country for fourteen or fifteen Days, and after his Return in the Beginning of *Auguſt*, in Purſuance of what they had concerted, Mr. *Lynch* and he went to view the Earl of *Cadogan*'s Houſe, to ſee how practicable that Deſign of ſeizing him at his Houſe was. Mr. *Lynch* thought it feaſible; but he grew uneaſy at Delays, and frequently told the Priſoner that his Circumſtances would not permit him to continue here at his own Expence; therefore to encourage him to ſtay, and perſevere in the Deſign, Mr. *Layer* gave him ſeveral Sums of Money.

My Lord, upon the twenty-fourth of *Auguſt* laſt, the Priſoner and Mr. *Lynch* agreed to ride out the next Day to take the Air: On the twenty-fifth, according to Appointment, (which brings us now to the Overt-Acts in the County of *Eſſex*) they rid out together; the Priſoner thought it proper to ride with Arms, alledging that he had things about him he would not loſe for any thing in the World. Upon the Road he told Mr. *Lynch* they would go to Lord *North* and *Grey*'s, with whom the Priſoner had the Honour to be well acquainted, and he would preſent Mr. *Lynch* to my Lord as his particular Acquaintance. It happened to be too late to get to Lord *North* and *Grey*'s by Dinner, whereupon they put in at the *Green-Man* near *Epping-Foreſt*, which, Gentlemen, is at *Layton-Stone* in your County. Dinner not being ready at their coming thither they enter'd into Converſation on the former Topicks, and Mr. *Lynch* deſiring to give him ſome inſight into the Scheme that was formed, the whole ſubject matter of their former Conſultations and Diſcourſes were repeated about ſeizing Lord *Cadogan*, ſeizing the Miniſters of State, of getting Part of the Army to declare for them, and for ſeizing the King's Perſon; and theſe things were then agreed to by them. At this Place it was, that the Priſoner pulled out of his Pocket, and ſhew'd to Mr. *Lynch* the traitorous Writing laid in the Indictment, which was a Declaration to encourage a general Riſing, writ, as the Witneſs believes, in the Priſoner's own Hand; and that Part which contained the Promiſes of Rewards to be given to the Soldiers and other Perſons to encourage them to come into their Deſigns; was read by the Witneſs; after which Mr. *Layer* took his Paper away, and put it up in his Pocket again. My Lord, when they had dined, they went on to Lord *North* and *Grey*'s Houſe (whom your Lordſhip will hear mentioned by the Evidence as the Perſon thought on to be General in this Undertaking); they ſtaid there that Night, and dined there next Day, and afterwards they had a ſecond Meeting at Lord *North* and *Grey*'s. Your Lordſhip and the Jury will be pleaſed to obſerve, that this Evidence will be a full and poſitive Proof by this Witneſs, that the Overt-Acts by publiſhing this traitorous Writing, encouraging Perſons to take up Arms againſt his Majeſty, of the Conſultations and Agreement to levy War, to ſet the Pretender on the Throne, and to ſeize his Majeſty's Perſon, were done at the *Green-Man*, in the County of *Eſſex*: And this will likewiſe be an Evidence, that all the Overt-Acts laid in the Indictment (except publiſhing the traitorous Writing) were done in the County of *Middleſex*.

My Lord, the next Witneſs we ſhall produce is *Matthew Plunkett*, formerly a Serjeant in ſome Regiment; he had been formerly acquainted with, and had been ſerviceable to the Priſoner, and was very well acquainted with one *James Plunkett*, which *James Plunkett* was a great Acquaintance of the Priſoner's. This *James Plunkett* deſired the Witneſs, *Matthew Plunkett*, to meet the Priſoner in *July* laſt at the *Italian* Coffee-Houſe in *Ruſſel-Court*, which the Witneſs could not comply with; but the Witneſs met the Priſoner the *Sunday* following in *Lincoln's-Inn Fields*; they were together near an Hour, the Priſoner gave him an Account of the intended general Riſing, and aſk'd the Witneſs if he knew any old Serjeants or Soldiers who can diſcipline a Mob, agreed with him to procure ſuch, mentioned to him ſeveral Perſons fit to be at the Head of this Enterprize; and in order to make him diligent, he gave him at that time Half a Crown: And Money was not only given him at that time, but a Promiſe was made to him of further Rewards. The Priſoner having occaſion to go in the Country, one *Jeffreys*, a Nonjuring Clergyman, was ſent to *Matthew Plunkett* by *Layer* (and this Fact that I am going to open muſt not be barely conſidered as an Act between *Jeffreys* and *Plunkett*, but it will be brought directly home to the Act of *Layer* himſelf). *Jeffreys* told *Plunkett* he came from the Priſoner, and that he was employed by him to go to ſuch as the Witneſs was, who were old Serjeants, to get a Number of them together to diſcipline the Mob, in order to the general Riſing: The next Day they met again, and had the like Diſcourſe, and *Jeffreys* gave *Matthew Plunkett* Half a Guinea; and what brings this home to the Priſoner, is, that he told *Plunkett* he had left a Guinea with the Nonjuring Parſon to give him, and talked with him on the ſame Subject that *Jeffreys* had diſcourſed the Witneſs before. But in fact *Jeffreys* did not give *Plunkett* the Guinea, he gave him but Half a Guinea.

My Lord, after Mr. *Layer* went out of Town, *Plunkett* gave him an Account what Progreſs he had made in the Affair. *Plunkett* told him that he had got ſeveral old Soldiers that would bear a Part in this Buſineſs; The Priſoner ſaid he muſt take care to keep a Liſt of their Names, and the Places where they lived, that they might be in a Readineſs when they ſhould have Occaſion for them. And on *Sunday* before the Priſoner was taken up, he told this *Plunkett* that a great many of his Country-

men were turned out of the Guards, and ask'd him, If he knew where they lodg'd; and upon the Witness's Answer that he did not, the Prisoner directed him to take a List of their Names, and Places where they lodg'd, that he might have them when Occasion required. So that here is Mr. *Lynch* a positive Witness as to the Overt-Acts in *Essex*; Mr. *Lynch* and Mr. *Plunkett* positive as to the Overt-Acts in *Middlesex*, and their Testimony confirmed by the Scheme under the Prisoner's own Hand, and other Papers, which we shall produce, found among his Papers which will leave no room to doubt of the Truth of their Evidence. Besides, my Lord, the Prisoner being seized in *September* last, we shall give an Account when he was in Custody of a Messenger, lock'd up in a Room two pair of Stairs high, he made a shift to make his Escape, got to the Water-side, and got a Sculler to carry him over the River; he actually got over the River, but he was retaken again in St. *George's-Fields*, and brought back to the Messenger, and offer'd very considerable Sums to the Persons who retook him to let him go. I believe it is hardly to be imagin'd, a Person perfectly innocent would venture to get out of a Room two Story high, and in the manner he did, and offer to give such a Reward to the Persons who retook him to let him get off; he must be conscious to himself that he was in very great Danger. There were likewise found in his House Arms more than necessary for his Use, and which he has confessed were to be used if there had been a Rising.

My Lord, to corroborate the Testimony of the Witnesses, we shall lay before your Lordship and the Gentlemen of the Jury, the several Papers which were found, I may say, in Mr. *Layer*'s Custody; I don't say they were actually taken in his Custody, but it will come to the same thing; for he had delivered them in two Parcels to Mrs. *Mason* the Witness, whom we shall produce, with Directions that she should take particular Care of them; and they were seized in her Custody not long after the Prisoner was committed to the Custody of a Messenger; she saw every one of them mark'd by the Persons who seized them, and marked them herself: There are not only the Scheme and the Cyphers and Letters mentioned before, but also ten promissory Notes subscribed by the Pretender: These promissory Notes run,

I Acknowledge to have received from the Sum of which Sum I promise to repay with an Interest for it at the Rate of per Ann. JAMES *R.*

Can any Man imagine, if there was nothing else to explain them, that these Notes were there for nothing? Every Body must believe that they were intended to be made use of to carry on the Conspiracy; But we shall shew, by the Prisoner's own Confession, that they were sent over to him by Sir *William Ellis*, in order to be made use of as Occasion should serve, to promote these Designs in favour of the Pretender. Among these Papers several Lists were found which will be produced, some of which contain the Number of the Officers and of the Soldiers in the Guards, some the Names of other Officers and Soldiers, and some the Number of the Officers belonging to the *Tower*. It must be owned, that in some of those Lists, there are the Names of several Persons of as great Honour, Loyalty, and Fidelity to his Majesty, as any Subjects his Majesty hath; yet the procuring these Lists could be for nothing but to get an Information of the Number and Character of the Persons in his Majesty's Service, to know the Strength of his Majesty's Forces, that Intelligence might be given and Schemes framed accordingly, and that there might be tampering with such as there could be any Hopes of bringing over into the Pretender's Interest: If the Prisoner can put any other Construction upon his having these Lists in his Custody, he will have an Opportunity to do it. These Things being proved, I apprehend there remains no doubt but that the Prisoner will appear to be guilty of the Crime charged on him in this Indictment: But besides all this, we shall prove his Confession by two Witnesses, whereby he has confessed every Overt-Act laid in this Indictment, the several Transactions that Mr. *Lynch* and *Plunkett* will give account of, and almost all the Facts that I have mention'd before. I shall conclude with this, Gentlemen of the Jury, that if we make out these Facts as they have been opened, and according to my Instructions, I have no Reason to make the least Question of it, it must be left to your Consideration whether the Prisoner at the Bar is guilty of the Offence for which he stands indicted or not: If you shall be satisfied by the Evidence that he is, I do not doubt but you will do Justice (which is all that is desired of you), and find a Verdict for the King.

Mr. Sol. Gen. If your Lordship pleases, we will now proceed to examine Witnesses; and we desire that room may be made for the Witnesses to come into Court. Call Mr. *Stephen Lynch.*

L. C. J. You must make way there.

Prisoner. My Lord, I humbly desire before this Witness be sworn, that he may be examin'd upon a *Voyer dire*, whether he hath not a Promise of Pardon, or some other Reward, for swearing against me?

L. C. J. Sir, you can't ask him that Question.

Mr. *Hungerford.* I hope we shall be at Liberty, and have a Right to enter into an Examination of this Matter. If a Man is represented to be in the same Circumstances with the Prisoner, and the Prisoner led into the same Circumstances by the Person proposed as a Witness, and afterwards by him involved in the same Offence; if the Person therefore proposed as a Witness, hath a Promise of Pardon or some Reward, upon Condition that he would swear against the Prisoner, he cannot by Law be a good Witness; the Person propos'd as a Witness must be a credible Witness, must be a legal Witness, must not be convicted of Perjury or any other notorious Offence, a free Witness that is not under Restraint for the Offence he accuses another of; and therefore we hope we have a Right of asking whether he acts under the Influence of any Promise of Reward, or the Promise of a Pardon: And the Right we have of examining him to the Promise of a Reward or Pardon, is supported by the Authority of my Lord Chief Justice *Hale* * as reported by *Kelynge*.

Mr. *Ketelbey.* My Lord, I would not take up your Lordship's time, and submit the Weight of what Mr. *Hungerford* has offered to your Consideration; but we found our Right of asking this Question upon my Lord Chief Justice *Hale*'s express Declaration, set forth at large in *Kelynge*'s Reports, *fol.* 18. which I have here in my Hand. I must likewise beg Leave to observe to your Lordship, that this Question was formerly asked in the Trial of *Gordon* and *Dorrell* to one *Adams*, that had been in the same Conspiracy with those that were brought to Trial for High-Treason, and was then produced as a Witness against them; the Book was then brought into Court, and the Quotation read before your Lordship, and according to my Notes of that Trial, which I have here brought with me for my Justification, (I submit to your Lordship's Correction if I don't state it right) *Adams* was ask'd that Question, though it was long objected to by the King's Counsel. The Distinction my Lord Chief Justice *Hale* made was this.

Mr. Just. *Eyre.* Read the whole Paragraph.

Mr. *Ketelbey.* I will, my Lord. The Words are these: "It was resolved that some of those Persons equally culpable with the rest, may be "made use of as Witnesses against their Fellows, and they are lawful Accusers or Witnesses within the Statute 1 *Ed.* VI. 12. 5 & 6 *Ed.* VI. *c.* "11. & 1 *Mar.* I. and accordingly at the Trial of these Men, some of "them who were Parties in the Treason were made use of against the rest: "For lawful Witnesses within those Statutes are such as the Law allow-"eth; and the Law alloweth every one to be a Witness, who is not con-"victed or made infamous for some Crime; and if it were not so all Trea-"sons would be safe, and it would be impossible for one who conspires "with never so many Persons to make a Discovery to any Purpose."

I was aware of what was here laid down, and therefore did submit Mr. *Hungerford*'s Reason to your Lordship's Consideration, and did not insist farther upon it; the subsequent Words are these, "But the Lord Chief "Baron *Hale* said, That if one of these culpable Persons be promised his "Pardon on Condition to give Evidence against the rest, that disableth "him to be a Witness against the others, because he is bribed by saving "his Life to be a Witness: So that he makes a Difference where the Pro-"mise of Pardon is to him for disclosing the Treason, and where it is for "giving of Evidence. But some of the other Judges did not think the "Promise of Pardon, if he gave Evidence, did disable him. But they all "advised that no such Promise should be made, or any Threatnings used "to them in case they did not give full Evidence."

So that, my Lord, we have not only the Authority of that Book with us, but a solemn Precedent in this Court in point established upon a long Debate, and grounded on that very Authority. And when I moved this Matter at the Trial of *Dorrell*, *Gordon* and *Ker*, I then cited another Instance where it had been allowed by the Court, and that was before Mr. Justice *Powell* at *Worcester* Assizes, upon the Trial of *Palmer* and *Symonds* for the Murder of Mrs. *Palmer*: There a third Person concerned in the Fact came in as a Witness against the other two, and after it had been argued by Counsel, and that learned Judge had read upon the Bench, and considered this Authority, the Witness was at last asked this Question upon a *Voyer dire*: And for the Truth of this Case as I reported it, I appealed to my Lord *Lechmere*, then Attorney-General, and who had been one of the Counsel at *Palmer*'s Trial.

Mr. Serj. *Pengelly.* My Lord, we hope if there is any room for this Pretence which is insinuated, it only goes as to his Credit, and does not disable him from being a Witness; the Authorities produced are no more: The Judges directed that no such Promise should be made, but if such a Promise was made, they agreed it doth not disable him from being a Witness, as was mentioned by my Lord Chief Baron *Hale*; it is not like Money given, which is an actual Corruption; the Promise of Pardon is a thing voluntary in itself: Who is the Promise to be made by? Is it in the Power of any Person but his Majesty to perform it? If there is any Thing in the Supposition, it is not proper to ask in relation to it upon a *Voyer dire* to prevent the Witness from being sworn to give Evidence; but when he hath been sworn, if they think fit to ask the Question, they may.

Mr. Att. Gen. The asking the Witness this Question, as 'tis irregular, so if it was answered in the affirmative, wou'd be of no Service to the Prisoner; for, with Submission, it will not disable Mr. *Lynch* from being a Witness. Every Man is bound in Justice to give Evidence if required, and a Promise to have a Pardon if he gives Evidence against the Prisoner, can be looked on only to induce him to do that which by Law he ought to do according to the Truth: It does not import that he was to give a wrong or a false Evidence; such a Question he cannot be obliged to answer. And the greatest Use the Prisoner could make of this, if such a Promise was made to the Witness (which is not admitted) wou'd be only against the Credit of the Witness, but not entirely take off his Testimony; his Credit, as well as the Credit of all Witnesses, must be left to the Consideration of the Jury. As to the Opinion of my Lord Chief Baron *Hale* cited out of *Kelynge*, the other Judges differ'd with him, and therefore we hope Mr. *Lynch* shall be sworn.

Mr. Sol. Gen. We who are Counsel for the King don't oppose the asking this Question, out of any apprehension that the Answer would come out against us, but for fear of overturning a Point that hath been long settled. As to the Book, which these Gentlemen cite to support their Objection, with Submission, it is rather an Authority to over-rule it. The Opinion they found themselves upon, is that of my Lord Chief Baron *Hale*; but the rest of the Judges were of Opinion against him; so that we apprehend the Authority is with us, and likewise the Reason of the thing. I take it that no Question is to be asked a Man upon a *Voyer dire*, but to a Fact that would take off his Testimony. Suppose then, for Argument sake, that there was a Promise of Pardon made to a Man upon Condition that he should give Evidence; I apprehend that would not disable him from being a Witness, any more than if the Condition had been that he should declare the Truth, which it was his Duty to have done, although no such Promise had been made: And surely the Promise of a Pardon, upon a Condition to do that which was his Duty before, won't take off his Testimony. If they would ask the Witness whether he has accepted a Promise of a Pardon upon Condition to give false Testimony, that is a Question, to which, with great Submission, he is not bound to answer; because that would be to examine him to accuse himself of a thing which is unlawful. For these Reasons, as well as upon account of the Authority they produce, we apprehend there is no Force in the Objection.

Mr. Serj. *Cheshire.* My Lord, I know not whether it would not be laying too great a Weight upon the Objection, for so many of the King's Counsel to answer it; for my Part I think it would.

* *Hale's Hist. P. C. B. 2. cap. 37.*

Mr. *Hungerford.* I urge it thus far: Whatſoever Perſon is produced in a Court of Juſtice for a Witneſs, he muſt appear to be utterly unconcerned in point of Intereſt in the Conſequence of the Trial. If a Man produced as an Evidence to prove the Debt upon the Defendant, ſhall, upon being examined upon a *Voyer dire*, diſcloſe that he is to have a part of the Money recovered, is not ſuch a Perſon diſabled from being a Witneſs at all? And is not a Promiſe of Pardon to the Witneſs, in Caſe he convicts the Criminal, a greater Byaſs than the Witneſs's having part of the Money recovered? In a Civil Cauſe the Queſtion is not, whether the Witneſs be tempted to ſwear a Truth or Falſhood? but whether the Witneſs doth not appear to be ſo far concerned in Intereſt, that he ought not to be examined at all? And therefore I humbly inſiſt that we ought to have an Account, whether the Witneſs, *Lynch*, hath the Promiſe of a Pardon, or any Reward for that which he is to do here, *viz.* for the Evidence he is to give againſt the Priſoner? As to the Conſequence of ſuch an Enquiry, it is indifferent to me whether it will diſable him from being a Witneſs abſolutely, or go to his Credit only: For if it ſhould come out that he hath ſuch a Promiſe, we ſuppoſe no Jury or Man living will believe him, and that is much the ſame as if he were not produced; tho' it ſeems more agreeable to the Practice in Civil Caſes, that he ſhould not be admitted as a Witneſs at all.

Mr. *Ketelbey.* Mr. *Sollicitor* miſtakes the Words of the Book as I read them; he is pleaſed to underſtand them as if all the reſt of the Judges differed in Opinion from my Lord Chief Baron *Hale*; but the Book does not ſay ſo, 'tis only that ſome of the other Judges were of Opinion that it did not diſable him, but all agreed that it went to his Credit, and that was all I read in the Book; and I would not have offered it otherwiſe than as it was truly there, upon any Conſideration whatſoever; but whether this Queſtion be asked at firſt or laſt, ſo as we have an Anſwer to it, I am contented.

L. C. J. You ſee the moſt you can make of it is, that it is an Objection to his Credit; and if it goes to his Credit, muſt he not be ſworn, and his Credit left to the Jury? He muſt be examined as a legal Witneſs; but if this Man, under Expectation and Promiſe of a Pardon, comes here to ſwear that which is not true, and you would ask him to that, he is not obliged to anſwer it. Nobody is to diſcredit himſelf, but always to be taken to be innocent till it appears otherwiſe. It is expreſſed that he has a Promiſe of Pardon: What to do? To give Evidence. Give Evidence! Why ſhould he not? Is he not obliged to it? Suppoſe he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The moſt you can ſay is, he has a Promiſe of Pardon if he gives Evidence; and can you conclude from thence that he can give no Evidence except a falſe Evidence? If they who aſk the Queſtion inſinuate any thing like that, it ought not to have an Anſwer: But if he hath a Promiſe of Pardon if he gives a true Evidence, it is no Objection to his being a Witneſs, or to his Credit.

Priſoner. My Lord, I humbly hope our Objections will thus far prevail, and that we ſhall come at the Fact.

L. C. J. When he is ſworn you ſhall ask him what Queſtions you pleaſe.

Mr. Juſt. *Eyre.* The Objection which gives Occaſion to inſiſt upon this Queſtion, ariſes from the Influence which the Hopes of Pardon may poſſibly have upon the Witneſs; and if this be a Reaſon for ſetting aſide a Witneſs as incapable, no Accomplice who diſcovers a Conſpiracy can ever be allowed to prove it upon Oath; for I believe, no Man ever yet made a Diſcovery but with the Hopes of Pardon; and a Government is obliged in Honour to grant it, where the Confeſſion appears to be ingenuous and ſincere: And therefore if the Hope or Proſpect of Pardon, which is all that can be inferr'd from a Promiſe, ſhould be an Objection to the Competency of a Witneſs, no Government would be ſafe; for treaſonable Conſpiracies might be form'd and carried on with Impunity, when the Perſons concerned, from whom alone a full Diſcovery can be had, are utterly incapable of proving the Fact, though they give all poſſible Marks of their Sincerity and Truth. They have therefore been always allowed to be Witneſſes; and I don't remember that ever any Objection was made to their Competency, 'till the Caſe of the King and *Gordon*, when the Counſel for the Priſoner would have asked the ſame Queſtion which is now propoſed, but the Court did not think it proper before the Witneſs was ſworn; for no Perſon produced as a Witneſs can be examin'd to any Matter which only affects his Credit, and is no Objection to his Competency, till after he is ſworn to give Evidence, and has been examin'd.

Mr. Juſt. *Powys.* Mr. *Hungerford* would do well to remember the ſeveral Acts of Parliament made to give Encouragement, by a Reward of forty Pounds, for the apprehending and convicting of every falſe Coiner, Highwayman, and Houſe-breaker; and if a Criminal in thoſe Offences ſhall come in, and diſcover and convict two of his Accomplices, he ſhall be entitled to a Pardon; and by the expreſs Words of the 5th of Queen *Anne*, ſhall have the Reward of forty Pounds for each Houſe-breaker, and ſhall alſo himſelf be entitled to a Pardon; ſo that the Parliament thought it proper to give even Money as well as a Pardon to ſuch Diſcoverer. Yet, ever ſince the making of thoſe Acts, the Perſons ſo promiſed and encouraged, have upon thoſe Trials been admitted as good Witneſſes even before a Pardon. And indeed there cannot be too great Encouragement given to Criminals to become honeſt, and to come in and impeach their Accomplices, it being often impoſſible fully to diſcover thoſe ſecret Confederacies, but by ſome of the Accomplices and Actors therein.

The Law thinks theſe are fit Witneſſes, and you will find it in the Book that Mr. *Ketelbey* hath mentioned, that they were thought fit to make Diſcoveries of thoſe ſecret Combinations; I don't ſay to come in and give falſe Evidence, but to make a fair Diſcovery.

Mr. *Hungerford.* My Lord, we ſubmit; we ſhall ask the Queſtion, whether he hath any ſuch Promiſe made? Let the Truth come out, and we ſhall be ſatisfied.

Mr. Juſt. *Forteſcue Aland.* I was Counſel in the Caſe of the King and *Gordon*; and I very well remember the Counſel of the other Side inſiſted the Witneſſes produced ſhould be aſked this Queſtion on a *Voyer dire*, his Name was *Mayer*. The Reaſon the Court gave that it was improper to aſk this Queſtion on a *Voyer dire*, was, that if he had this Promiſe, ſuch Promiſe was made either to ſpeak the Truth, or to ſpeak a Falſhood; if it were to give a juſt and true Evidence, there was no Harm in it; and if it was a Promiſe of Pardon for ſpeaking that which was not true, the Witneſs was not bound to anſwer that Queſtion, and conſequently it can be of no Uſe whatſoever; therefore the Witneſs muſt be ſworn.

[*Mr.* Stephen Lynch *was ſworn.*]

Mr. Sol. Gen. Do you know the Priſoner at the Bar?

Lynch. Yes.

Mr. Sol. Gen. How long have you known him?

Lynch. I firſt knew him about the Month of *June* laſt.

Mr. Sol. Gen. Pray, give an Account to the Court and Jury by what Means you firſt became acquainted with him.

Lynch. I became acquainted with him by Dr. *Murphey:* About the Month of *April* laſt I came into *England* from *Flanders*; at my Arrival in *England* I met with Dr. *Murphey*, that was my Acquaintance ſeveral Years before, who met me, and told me, he had ſome particular Buſineſs to tell me, and deſired me to meet him at *Cooper*'s Coffee-houſe in *Cornhill*, where I met him; and he told me that material Things were acting in the Kingdom in order to a Riſing, and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it: I asked Time to conſider it; and in two or three Days time I told him that I was reſolved to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to; about the Month of *June* he told me I ſhould go with him to his Lodgings, which were at the upper End of *Chancery-lane*, right over-againſt the *White-Hart*.

Mr. Sol. Gen. Whoſe Lodgings did you go to?

Lynch. The Lodgings of Mr. *Layer:* Mr. *Layer* was at home, and deſired us to go to the *Griffin* Tavern in *Holborn*, and he would meet us there; we went, and in a little while Mr. *Layer* came to us; and then Dr. *Murphey* told him that I was the Gentleman he had ſpoke to him of. Mr. *Layer* was glad of my Acquaintance, and told me that he had ſuch a ſtrong Recommendation of me, that he was fully ſatisfied in me; and then he held a Diſcourſe about a Riſing that was to be in the Kingdom in Favour of the Pretender, and that it would be back'd by a great many of the Army and the Guards, and ſeveral other Gentlemen.

Mr. *Hungerford.* The Overt-Act is laid in *Eſſex*, and here is an Evidence given of an Overt-Act in *Middleſex*; with Submiſſion, they can give no Evidence of an Overt-Act in another County, till they give Evidence of an Overt-Act in *Eſſex*, where the Indictment is laid.

L. C. J. All they ſay of Matters in the County of *Middleſex*, unleſs they give Evidence of an Overt-Act in the County of *Eſſex*, it ſignifies nothing.

Mr. *Hungerford.* My Lord, with Submiſſion, they ought not to be ſuffered to give Evidence of an Overt-Act in *Middleſex*, before they give Evidence of ſome Overt-Act in *Eſſex*; for the proving ſome Overt-Act in *Eſſex* is the only thing which can entitle them to prove any Overt-Act elſewhere. For by the Method they would go on in, the Jury may be captivated with a Story of the *Griffin* Tavern, and of Mr. *Layer*'s other Aſſignations and Actions in *Middleſex*, which cannot be imputed to him upon this Indictment until ſome Treaſon be proved in *Eſſex:* I hope therefore the King's Counſel ſhall receive your Lordſhip's Directions to go on regularly, to begin to give an Account of the Overt-Acts in *Eſſex*, before they go into another County.

L. C. J. Mr. *Hungerford*, you muſt give them leave to go on in their own Method, of that that firſt happened in *Middleſex*, and afterwards of what happened in *Eſſex*; and if you dare not truſt them and us, but will have your own Method, it would be to put us into Confuſion.

Mr. Sol. Gen. My Lord, we inſiſt upon it in point of Law, that we are intitled to give Evidence of Overt-Acts of the ſame Species of Treaſon laid in the Indictment, though done in any County in *England*, provided we alſo prove an Overt-Act in the County of *Eſſex*; which we muſt do, otherwiſe this will paſs for nothing. Mr. *Lynch*, go on, and give my Lord and the Jury an Account of what Mr. *Layer* ſaid, when you were together at the *Griffin* Tavern.

Lynch. The firſt thing he told me was, That he was very glad to meet me, that he had had a good Recommendation of me from Dr. *Murphey*, as being a Man he could confide in; and beginning his Diſcourſe of an Inſurrection in the Kingdom, he told me, that they were back'd with a great many of the Army and the Guards; that there was a great many of the Nobility and Gentry of the Country that would come in to them: He told me then, that he wanted a Man of Reſolution that would take upon him the ſeizing of ſome Perſon of Note, as a General, or ſome other great Man. The Diſcourſe run all upon the ſame thing.

Mr. Sol. Gen. Recollect as well as you can, the Particulars Mr. *Layer* told you relating to this Deſign?

Lynch. He told me the general Deſign of a Revolution in the Kingdom, in favour of the Pretender, and that they were back'd by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me he wanted a Man of Reſolution, to undertake, with ſome others, to ſeize a great Man, as a General or ſome other great Man: At that Time I took upon myſelf to do it; ſo that Time we diſcourſed no more.

Mr. Sol. Gen. How long were you together?

Lynch. About half an Hour.

Mr. Sol. Gen. When had you the next Meeting?

Lynch. A Day or two afterwards.

Mr. Sol. Gen. At what Place?

Lynch. At the ſame Tavern, the *Griffin* Tavern; when I came there, I ſent a Boy for Mr. *Layer*, as he had ordered me to do when I wanted to ſee him.

L. C. J. When was your firſt Meeting?

Lynch. About the Month of *June.*

L. C. J. And the ſecond Meeting was two or three Days after the firſt?

Lynch.

Lynch. Yes, my Lord.

Mr. Serj. *Cheſhire.* At your parting after the firſt Meeting, what did Mr. *Layer* ſay to you?

Lynch. Mr. *Layer* told me, if I had Occaſion to ſpeak to him that I ſhould not come to his Lodgings, but to go to a Tavern and ſend for him, which I did; I ſent a Boy for him, and he came to me. Then talking over a Glaſs of Wine, he told me that he had pitched upon me to ſeize the Earl of *Cadogan*, and that I ſhould chuſe as many Perſons as I thought fit who would anſwer the ſame Deſign; and he being the principal Man in the Army, it would diſcourage the King's Party, and animate the Pretender's Party; which, as I ſaid before, I agreed to undertake, and to do the utmoſt of my Endeavours to do it.

Mr. Serj. *Pengelly.* Was you to do it alone, or was you to have any Aſſiſtance?

Lynch. Yes, I was to have Aſſiſtance.

Mr. Serj. *Pengelly.* What Aſſiſtance?

Lynch. Such that I ſhould chuſe; ſuch People that I could confide in.

Mr. Sol. Gen. Did you undertake it?

Lynch. Yes, I did undertake it, and to pitch upon ſuch Perſons as ſhould be proper to aſſiſt me in it.

Mr. Sol. Gen. Was any thing ſaid at that time relating to any Perſon who was to have the Conduct of the Deſign?

Lynch. He told me that there was ſome great Man that did not want Wit, Courage or Reſolution, and was at the Head of this Affair, who would at a proper time give me an Order to effect ſomething further about it.

Mr. Sol. Gen. Had you any more Diſcourſe with the Priſoner about this Affair?

Lynch. Yes, we had ſeveral Diſcourſes about it.

Mr. Att. Gen. Tell my Lord and the Jury what more Diſcourſe you had, if you can remember.

Lynch. The chief Part I was to act was to ſeize the Earl of *Cadogan*, with ſuch Gentlemen as I ſhould think proper to anſwer the end of ſeizing him.

Mr. Serj. *Cheſhire.* Was there any other Meeting, and when, and how long after?

Lynch. After that I came to a Tavern in *Holborn.*

Mr. Serj. *Cheſhire.* How long after?

Lynch. Some few Days; it was at the *Caſtle* Tavern in *Holborn.*

Mr. Att. Gen. Who was with you at the Tavern?

Lynch. I came to the Tavern and ſent for Mr. *Layer.*

Mr. Att. Gen. Did he come to you?

Lynch. Yes, he came to me.

Mr. Att. Gen. What Diſcourſe had you with him at that time?

Lynch. We had no particular Diſcourſe, but in general we talked about the Uneaſineſs of the Nation, and the fair Opportunity there was to riſe.

Mr. Att. Gen. Pray, give an Account of what elſe paſſed.

Lynch. I ſay, the Diſcourſe that we had at two Meetings before, he repeated, and ſaid, Now is a fair Opportunity, the Uneaſineſs of the People being ſuch, to bring about a Revolution, ſince they would be back'd by the Army and the Guards, and ſeveral other People. Soon after that we parted.

Mr. Serj. *Cheſhire.* When had you any other Meeting?

Lynch. Some Meetings we had at Mr. *Layer*'s Houſe in *Southampton-Buildings.*

Mr. Serj. *Cheſhire.* How long after?

Lynch. A few Days only.

Mr. Serj. *Cheſhire.* At the ſeveral Meetings at his Houſe, what was the Subject of your Diſcourſe?

Lynch. It was upon the ſame, about the Riſing and Uneaſineſs of the People, and the fair Opportunity of bringing about a Revolution; of the Diſpoſition of the Army and the Guards.

Mr. Serj. *Cheſhire.* Did he give you any Encouragement?

Lynch. After I met him at his Houſe in *Southampton-Buildings*, I told him of my Uneaſineſs; Becauſe he had told me at the Beginning, that theſe things would be ſoon put in Execution: I told him, if they were delayed, I was afraid they would not ſucceed. He then animated me, by telling me that there were no fear of its ſucceeding; and that I ſhould not be diſcouraged, for there was a great Man, a Man of Wit and Conduct, that was at the Helm, and that had the Management of the Scheme: That I ſhould always keep a good Heart; and that Things went on very well.

Mr. *Weſt.* Did he tell you in whoſe Favour this was to be?

Lynch. Yes, in favour of the Pretender. He mentioned him by the Name of King.

Mr. Serj. *Cheſhire.* Do you know any thing about his going into the Country?

Lynch After I met him at his Houſe, he went into the Country and ſtaid ſixteen or ſeventeen Days; at his Return I went to ſee him, expreſſing how uneaſy I was at the Delay.

Mr. Serj. *Pengelly.* About what Time was this?

Lynch. I believe it was in *July.* And then I told him again how uneaſy I was at the Delay. To which he anſwered, Keep a good Heart, all Things go on very well.

Mr. Serj. *Cheſhire.* Had you any Apprehenſions that all was to be done at Home, or that you was to have any foreign Aſſiſtance?

Lynch. In my Diſcourſe to him of the Uneaſineſs I was under at the Delay, I aſked him if he had any Promiſe of any Succour from any Power Abroad? He told me, if we once made a Beginning, we ſhould not want them: But did inſinuate, that we ſhould not want Encouragement from the Court of *France.*

Mr. Att. Gen. When you expreſſed your Uneaſineſs at the Delay, what did he ſay to encourage you?

Lynch. The Reaſon he told me was, that things went on very well, and would very ſoon be put in Execution.

Mr. Att. Gen. In what Manner did you expreſ your Uneaſineſs?

Lynch. Nothing, but that I was uneaſy, and I was afraid that things did go wrong.

Mr. Sol. Gen. What did you ſay? Did you ſay any thing relating to your own Circumſtances?

Lynch. In the Beginning I told Dr. *Murphey*, becauſe it would be a long while, ſome five or ſix Weeks, before I was to be introduced to Mr. *Layer*'s Company, that I came on my own particular Buſineſs, and my Circumſtances would not permit me to be long here at my own Expence. At the Meeting with Mr. *Layer*, when I firſt made this Complaint to him, Mr. *Layer* told me I ſhould not want for a ſmall Matter to maintain me in *England.* Accordingly Mr. *Layer* gave me ſome Money.

Mr. Att. Gen. Do you remember how much that was?

Lynch. I cannot remember.

Mr. Att. Gen. Did he give you Money at any other Time?

Lynch. Mr. *Layer* gave me ſome Money the firſt Time, and afterwards he ſent me ſome Money by Dr. *Murphey.*

Mr. Serj. *Pengelly.* Did he give you any Money at any other Time?

Lynch. Yes; the laſt time I was with him I had more.

Mr. Att. Gen. How many times had you Money of him?

Lynch. Five or ſix times.

Mr. Att. Gen. Do you know what the Sums did amount to together?

Lynch. I can't recollect; but I believe about eight or ten Guineas.

Mr. Att. Gen. What was it given you for?

Lynch. To keep me in *England*, and to aſſiſt in the intended Deſign of a Revolution.

Mr. Serj. *Pengelly.* After you went to him, upon his Return out of the Country, do you remember the Diſcourſe that paſſed between you then?

Lynch. Yes: After I came to his Houſe, I expreſſed my Uneaſineſs at the Delay; upon which he encouraged me, giving me to hope that Things went on very well, and our Deſign would effectually take Place.

Mr. Serj. *Pengelly.* Did you aſk him any thing about the Army?

Lynch. I aſked him if he had any Encouragement from the Guards and the Army? He told me, Yes, he had; that a great many of the Officers would not engage themſelves now, being well paid; but he ſaid he had ſpoke with ſeveral Officers of the Guards, who had aſſured him, that moſt of the common Soldiers would come in, as ſoon as we had made a Beginning.

Mr. Serj. *Pengelly.* Did he mention any thing of the Time?

L. C. J. When you aſked him if he had any Encouragement from the Army, what did he ſay?

Lynch. He told me, that he had Encouragement from many of the Officers of the Army: That he had diſcourſed with ſeveral Serjeants of the Guards, who told him that the common Soldiers would be glad, after they had made a Beginning, to come in to them.

L. C. J. Did he give you any Reaſon for this?

Lynch. Mr. *Layer* told me, the Serjeants told him ſo before they were encamped, and complained of their ill Uſage, and hard Uſage from the ſubaltern Officers.

Mr. Serj. *Pengelly.* Was you acquainted with any Time or Day that was fixed?

Lynch. There was no fixed Time: Mr. *Layer* told me, it was to be on the Riſing of the Camp; becauſe they could not talk with the Soldiers ſo well, while they were encamped, as they could afterwards, when they were in their Quarters.

Mr. Serj. *Cheſhire.* Was there any Conſultation of viewing any one's Houſe?

Lynch. Afterwards in Diſcourſe he told me, that it was fit to go and view the Earl of *Cadogan*'s Houſe, in caſe it was neceſſary to ſeize the ſaid Lord in his Houſe.

Mr. Serj. *Cheſhire.* Where is his Houſe?

Lynch. In *Piccadilly.* Accordingly we appointed a Day to go; and I came to his Lodgings, and we took Coach, and away we went; and talking to him about it, he told me, he was very well acquainted with my Lord *Cadogan*, and had ſome Buſineſs with him, about an Eſtate which his Lordſhip was about buying: We went to his Houſe, but my Lord was not to be ſpoke with, or was not within, I don't remember which, but we were conducted into his Houſe. We viewed the inner Part of the Houſe; afterwards we went into the Garden, we view'd the lower Part of the Garden; then we went out in the Yard, and took a View of the Avenues round about the Houſe. I don't remember exactly the Time, but it was that Day that a Soldier ſhould have been ſhot in *Hyde-Park.*

Mr. Serj. *Cheſhire.* Had you any Diſcourſe about the Feaſibleneſs of it?

Lynch. Yes, that it was eaſy to be done; if we had but ſome reſolute Gentlemen to ſtand by us, that it was very feaſible to be done.

Mr. Serj. *Cheſhire.* Had you any Talk at that time relating to the *Tower?*

Lynch. He told me, the *Tower* would be immediately ſurrendered to the Party; on the Day the Plot was to be put in Execution, a certain Officer of the Guards would take upon him to mount the Guards there, who would facilitate the Delivery of the *Tower* to them.

Mr. Serj. *Cheſhire.* Was there any talk of the Mint?

Lynch. Yes, afterwards: He ſaid there would be no doubt of the Mint; they would be glad to take the Opportunity to ſhake off their Confinement: And that they would put Arms into their Hands, according as they repaired to their Party.

Mr. Att. Gen. When did you ſee the Priſoner next after the time that you ſpeak of viewing my Lord *Cadogan*'s Houſe?

Lynch. I ſaw him at his own Houſe, and at ſeveral Taverns in the City; and once he wrote to me, deſiring me to come to his Lodging; accordingly I went, and when I came to his Houſe, I met with a little Paper that was left for me, directing me to go to the *Queen's-Head* Tavern in *Great Queen-Street* near *Lincoln's-Inn-Fields*, and to enquire there for one Mr. *Wilſon*; which I did, and I was conducted into a Room where the ſaid Mr. *Wilſon* was, with Mr. *Layer* and another Man, who ſeemed, by his Clothes, to be a Serjeant of the Guards. I do not know the Man.

Mr. Att. Gen. What paſſed then?

Lynch. We ſtaid a little while there, we talked over the Buſineſs, and drank good Succeſs to the Enterprize.

Mr. Serj. *Cheſhire.* Your Lordſhip will pleaſe to take Notice, that when he went to Mr. *Layer*'s Lodging, he found a Letter there, directing him to go to the *Queen's-Head* Tavern, and enquire for one *Wilſon*; that when he came there, *Wilſon* was there, and Mr. *Layer*, and another Man.

Mr. Serj. *Pengelly.* What paſſed at that time?

Lynch. Nothing material.

Mr. Att. Gen. You talked about drinking good Succeſs to the Enterprize: Who drank that?

Lynch. We all drank that.

Mr. Att. Gen. Did the Priſoner at the Bar drink it?

Lynch. Yes, he did. I told the Priſoner, when he went out, that I was mighty uneaſy at the Delay of this Affair. He told me, I need not be uneaſy, for every Thing went on well; and they had a Nobleman at the Helm, who had Authority from the Pretender, and would loſe no Opportunity when a fit Time offered.

Mr. Serj. *Pengelly.* What did he call the Pretender?

Lynch. He called him the King. I was uneaſy at the Delay, for fear of being diſcover'd.

L. C. J. What Reaſon did he give you, why you ſhould not be uneaſy?

Lynch. Becauſe their Deſigns were quickly to be put in Execution; and there was a Nobleman at the Helm who would put the Deſign in Execution, as having full Power and Authority from the King to act as he thought proper.

L. C. J. Did you aſk who that Nobleman was?

Lynch. Yes; but he never told me his Name, but ſaid, that I ſhould, in a proper Time, be preſented to him, and receive my Commiſſion and Orders from him to ſeize my Lord *Cadogan.*

Mr. Serj. *Pengelly,* My Lord, we ſhall now gratify the Priſoner's Counſel, with an Account of what happened in *Eſſex*; I hope they will not be impatient to hear that: Therefore, pray, acquaint my Lord and the Jury, when you went out of Town with Mr. *Layer?*

Lynch. My Lord, I was at Mr. *Layer*'s Houſe the Day when the Biſhop of *Rocheſter* was ſent to the *Tower*; he aſk'd me, if I would ride abroad with him the next Day to take the Air; I conſented to it, and came the next Morning to his Houſe; and Mr. *Layer* aſked me if I mounted with Furniture: I told him no; but that I had a double Barrel Fowling-piece, which if his Servant would carry, would do as well. He then deſired me to go and ſtay for him without *Aldgate*, and get my Gun ready loaden, for he had that about him which he would not loſe for any Thing in the World. I went and ſtaid till about ten or eleven o'Clock, when Mr. *Layer* met me, and gave the Gun to his Servant to carry. On the Road he told me, we were going to my Lord *North* and *Grey*'s, whom he was very well acquainted with, and that he would recommend me to him as a Friend of his. When we got to the *Green Man*, he told me, we had better go in and dine there, becauſe Dinner-time would be over before we could get to my Lord *North* and *Grey*'s. Whilſt Dinner was getting ready, we had ſeveral Diſcourſes on the ſame Subject, Of the Uneaſineſs of the Nation, and its Inclination to a Revolution, and how to bring it about; upon which he pulled a Paper out of his Pocket, and gave it me to read the latter Part of it.

Mr. Serj. *Pengelly.* Can you remember what it contained?

Lynch. I remember ſome Lines of it; which was, in general, to invite the Nation to an Inſurrection, and to ſhake off the Calamities and Miſeries they endured under the preſent Miniſtry. And it was mentioned in the ſaid Paper, that the Earl of *Cadogan* was actually in their Cuſtody; thereby encouraging the Army to revolt, with an Offer of three Guineas to every Horſeman and Serjeant, and two Guineas to every Corporal, and one Guinea to ever common Soldier, to be paid immediately on their joining the Party, and a Promiſe of farther Preferment.

Mr. Att. Gen. Did you read this?

Lynch. I did, out of the Paper in Mr. *Layer*'s Hand.

Mr. Att. Gen. Do you know whoſe Hand-writing it was?

Lynch. According to our Diſcourſe, I thought it might be his writing.

L. C. J. But he produced it?

Lynch. Yes, my Lord, he produced it.

L. C. J. You ſay you imagine, from ſome Diſcourſe between you, that it was his Hand-writing; what Reaſon was there in all his Diſcourſe, that induced you to think ſo?

Lynch. He talk'd of it as being of his own making; beſides, there were ſeveral Interlineations, Daſhings-out, and Interlineations afterwards. He was very well ſatisfied and eaſy as to me, and ſaid, he could wiſh that he could bring Matters about ſo, as that I could have the ſole Direction of ſeizing ſome of the Miniſtry, and namely, my Lord *Townſhend*, my Lord *Carteret*, and Mr. *Walpole.*

Mr. Att. Gen. Was there any Diſcourſe about ſeizing the King?

Lynch. He ſaid, when the Deſign was put in Execution, the Army would declare in their Favour, and they would ſend a ſtrong Guard to take care of the King's Perſon.

Mr. Att. Gen. How to take care of the King's Perſon? What was you to do?

Lynch. Nothing but to ſecure the King's Perſon; by what he told me, it was for the Public Good of the Kingdom; that they did not mean, nor had they any Deſign on the King's Perſon, but only to keep him in Security from any Inſult.

Mr. Att. Gen. What more paſſed at that Time?

Lynch. Nothing more in particular.

Mr. Att. Gen. Had you any talk relating to the Army?

Lynch. I ſaid before what related to the Army.

Mr. Serj. *Pengelly.* Was there any Diſcourſe about a Scheme or Plan?

Lynch. He told me there was a Scheme laid on that Foot, of which I told you the firſt Step was to ſeize the Earl of *Cadogan*, and then, according as the Army came over, to take care and ſeize the King's Perſon; and he thought the proper Time to put this in Execution, would be at the Riſing of the Camp in *Hyde-Park.*

Mr. Serj. *Pengelly.* Was there any Objection to be made to this?

Lynch. No; I made no Objection, only ſhew'd my Uneaſineſs at the long Delay.

Mr. Serj. *Pengelly.* When you ſo expreſſed your Uneaſineſs, what did he ſay?

Lynch. He told me, if I could think or propoſe any Thing more proper, that I ſhould do it. After that we rode toward *Epping*, and went to my Lord *North* and *Grey*'s; and there Mr. *Layer* introduced me as his Friend. We ſtaid there all Night, and dined there the next Day. In the Evening we came away, in company with another Gentleman that I did not know; but we talk'd on the Road about the Situation of my Lord's Houſe; and Mr. *Layer* told me he had recommended me to his Lordſhip as his particular Friend, and aſked me how I liked him.

Mr. Serj. *Pengelly.* Did he aſk you any Queſtions? Do you remember what he called his Lordſhip?

Lynch. I don't remember any other Name but *My Lord.*

Mr. Serj. *Pengelly.* When he aſked your Opinion of him, and how you liked him, did he deſcribe him in any other manner, or only called him *My Lord?*

Lynch. He only called him my Lord *North* and *Grey*; he only aſked me how I liked my Lord *North* and *Grey.*

Mr. Serj. *Pengelly.* Liked his Lordſhip, for what?

Lynch. That was all.

Mr. *Reeve.* Had you any Talk with him about the Perſon that was to have the chief Command?

Lynch. Yes; but he never named the Perſon.

Mr. *Weſt.* Had you never any Diſcouſe who was to command the Party that was to ſeize my Lord *Cadogan?*

Lynch. I was to command that Party.

Mr. *Weſt.* Was you any other Time at my Lord *North* and *Grey*'s?

Lynch. Yes; another time I went to my Lord *North* and *Grey*'s, where I found Mr. *Layer*, and expreſſed to Mr. *Layer* the Uneaſineſs I was in at the long Delay, and that I was afraid our Hopes would vaniſh; and told him, if things were not ſoon put in Execution, I would withdraw myſelf. Mr. *Layer* bid me not to be uneaſy, Things might perhaps be ſooner put in Execution than I imagined.

Mr. *Weſt.* Where was this?

Lynch. At *Epping*, at my Lord *North* and *Grey*'s.

Mr. *Weſt.* Did you come home together?

Lynch. No; I came home that Night: Mr. *Layer* remained there.

Mr. Serj. *Pengelly.* Did you ſee him ſome time afterwards?

Lynch. I met him at his own Houſe, where I expreſſing my Uneaſineſs as formerly, he ſaid, I ſhould not be uneaſy, for Things would ſoon take Effect; and bid me get myſelf ready to execute my Deſign; becauſe they had Notice the Camp would ſoon break up, which was the Time deſigned to put Things in Execution. And at another time he told me, that the Declaration which he had ſhewn me at the *Green Man*, had mentioned no particular Perſons, but in general the Safety and Public Good of the Kingdom; There was nothing mentioned of the Pretender in it, but that he had thought fit to put it now in the Pretender's Name.

Mr. Serj. *Pengelly.* Who was you to receive your particular Orders from, for the executing your Deſign?

Lynch. From that Nobleman, who was to act as General in this Affair.

Mr. Serj. *Pengelly.* Did you never hear from Mr. *Layer* who that was?

Lynch. No; I don't recollect he was ever named by Mr. *Layer*; he told me, that the Declaration was afterwards put in the Name of the Pretender.

Mr. Serj. *Pengelly.* What was it he recommended you to my Lord *North* and *Grey* for?

Lynch. He recommended me to him as one of his particular Friends.

Mr. Serj. *Pengelly.* What Diſcourſe had you at that Time?

Lynch. We talk'd indifferently; we diſcourſed nothing of the Revolution at that Time: He told me he had given the Declaration to a Non-juring-Miniſter to get printed, and had given twenty Guineas for that Purpoſe.

Mr. Sol. Gen. Was you acquainted before with my Lord *North* and *Grey?*

Lynch. No; he introduced me as one of his Friends.

Mr. Serj. *Cheſhire.* Did you know when Mr. *Layer* was firſt taken up?

Lynch. Yes.

Mr. Serj. *Cheſhire.* How long before that had you been with him?

Lynch. I can't recollect the Time. I firſt became acquainted with Mr. *Layer* about *June.*

Mr. Serj. *Cheſhire.* What paſſed the laſt time you was with him, before he was taken up? Was there any particular Conference between you?

Lynch. I told you about the Declaration, and about my Uneaſineſs, and that he told me Things would ſucceed ſooner than I thought for.

Mr. Serj. *Cheſhire.* When you expreſs'd your Uneaſineſs, did he uſe any Vehemence of Expreſſion, as to what Part he would act?

Lynch. He told me ſeveral Times, when I was ſo irreſolute and uneaſy, ſaith he, Don't you be uneaſy; rather than all ſhould fail, I will ſtir up and be a ſecond *Maſſinello.*

Mr. *Weſt.* Had you any Converſation about the taking up of any Perſon?

Lynch. He only told me at that Time, that if the Nobleman at the Head of Affairs ſhould be taken up, every thing would be quaſhed.

Mr. Serj. *Pengelly.* That Nobleman was not taken up at that Time then?------*Lynch.* No.

Mr. Serj. *Pengelly.* What Recommendation had you to my Lord *North* and *Grey?*

Lynch. Only as a Friend of Mr. *Layer*'s, to paſs away the Time in Summer.

Mr. *Hungerford.* I preſume they have done with giving the Evidence, which they intend, of any Overt-Act in the County of *Eſſex*; if they have, I would crave the Liberty to obſerve-----

Mr. Serj. *Pengelly.* We have not done; if you have any thing to obſerve, it muſt be when we have gone through our Evidence.

L. C. J. When they have given all their Evidence, then will be your proper Time to object to the Evidence, and to ſhew whether 'tis competent or no.

Mr. *Hungerford.* I do not preſs to make any Remarks upon their whole Evidence; but if they have given all the Evidence they intend to give of any Overt-Act in *Eſſex*, for on that depends the Fate of this Gentleman at the Bar, I hope we are now (before they ſhall be permitted to give Evidence of any farther Overt-Act of Treaſon in another County) at Liberty to object, that the Tranſaction in *Eſſex* is not an Overt-Act at all of the High-Treaſon laid in this Indictment.

Mr. Sol. Gen. We have not done: When we have given our Evidence, then it will be proper for them to make their Objections to the Whole.

Mr. *Hungerford.* I humbly offer it to your Lordſhip's Conſideration, whether it is right and proper to go on in ſuch a Method, and to take up the Time of the Court, when the Gentlemen on the other Side ſay, they have done with giving Evidence as to any Overt-Act in the County of *Eſſex.*

Mr. Sol. Gen. No; we have not done with that Evidence.

Mr. *Ketelbey.* I don't know whether your Lordſhip will indulge us to aſk the Witneſs a Queſtion or two now.

L. C. J. Propoſe your Queſtions, and we will tell you.

Mr. *Ketelbey.* Whether he hath any Offer of Pardon propoſed to him to induce him to give Evidence againſt the Priſoner at the Bar; which if he hath, we apprehend, will invalidate his Evidence.

Lynch. No, Sir; I have no Promiſe of Pardon at all: I only do this out of Juſtice, to make what Reparation I can, and to ſave the Blood of many People.

Mr. *Ketelbey.* I beg leave to aſk him a few more Queſtions. I think you ſay the firſt Time you were introduced into this Gentleman's Company, the Priſoner at the Bar, was at the *Griffin-Tavern* in *Holborn*, and that he then told you he had great Deſigns in hand; and that there was an Inſurrection deſigned, and they wanted a Perſon of Reſolution to ſeize a General: This, you ſay, was the firſt Time that ever you ſaw the Priſoner at the Bar. How came you to have that Share of Confidence in a Man that you never ſaw before?

Lynch. I told you I was in Diſcourſe with Dr. *Murphey* a great many Days and Weeks before I ſaw Mr. *Layer*; I told you how every Day I ſaw him, and always diſcourſed about the Inſurrection, and how he told me then, that he would recommend me to a Man that had the Management of the greateſt Part in this Affair; and I aſked every Day when I ſhould be introduced to him: He told me, the Time was not come yet; but when it was a proper Time, he would introduce me.

Mr. *Ketelbey.* I think you give that for a Reaſon, why you had that Confidence in him, becauſe you had been recommended by one Dr. *Murphey.* How came you to have that mighty Dependance on Dr. *Murphey?*

Lynch. Becauſe Dr. *Murphey* and I had been acquainted ſeveral Years ago.

Mr. *Ketelbey.* I hope you was not in any wicked Deſign with Dr. *Murphey*, and ſo much acquainted, as to recommend you in a Caſe of Treaſon.

Lynch. There was a common Friendſhip between us.

Mr. *Ketelbey.* How came he to truſt you? Would you have truſted him in a Buſineſs of Treaſon?

Lynch. We have been concerned in Affairs together.

Mr. *Ketelbey.* How long was you at the *Green Man* with Mr. *Layer?*

Lynch. I can't ſay exactly the Time.

Mr. *Ketelbey.* I don't aſk you exactly to a Minute or two; but was you there an Hour, or two, or three Hours?

Lynch. I can't ſay whether we were there an Hour or two; but we had ſomething dreſſed for Dinner, and the Matter was diſcourſed of by us before Dinner.

Mr. *Ketelbey.* When you firſt alighted from your Horſes, what Room was you ſhewn into?

Lynch. We were ſhewn into a Room up one Pair of Stairs on the Right Hand, the firſt Room.

Mr. *Ketelbey.* Was it towards the Street, or backwards?

Lynch. It looked into the common Road.

Mr. *Ketelbey.* Did you look out of the Window and ſee a Perſon of your Acquaintance?

Lynch. I ſaw two Gentlemen, but did not know them.

Mr. *Ketelbey.* Did you not look out of the Window, and ſay, you ſaw a Gentleman of your Acquaintance?

Lynch. I ſaid I ſaw two Gentlemen that I thought I had ſeen before.

Mr. *Ketelbey.* Did not you go down to thoſe Gentlemen?

Lynch. No, I did not go down to them.

Mr. *Ketelbey.* Did not you go down to them?----*Lynch.* No.

Mr. *Ketelbey.* Did not you ſay ſo to Mr. *Layer*, in the Drawer's Preſence?----*Lynch.* No.

Priſoner. Did you not tell me that thoſe Gentlemen were your Acquaintance?

Lynch. I told you, thoſe two Gentlemen I had ſeen before.

Priſoner. How long were we together at the *Green Man?* Were the Horſes put up, or not?

Lynch. I can't tell.

Priſoner. Was there any thing dreſſed for our Dinner but a Beef-Stake?

Lynch. No, nothing elſe.

Priſoner. Did not you go down Stairs, pretending you went to thoſe Gentlemen?

Lynch. No, I did not tell you I went to thoſe Gentlemen.

Priſoner. Did you not go down Stairs?

Lynch. Yes, I did, and came up again immediately.

Priſoner. Was not Dinner on Table when you came up again?

Lynch. I went down twice before Dinner.

Priſoner. Then you muſt conſequently leave me in the Room.

Lynch. I went down to make Water.

Priſoner. What did you go down the ſecond time for?

Lynch. Out of Curioſity.

Priſoner. How long did you ſtay?

Lynch. Not both times above two Minutes.

Priſoner. I was then alone, when you went down?----*Lynch.* Yes.

Priſoner. Was this Diſcourſe before or after Dinner?

Lynch. It was before Dinner.

Priſoner. When you came up the ſecond time, was not Dinner on the Table?

Lynch. It was come up.

Priſoner. And yet the Diſcourſe we had was before Dinner?

Lynch. Yes, it was before Dinner.

Priſoner. How much Time might we ſpend before Dinner, half an Hour or an Hour?

Lynch. I don't remember, but it was a good while.

Priſoner. Was not the double-barrel Gun in the Room?

Lynch. I don't know whether it was there, or whether your Servant had it.

Priſoner. At the Time of Dinner was my Servant, or Drawer, in the Room?

Lynch. Neither of them was in the Room.

Priſoner. You ſay we were a good while, you and I, alone; pray, how long?

Lynch. I cannot ſay poſitively how long.

Mr. *Hungerford.* Have you any Copy of that Part of the Paper he gave you to read, and which you read?

Lynch. No.

Mr. *Hungerford.* Was the Whole of it of any Length?

Lynch. To the beſt of my Remembrance it was a common Sheet of Paper.

Mr. *Hungerford.* Did you read the Whole?

Lynch. No; he doubled it down, and gave me the latter Part of it to read.

Mr. *Ketelbey.* Some Things you ſeem to remember, and ſome Things you don't remember: Was it printed, or written?

Lynch. It was written.

Mr. *Ketelbey.* Did he not mention it to be the Prince of *Orange*'s Declaration?

Lynch. No, he did not.

Priſoner. Was not the Paper blotted?

Lynch. In that I ſaw there were two or three Places interlined.

Mr. *Hungerford.* My Lord, I think the Gentlemen did ſay they had not done with their Evidence, with relation to an Overt-Act in *Eſſex*; if they have not, they will do well to go on now: But we hope they ſhall not go into Overt-Acts committed in any other County, till they make the Whole of their Proofs of an Overt-Act in *Eſſex.*

L. C. J. You have been told, they ſhould proceed in their own Method, and when they have done, you may make what Obſervations may be of Service to your Client.

Mr. *Hungerford.* Relations of Fact ariſing in another County, which have no Relation to the Fact ariſing in *Eſſex*, we hope they ſhall not go into, to amuſe or captivate the Jury, the Court, and the Auditory.

L. C. J. Sure never any Thing was like this! It is our Province to give Directions, and we think it not proper to interrupt the King's Counſel, but that they ſhould proceed in their own Method: You ſhall be heard as long as you pleaſe, when you come to make your Obſervations.

Mr. Sol. Gen. The Priſoner hath a Right to ſay any thing that is proper to the Court and the Jury, in his Defence, but he muſt ſay it openly; he is not to talk privately with the Jury; tho' I am ſure they are Gentlemen of ſo great Worth and Honour as not to be influenced.

Mr. Att. Gen. I dare ſay the Jury won't be influenced; but he talks to his Counſel ſo loud, that the Jury may eaſily hear every Word he ſays.

L. C. J. He muſt not ſpeak ſo loud.

Mr. Att. Gen. I juſt now heard him ſay, It was ſtrange to go on with Evidence that would not be to the Purpoſe. I heard him, as I ſat here; let him deny it if he can.

L. C. J. I hope you will not offer any thing of that Kind, Mr. *Layer:* You have a Right to diſcourſe with your Counſel, but you muſt do it in ſuch a Manner as the Jury may not hear.

Mr. *Hungerford.* Indeed, my Lord, he ſhall have no Encouragement from us for any ſuch Conduct.

[*Matthew Plunkett* ſworn.]

Mr. Serj. *Cheſh.* Tell my Lord and the Jury, whether you know the Priſoner at the Bar.

Plunkett. Yes, I do know him.

Mr. Serj. *Cheſh.* Will you tell my Lord and the Jury, upon what Account, and by whoſe Means, you firſt became acquainted?

Plunkett. One Major *Barnewell* brought me firſt acquainted with Mr. *Layer*; he had an Execution in his Houſe in *Great Queen-Street*, and this Major *Barnewell* came to me, and deſired me to get a Couple of Grenadiers. I brought him two; we went to Mr. *Layer*'s Houſe, and his Clerk let us in at the Back-door, and the Grenadiers turned the Officers out, and Mr. *Layer* gave them a Crown, and a Glaſs of Brandy.

Mr. Serj. *Cheſh.* When was this?

Plunkett. As near as I can gueſs, it is going on of five Years.

Mr. Serj. *Cheſh.* Tell my Lord and the Jury what Month in this laſt Year you renewed the Acquaintance, and who brought you to him?

Plunkett. The next Acquaintance I had afterwards, was by Major *Barnewell*, who was arreſted, and he ſent me with a Letter to his Houſe, to deſire him to relieve him.

Mr. Serj. *Cheſh.* Do you know any thing of one *James Plunkett?*

Plunkett. Yes; he came to me from Mr. *Layer*, in *July* laſt, to deſire me to meet him; but how this Counſellor *Layer* and this *James Plunkett* came acquainted I don't know.

Mr. Serj. *Cheſh.* What was he?

Plunkett. I don't know what he is; he is acquainted with Mr. *Layer.*

Mr. Serj. *Cheſh.* What Profeſſion is he of?

Plunkett. I don't know; nor how he lives, or gets his Bread.

L. C. J. Go on.

Plunkett. Mr. *Layer* paid the Charges for Major *Barnewell*, and brought him out of the *Marſhalſea.*

Mr. *Reeve.* How long was this ago?

Plunkett. To the beſt of my Knowledge four Years ago.

Mr. *Reeve.* He is giving an Account how he came to be acquainted with Mr. *Layer*; the firſt Time was upon the Account of reſcuing Mr. *Layer*'s Goods; the other Time was by Mr. *Layer*'s redeeming Major *Barnewell* out of the *Marſhalſea*, and paying his Debt: Give an Account how you came laſt acquainted with him.

Plunkett. I being at home, in my own Room——

Mr. *Reeve.* How long ago?

Plunkett. I believe, as near as I can gueſs, it was laſt *July.*

Mr. *Reeve.* Give an Account of what happened then.

Plunkett. Now this *James Plunkett* came into my Room, ſat down, and he aſked me how I did, and ſaid, he was glad to ſee me; and he

asked me, Are you not well acquainted in the Army? Yes, faith I, I know a great many in the Army, both Officers and common Soldiers. Do you know, faith he, any of the Serjeants of the Guards? I know some of 'em, said I. He brought me out of the Room, because my Wife was there, and then he opened his Mind to me: Saith he, Do you know one Mr. *Layer?* (I had forgot the Gentleman, being so slightly acquainted with him;) No, faith I, I don't know him. No matter, faith he, I have appointed a Place for you to meet him at, at the *Italian* Coffee-House in *Russel-Court*; and at the End of this, Mr. *Plunkett* ask'd me to keep Correspondence with them for the Pretender's Service. I did not go to the *Italian* Coffee-House; not being in a proper Station, nor having Money for that Purpose: So I did not think proper to go to the *Italian* Coffee-House; but the *Sunday* following I went to St. *Andrew*'s Church, and meeting with some Friends, they told me Dr. *Sacheverel* preach'd there; and so they decoyed me to go and hear him preach there. When Service was over, to the best of my Knowledge, as I was going Home, between twelve and one a-Clock, I met Mr. *Layer* accidentally in *Lincoln's-Inn-Fields*; Mr. *Layer* he look'd at me, he was really a perfect Stranger to me, for I did not know him again; saith he, Is not your Name *Plunkett?* Yes, saith I. Was there not one with you t'other Night, one *James Plunkett?* Yes, Sir, says I. Where did he desire you to go? said he. I answer'd, He desired me to go to the *Italian* Coffee-House in *Russel-Court*. Saith he, 'Tis well enough: Do you not know me? No, saith I, you have the Advantage of me; I ask your Pardon, for I don't remember you. Don't you remember one *Layer?* said he. Then I call'd to Mind that I knew the Gentleman. Saith he, Will you walk on this Side? I walked back again towards *Little Turn-Stile*, and we struck up the Wall-Side, and just as we came under a great Coach-House Gate-Way, we went in, and in the Gate-Way he talk'd to me; saith he, I am told that you are a very honest Man, and well-affected so and so.

Mr. *Reeve*. Well-affected, to whom?

Plun. Well-affected as to the Business of the Pretender. At the same Time we had this Talk, he bid me not mention it to *James Plunkett*, that I had seen him: Then he asked me if I knew any of the Serjeants in the Guards; for, faith he, I want such old Soldiers as you are yourself, that could discipline a Mob, for we have other Men enough amongst us; but if we could get some old Soldiers, if that could be managed, they would be finely rewarded. But, Sir, saith I, the Pretender is a Papist. Saith he, what Difference is there between a Papist King, and a *Lutheran* King?

Mr. *Reeve*. He said he wanted such old Soldiers as you; for what?

Plun. He wanted them to discipline a Mob, and to put them in Order. Then we began to reason about the Pretender; Why, saith he, we had as good have a Papist for our King as a *Lutheran*.

Mr. Serj. *Cheſh*. What did you object?

Plun. I said he was a Papist. Says he, We had as good have a Papist for our King, as to have a *Lutheran*, I don't know what Difference there is; but as it was, the Nation was enslaved, and the People were obliged to be Slaves. I asked him, Sir, Who is the Promoter of this, that may join us? You see, says he, what Injustice is done to you, you have served Abroad, and others are put over your Head; you have had and found great Hardships. I asked him who promoted this? He said, the Lord *North* and *Grey*. Says I, He is a Peer of the Realm. Saith he, He is a fine General. And the Earl of *Strafford* he mentioned.

Mr. *Reeve*. Who did he say was a fine General?

Plun. He said my Lord *North* and *Grey* was a fine General; and ask'd me what I thought of him? I said, I had never been under his Command, but I look'd upon him to be a great Man, and one of the Peers of the Land. And then he mentioned my Lord *Strafford*, What do you think of him? To which I made the like Answer: And what do you think of General *Primrose?* I said, I had lately seen him at *Chelsea*, passing by in his Coach, but that he was an old Man; however, Mr. *Layer*, said he, was a brave General. Then he ask'd me what I thought of General *Webb?* I said, I had heard of his Fame.

Mr. Serj. *Peng*. When he had said my Lord *North* and *Grey* was a fine General, and when you ask'd who promoted it, whether did Mr. *Layer* tell you what their Design was to do? When Mr. *Layer* ask'd you what do you think of this Person and the other Person, what were they to do?

Plun. To raise a Rebellion.

Mr. Serj. *Peng*. Was that talk'd of that Time?

Plun. Not at that Time.

L. C. J. You say he wanted such old Soldiers as you; for what Purpose? You say he wanted them to discipline a Mob, and put it in Order?

Plun. Yes, my Lord.

L. C. J. Did he tell you how many he wanted?

Plun. No; he did not say how many.

Mr. Serj. *Cheſh*. Was there any thing said about their Names at that Time?

Plun. Mr. *Layer* would have me take a List of their Names, and to enroll them, that they might know where they lodg'd, and where they quarter'd; that so when he wanted them, he might send for them to be in Readiness.

Mr. Serj. *Cheſh*. Was there any Number he ask'd you the Names of?

Plun. I said, I knew a great many, and that I could get twenty-five. Saith he, you ought to have a List of their Names, where they lodge, that they may be in Readiness for a Call: And saith he, This would have gone on some Time ago, only Somebody made Discovery of it to the *French* Ambassador, and he wrote to the Regent, and so it was discovered to the King: And saith he, The Duke of *Ormond* was to come in one Ship, and General *Dillon* in another, and they would bring their Numbers with them; and then I should see that the Army would not oppose them. And when I parted from him, he gave me half a Crown to drink.

Mr. Serj. *Cheſh*. What was that to do?

Plun. It was to encourage me. And he said he would send a Messenger to me; and in a Day or two afterwards there came a Messenger from him: I was not at home, but he spoke with my Wife.

Mr. Serj. *Cheſh*. Who was that?

Plun. The Un-juring Minister.

Mr. Att. Gen. What was his Name?—*Plun*. His Name was *Jeffreys*.

Mr. Att. Gen. You say, you was not at home the first Time; Did he come again?

Plun. Yes.

Mr. Att. Gen. How long after?

Plun. A matter of five or six Days after.

Mr. Att. Gen. Did you see him?—*Plun*. Yes, I saw him.

Mr. Att. Gen. What passed between you?

Plun. He ask'd me if I knew Mr. *Layer?* I told him I did. He then carried me to the *Castle* Tavern in *Drury-Lane*, where we drank two Pints of Wine, which he paid for; after the Non-juring Parson told me he came from *Layer*, who gave his Service, and told me that he was employed by Mr. *Layer* to go to such as I was, who were old Serjeants, to get a Parcel together to discipline Citizens, and other Mob in the Country.

Mr. Att. Gen. What further pass'd between you and Mr. *Jeffreys?*

Mr. *Ketelbey*. I beg leave to object to that Question.

Mr. Att. Gen. If I don't bring it home to Mr. *Layer*, it will signify nothing.

L. C. J. Mr. *Ketelbey*, you know that many times in Discourse it is necessary to mention Introductions, to let in what is material: Whatever pass'd between him and *Jeffreys*, don't affect your Client.

Mr. *Hung*. It is a constant Rule, if a Man speaks of a third Person's Transactions, it is declared as nothing, and commonly stop'd from being given in Evidence.

L. C. J. If they begin right, they will give Evidence in such a Method as to be understood: By declaring what passed between him and *Plunkett*, the Evidence may be the better understood.

Mr. *Ketelbey*. I don't doubt your Lordship's giving Direction right; but I observe this, lest some of the Jury should not take it right.

L. C. J. Let the Evidence be given in such a manner as may be understood; what is introductory goes for nothing, but it is in order to explain the Evidence.

Mr. Att. Gen. What pass'd between you and the Non-juring Parson at the *Castle* Tavern?

Plun. He talk'd to me of the same Subject, desiring me to get Men in Readiness; he told me, he had a great many Places to go to besides me with this Errand, and then we parted. Another time he came to me, we went to an Ale-House, to the *Cock* and *Bottle* in the *Strand*, where he gave me half a Guinea, and said, there is a Token; Mr. *Layer* had sent it me to give me Encouragement.

Mr. Serj. *Peng*. At that Time that Mr. *Layer* said he would send a Messenger to you, did he mention any thing of Money?

Plun. Mr. *Layer* said he would send Money by the Messenger to me.

L. C. J. You say he told you, that he would send you Money by the Messenger.

Plun. He told me so.

L. C. J. Afterwards you say, one came to you as from him, and encouraged you, and gave you half a Guinea?

Plun. He did: I am upon my Oath before God and Man, I will say nothing but the Truth.

Mr. Serj. *Cheſh*. Did you receive any Message from *Jeffreys* to appoint a Meeting with Mr. *Layer?*

Plun. Some Time afterwards I met Mr. *Layer* at eight a-Clock, at the *Castle* Tavern in *Drury-Lane*; there was the Landlord and Mr. *Layer*, who had two Bottles of Wine, and some Bread and Cheese: He would have had me eat, but I told him I could not eat; but I drank of the Wine. When he had discours'd with me about the Affair, to encourage me he gave me a Crown; I went cross *Lincoln's-Inn Fields*, so went home.

Mr. *West*. What did he give you the Crown for?

Plun. To encourage me to list Men for the Pretender.

Mr. Att. Gen. Had you any Letter by the *Penny-Post?*

Plun. That Morning Mr. *Layer* was going to *Norfolk*, *Plunkett* told me Mr. *Layer* was going out of Town, and would be glad to see me. I went to Mr. *Layer*, and his Horses were at the Door; he desired me to walk up two Pair of Stairs forwards, and by the same Token order'd his Servant to charge his Blunderbuss in the Room. Saith Mr. *Layer*, I have given a Guinea to the Non-juring Minister to give you, to do what Service you can; and when I am abroad, you may be sure I shall not be idle.

Mr. *Reeve*. Was any Proposal made to any other Person?

Plun. I brought an old Soldier who had been in the Service many Years.

Mr. *Reeve*. What was his Name?

Plun. *John Child*; I brought him, as thinking he might have been of Service to them.

L. C. J. What was it Mr. *Layer* said when he was going into the Country?

Plun. He told me he would not be idle there.

Mr. Serj. *Peng*. What did he desire of you?

Plun. He desired me to see and get what Soldiers I could for him: I came to the Non-juring Minister, and told him I had got twenty-five. Then Mr. *Layer* ask'd me, why I did not bring a List of them, that he might know where their Habitations were, and that they might be in Readiness at the Time. I disputed with Mr. *Layer* what they would do for Arms? No fear of Arms, saith he; Arms will be provided for them. After he returned from the Country to the Town, this Mr. *Plunkett* was the first Messenger that was sent to me; he came and told me Mr. *Layer* was come to Town; and this Non-juring Parson sent me a Letter by the *Penny-Post*; Mr. *Child* was in my Room and read it; the Contents were, *Mr.* Layer *is come to Town, and would be very glad to see you: No more, but your humble Servant*, William Jeffreys. By this I knew his Name.

Mr. Att. Gen. By this Letter he told you Mr. *Layer* would be glad to see you; did you go to him?

Plun. Yes, I went to him.

Mr. Att. Gen. Where? To his own House?

Plun. Yes, to his own House.

Mr. Att. Gen. What passed between you and Mr. *Layer* at that Time?

Plun. I remember at that Time, when I came to him, he gave me a Guinea with his own Hand.

Mr. Att. Gen. Who gave it you?

Plunkett. Mr. *Layer*, after he came from the Country, gave it me; and I recommended Mr. *Child* to him.

Mr. Serj. *Pengelly.* When you recommended Mr. *Child*, what did *Layer* say?—*Plunkett.* He said he had no Business for him.

Mr. Serj. *Pengelly.* For what Purpose was *Child* recommended to Mr. *Layer?*

Plunkett. I recommended him as an honest Man, as one that was well-affected, as he desired me.

Mr. Serj. *Pengelly.* Upon what Account did you recommend him?

Plunkett. Upon the Account to be a Pretender's Man.

Mr. Serj. *Pengelly.* Did you ever receive any Money to give to *Child?*

Plunkett. I received half a Guinea from Mr. *Layer* to give to Mr. *Child.*

Mr. Serj. *Pengelly.* For what Purpose was it?

Plunkett. For to encourage him in the Service, to be trusty to him, and to be a Pretender's Man.

Mr. Serj. *Pengelly.* By what Name did he call the Pretender?

Plunkett. He called him the King.

Mr. Serj. *Pengelly.* Had you any Talk with him any other Time?

Plunkett. The *Sunday* before he was taken up I was with him, and he was talking and saying, the King was as fine a Shooter as any in *Europe.*

Mr. Serj. *Pengelly.* Whom did he mean by the King?

Plunkett. The Pretender, that he was as fine a Shooter as any in *Europe*; he shot nineteen out of twenty: I said, that was fine shooting.

Mr. Att. Gen. Where was this Discourse?

Plunkett. In his own Parlour.

Mr. Att. Gen. Can you recollect any other Discourse there was at that Time, besides that of Shooting?

Plunkett. Yes, there was; We talked of those Men that would do Service. I asked him what Rewards those Men, that would do Service for their King and Country, should have; he told me, that they, and their Families, were to be for ever taken Care of.

Mr. Serj. *Pengelly.* Was there any other Promise made to you?

Plunkett. There was no Promise; only he was the Man who said, if I would follow his Directions, he would promote me; that he would engage to do great Matters for me; and what I suffered in the Army, he would make me Amends for.

Mr. Serj. *Pengelly.* Had you any Discourse about the Disposition of the Nation?

Plunkett. He said, that most of the Nation was tired with the present Government; and he said that King *George* was for ruining of the Nation.

Mr. Serj. *Pengelly.* Had you any Talk of any Persons at Court?

Plunkett. Yes; he said, what signified the Government; there were but only eight or nine Upstarts that belonged to King *George*'s Court; that the ancient Peers of the Realm would not be run down; for they should be made Slaves, if they did not prevent it.

Mr. Serj. *Pengelly.* Had you any Discourse any other Time about the *Dutch* or the *French?*

Plunkett. Yes; I do remember that he said, Here is a *Dutch* Army come in upon this Nation, and then the *French* Army will come in, and take our Rights and Liberties from us: You will keep a *Dutch* Army, and it will be to make a War among ourselves.

Mr. Serj. *Cheshire.* What would he have to cure all this?

Plunkett. He told me, that when the Insurrection was, there would be a great many Half-Pay-Officers as I knew, that would be on the Pretender's Side, and especially those of the Names of *Fitzgerald*; but I never knew any *Fitzgerald* Abroad.

Mr. Att. Gen. We have done examining this Witness.

Prisoner. You say your first Acquaintance with me was in *Queen-Street*, and that Major *Barnewell* desired you to assist me, there being an Execution in my House: Was it not so?—*Plunkett.* Yes.

Prisoner. At the same time you called me Counsellor *Layer?*

Plunkett. Yes; I came to your House.

Prisoner. Did I employ you?

Plunkett. Major *Barnewell* sent me to get a Couple of Grenadiers, and you ordered your Clerk to let them in at the Back-door; and the two Grenadiers, which were confined in the *Savoy* afterwards for it, drove the Officers out.

Prisoner. Was it the Landlord of the House's Goods, or my Goods?

Plunkett. I cannot tell; how should I know whether they were yours, or his? they were in your House.

Prisoner. You said it was about five Years before I saw you in *Lincoln's-Inn-Fields?*

Plunkett. It was when the Army was broke; and I came over from *Ireland.*

Prisoner. Well, you say five Years afterwards I met you in *Lincoln's-Inn-Fields*, and gave you half a Crown to drink. I told you my Lord *North* and *Grey* was to be General: That my Lord *Strafford* was concerned in it?

Plunkett. No, you told me they were Promoters of it.

Prisoner. Promoters of what?

Plunkett. Of this Conspiracy.

Prisoner. So you did not know me? nor I did not know you?

Plunkett. Yes, you knew me; therefore, Sir, said I, you have an Advantage against me; for I don't know you. Afterwards we met one another by Accident: Says you, Don't tell *Plunkett* you met me.

Prisoner. What *Plunkett?*—*Plunkett. James Plunkett.*

Prisoner. Where lives *James Plunkett?*

Plunkett I don't know: However that's not material.

Prisoner. Did not you come to my House some time after this, and desire me to lend you thirteen Shillings, upon Account of being Bail in an Action in the *Marshal*'s Court?

Plunkett. That was two Months after: There was a Soldier which was arrested by a *Marshal*'s Court Writ.

Prisoner. And I lent you thirteen Shillings in order to discharge him?

Plunkett. Yes, you did.

Prisoner. Did not you afterwards ask me for some Money on Account of Sir *Daniel Carrol?*—*Plunkett.* No.

Prisoner. Did not you make a Demand on Sir *Daniel?*

Plunkett. No: I told you my Affairs with Sir *Daniel.* You said you would not meddle yourself, but you would write to him.

Prisoner. Did you not bring a Paper, and say, Sir *Daniel* had agreed to pay you twenty Pounds when he received his Pay?

Plunkett. No: I brought no Papers to you.

Prisoner. Did not you tell me, it would be the greatest Kindness in the World to you to advance twenty Shillings for you?

Plunkett. I never asked you in the Course of my Life.

Prisoner. Did you never borrow any Money of me?

Plunkett. No; I never borrowed any Money of you, otherwise than to get Men listed for the Pretender.

Prisoner. I shall shew that you are a little mistaken by and bye.

Mr. *Hungerford.* You said you was decoyed to Church?

Plunkett. Decoyed! I said it was out of my Way, when my own Parish Church was nearer.

Mr. *Hungerford.* What, do you use to go to Church?—*Plunkett.* Yes.

Mr. *Ketelbey.* You say, the first time you saw this *James Plunkett*, he came to you when your Wife was in the Room?

Plunkett. The first time I saw him, was, when Mr. *Layer* released Major *Barnewell* out of the *Marshalsea.*

Mr. *Ketelbey.* When *James Plunkett* came to your House, he took you by the Arm, and told you, he came from Mr. *Layer*; did he tell you that first time, he came from Mr. *Layer?*

Plunkett. Upon my Oath he did.

Mr. *Ketelbey.* What Discourse had you the first Time? Did he only ask you to go and meet Mr. *Layer?*

Plunkett. He came to me, and desired me to meet Mr. *Layer* at the *Italian* Coffee-House in *Russel-Court.*

Mr. *Ketelbey.* Did *James Plunkett* talk to you about listing Men for the Pretender the first time he saw you?

Plunkett. No; he only was sent on an Errand from Mr. *Layer.*

Mr. *Ketelbey.* And then you came to the Non-juring Parson: The Un-juring Parson, as you call him: What Discourse had you with him?

Plunkett. The same Discourse passed between us about listing Men.

Mr. *Ketelbey.* What, the first time you saw *James Plunkett*, and the first time you saw the Non-juring Parson?

Plunkett. Because he came from Mr. *Layer.*

Mr. *Ketelbey.* So you trusted both of them at first Sight, and talked to them about listing Men for the Pretender?

Plunkett. Yes, both talk'd to me.

Mr. *Ketelbey.* How many times had this Un-juring Parson been with you, before you knew his Name?

Plunkett. He had been with me two or three times; he told me his Name was *Jeffreys*, but did not tell me his Christian Name.

L. C. J. Did he tell you his Name was *Jeffreys* the first time?

Plunkett. He told me his Name was *Jeffreys.*

L. C. J. How long after was it that this Letter was sent to you by Mr. *Jeffreys?*

Plunkett. It was the time when Mr. *Layer* came from the Country.

L. C. J. How long ago was that?

Plunkett. I believe about ten Months ago: I mean ten Weeks ago.

Mr. *Ketelbey.* I would not surprize you; I would have you consider you are upon your Oath: Is it ten Months, or ten Weeks?

Plunkett. Ten Weeks.

Mr. *Ketelbey.* How came you to remember the Contents of the Letter so exactly?—*Plunkett.* I heard it repeated over.

Mr. *Ketelbey.* Pray, repeat it over again.

Plunkett. Mr. Plunkett, *Mr.* Layer *is come to Town; I should be very glad to see you: So I rest your humble Servant,* William Jeffreys.

Mr. *Ketelbey.* Where is that Letter?

Plunkett. I don't know; the Letter is lost.

Mr. *Ketelbey.* Do you remember how long 'tis since this Letter was lost?

Plunkett. Why, I missed it about two Months ago, or more.

Mr. *Ketelbey.* Two Months ago, or more! How long was it after you received it that you missed it?

Plunkett. I kept the Letter in my Pocket some time.

Mr. *Ketelbey.* How long?—*Plunkett.* I believe I had it three Weeks.

Mr. *Ketelbey.* So that 'tis ten Weeks since you received this Letter, two Months since you lost it; you kept it in your Pocket three Weeks: You can read Writing?—*Plunkett.* No, I cannot.

Mr. *Ketelbey.* What, not read Writing?—*Plunkett.* No, Sir.

Mr. *Ketelbey.* How can you be so particular as to the Writing?

Plunkett. I have heard it read often enough.

Mr. *Ketelbey.* Who read it to you?

Plunkett. John Child read it over to me two or three times.

Mr. *Ketelbey.* Why, this is mere Romance, that at twice hearing it read, you can remember it, the very Words.

Plunkett. I can remember those Words to the best of my Knowledge.

Mr. *Hungerford.* How can he tell, when he cannot read at all? There is nothing in it: If one was to ask him, whether you can recite the Articles of the Creed, I believe he could not do it; and yet is so exact in repeating the Words of this Letter.

Prisoner. What Countryman are you?

Plunkett. An *Irishman:* You knew that long ago; you need not ask me that Question now.

Mr. Serj. *Pengelly.* My Lord, we shall now proceed, and produce the Plan of this Conspiracy, which was found among the Papers taken in Mrs. *Mason*'s Possession; and shall shew how they came to be in Mrs. *Mason*'s Possession; and we shall prove this Plan to be Mr. *Layer*'s own Hand-Writing.

[John Turner, *one of the Messengers, sworn.*]

Mr. Att. Gen. Look upon these Papers. [Turner *looks upon the Papers.*]

Mr. Att. Gen. Do you know any thing of those Papers, and where they were found?

Turner. My Lord, by Warrant from my Lord *Carteret*, Principal Secretary of State, dated the 29th of *September* last, I was directed to search for

for one Mrs. *Maſon* and Mrs. *Cook*, and the very ſame Day I executed that Warrant. I found out Mrs. *Cook*'s Houſe in *Stone-Cutter*'s *Yard*, in *Little Queen-ſtreet*, near *Lincoln's-Inn-Fields*, and in ſearching the Houſe----

Mr. Serj. *Peng.* Who lodged there?

Turner. One Mrs. *Maſon* lodged there: I found her in the Houſe; and in her Lodging there was a Trunk, and being demanded to open the Trunk---

L. C. J. Was your Warrant to ſearch for both Mrs. *Maſon* and Mrs. *Cook?*

Turner. For both; and in Mrs. *Maſon*'s Lodgings there was a Trunk which the other Meſſenger and I demanded to be opened: She opened the Trunk, and in the Trunk there were two Bundles of Papers ſealed up; which Papers being opened, this Paper was found amongſt them. *(Meaning the Plan or Scheme.)*

Mr. Serj. *Peng.* Look upon it: How do you know that to be the ſame?

Turner. I know it to be the ſame, becauſe I writ upon't; I ſet my Mark upon it.

Mr. Att. Gen. You ſay that theſe Papers were found in the Trunk, in two Bundles ſealed up?------*Turner.* Yes.

Mr. Att. Gen. (Shewing the Witneſs another Paper.) Look upon that; ſee if that was in the ſame Bundle with that you laſt gave an Account of?

Turner. Yes, that was in the ſame Bundle.

[*And ſo he was examined as to ſeveral particular Papers, which he ſwore to have been all found in the two Bundles taken out of Mrs.* Maſon's *Trunk, and that he had ſet his Mark upon them.*]

Mr. *Ket.* I beg leave to aſk Mr. *Turner* a Queſtion or two. Mr. *Turner*, I think you give a poſitive Account of ſeveral Papers, what they are I know not; of ſeveral Papers handed to you from Mr. *Paxton?* You had a Warrant to ſearch for Mrs. *Cook* and Mrs. *Maſon*, and in a Trunk you found theſe Papers ſealed up in a Bundle?

L. C. J. He ſaid he had Directions from my Lord *Carteret* to ſearch for Mrs. *Cook* and Mrs. *Maſon.* That he ſearched Mrs. *Cook*'s Houſe, and found Mrs. *Maſon* there; he ſees a Trunk in the Houſe, in Mrs. *Maſon*'s Lodgings, and he demanded the Trunk to be opened, and in the Trunk is found two Bundles of Papers; in theſe Bundles are theſe Papers which have been ſhewn to the Witneſs. When he is aſked how he knew them to be the ſame that were in the Bundle; he ſays, he knows them to be the ſame, becauſe he ſet his Mark upon them.

Mr. Juſt. *Forteſcue Aland.* Were the Bundles ſealed up?

Turner. Yes, my Lord, they were ſealed up when we took them out of the Trunk.

Mr. Att. Gen. In whoſe Lodgings were they found?

Turner. At Mrs. *Maſon*'s Lodgings, in her Bed-Chamber.

Mr. *Ket.* You ſay theſe Papers handed to you, you found in the Trunk in Mrs. *Maſon*'s Lodgings. Where have they been ever ſince? How come you to be ſo poſitive that theſe Individual Papers are the ſame Papers that you found in Mrs. *Maſon*'s Room?

Turner. I put my Name upon them.

Mr. *Ket.* Is your Name put upon thoſe?

Turner. Yes, upon each of them at that time.

Mr. *Ket.* How long were they in your Cuſtody?

Turner. About an Hour.

Mr. *Ket.* Who did you deliver them to, when you parted with them?

Turner. I think, to Mr. *Stanyan.*

Mr. *Ket.* I aſk you, when you put your Name on each of them, was it before you firſt parted with them?

Turner. After the Trunk was open, and the Bundles were opened; in the Bundles finding Papers of Conſequence, I was directed to go and fetch Mr. *Stanyan* as being a Magiſtrate, to give that Perſon her Oath. While I was gone, I delivered the Papers into my Brother Meſſenger's Hand, and he ſigned them.

Mr. *Ket.* So you only ſwear for your Brother Meſſenger. How long after your firſt ſeizing the Papers was it before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Mr. *Ket.* Who had you left them with?

Turner. I left them with this Man, my Brother Meſſenger.

Mr. *Ket.* You left them with your Brother Meſſenger before you ſet your Mark upon them; how comes it that you are ſure they are the ſame? How can you ſwear they are the ſame, when you went away and left them in your Brother Meſſenger's Hands, and did not ſet your Name upon them, till you returned?

Mr. Sol. Gen. You ſay theſe Papers were ſeized in Mrs. *Maſon*'s Lodgings, and that ſhe was by, and unlocked the Trunk, and you took out the two Bundles?----*Turner.* Yes.

Mr. Att. Gen. You ſay you delivered the ſame Papers to this Perſon here?

Turner. Yes, Sir.

Priſoner. Mr. *Turner*, in Mrs. *Maſon*'s Lodgings you ſay you ſeized two Bundles of Papers ſealed up?----*Turner.* Yes.

Priſoner. When Mrs. *Maſon* had them locked up, were they then ſealed up?----*Turner.* They were then ſealed up.

Priſoner. Did not the Seals appear to have been broke open?---*Turn.* No.

Priſoner. You ſaw two Bundles?----*Turner.* Yes.

Priſoner. You ſaw this Paper, and that, and all the Papers taken out of the Bundles. What Bundle was this Paper in? *(Meaning the Plan or Scheme.)*

Turner. This was in the ſame Bundle.

Priſoner. Was there a ſmall Bundle, and a great Bundle?

Turner. Yes, there were two Bundles.

Priſoner. And this was out of one of the Bundles?

Turner. Out of the ſmall Bundle.

Priſoner. Did you ſee them taken out of the Bundle?

Turner. I can't ſay that.

Mr. *Hungerford.* If I obſerve that Paper or Bundle right, it is one that conſiſts of ſeveral Sheets of Paper; I deſire he may hold it in his Hand, till we have done examining of him.

Mr. *Ket.* Mr. *Turner*, that conſiſts of more Sheets than one; did you ſign your Name to each Leaf, or only to the firſt and the laſt Leaf of the Book?

Turner. I ſign'd my Name to each Sheet.

[*Edward Speare*, ſworn.]

Mr. Att. Gen. Mr. *Speare*, Did you go with Mr. *Turner* to ſeize any Papers at Mrs. *Cook*'s Houſe?

Speare. Yes, I did.

Mr. Att. Gen. Give an Account of what you know of ſeizing any Papers there.

Speare. My Lord, by a Warrant directed to us from my Lord *Carteret*, Mr. *Turner* and I were to ſeize Mrs. *Cook* and Mrs. *Maſon*; and ſearching Mrs. *Cook*'s Houſe, I found Mrs. *Maſon* there. At Mrs. *Cook*'s I found no Papers in the firſt Room; I proceeded into a ſecond Room, where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it; one of 'em was ſeal'd with three Seals, which I looked at; they did not appear to have been open'd and ſeal'd up again. I open'd them, and mark'd them.

Mr. Att. Gen. Who was by?----*Speare.* Mrs. *Maſon* was.

Mr. Att. Gen. Was ſhe there when you open'd them?

Speare. She was by when they were open'd.

Mr. Att. Gen. Look upon them, are they the ſame Papers?

Speare. I have look'd upon them, and know them to be the ſame.

Mr. Att. Gen. Are thoſe the Papers that were taken out of the Trunk?

Speare. The very Papers.

Mr. Att. Gen. In whoſe Room were they taken?

Speare. In Mrs. *Maſon*'s Room.

Mr. Serj. *Cheſh.* Were they ever out of your Cuſtody, till you mark'd them?----*Speare.* No, Sir.

Mr. Sol. Gen. During the Time that *Turner*, your Brother Meſſenger, was gone for Mr. *Stanyan*, who had the Cuſtody of the Papers?

Speare. I had the Cuſtody of them.

Mr. Sol. Gen. Were any of them taken away, or was there any Alteration in, or Addition to them, during that Time?

Speare. No, Sir.

Mr. Serj. *Cheſh.* Do you remember that Mr. *Turner* ſet his Name upon them?

Speare. Yes, he did.

L. C. J. How long after your Brother Meſſenger returned back to you, was it before you ſet your Name upon them?

Speare. Immediately, my Lord.

Mr. *Ket.* How long did you ſtay in the Place after the Return of *Turner?*

Speare. I believe I might ſtay there an hour, or an Hour and an half.

Mr. *Ket.* When did you firſt part with the Papers out of your Cuſtody?

Speare. I gave them to Mr. *Stanyan.*

Mr. *Ket.* How long after you firſt ſeized thoſe two Bundles was it before Mr. *Stanyan* came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. *Ket.* What, did you deliver them to Mr. *Stanyan* then?

Speare. After Mr. *Turner* and I had ſign'd them, I delivered them to Mr. *Stanyan.*

Mr. *Ket.* Was it not before you ſign'd them?

Speare. No, upon my Oath.

[Mrs. *Elizabeth Maſon* ſworn.]

Mr. Att. Gen. Mrs. *Maſon*, Give an Account of what you know of theſe Papers?

Mrs. *Maſon.* Mr. *Layer* left two Parcels of Papers with me: He told me they were of the Value of 500 *l.* He afterwards took them away from me; and afterwards brought them to me again.

Mr. Serj. *Cheſh.* You ſay, he deliver'd two Bundles firſt?

Mrs. *Maſon.* No; he deliver'd only one, and that was the largeſt Bundle: He told me it was of the Value of 500 *l.* and deſired me to take care of it, and lock it up.

Mr. Serj. *Cheſh.* When was the leſſer Bundle deliver'd to you?

Mrs. *Maſon.* Some time after; and after that, he took them away from me; and in four or five Days time he brought them to me again: He took them away, and brought them to me again, and told me they were a few Love-Letters; and begg'd of me not to let Mrs. *Cook* know it, for ſhe would make a Diſturbance, and tell his Wife.

Mr. Serj. *Cheſh.* When had you the leſſer Bundle?

Mrs. *Maſon.* I had that ſome time after.

Mr. Serj. *Cheſh.* What Directions had you with the little Bundle?

Mrs. *Maſon.* He deſired me to take the ſame Care of that, as of the other.

Mr. Serj. *Cheſh.* Was that ſeal'd up?

Mrs. *Maſon.* They were both ſeal'd.

Mr. Serj. *Cheſh.* Where did you put them?

Mrs. *Maſon.* I put them into my Trunk.

Mr. Serj. *Cheſh.* After this; you know when the Meſſengers came?

Mrs. *Maſon.* Before that, he came one Day in the Afternoon to our Houſe, and aſk'd where I was? It was the Beginning of *Bartholomew-tide.* I was not at home: He left a Meſſage for me, that I ſhould bring thoſe Writings home. I carried them home.

Mr. Serj. *Cheſh.* Home! What do you mean by Home?

Mrs. *Maſon.* Mr. *Layer*'s own Houſe: He left Word, that he wou'd be at home by eight a-Clock that Night. I was there about eight a-Clock; I aſk'd the Maid where he was? She ſaid, he was in the Back-Parlour. I aſked her if any body was with him? She ſaid, there were two Gentlemen. Said I, tell your Maſter that I am here.

L. C. J. You ſay the great Bundle was taken from you again, and afterwards he brought the leſſer Bundle; and after this you receiv'd a Meſſage, or Intimation, that you ſhou'd bring home that Bundle.

Mrs. *Maſon.* My Lord, I had two Bundles. He left Word, that I ſhould bring his Papers Home; for he ſtaid at Home 'till eight a-Clock that Night. I went to his Houſe: And when I knock'd at the Door, the Maid came to the Door. I aſked her, if her Maſter was within? She told me, yes; he was in the Back-Parlour; and that there was a Gentleman or two with him. I deſir'd her to go and tell her Maſter that I was there. And he came out to me; and I gave him the Writings; and he deſir'd me to come again the next Morning; which was on a *Saturday*, about eleven a-Clock, for he was going out of Town: And that I would come and take thoſe Writings again. Which accordingly I did. It

was in the Morning, at the Time that the Bell was ringing at *Lincoln's-Inn* Chapel, when I went to him, and he delivered me the Papers again.

Mr. Sol. Gen. Can you recollect the Day that he left Word for you to come to him?——Mrs. *Mason.* It was the Beginning of *Bartholomew-tide.*

Mr. Sol. Gen. What Day of the Week was it?

Mrs. *Mason.* It was on a *Friday* Night that I went and carried them to his House.

Mr. Sol. Gen. And when was it that he desired you would come and call for them again?

Mrs. *Mason.* It was the next Morning at eleven o'Clock, or near the Matter, that I went to his House; and he gave me the Writings again, and charged me to take Care of them.

Mr. Serj. *Cheshire.* What was you to do with them?

Mrs. *Mason.* To take Care of them.

Mr. Serj. *Cheshire.* Did you meddle with them, or open them?

Mrs. *Mason.* No, Sir; I put them in my Trunk: They lay there all the Time.

Mr. Serj. *Cheshire.* Were they there when the Officers came?

Mrs. *Mason.* Yes, Sir.

Mr. Serj. *Cheshire.* Was you there when the Bundles were opened?

Mrs. *Mason.* I was there.

Mr. Serj. *Cheshire.* Did you mark the Papers yourself?

Mrs. *Mason.* I did.

Mr. Serj. *Cheshire.* Look upon the Papers, and see if you find your Mark on those Papers?——Mrs. *Mason.* Yes, this is my Mark.

Mr. Serj. *Cheshire.* Mr. *Speare*, you was present at the opening of them?

Mr. *Speare.* I was: They were sealed up when I opened them.

Mr. Serj. *Cheshire.* Did you put your Name on them?

Mr. *Speare.* I did put my Name on them.

Mr. Serj. *Cheshire.* Were they out of your Custody before you put your Name on them?—Mr. *Speare.* No; they were not.

Mr. Serj. *Cheshire.* Did Mr. *Turner* put his Name to them?

Mr. *Speare.* He put his Name to them before ever they were out of my Custody.

Mr. Att. Gen. You have marked all those Papers. You are sure those are the Papers you took out of the Trunk in Mrs. *Mason's* Lodgings?

Mr. *Speare.* I am sure they are.

Mr. Att. Gen. Shew them to Mrs. *Mason.* Mrs. *Mason*, Were those Papers in the Bundles that were delivered to you by Mr. *Layer?*

Mrs. *Mason.* Yes, Sir, they were.

Mr. Att. Gen. You have marked those Paperr, have you not?

Mrs. *Mason.* Yes, I have.

Mr. Sol. Gen. You say, you gave the Bundles back to Mr. *Layer* on a *Friday*, about the Beginning of *Bartholomew-tide:* Do you remember whether it was upon *Bartholomew* Day or not?

Mrs. *Mason.* Indeed I don't know.

Mr. Sol. Gen. What did Mr. *Layer* say when you brought them to him again?

Mrs. *Mason.* He only thanked me; and desired me to come the next Day and take them from him again; Which I did.

Mr. Sol. Gen. Did he mention then that he was going out of Town?

Mrs. *Mason.* Yes: And it was about eleven a-Clock on a *Saturday* Morning that I went to him, and he delivered the Papers to me again.

Mr. *Hung.* Can you write?——Mrs. *Mason.* No.

Mr. *Hung.* Have you made the same Mark on all those Papers?

Mrs. *Mason.* I was so frightned at that Time, that I hardly knew what Mark I made.

Mr. *Hung.* If you was frightned at that Time, and did not know what Mark you made, how can you be sure you know your Mark again?

Mrs. *Mason.* Yes, I can tell it very well.

Mr. *Hung.* When you say you was so frightned you did not know what Mark you made?——Mrs. *Mason.* Yes, sure I do.

Mr. *Hung.* Upon the Oath you have taken, hath any Body seen those Papers before they were taken by the Messengers; whether Sir *John Meeres*, or his Man *Thomas* hath seen them?——Mrs. *Mason.* No.

Mr. *Ketelbey.* Nor his Man *Thomas?*

Mrs. *Mason.* No, nor his Man *Thomas.*

Mr. *Ketelbey.* I ask you, can you write, or can you read Writing?

Mrs. *Mason.* I told you I can't.

Mr. *Ketelbey.* You only can make your Mark?——Mrs. *Mason.* No.

Mr. *Ketelbey.* Do you only make but one Mark, or use several Marks?

Mrs. *Mason.* I make but one Mark.

Mr. *Ketelbey.* Pray, make the Mark you generally use. With Submission, my Lord, I desire she may have a Pen and Ink, to see if she can make the same Mark again.

Mr. *Hung.* Surely we are regular in desiring that.

L. C. J. What you desire is proper. She says she knows them to be the same Papers, because she hath set her Mark upon them; they doubt whether she may mistake in her Mark, and desire she may make her Mark again.

Mr. *Ketelbey.* My Lord, we desire she may make her Mark again.

Mr. Sol. Gen. We desire she may have a convenient Place to do it in, and that she may sit down while she writes.

Mrs. *Mason.* No, I can do it without. (*A Pen and Ink and Paper is given to her, and she sets her Mark an* E *and an* M.)

Mr. Sol. Gen. Here are the Letters *E* and *M* set to the Papers produced; and though in this Confusion she should not make her Letters exactly like those, yet I apprehend that would weigh very little.

Mr. Att. Gen. My Lord, I can't tell what they mean? this doth not depend——

Mr. *Ketelbey.* My Lord, I desire to go on with our Questions. I ask you——

L. C. J. (*Having compared the Letters made by Mrs.* Mason *in Court, with those on the Papers*) the Character which she now writes is like what she writ on those Papers, and so confirms her Evidence.

Mr. *Ketelbey.* After the Delivery of those two Bundles to you by Mr. *Layer*, I ask you whether Sir *John Meeres's* Man *Thomas* ever saw those Bundles opened?

Mrs. *Mason.* No, he never was up in my Room; there was no such Familiarity between us.

Mr. *Ketelbey.* Did one *Wilson* ever see them?——Mrs. *Mason.* No.

Mr. *Ketelbey.* Did ever you produce them to one *Binks?*

Mrs. *Mason.* No.

Prisoner. No! Nor did Sir *John Meeres's* Man *Thomas* never see them?

Mrs. *Mason.* No, never upon my Oath.

Mr. *Ketelbey.* Did you ever produce them sealed up? Did you ever let *Thomas* or *William*, or Sir *John Meeres* himself see either of those Bundles as they were sealed up?

Mrs. *Mason.* No, they were in my Trunk: I always kept them in my Trunk; perhaps as I opened my Trunk, they might see them lie in my Trunk.

Mr. *Ketelbey.* Do you know one Mrs. *Buda?*

Mrs. *Mason.* No: I don't know the Name. I don't know one Mrs *Buda.*

Prisoner. Did you ever know one Mrs. *Herbert?*

Mrs. *Mason.* I know many of that Name.

Prisoner. Did you ever go by that Name?——Mrs. *Mason.* No.

Prisoner. Did you ever go by the Name of *Corbet?*—Mrs. *Mason.* No.

Prisoner. Did you ever go by the Name of *Bevan?*

Mrs. *Mason.* No, I never did go by the Name of *Bevan.*

L. C. J. Mr. *Ketelbey*, I don't know what the Meaning of this Examination is; when it appears beyond Contradiction, that this Woman was an Acquaintance of your Client's.

Mr. *Ketelbey.* My Lord, if we prove her to be an ill Woman, I hope it will take off her Credit, so that her Evidence will not weigh with your Lordship or the Jury.

L. C. J. At the Time when these Bundles were seized, had they Mr. *Layer's* Seal upon them?

Mrs. *Mason.* Yes; the Seal of Mr. *Layer* was upon them.

L. C. J. What says the Messenger? At the Time that you seized these two Bundles of Papers, was there any Seal upon them?

Messenger. There were three Seals upon one, and some Seals upon the other; the Seal was something of a small Head.

L. C. J. What is Mr. *Layer's* Seal?

Mrs. *Mason.* Something of a Head, but I can't tell what Head.

Mr. *Ketelbey.* Do you know Mr. *Layer's* Seal?

Mrs. *Mason.* It is something of a Head.

Mr. *Ketelbey.* Was it the Representation of a Man's Head, or the Head of a Beast?

Mrs. *Mason.* It is a Head with something of a Ruff about it.

L. C. J. Mrs. *Mason*, look upon the Head? Is that Head the Seal of Mr. *Layer?*—Mrs. *Mason.* Yes: Upon my Oath it is.

L. C. J. What says the Messenger: Was that Seal of a Head upon them, when you seized them?

Messenger. Yes, it was.

Mr. *Ketelbey.* Before that Time that the two Messengers came, Mr. *Turner* and Mr. *Speare*, and seized the Papers, and afterwards one of them went for Mr. *Stanyan*; I ask you, whether you had shewn those Bundles to any Body before that Time?

Mrs. *Mason.* No; I had shewed them to Nobody.

Mr. Att. Gen. She hath said so two or three Times before.

L. C. J. Indeed, Mr. *Ketelbey*, we must direct you not to spend the Time of the Court so. You have asked her that Question two or three Times over.

Mr. *Ketelbey.* My Lord, I would very fain have the Truth come out.

Mr. *Hung.* I will ask you a Question or two. What Trade or Business do you follow? What is your Trade or Occupation?

Mrs. *Mason.* What is that to you? I have no Trade.

Mr. *Hung.* I should have asked you another Question before; have you not a Promise of Reward for the Service you do here, in giving this Evidence?——Mrs. *Mason.* No, I have not.

Prisoner. Nor you have received none?

Mrs. *Mason.* No: You are an unjust Man.

L. C. J. Are you promised any Reward? Why don't you ask her whether she is to swear for Hire? Is that a proper Question to ask a Witness?

Mr. *Ketelbey.* I submit it to your Lordship, whether it is not proper to ask her this Question; Whether she hath not told any Person, and whom, that she was to have a Reward for coming hither?

Prisoner. The Question is, Whether she hath never owned and confessed to any Body, that these Papers were opened before a Friend of hers, before the Messenger seized them?

Mrs. *Mason.* No, my Lord, I never did. I never opened them before any Body.

Mr. Att. Gen. They have asked you what Names you went by; do you know what Names the Prisoner at the Bar has gone by?

Mrs. *Mason.* He had once given me Orders, that if any Letter came directed in the Name of *Fountaine*, that I should take it in; accordingly in two or three Days Time, there came a Letter, directed to Mr. *Fountaine*, and I took it in; and when he came I gave it to him, and he opened it, and read it.

Prisoner. Where is your House?

Mrs. *Mason.* Where! Where you left the Writings.

Prisoner. How can you tell how that Letter was directed which you took in, since you say you cannot read?

Mrs. *Mason.* It was directed to Mr. *Fountaine.*

Prisoner. Did you read the Superscription?

Mrs *Mason.* No; Mrs. *Cook* did.

L. C. J. You say you was desired by Mr. *Layer*, when any Letter came directed to Mr. *Fountaine*, to take it in; and that a Letter came directed to Mr. *Fountaine*, and you took it in; the Question is asked you, since you cannot read, How could you tell it was directed to Mr. *Fountaine?*

Mrs. *Mason.* My Landlady told me it was for Mr. *Fountaine*, and she knew he went by the Name of *Fountaine* sometimes.

Prisoner. She said she read it.

Mrs. *Mason.* No; I said I gave it to you, and you opened it, and you read it.

L. C. J. The Occasion of this Question is, that this *Misnomer* was approved of by you: She says, that you ordered her, that if any Letter came directed to Mr. *Fountaine*, she should take it in; a Letter did come directed so, she took it in, and then delivered it to you; and you received it from her, and opened and read it; but how, say they, could you know this Letter was directed to Mr. *Fountaine*, when you can neither write nor read?

read? She having received such an Order, when there was a Letter come, it was natural enough, that she that could not read, should ask her Landlady the Directions of the Letter, and it was directed for *Fountaine*; it was natural enough for her to take it in, and give it to you.

Who brought the Letter?----------Mrs. *Mason.* A Porter.

L. C. J. Did he say from whence he came?

Mrs. *Mason.* He told me he came from the *Ditch-Side*, and asked me if Mr. *Fountaine* lodg'd there.

Mr. *Hung.* This Trunk that the Papers were in, did it use to be kept open, or was it lock'd up?

Mrs. *Mason.* It was always lock'd up.

(Mr. *Doyley* sworn.)

Mr. Att. Gen. Mr. *Doyley*, do you know Mr. *Layer?* and how long have you known him?

Doyl. I have known him about seventeen or eighteen Years; he was my Clerk; 'tis thereabouts, I believe.

Mr. Att. Gen. Do you know his Writing?

Mr. *Doyl.* I believe I do.

Mr. Att. Gen. Look upon that Paper. *(He is shewn the Scheme.)*

Mr. Att. Gen. Do you take that to be his Hand?

Doyl. If you ask me as to my Belief, I believe it is.

Mr. Att. Gen. Have you often seen him write?-------*Doyl.* Yes, Sir.

Mr. Att. Gen. Have you seen him write since he left your Service?

Doyl. I have had several Letters from him since he was my Clerk.

Mr. Att. Gen. Look upon that Paper; can you swear that you believe that is his Hand-Writing?

Doyl. I have seen the Paper before, and I do believe it to be his Hand-Writing.

Prisoner. Have you seen me write any thing but my Name these fourteen Years?-----*Doyl.* I can't particularly recollect whether I have or no.

Prisoner. How long is it since I was your Clerk?

Doyley. About fourteen or fifteen Years.

Prisoner. Have you seen me write since?

Doyl. I can't say I have, or I have not.

L. C. J. How long is it since you received any Letters from him?

Doyl. About five Years ago.

L. C. J. How do you know those Letters came from him?

Doyl. Because he was my Client, and writ to me about Business; and I answered those Letters, and did the Business that he desired me to do by those Letters.

L. C. J. Did he pay you for that Business done?

Doyl. Yes, very honourably.

Prisoner. You say you don't remember you have seen me write since I came from you; as to that Paper which you say you believe to be my Hand, have you compar'd it with those Letters?------*Doyl.* I have.

Prisoner. Is that what you found your Belief upon?

Doyl. That is what I chiefly found my Belief upon.

Prisoner. Consider, Mr. *Doyley*, my Life is at Stake, and you say you have not seen me write these fourteen Years?

Doyl. I don't know that I have.

Prisoner. Have you any of my Letters in Court?

Doyl. I have not your Letters in Court.

Prisoner. You say, you found your Belief only by Comparison of those Letters. Now I wish you had brought those Letters here.

Mr. Att. Gen. He doth not say so.

Doyl. If you had desir'd it, I could have brought 'em.

Prisoner. I desir'd it! I little thought to have seen you here on such an Occasion.

Mr. Att. Gen. Mr. *Doyley*, I ask you, if you had no Dealings with him since he was out of his Clerkship?

Doyl. Yes, I was his Agent.

L. C. J. Whose Name is subscribed to those Letters?

Doyl. Christopher Layer's.

L. C. J. You did the Business mentioned in those Letters; and he honourably paid you for it?---------*Doyl.* Yes, my Lord.

L. C. J. I suppose, in your time, that you will shew that other People writ Letters in your Name?

Mr. *Ketelbey.* You say, you believe that Paper to be Mr. *Layer's* Hand-writing. And if I did not misunderstand you, I took it down in Writing, you founded your Belief on the comparing that Writing with the Letters which you receiv'd?

Doyl. I said, I chiefly founded my Belief upon such Comparison of Hands.

Mr. *Ketelbey.* That you chiefly did so; and you have not those Letters here in Court, on which you chiefly founded this Belief.

Mr. Sol. Gen. Mr. *Doyley*, I think you say you have seen him write several Times?

Doyl. I don't remember that I have seen him write these fourteen Years.

Mr. Sol. Gen. During the Time he was your Clerk, you have seen him write?

Doyl. Yes; he was but two Years with me: He had been Clerk with Mr. before.

Mr. Sol. Gen. Then he had been used to Business before he came to you; and had formed his Hand.

Mr. *Hung.* How old was he when he was your Clerk?

Doyl. Indeed I don't know.

Mr. *Hung.* You form your Belief upon the Remembrance you have of what was his Hand-writing fourteen or fifteen Years ago?.

L. C. J. You say, you received Letters subscribed by his Name five Years ago?--------*Doyl.* Yes, my Lord.

L. C. J. Was the Character of those Letters that you receiv'd five Years ago, agreeable to the Characters that he writ when he was your Clerk?

Doyl. Yes, my Lord.

L. C. J. Then I ask you upon the whole, whether you believe it to be his Hand-writing, or not?----*Doyl.* Yes, I do believe it to be his Hand.

Prisoner. Since my unhappy Circumstances, have you had no Promise of being restored to your Place again, or the Promise of some other Office or Place?

Doyl. No; I never, to my Knowledge, have seen one Man that had the Power to put me in my Place again; nor ever conversed with any one Great Man upon that or any such Affair.

Mr. Serj. *Peng.* We think we are entitled to read it: However, that there may be no Dispute, we desire to call Mr. *Delafaye* and Mr. *Stanyan*, in whose Presence the Prisoner at the Bar, confess'd it to be his Hand-Writing.

(Mr. *Delafaye* was sworn.)

Mr. Serj. *Peng.* Sir, was that Paper shewn to the Prisoner at the Bar?

Mr. *Delaf.* I was not near enough when he was before the Lords of the Council, to see what was on the Table; neither did I look upon the Table, to see whether this Paper was on it or not. But upon a Question that was asked him relating to some Arms, if he knew where any were lodg'd in such a Place, he said no: Upon which, one of the Lords of the Council held up a Paper; it might be this, for aught I know; and said, Here is your own Paper, your own Hand-writing; which says, Arms that are there lodged; says he, I should have writ Arms that should be there lodged.

L. C. J. Whether is that the Paper or no; and did he own that Paper that was then shewn to be his?

Mr. *Delaf.* The Question was not asked, Is this your Paper and your Hand-Writing? But it was shewn to him as such; and he said, I should have wrote Arms that should be there lodg'd.

(Mr. *Stanyan*, sworn.)

Mr. Att. Gen. Mr. *Stanyan*, do you remember whether this Paper was shewn to the Prisoner at the Bar, or any Questions asked him about it, when he was before the Lords of the Council?

Mr. *Stanyan.* Upon the Question that was asked him about the Arms, this Paper was shewn him; I think this is the Paper: I was nearer to the Table than Mr. *Delafaye*, and did observe this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was shewn him then.

Mr. Att. Gen. What was said to him at that time?

Mr. *Stanyan.* The Question was asked him, What he knew of any Arms that were lodged in *Westminster?* He said, He knew of none. Then this Paper was shewn to him, and a Question was asked him; here the Arms are said to be lodg'd in this Scheme of your own Hand-writing: how came you to write so, if there be no Arms lodg'd? Mr. *Layer* said, it was a Mistake: It was not intended Arms that are there lodg'd, but Arms that should be there lodg'd. He said, I should have writ Arms that should be lodg'd, instead of Arms that are lodg'd.

Mr. Serj. *Chesh.* The Question was concerning a Paper of his own Hand-Writing?

Mr. *Stanyan.* Yes; it was concluded, that the Paper was of his own Hand-Writing, and he did not deny it.

Mr. Att. Gen. Did he say it was not his own Hand-Writing?

Mr. *Stanyan.* No, he did not.

Mr. *Ketelb.* Was the Question ask'd, Whether that Paper was his Hand-Writing, or no?---------Mr. *Stanyan.* No, I believe not.

Mr. *Ketelbey.* Then if there was no Question ask'd, whether did he own it to be his Hand-Writing, or no?

Mr. *Stanyan.* He did not expresly own it to be his Hand-Writing.

Mr. Att. Gen. He was not ask'd that Question, whether it was his Hand-Writing, or no?-------Mr. *Stanyan.* No, Sir.

Mr. Serj. *Peng.* He did not deny it to be his own Hand-Writing?

Mr. *Stanyan.* No, Sir.

Mr. *West.* Whether the Lords in their Question did state it so, as taking it for his own Hand-Writing?

Mr. *Stanyan.* It was taken for granted that it was so, and he made no Offer to deny it.

Prisoner. Pray, Sir, let me ask you one Question about the Arms? When I was ask'd, if there were any Arms lodg'd, did I not answer in the Negative, and said, No?------*Stanyan.* Yes.

Prisoner. In relation to the Arms, you say, that I said Arms that should have have been lodg'd?

Stanyan. That was upon the Lords asking you, to explain that Part of the Scheme relating to Arms; and when you said you knew of no Arms that were lodg'd, then said they, How come you to mention in this Scheme of your own Hand-Writing, Arms that are lodg'd? To which you answer'd, I should have writ Arms that should be lodg'd.

Prisoner. When I was ask'd, why I did say Arms that were lodg'd? Why, faith I, my Lords, I know of no Arms. If that was my Paper, and I had writ it, I should have writ Arms that should be lodg'd.

Mr. Att. Gen. My Lord, we pray that the Papers may be read.

Mr. *Hung.* My Lord, we hope that these Papers, (tho' for my Part I know not what they are; for there is no Hint of them in my Brief) shall not be read, for this Reason; the Evidence which hath been given for the King, hath not brought them home to the Prisoner. There is no legal Proof that the Papers are of his Hand-Writing; and consequently he cannot be affected by any thing that is in them. As to what is said of the Likeness of Hands, that we humbly hope is no Evidence at all. The first Witness, Mr. *Doyley*, he hath said it is like his Hand; but he gives that Opinion of his, on the Knowledge he had of the Prisoner's Hand fourteen Years ago; and by some Letters he received from him about five Years since; Men's Hands may differ and vary even in five, much more in fourteen Years.

What follows is the Evidence that hath been given by the Gentlemen belonging to the Secretaries Office.

I personally know them to be Gentlemen of good Sense, Integrity and Honour, and for my Part I believe every Word they say; which is more than I can say of the other Witnesses hitherto produced. But what these say, doth not, with Submission, affect the Prisoner: They were present when the Prisoner was examin'd before the Lords of the Council; none of them heard the Prisoner acknowledge that the Papers were writ by him, or that he did own them as his; neither was he asked any Question to that Purpose; neither did the nature of the Examination my Lords of the Council were then upon, lead them to such a Question: The Lords were not asking Mr. *Layer* Questions to fix an Evidence upon himself. But the Lords having some Papers before them, and, according to the Duty of their high Stations, being intent upon discovering what might be of Danger to his Majesty and the Public, they ask'd Mr. *Layer*, where the Arms were deposited at *Westminster?* He answers, That he knew of none

there, or to that Purpose. It cannot in Law or Reason be from hence inferred, that he did own the Papers to be of his own Hand-Writing. The only Evidence, therefore, which can be insisted on to entitle these Papers to be read, is the Evidence of Likeness of Hand, which is no Evidence at all in a criminal Case.

In my Lady *Carr*'s Case, it was not allowed to be Evidence; and yet that was not a capital Case, but a Case of Misdemeanor only, it was Perjury. But there is an Authority beyond all that; we have the Act of Parliament for the Reversal of the Attainder of Colonel *Sidney*, who had been convicted upon Evidence given of the Similitude of Hands, and that a much stronger Proof than what appears here; for *Cook* and *Cary*, two famous Goldsmiths, swore they believed the treasonable Libel laid to Colonel *Sidney* to be writ by him; and assigned that for a Reason of their Belief, for that they had received several Bills from him of the like Hand-Writing, which they constantly paid. Nay, one of the Goldsmiths swore, (as I remember the Tryal) that he saw the Colonel write a Receipt. Some other Cases of this Nature might be quoted, but we depend upon the Authority of my Lady *Carr*'s Case, and the Act for reversing the Attainder of Colonel *Sidney*, which is *instar omnium*; for in that Act the Reason assigned for reversing the Attainder is, for that the Conviction and Attainder were found upon a Similitude of Hands. We have an attested Copy of the Act here ready to be read. In Consequence of this Act, my Lord, Similitude of Hands is never to be given as Evidence in a criminal Case: and therefore we humbly hope, that this Paper is not so proved, as to be read in any Court, but must be rejected: it is not proved to be his Hand by any that ever saw him write; neither hath any body heard him own it to be his.

Mr. *Ketelley*. My Lord, I beg Leave to say a few Words in Support of this Objection. We don't know what is the Purport of this Paper. I dare say, Mr. *Hungerford*, as well as myself, hath not seen one Tittle relating to it whatsoever; but I hope, for the Sake of Evidence, the sacred and eternal Rule of Evidence, that Similitude of Hands shall not go for Proof, where a Person is charged with a capital Offence. We shall in due Time endeavour to lay before the Court several material Objections to the Credit of some of the Witnesses; but at present we must suppose them unexceptionable, and consider, with respect to this single Point, whether this Paper is sufficiently proved to be his Hand-Writing, so as to be read. Mrs. *Mason* and the Messengers have endeavoured, by a jumbling Evidence, to prove the Identity of the Papers, and to hand them down from one to another: but how do they appear to be of the Prisoner's Hand-Writing? Mr. *Doyley* says, fourteen or fifteen years ago he was his Clerk; that five Years ago he received Letters from him; and that he chiefly founded his Opinion that it was the Prisoner's Hand-Writing, because he had compared it with those Letters, and that the Hands were alike: and yet those Letters with which he compared this Paper he hath not in Court to produce. This is the Substance of *Doyley*'s Evidence.

My Lord, I humbly insist, that this is not sufficient; and if Comparison of Hands was to be Evidence, surely this would not do, unless he produced those Papers, on which he owns he founded his Opinion. I refer it to the Jury, whether he may not possibly, nay probably, make an erroneous Judgment. Shall a Man be believed out of his Life, because the Witness saw him write fifteen Years ago, and received Letters from him five Years ago? Is any thing more changeable than a Man's Hand-Writing? Can either of you, Gentlemen, take upon you to say, what is or is not your Writing after so great a Length of Time? Would not the different Subjects, the one a common Letter of Business, the other a treasonable Scheme, make a sensible Variation even in a Man's usual Character?

The Case of my Lady *Carr* is reported in *Siderfin*, *fo.* 419. and was upon an Indictment of Perjury, an Offence of a much lower Nature than what this Gentleman is now tried for: There a Witness swore he believed the Paper produced in Court to be her Hand-Writing, yet it did not amount to such a Proof as to make her guilty: Nay, the Court said expressly, that it was not Evidence, and should not be admitted; and accordingly she was acquitted. But the highest Authority is what Mr. *Hungerford* hath named, the Act of Parliament for the Reversal of the Attainder of Col. *Sidney*; and we have a Witness here ready, that examined it with the Record, that proves it to be a true Copy. *Algernon Sidney* was attainted of High-Treason by Similitude of Hands, and that was the Reason of the Reversal.

The two next Witnesses are Mr. *Delafaye* and Mr. *Stanyan*, Gentlemen of Honour, and that would not strain a Point upon any Account whatsoever. Mr. *Delafaye* doth not know whether this Paper was on the Table, when Mr. *Layer* was examined before the Lords of the Council, or no: Mr. *Stanyan* says, he was somewhat nearer the Table, and he takes the Paper that is now produced to be the same Paper that was upon the Table in the Room before the Lords of the Council, when Mr. *Layer* was there; because when it was produced there, and shewn to him, he said, I should have wrote Arms that should be lodg'd.

Mr. *Stanyan* owns, that he never was ask'd the Question, whether it was his Hand-Writing or no? How then should he deny it, if it was never put to him? And therefore to say, because he did not deny a Question that was never asked him, that that shall import, as to this particular Matter, a Confession, is to me strange and unaccountable! The natural Sense of the Prisoner's Words, as proved, is no more than this: No, if I had writ it, I shou'd have rather wrote Arms that should be lodg'd, than Arms that were lodg'd. Therefore, my Lord, we humbly apprehend they have not given Evidence in this Case, sufficient Evidence to support the Reading of those Papers.

Your Lordships are now to lay down a perpetual Rule of Evidence: For latest Posterity will pay a just Regard to the present Determinations; and if Comparison of Hands in this Case be allowed as Evidence, the same Rule must for ever hold in all parallel Cases; and God knows what may be the Consequence of such a Revolution, or who may be affected by it.

Mr. Serj. *Peng*. My Lord, we hope, that notwithstanding what hath been objected to the Reading of this Paper, we think it proper to have it read: Tho' they have mentioned some Cases for to maintain their Objection, yet the latter Authorities, and the constant Course of Evidence since, as we think, are directly with us: As the Case of my Lord *Preston*, where eight or nine of the Judges were present.

In the Case of the Lady *Carr*, there is that Opinion insisted on given at the End of the Case in a short unintelligible Manner.

(*Here Mr.* Hungerford *interrupted.*)

Mr. *Hungerford*. My Lord, I don't know whether we shall be at Liberty, when the King's Counsel have done, to read the Act; and therefore I offer it to your Lordship's Consideration, whether we should not read it now?

L. C. J. Read the Act of Parliament.

Mr. *Ket*. Call Mr. *Theedam*.

Mr. Att. Gen. We are apprized of that Act of Parliament; I have an examined Copy of that Act; but we apprehend it will not come up to what they cite it for.

Mr. *Ket*. We have five Acts of Parliament that we have examined with the Records; we did not know where they would shoot at us, and therefore were resolved to be armed *Cap-a-pee*.

Mr. Serj. *Peng*. As to my Lady *Carr*'s Case, it will be hard to maintain that Opinion, because the Letters they produced were not in the direct Instance of the Perjury.

Even the Act of Parliament, which they produce, it takes Notice, that a Paper was found in the Closet of Mr. *Sidney*, and was read, without proving it to be his own Hand-Writing: Is this Paper found without any Owning and Acknowledging it by the Prisoner? Is not this Paper delivered by Mr. *Layer* himself to Mrs. *Mason*? Had not he this Paper in his Custody, and it proceeded from him?

In the Case of my Lord *Preston*, there were a great Number of Judges, My Lord Chief Justice *Holt*, Lord Chief Justice *Pollexfen*, and others; there the Indictment of my Lord *Preston* was his adhering to the King's Enemies; and amongst other Overt-Acts alledged, his carrying several Papers of Instructions to inform the *French* King how to attack the Kingdom: Mr. *Warer*, who had been an Under Secretary to my Lord *Preston*, swore, that he believed some of those Papers to be like the Lord *Preston*'s Hand, and they were all read in that Case by the Opinion of the whole Court, though they were the very express Overt-Acts alledged in the Indictment itself: How doth this stand here, supposing no Use is made of the Evidence of Mr. *Doyley*? When this Paper is shewn to Mr. *Layer* himself, before the Lords of the Council, and was mentioned as a Paper of his own Writing, and he is asked how he came to write Arms that are said there to be lodged; his Answer is, I should have wrote, Arms that should be there lodg'd; Is not this sufficient Evidenc to prove a Confession? Doth not this amount to an Evidence of his confessing it to be his own Writing? So here is, as we apprehend, the Evidence not only of the Thing itself, but likewise the Prisoner's own Declaration, that he was the Person who wrote it. In Sir *Henry Vane*'s Case, the Warrant given in Evidence against him was proved only by Witnesses who believed it to be his Hand; but here is a particular Fact which (we apprehend) amounts to a Confession, and is a proper Evidence for the Jury to consider of, whether this be not a Confession.

Mr. Att. Gen. My Lord, I apprehend that we have given very proper Evidence to intitle us to read this Paper: My Lord, I beg leave to observe first, that it hath been proved that this Paper was found among the Papers which the Prisoner delivered to Mrs. *Mason*, to be kept for him, which were seized in her Lodgings, as the Witnesses have before acquainted your Lordship, and if that were all, this Paper must be read. As to that, the Lord *Preston*'s Case is direct in Point, and so determined by six or seven Judges, viz. that Papers found in the Possession of the Prisoner may be read without further Proof. But we insist that this Paper is legally and regularly proved to be his Writing by the Evidence of Mr. *Doyley*, and the Prisoner's own Confession: The Counsel for the Prisoner have mentioned Lady *Carr*'s Case, and the Act for the Reversal of the Attainder of Col. *Sidney*, and say they have a great many other Cases to the same Purpose.

I defy them to shew any one single Case, wherein it has been determined, that Proof of a Person's Hand by a Witness, who swears he has seen him write, and knows his Hand, and believes the Paper produced to be of his Hand-Writing, is not a sufficient Proof, in a criminal Prosecution, that that Paper is such a Person's Hand, before my Lady *Carr's* Case: if that Case does support the Opinion they have laid down: In all Actions such Evidence hath been constantly allowed; then I should be glad to know, what Law or what Reason has made a Difference as to such Evidence, between civil Actions, and criminal or capital Prosecutions. As to my Lady *Carr*'s Case, the Book is very dark and obscure; I believe the Prisoner's Counsel cannot make it support what they now contend for.

Lady *Carr* was indicted for Perjury, supposed to be committed in an Answer sworn by her before a Master in Chancery: What is there said about a Letter, does not appear at all to relate to the Case there; and if any Judge did lay down such a Position, as has been mentioned by the other Side, the meaning must be, that an Answer on Oath shall not be falsified by a Letter only under the Party's Hand; and that such a Letter should not be a sufficient Evidence to convict him of Perjury.

As to the Case of Col. *Sidney*, 'tis very well known that he was a Gentleman of Quality, and in his Study a Writing was found, *viz. A General Treatise of Doctrines and Positions*, which were very distasteful to the then Government, writ in answer to a Book formerly published. It was not a Scheme for raising a Rebellion, nor was it design'd, for any thing that appeared, that it should go out of his own Closet, but his Papers being seiz'd, this Paper was found there among them; and for this he was indicted of High-Treason. It was generally thought extremely hard to make his having by him such a General Tract, writ in answer to a particular Book, and kept private in his Closet, an Overt-Act of Treason. However, he was found guilty, and attainted. No wonder then, when this came into Parliament, that they resented this Proceeding, and revers'd his Attainder. And the Reasons recited in this Act, as Inducements for this Reversal, are accumulative; every Step taken in that Proceeding is complained of, and there is not Stress laid only upon the Proof of this Paper, but

The

The Act recites, *That Col.* Sydney, *by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen, for want of Freehold, and without sufficient legal Evidence of any Treasons committed by him, there being produced a Paper found in his Closet, supposed to be his Hand-Writing, which was not proved by any one Witness to be written by him; but the Jury was directed to believe it by comparing it with other Writings of his: And besides that Paper so produced, there was but one Witness to prove any Matter against him, and by a partial and unjust Construction of the Statutes of Treasons was most unjustly attainted. And then the Act reverses the Attainder.* Surely, if the Nature of the Evidence we have given, to prove this Paper to be the Prisoner's Hand is consider'd, it stands clear of any material Objection that can be raised from that Act. This is not barely proved by a comparison of Hands; here is a Witness, that often saw him write, swears it to be his Hand-Writing: There was a Multitude of Papers, some offered to be proved by Similitude of Hands, and every one of them was read in my Lord *Preston*'s Case.

Besides, here is that, which I beg Leave to insist upon, as a Confession by Mr. *Layer*, that this Paper was his Writing; if the Question proposed to the Prisoner by the Lords of the Council and his Answer are consider'd, it amounts to a plain Confession of it; therefore we must insist on it, that we have given a sufficient Evidence for the Reading of this Paper; and I hope we shall have your Lordship's Direction that it shall be read.

[*Here some other of the King's Counsel offered to speak.*]

L. C. J. If there was any Occasion, you should be heard; but there is no Occasion.

It is proved by the Witnesses that these Papers were in Mr. *Layer*'s Possession, that he delivered them to Mrs. *Mason*, that she lock'd them up in her Trunk, sealed as they were delivered to her by Mr. *Layer*, and afterward taken out of her Trunk by the Messengers, so that if they rest it here, and no other Evidence had been given; the Papers ought to be read, as being his Papers, which he once had in his Possession, if nothing else had been the Case.

Can any thing in the World be an Authority more express than that of my Lord *Preston*, where all the Papers which were in his Custody, and taken out of his Custody, were read without any Offer of Proof that they were his Hand.

And then consider, this goes further; it is not only a Paper found in his Custody, but it is a Paper written with his own Hand! How do you prove that?

The Master of this Gentleman tells you he was his Clerk, lived with him two Years; afterwards he received Letters from him about Business, which Business he did according to the Direction of those Letters, and was paid honourably by him for it, and that he believes it to be his Hand. If they had gone no further, nobody could have doubted, but that according to the usual Course and Rule of Evidence it ought to be read. Then they make an Objection, and ask how long it is since he was his Clerk? Why about fourteen or fifteen Years ago: His Hand may be altered in that Time very much: therefore how can you swear it, when it is so long since, that it is his Hand? Why, says he, because I have received Letters from him five Years ago; I dealt for him as his Agent; this Gentleman, Mr. *Layer*, was my Client, he sent Letters to me, and the Characters of the Letters I have compared with this Paper, and from hence it is I believe that his Character is not changed. How do you know he writ those Letters? I answered those Letters, and they were about Business which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his Writing, and therefore I believe he hath not changed his Character; and upon the whole Matter, says he, I verily believe it to be his own Hand-Writing. Consider, this is confirmed by his own Confession; but if it had been an independent Evidence, it is an Evidence sufficient for to have had this Paper read; because if a Man says he verily believes it to be his Hand-writing, it is always allowed to be read. You did ask him, but upon what Grounds do you believe his Character is not changed? Why, says he, I do principally believe it from the Letters I received from him, which I should have doubted on the Hand, which he writ fourteen Years ago, whether it was changed or not; and I believe it is not changed, because it is agreeable with the Characters he writ, when he was my Clerk; and upon the whole, I believe it to be his Hand-Writing.

Then they tell you of an Examination of this Gentleman before the Lords of the Council; when they asked him about Arms, he knew nothing of them; then they shew him this Paper, and ask him, How came you in a Scheme, all of your own Hand-writing, to say, Arms that are provided? What was more natural than for him to say, here is a Paper that doth mention it, I deny it to be my Hand-Writing? But he was so far from denying it, that as the plain Sense and import of the Words spoken must be understood, he owns it to be his Hand.

It is a Mistake, says he, I should have writ which should have been provided.

How should he have writ that, if he had not writ the other?

So considering the whole Contexture of the Business, and Course of Proceeding, it is, and I believe none can doubt it, as plainly proved to be his own Hand-Writing, as if he had said in so many Words, it is my Hand-Writing. It must have been read as a Paper found in his Custody. The other Evidence, that is given to the Jury, will be a Matter proper for their Consideration; but if that Evidence had not been, they must have been read; they offer that as of greater import, because it is of the Prisoner's own Hand-Writing.

You tell us of the Lady *Carr*'s Case, which was an extraordinary Case, when she in her Answer in Chancery swore that it was not her Hand, they come to convict her of Perjury, by proving it to be her Hand by a Letter they produced.

Gentlemen, there is no Pretence to make this a Question. Do you think that the Paper which you offer shall convict this Woman of Perjury? No; when she had sworn it was not her Hand, they come to prove it by a Witness, that says he believes it to be her Hand, because they produce a Letter, which they say is her Hand. Upon this the Court determines that this Evidence should not be allowed; that is, that it could be of no Consequence to falsify any Matter, which she had declared upon Oath.

But as this Case is, sure there is not the least Doubt but if the Proof of his Hand had been out of the Case, it must be read as a Paper that was in his Custody, and taken out of the Custody of one, with whom he had deposited it, which is proved beyond all Contradiction.

And in the Case of my Lord *Preston*, and in a thousand Cases, it hath been so, and never was denied.

True, if they come and say, is this his Hand? and the Witness says I don't know whether it is his Hand or no; I have seen something of his Hand, and I don't know but it may be his Hand; it is not right: but the Witness must ground his Belief stronger; I have seen him write, and I know his Writing, therefore I believe it to be his Hand. If they had rested it on that, that the first Evidence knew his Hand fourteen Years ago, that must be left to the Jury, whether they believe Mr. *Doyley*'s Evidence; because, says he, I saw him write fourteen Years ago. The Possibility of that, if there was nothing else in the Case, might be left to the Jury, whether that Evidence was sufficient to satisfy them that it was his Hand. Upon the whole, never was any thing clearer than that this must be read as a Paper found in his Custody, that hath in the usual Manner and Method the Proof of being his Hand-writing.

Prisoner. If I am out of Time I beg your Lordship's Pardon; I will not take up your Lordship's Time; I only beg a Word or two; whether there is any legal Evidence as to the Publishing; the Indictment says, *publicavit quoddam malitiosum seditiosum & preditiorum scriptum*, and that is not that, that is the Declaration.

L. C. J. Whatever you say or offer, although it happen to be out of Time, we will dispense with you, when out of Time; but what you offer now is upon a Mistake, we are not upon the Paper you should apply it to, that is, the Matter of your Declaration, but we are upon the Scheme-Paper, not whether you published it, but whether you writ it.

Prisoner. I am charged in the Indictment as publishing a malicious, seditious and traitorous Writing.

L. C. J. You are charged with that as an Overt-Act of the Treason, of compassing and imagining the Death of the King; that you did publish a malicious, seditious, and traitorous Paper, that is the matter of the Declaration. The Matter now is, not for Publishing, but whether there is a reasonable Proof given that it is your Hand-Writing.

Mr. Just. *Powys.* This is only a Circumstance, not an Overt-Act sufficient to convict you.

Mr. Sol. Gen. My Lord, we offer this Paper as a strong Evidence corroborating and confirming every Thing which hath been sworn by the Witnesses, and we pray it may be read.

Mr. *Hungerford.* I was reading the Act of Parliament when they——

Mr. Sol. Gen. My Lord, we must beg leave to insist upon the Course of Proceeding, that the Counsel should not go on to argue a Point, after the Opinion of the Court has been given.

L. C. J. Now you have heard the Opinion of the Court, you must not go on.

Mr. *Hungerford.* I was looking upon the Act of Parliament——

L. C. J. You remember *Francia*'s Case, there was a Letter taken up at his Bedside, it was disputed whether that should be read; at last a Witness came and said, I have seen him write several Times, and I believe it to be his Hand; and it was read.

Mr. *Hungerford.* Ay, hastily read.

(*Clerk of the Crown reads the Scheme.*)

The SCHEME.

Au defaut de la force, il faut employer la ruse.

1. LET the General, and only one Officer of Note in the Camp, agree upon a Day for Execution.

2. Let the Officer that Day put himself on the *Tower-Guard.*

3. And as there is eight Serjeants *(viz.)* three of the first Regiment of Foot-Guards, three of the Second, and two of the Third, all ready at an Hour's warning to obey Orders; early that Morne, let the Officer see a single Person, namely *George Wilson*, who manages these Serjeants, and give him Directions to bring them all to some convenient Place at four that Afternoon.

4. Then the Officer must give each Serjeant Money sufficient for the Purpose, and direct 'em, that each Serjeant order twenty-five Men (making together two hundred, which they have ready) to go singly out of the Camp, and meet together an Church-Yard, exactly half an Hour past eight in the Evening, when and where another *Officer* that they know, must meet 'em, and take the Command; give 'em Muskets ready loaded, and march with them in a Body to the *Tower-Gate*, at nine that Night exactly.

5. Our Friend, the Officer within, must precisely at that Hour of nine be on the Guard at the *Tower-Gate*, and seeing this Body of Men appear, order the Garrison to let 'em in, as a Recruit sent to the *Tower-Guard.*

6. As soon as ever they have entered to seize the Arms at the *Tower-Gate*, shut the Gate up, and secure every one in the *Tower*, that the Officer on Guard gives them Orders to secure, but not to shed any Blood

7. The *Tower* being thus seized, to leave only a small Guard there under that Officer who lets 'em in, and then, with all those that join you, march directly to the *Exchange*, where the great Doors must be ready opened, and the *General* there in Person.

8. At the exact Hour of nine, that the *Tower* shall be thus seized, the Persons of some great Men to be arrested *at their Houses*, brought directly into the City, and delivered to the General.

9. That upon our Meeting at the *Exchange*, the annexed Proclamation to be spread about; the Gates of the City to be shut up, and Pieces of Cannon brought down against 'em, but every Man that desires to enter the Gates, before any regular Force appear, to be admitted to come in, and after the General has appointed a Guard at each Gate, and Inlets of the City, with proper Officers to command there; let him march back to

General Rendezvous under the Cannon of the *Tower*; and order the Lord Mayor a good Guard to watch over the *Bank*, but first take Money from thence to the *Tower*, in order to pay the Men.

10. That on the Morne of this same Day, our General to have an Interview with some other *principal* Officer of the Camp, and order him to engage all Friends to attend at their respective Posts, and expect a (*a*) Token to be sent to each of them as that very Night, on receipt of which Token, they are to draw their Men out, and march directly to the *Artillery in the Camp*, as a Place of General Rendezvous; and that the Captain of the Artillery may not be alarm'd, let this *Principal Officer* previously send a Message to him, that Orders are come from the General (*Cadogan*) to double the Guard of the Artillery, on a Rumour that is spread of the Mob being up in the City.

11. The Party being come to the Artillery with the said Principal Officers at the Head of 'em, let 'em immediately draw the Guns round 'em, and stand upon their Defence, without making any Declaration, until the said principal Officer, who commands in chief there, receive certain (*b*) Intelligence from our General that the *Tower* is seized upon, and the City all in Arms, and then under a Pretence of securing the King's Person from the Insults of the Mob, let this Officer make a Detachment to take him into Custody, and send him into the City to the General at the *Tower*.

12. To facilitate these Proceedings, let the General the same Day speak to the *Horse-Officers* in the Camp, who he knows to be our Friends, and upon the very first Alarm of the City's having revolted, let 'em march their Men to either *Ludgate* or *Newgate*, on pretence to suppress the Mob; and when they are at the Gate, as a Token of their being Friends, let the Watch-Word be *This Morning*, and upon giving us the Word there, to open the Gates and let 'em in, and as soon as they are entered, to march directly to *Tower-Hill* and join themselves with the General there.

13. Let the General also the same Day order four of the Half-pay Captains to take upon them the following Commands, (*viz.*)

14. First Captain to go into *Southwark*, and exactly at the Hour of nine, to make a bonfire in the Fields there, and give some Money among the Mob; and when you have got a Number together, send an Account to the General, take the Arms that must be lodged there, and distribute out amongst 'em to your Acquaintance in the first Place, and to those which they recommend, and then issue out the Declarations; and after the Receipt of a Token from the Captain next mentioned, who is to command in *Palace-Yard*, to ferry over thither in Lighters, with the Watch-Word *This Morning*, and join the Captain in *Palace-Yard*.

15. Second Captain, exactly at the Hour of nine, to be in *Privy-Garden*, adjoining to *White-Hall*, with a few Gentlemen armed, and seize upon the great Guns there, and then spread the Declarations, and stay there under the Cannon till a greater Body join you from *Southwark*; or otherwise nail up the Cannon, and march directly to the next Captain in *St. James's Park* with the Watch-Word *This Morning*, and then send the Token, as above, to the first Captain in *Southwark*, and let the Messenger you send conduct him and his Men to you in *St. James's Park*.

16. Third Captain at the said Hour of nine, to go into *St. James's Park*, with the Key that is given you of the Private Door out of *Arlington-Street*, and appoint only some few Gentlemen to meet you there exactly at the Hour and ready, one to have the Watch-Word you give 'em, which must be *This Morning*. Let your first Rendezvous be at the Little Grove under the Wall near the Gate leading to *Hyde-Park*, and there you'll meet Fire-Arms ready charged. Then march down to the Parade next the Horse-Guard, and seize upon the Cannon there, and Ammunition in the Store-House; and the better to secure *St. James's Park* for a Place of general Rendezvous, you shall have an Officer out of the Camp exactly at the Hour of nine come to your Assistance with some Men, as he and you shall agree in the Morne of this Day, and as soon as you have seized the Cannon here, and Ammunition aforesaid, you are to put yourselves in a Posture of Defence, and publish the Declaration, and send forthwith to the General at the *Tower* to let him know of your Situation, and also send to the Captains in *Palace Yard*, *Southwark*, and *Tuttle-Fields*, that they immediately come and join you.

17. Fourth Captain, exactly at the Hour of nine, the Evening of the same Day to be in *Tuttle-Fields*; raise the *Westminster* Mob there, and with the Arms that are there *lodg'd*, equip them as you can; publish the Declarations, and march to *St. James's Park* directly, and join with them there, who, on your giving them the Watch-Word, are to admit you into the Park.

18. So here being two Bodies of Men thus gotten together the first Night, *viz.* One on *Tower-Hill*, and the other in *St. James's Park*, (besides our Friends at the Artillery in *Hyde-Park*.) The next Morning, if not sooner, let our *General* order a Detachment to *Lincoln's-Inn-Fields*, and some Cannon to be placed on the Terras of the Garden there, lest the Enemy come in there between *St. James's Park* and the City.

19. A proper Captain must be appointed to head the Watermen belonging to the *Thames*, and previous to the Day of Execution, he must agree with the Duke's Bargeman, that upon the least Notice to be given them, that they alarm all the Watermen, and bring them to a Rendezvous the same Hour of nine that Night of Execution, and this Captain's Rendezvous must be at *Greenwich*, where he must seize the Magazine of Powder, and take out such Part of it as each Man will carry, then blow up the rest; march from thence to the *Tower*, and join his Men with the General there, to whom he must first send a Messenger with the Watch Word, and an Account of his Numbers.

20. Some Time before Execution, the General to send a Messenger to particular Men in the Country, that they rise in their respective Counties upon the first News of what is done here.——

21. An Officer, *&c.* to go to *Richmond*, and at the exact Hour of nine to seize upon Prince *Pritty Man*, and bring him away to *Southwark* to some particular Place appointed, where an Agent from the General must meet them with his further Orders.

Mr. Serj. *Peng.* We read this as an Evidence that cannot be mistaken, which is all of his own Hand-Writing.

Mr. Att. Gen. My Lord, we apprehend that this confirms what both the Witnesses have sworn.

Mr. Serj. *Peng.* We shall now produce some Receipts subscribed by the Name of *James* R. and pray that they may be read, these were likewise among those Papers, as hath been proved in the Manner you have heard already.

Clerk of the Crown reads one of them.

I Acknowledge to have received from *the Sum of* *which Sum I promise to repay with an Interest for it at the Rate of* per Annum

James R.

L. C. J. They are not read as if proved, the Hand is not proved, but as Papers found on him.

Mr. Sol. Gen. In my Lord *Preston*'s Case, his Lordship was taken in the Hold of a Ship lying upon the Ballast, and *Ashton* there near him, and between his Lordship and *Ashton* was found lying also upon the Ballast, a Pacquet of Papers which *Ashton* snatch'd up, and put into his Bosom, from whence they were presently taken; two Seals, which appeared to be my Lord *Preston*'s, when he was Secretary of State, were found lying near to the Papers. Upon this Proof those Papers were read as Evidence against my Lord *Preston*, without any Proof made of their being his Hand-Writing, in order to the Reading of them.

Mr. *Hung.* My Lord *Preston* was taken on board a Ship going to *France*, then in War with *England*, these Papers were found in the Bosom of Mr. *Ashton*, who was going with him; my Lord endeavoured, so far as he could, to throw them over-board: The Offence did not turn upon the Papers being writ by my Lord *Preston*, or not; in my Lord *Preston*'s Case the Papers contained a Discovery of the Condition of the Fleet and Garrisons of *England* and *France*, in order to enable *France to invade us*; it signify'd nothing who writ the Papers, the Crime was the having them, knowing the Contents of them, and endeavouring to carrry them to *France*, so the Circumstances of my Lord *Preston* widely differ from this.

Mr. *Ketelbey.* I beg leave to mention another Thing, there the Papers were found in the Custody of my Lord *Preston*; here they were found in the Custody of a third Person, whose Evidence we shall controvert by a number of Witnesses, when it comes to our turn. I believe it will appear that some of the Papers were found on the Table in my Lord *Preston*'s Case, and others taken out of his Pocket.

Mr. Sol. Gen. No, they were first found lying on the Ballast.

Mr. *Ketelbey.* What were found on *Ashton*, and taken out of his Bosom, were seen lying on the Ballast; but there were other Papers seized at that Time.

Mr. Sol. Gen. They were the same Papers that were afterwards taken out of *Ashton*'s Bosom, which were read as Evidence against my Lord *Preston* upon the Circumstances I have mentioned.

Mr. *Ketelbey.* As I remember, some of them were found on the Table in the Cabin.

Mr. Just. *Eyre.* No, they were on the Ballast in the Hold of the Ship.

L. C. J. You say that they were found in my Lord *Preston*'s Possession, and not in the Possession of *Ashton*; you say my Lord *Preston* had no Counsel, but you know it is the Duty of the Court not to suffer any thing to be read in Evidence that ought not. You say you shall controvert this Matter, and give an answer to it, and that it appears they were not in his Custody, they were taken out of this Witness's Custody, and under his Seal, and therefore the Difference it makes is nothing at all. Besides, the Proof in my Lord *Preston*'s Case is not so strong as the Proof of the Scheme against the Prisoner, because the Scheme is proved to be his own Hand-Writing, which was not in the Case of my Lord *Preston*.

Mr. *Ketelbey.* My Lord, will not your Lordship think it necessary that they give further Evidence that they are his Papers before they are read?

L. C. J. Read them.

Cl. of the Cr. I acknowledge to have received, *&c.* here are *ten of them*, that are the same.

Mr. Serj. *Peng.* Mr. *Stanyan*, do you remember whether any Questions were ask'd him with relation to those Receipts?

Mr. *Stanyan.* What I recollect is this: Upon the Lords asking Mr. *Layer* the Meaning of those Receipts signed by the Pretender, and what Use he made of them, he said, that during the Time he was at *Rome*, he had settled a Correspondence with Sir *William Ellis*, and some time afterwards he writ to Sir *William Ellis* according to the Directions he gave him, and he told him, if he could send any Receipts signed by his Majesty, or the King, as he called him, he thought Money might be rais'd upon them for carrying on the Cause, these were the Words, as near as I can remember.

Mr. Att. Gen. Mr. *Delafaye*, was you by?

Mr. *Ketelbey.* It was for raising Money to carry on his Cause, you mean Sir *William Ellis*'s Cause?—Mr. *Stanyan.* No, Sir.

Mr. *Hung.* He acknowledged to have received them from Sir *William Ellis*?—Mr. *Stanyan.* Yes.

Mr. *Ketelbey.* You said he own'd he had them from Sir *William Ellis*, having settled a Correspondence with him, that Money might be raised by these to carry on his Cause; he told you he had Business to do for Sir *William Ellis*?

Mr. *Stanyan.* No. I know nothing of Sir *William Ellis*'s Business, but that he had appointed to correspond with Sir *William Ellis*, and Sir *William Ellis* gave him his Address how to direct to him, and he acknowledged to have received a Letter or Letters from Sir *William Ellis*, in the Name of *Jones*, and that he writ to him in Answer to 'em.

Mr. *Ketelbey.* Are you sure as to those Words, or only to the Purport of 'em?

Mr. *Stanyan.* I think they are near the Words, but I am sure they are the Purport of them?

Mr. *Ketelbey.* Was it reduced into Writing?

Mr. *Stanyan.* It was reduced into Writing in this Manner. It was a very long Examination, about four or five Hours.

(*a*) It may be a Note in Writing thus; Sir, I'll meet you at nine To night, don't fail me. *J. S.*

(*b*) A verbal Message by a third Person that must be by, when the General and this Chief Officer consult together till Morne.

Mr. *Ketelbey*. I aſk you, whether it was reduced into Writing?

Mr. *Stanyan*. Yes, it was; the Lords ſent to me to aſſiſt Mr. *Delafaye*, upon Mr. *Layer*'s being examined: Mr. *Delafaye* took the Heads of the Queſtions propounded; and I ſat near the Table, looked over Mr. *Delafaye*; attended to the Queſtions and Anſwers; ſo that we could ſet one another right when we came to conſider them.

Mr. *Ketelbey*. This you wrote, was it read over to the Priſoner?

Mr. *Stanyan*. No.

Mr. *Ketelbey*. Do you believe the Priſoner at the Bar ſaw you write?

Mr. *Stanyan*. Yes, I believe he ſaw us write.

Mr. *Ketelbey*. Do you believe he thought any Perſon was taking his Confeſſion in Writing?—Mr. *Stanyan*. I think it cannot be otherwiſe.

Mr. *Ketelbey*. I aſk you, do you believe that Mr. *Layer* knew that you was taking his Confeſſion at that Time?

Mr. *Stanyan*. The Lords ſpoke thus; *Pray, take Natice*, and then take down ſuch a Thing, and ſuch a Thing; and I believe Mr. *Layer* heard them ſay, *Take down that, and take down that.*

Mr. *Ketelbey*. Was it ever known for one to take down the Queſtions, and the other the Anſwers; and then to compare them together, in order to make a Confeſſion?

Mr. *Stanyan*. No; Mr. *Delafaye* wrote down the Queſtions and Anſwers.

Mr. *Hung*. How was the Poſition of Mr. *Layer*, with reſpect to you; was your Back or Face towards him?

Mr. *Stanyan*. It was on one Side.

Mr. *Hung*. Was you in the Room when Mr. *Layer* came in firſt?

Mr. *Stanyan*. I was, I called on Mr. *Layer* by the Lords Order.

Mr. *Hung*. Was it ever read to him?——Mr. *Stanyan*. No.

Mr. *Hung*. Was it drawn up in Form, ſo that you might call it an Examination?

Mr. *Stanyan*. I will tell you what we underſtood by it; it was the Minutes of an Examination to be drawn out in Form: But the Lords finding Mr. *Layer* not ſo candid and ingenuous as they thought he would have been, did not aſk him to ſign it; and we only make Uſe of it to refreſh our Memories.

Mr. *Ketelbey*. He calls it an Examination, and it appears by what Mr. *Stanyan* ſaith, that he and Mr. *Delafaye* took it; one takes one Part, and the other takes another Part.

Mr. Sol. Gen. He did not ſay any ſuch Thing.

Mr. *Ketelbey*. His Confeſſion was never read over tohim.

Mr. Sol. Gen. Mr. *Stanyan*, when the Lords directed Mr. *Delafaye* and you to write this or that particular Thing, was the Priſoner ſo near that in your Apprehenſion he might hear their Lordſhips give ſuch Directions?——Mr. *Stanyan*. Yes, he was.

Mr. *Hung*. Sure they are not contending, that any Confeſſion ſhould affect a Man, unleſs it was read to him, and it ought to be ſigned by him; my Lord, the Man is no way anſwerable for any Thing taken in Writing, without his Conſent or Privity, in a criminal Caſe: It is called Minutes, or an Examination, which they might enlarge as they pleaſe; therefore we humbly ſubmit it to your Lordſhip, Whether it ought to be offered in Evidence at all as a Confeſſion.

Mr. *Ketelbey*. What will be the Conſequence, if this be allowed here? Is a Perſon to be convicted of Treaſon upon a Confeſſion taken, without its being read to him, and without his ſigning it? A Confeſſion to a Juſtice of Peace, in Caſes of Felony, unleſs read to the Party, and ſigned by him, muſt not be given in Evidence.

L. C. J. Mr. *Ketelbey*, you ſeem to miſtake what it is that is contended for by the King's Counſel: They are not going to offer any Thing to be read in Evidence; your Objection would prevail, if they were going to read a Confeſſion as Evidence, which was neither read to him, nor ſigned by him; but if there is no Examination reduced into Writing, and ſigned by the Party, the Conſequence of that is, that the Witneſs is at Liberty to give an Account of what was ſaid; and he may look to his Notes to refreſh his Memory: If you will ſay, it is not ſo great an Evidence, of ſo great Weight, as an Examination taken, and ſigned by the Party, there is ſome Room left, ſome Foundation to ſuppoſe the Evidence may be miſtaken.

He ſays, he was examined before the Lords of the Council; and he took Minutes of his Examination: And afterwards to refreſh himſelf, he looks upon them, and ſays, he believes that is the Subſtance of what he confeſſed at that Time. You ſay, there is no Precedent for it; for God's Sake! recollect yourſelf, it is every Day done at the *Old Bailey*: If a Perſon confeſſeth, and it be not in Writing, they do prove his Confeſſion, *Vivâ voce.*

Mr. Sol. Gen. My Lord, *Coleman*'s Caſe, which was during the Time that Sir *William Jones* was Attorney-General, went further than this: There his Letters were laid in the Indictment, as the very Overt-Act of the High-Treaſon charged againſt him; and yet one of thoſe Letters was proved by his Confeſſion, upon an Examination before a Committee of the Houſe of Lords; and that Confeſſion was proved, *Vivâ voce*, by Sir *Philip Lloyd.*

Mr. *Ketelbey*. Whether that Caſe will be a Precedent? I never heard it ſo reckoned.

Mr. *Hung*. And I hope it will never be one.

(Mr. *Delafaye* ſworn.)

Mr. Serj. *Cheſhire*. Mr. *Delafaye*, pray, give an Account what Mr. *Layer* declared before the Lords of the Council concerning theſe Receipts.

Mr. *Delafaye*. The Account he gave——

L. C. J. Mr. *Delafaye*, you was preſent at the Time of taking this Examination; you ſay you took Minutes in Writing; you have told us the Reaſon why it was not in Form, and read to Mr. *Layer*: If you have not already done it, you may look to your Minutes, and refreſh your Memory: That which the Court demands of you is, what Mr. *Layer* did confeſs at the Time of his Examination before the Lords of the Council.

Mr. *Delafaye*. He told the Lords, that he did write to Sir *William Ellis*, that he would ſend over ſome blank Receipts under the King's own Hand, that might be made Uſe of, for the carrying on this Cauſe: That he did receive ſuch Receipts, and his Intention was to have tried his Friends, and to have raiſed money on thoſe Receipts.

Mr. Serj. *Cheſhire*. Did he give any Reaſon why he went into that Method?

Mr. *Delafaye*. For a Precedent, he ſaid, a little before the Reſtoration of King *Charles* II. a Method of this Kind had been uſed.

Mr. Att. Gen. My Lord, we ſhall now proceed to read the Letters that were ſent and paſſed between them, Sir *William Ellis* and Mr. *Layer*: But it will be proper firſt to lay before you the *Cyphers* which they made uſe of to explain ſeveral cant Words and Expreſſions, which they uſed in their Letters.

L. C. J. Were the *Cyphers* found among Mr. *Layer*'s Papers?

Mr. Att. Gen. Yes, my Lord.

Mr. Serj. *Cheſhire*. Pray, read No. 38.

Mr. Att. Gen. I don't know whether we ſhall trouble your Lordſhip to read the whole *Cypher*; it is very long; but when we meet with a Word in the Letters which wants Explanation, we may have Recourſe to the *Cypher*.——Read the Letter No. 38.

Cl. of the Cr. reads. This Letter is ſigned *Euſtace Jones*, &c.

Dear SIR,

'I Received with a great deal of Pleaſure and Satisfaction, a Letter of 'the 24th of *November*, from my worthy Friend, with an Account of 'his ſafe Arrival, of which I was in ſome Doubt before, and in no ſmall 'Pain on that Account: I eaſily conceive he muſt needs have had a great 'deal of Buſineſs on his Return, as well of his Uncle's as of his own; 'and therefore, I don't think much that I heard no ſooner from him, believing he was much better employed, and that Buſineſs is to be preferred before Compliment.

'I was entirely of his Opinion as to the Method of carrying on the '*Manufactory*; the procuring of good *Workmen*, is the firſt Step to be 'made, and if he can get ſuch, the reſt will be eaſy; and particularly if 'he could gain ſome of the ableſt of Mrs. *Barbara Smith*'s, I know it 'would be very agreeable to all concerned, and particularly to Mr. '*Atkins*, to whom he ſpoke of Writing; and which, I am ſatisfied, will 'be very acceptable: And if he thinks fit to incloſe it to me, I ſhall convey it ſafely to his Hands, who, I find, was very glad to hear of him, 'counts very much upon his Friendſhip, and hopes for the Continuance 'of it.

'I made his Compliments to Mr. *Timothy Watſon's Wife*, who took 'them very kindly, and returns hers, with her moſt humble Service. She 'and her Charge are very well, God be praiſed, as are alſo all Friends here.

'He having read over ſeveral times the Paper I ſhewed him, and having 'a good Memory, I don't think it neceſſary to ſend a Copy of it.

'I am with great Eſteem and Reſpect, ever moſt entirely,

Dear SIR,

30th *January*. Your moſt affectionate,

Moſt humble and moſt

Obedient Servant,

Euſtace Jones.

For *James Fountaine*, Eſq; to be left at *Howell's Coffee-Houſe*, in *Great Wild-Street*, LONDON.

Mr. Att. Gen. Your Lordſhip is pleaſed to remember, Mr. *Stanyan* ſaid, that Sir *William Ellis* was to write by the Name of *Jones.*

Mr. *Stanyan*. My Lord, he did ſay, that he had received a Letter ſince he had ſettled a Correſpondence with Sir *William Ellis* ſubſcribed by the Name of *Jones.*

Mr. Att. Gen. In the *Cypher* Sir *William Ellis* is called *Jones.*

Cl. of the Cr. reads. This Letter is ſigned *Euſtace Jones*, dated 30th *January*, no Year, *Dear Sir, I received*, &c.

Mr. Att. Gen. Your Lordſhip will be pleaſed to obſerve the Expreſſions in this Letter, the procuring good *Workmen:* Now look in the *Cypher*, and *Soldiers* are meant by *Workmen*; Manufactory is not in the *Cyphers*; but I don't know for what Manufactory they wanted Soldiers, unleſs to raiſe a Rebellion. The ableſt of Mrs. *Barbara Smith*'s; look for *Army* in the *Cyphers*, and you will find, that is ſiginfied by *Barbara:* It will be very acceptable to all concerned, and particularly to Mr. *Atkins*; in the *Cypher* that is *the Pretender.* Compliments to Mr. *Timothy Watſon's Wife*; look in the *Cyphers*, and *Timothy* ſtands for *Hughes*, whoſe Wife is Nurſe to the *Pretender*'s Child. This Letter is directed for *James Fountaine*, Eſq. to be left at *Howell's Coffee-Houſe* in *Great Wild-Street*; and I obſerve, Mrs. *Maſon* ſaid, the Priſoner went by the Name of *Fountaine.*——No. 10. are ſix fictitious Names, and the Key to them: Read it.

Cl. of the Cr. Reads No. 10.

Digby——*Dillon.*
Orrery——*Burford.*
Regent——*Steel.*
Tories——*Tanners.*
Wiggs——*Waggs.*
Rogers——*Plunkett.*

Mr. Att. Gen. Read the Letter No. 40.

Cl. of the Cr. Reads, ſigned *N. C.* Dated the 11th of *July*, 1722.

Dear SIR, The 11th of *July*, 1722.

'I Received with all poſſible Satisfaction your moſt affectionate Letter 'of 8th *May*, with its incloſed, which was preſently delivered to 'Mr. *St. John*, who took it extreme kindly; but could not well *under'ſtand what relates to Mr. Burford*; he hopes your Anſwer to what I 'writ in the Beginning of laſt Month, may ſoon clear that: You will 'have ſeen, by what I then told you, that the former came ſafe to his 'Hands, and the Reaſon of your not having had a diſtinct Anſwer to it: 'He had the Stockings you ſent for him, and returns you many Thanks 'for them; as alſo for all other Marks of your Affection and Concern 'for him and his, and will be ready to ſhew his Senſe thereof on all Occaſions. I am in earneſt Expectation of hearing ſoon again from you, 'and am, with all poſſible Affection and Eſteem,

Dear SIR,

For *James Fountaine*, Eſq; to be left at *Howell's Coffee-Houſe*, in *Great Wild-Street*, LONDON.

Your moſt faithful and

Moſt humble Servant,

N. C.

L. C. J.

L. C. J. Who is that *N. C.?*

Mr. Att. Gen. My Lord, we do not know, it is directed to *James Fountaine*, Esq; *Mr. St. John* in the *Cypher* signifies the *Pretender*.

Mr. Sol. Gen. Mr. *Burford* appears to stand for my Lord *Orrery* in the little *Cypher*.

Mr. *Hungerford.* Look into the Papers, pray, what do *Stockings* stand for?

Mr. Sol. Gen. Read the Letter No. 41.

Cl. of the Cr. This is dated the 27th *May*, it is sign'd by Nobody, nor directed to any Body; the Cover is of: *I receiv'd with a great*, &c.

'Dear SIR, 27 *May*.

'I Receiv'd with a great deal of Pleasure, the Favour of your most obliging Letter of 22d *March*, with an inclosed for our Friend, who 'was very glad to hear from you; and is very sensible of, and takes 'very kindly, the Care you take of his little Concern there; but says, he 'doth not sufficiently understand the State you sent, so as to be able to 'make a particular Answer, till you shall further explain it; there being 'some Tenants, mention'd by you, whose Names he does not find in the 'Rental, as *Burford*, *Steel*, *Digby*, *the little Soldier*, and *Simmonds*; the 'latter, he believes should be *Simmes*, he is of the North, a grey hair'd 'antient Man, whom he very well remembers, and has a particular 'Esteem and Value for, as a very good Tenant, and a very honest Man.

'All Friends here are in perfect good Health, God be thanked, and re-'member themselves kindly to you, and I am most entirely,

'*Yours*, &c.'

Mr. Sol. Gen. If you look into the *Cypher*, you will find *Rental* stands as the fictitious Name for the *Cypher* itself; *Burford* stands for the Lord *Orrery*, *Steel* for the *Regent*, and *Digby* for General *Dillon*.

Simmons, he believes should be *Simmes*, but *Simmonds* in the large *Cypher* is put for Lord *North* and *Grey*, and who is meant, appears pretty plain from the Cant which follows. 'He is of the North, a grey hair'd antient 'Man, whom he well remembers, and hath a particular Esteem and Value 'for, as a very good Tenant, and a very honest Man.'

Mr. Att. Gen. Look for *Simmons* in the *Cypher*.

Mr. *Hungerford.* I can make one Observation, that Mr. *Harcourt* is very ready at.

Cl. of the Cr. It is alphabeted, so that it is easy to look for it.

L. C. J. What Use do you make of these Letters?

Mr. Sol. Gen. The Use we make of them is to shew that Mr. *Layer* who took on him the Sham-Name of *Fountaine*, by which Name some of these Letters are addressed, had a Correspondence with the Friends of the *PRETENDER* at *Rome*. That this Correspondence related to a Conspiracy, which was formed and carrying on here; and it appears, they took upon them to mention several Persons of Distinction under a kind of Jargon.

Mr. Att. Gen. The first Letter, wherein is mentioned the carrying on the *Manufactory*, the procuring good *Workmen*, and particularly, if he could gain some of the ablest of Mrs. *Barbara Smith*'s, and that it would be very agreeable to all concern'd, and particularly to Mr. *Atkins*, which is the Name for the *Pretender*; shews, that the Agents of the *Pretender* at *Rome*, had laid Designs to procure Soldiers, and those, if possible, out of his Majesty's Troops; which falls in with the Evidence we have given of the Prisoner's Endeavours to get Soldiers and Serjeants out of the Army.

Mr. Serj. *Chesh.* It may not be improper, since we have explain'd it, to lay before you the Lists of several Persons Names that are in the Army.

Pray read No. 7. out of the large Bundle.

Cl. of the Cr. Reads a *List* of Officers Names with Marks and Numbers to some of them.

Mr. Att. Gen. We did mention before, that there were the Names of several Persons of very great Honour and Loyalty to his Majesty in some of the Lists; but this is to shew, that the Prisoner was consulting how he might get an Account of the Number of the Forces; as how many Colonels, how many Captains, and how many Soldiers there were in the Guards and other Troops of his Majesty.

Read No. 5. in the large Bundle.

Cl. of the Cr. Reads No. 5. A List of Officers of the Second, or *Coldstream* Regiment of Guards.

Mr. Att. Gen. We make the same Use of this to shew, that he was searching and examining to get an Account of the Guards.

L. C. J. I suppose he is taking a Survey of the Persons that were of the Guards, that he might be capable of making a Judgment.

Mr. Att. Gen. Yes, my Lord; and to know their Strength: Look out No. 6. in the large Bundle.

Cl. of the Cr. Reads No. 6. A List of Officers in the first Troop of Horse-Grenadiers, the Names being distinguished by different Letters.

No. 7. out of the small Bundle. A List, *&c.* here are eleven of them put down.

Mr. Sol. Gen. Read No. 8. in the large Bundle.

Cl. of the Cr. Reads No. 8. A List, *&c.*

Mr. Att. Gen. Your Lordship will observe, that this is a List of some Persons Names, and the Numbers of Horses and Men they were to provide.

L. C. J. You'll have this to import an Account of what Quota's several Persons were to find.

Mr. Att. Gen. The last was read for that Purpose: Read No. 15. in the large Bundle.

Cl. of the Cr. Reads No. 15. Containing divers Names, with Numbers set against some of them.

Mr. Serj. *Peng.* Read No. 20, 21, 22, 23, and 24, in the large Bundle.

Cl. of the Cr. Reads No. 20. Containing a List of the Great-Officers of the *Tower*. No. 21. Containing Names of Officers of the Second Troop of Horse-Guards, Second Troop of Horse-Grenadiers, and Fourth Troop of Horse-Guards. No. 22. Containing a List of Names. No. 23. Containing Names of Officers of the First, Second, Third and Fourth Troops of Guards. No. 24. Containing the Names of two Officers of the Horse-Guards.

Mr. Att. Gen. Look upon that List, No. 21. whether there are not some private Marks upon it.

Cl. of the Cr. Yes, here is upon one of them a Dott, and on the other Side there is a Dott; and in two or three Places some Men mark'd and cross'd.

Mr. Serj. *Chesh.* Read No. 25.

Cl. of the Cr. Reads No. 25. Containing a List of Officers, five of them mark'd to be *not bad*.

Mr. *Reeve.* Are the Words *not bad* of the same Hand-Writing?

Cl. of the Cr. Yes, it doth appear to me to be so.

Mr. Serj. *Peng.* Read the Title of No. 22.

Cl. of the Cr. Here are a great many People's Names, with Marks upon some, and none upon others: Upon one of them is Writ *William Johnson, to be gained.*

Mr. Serj. *Peng.* Read No. 27.

Cl. of the Cr. Reads, A List of the Third Regiment of Guards; against several of which Names are Dotts and Marks.

Mr. Serj. *Peng.* Read No. 28.

Cl. of the Cr. Reads, A List of the Officers of the *Coldstream* Regiment of Guards; and a List of the Officers of the *Scotch* Guards.

Mr. Sol. Gen. Read No. 35.

Cl. of the Cr. Reads No. 35 A Paper, containing an Account of the Numbers of the Officers and Soldiers in the First, Second, and Third Regiment of Foot Guards.

Mr. Serj. *Peng.* My Lord, we beg leave to ask Mr. *Delafaye* and Mr. *Stanyan* two or three Questions, to support the Evidence of Mr. *Lynch* and Mr. *Plunkett*, in relation to some particular Facts; whether at the time of the Examination of Mr. *Layer* before the Lords of the Council, any thing was said of Mr. *Layer*'s being at *Rome?*

Mr. *Hungerford.* With humble Submission, Mr. *Layer*'s being at *Rome*, and corresponding with the *Pretender*, (if he did so) is made Treason by another Act of Parliament, not by this Act of Parliament upon which he is indicted: Therefore, whether he was himself at *Rome*, or corresponded with the *Pretender*, cannot be offered as an Evidence of High-Treason upon this Indictment.

Mr. Serj. *Peng.* It is only to shew the Probability of his receiving those Receipts.

Mr. *Ket.* Since we did not know any thing of those Papers, we could not properly make our Exceptions against them, till we heard them read: and now, if they prove any thing, 'tis the holding Correspondence with the *Pretender*; but that relates to another late Act of Parliament; 'tis another Species of Treason; and the Evidence which they would give of his Confession, *Vivâ Voce*; they say, it is only to support these Papers that are read; Who can make any Objection to a Paper which we did know nothing of? I believe few in the Court know what the Meaning of these Papers are, now they are read; for my Part, I know very little of them; we apprehend, that instead of being allowed to support this Evidence, by proving a foreign Correspondence between Mr. *Layer* and the *Pretender*, by the Name of King *JAMES*, which is made Treason by a particular Act of Parliament; they ought rather to have Indicted him upon that, than endeavoured to support their defective Proof by giving Evidence of an Offence, which may be matter of another Enquiry.

Mr. Att. Gen. My Lord, we apprehend a Proof, that the Prisoner was at *Rome*, and had Conferences with the *Pretender*, will be very proper to corroborate, and explain the Evidence that hath been given by the Witnesses, and the *Pretender*'s Notes, and Sir *William Ellis*'s Letters to the Prisoner; and for those Purposes we would make Use of it.

Mr. Sol. Gen. Though we apprehend we have made our Case extremely strong already, yet this which has been opened may be offered by Way of further Confirmation: Notwithstanding the Objection which is made, that we are attempting to give Evidence of another Kind of Treason not alledged in the Indictment, yet we insist upon it, that it is proper here, as circumstantial Evidence of the Treason which is alledged. We have proved a Conspiracy entered into between this Gentleman and others, to bring in the *Pretender*, and levy War for that Purpose; and also, Notes sign'd *JAMES* R. which he received from Sir *William Ellis*, a Person at the *Pretender*'s Court. Now, if we follow this, by shewing that the Prisoner was actually at *Rome*, and had Personal Conferences with the *Pretender* himself; that, surely, must be admitted to be a material Circumstance to support the Proof of those other Facts. I beg leave to say, that it has been held, even since the Stat. 7° *Will. Tertij*, That Acts of High-Treason, not laid in the Indictment, may be given in Evidence, if they conduce to the Proof of some Overt-Act which is there laid.

Mr. Serj. *Chesh.* We apprehend your Lordship will receive Evidence of the same Kind of Treason in a lower Degree, in order to prove the Overt-Act, whereby he consulted and conspired to bring in the *Pretender*, and place him upon the Throne.

As the Prisoner did correspond with his Ministers, so he had Access to the *Pretender* himself; and he did own it. That we apprehend is going a Step higher, something further than already is admitted; and if it is proper Evidence, there is no reason why it should be rejected.

Mr. *Reeve.* It is true, we have not Indicted him for a treasonable Correspondence with the *Pretender*, therefore they object, we cannot give Evidence of any such Correspondence upon this Indictment.

My Lord, we humbly apprehend, every thing that is a Circumstance that will gain Credit to the Witnesses examined is proper Evidence. It looks indeed improbable, that a Gentleman of the Profession of the Law should enter into this treasonable Design, which is expresly sworn upon him by two Witnesses, whose Credit they design to impeach; therefore we humbly offer this as a Circumstantial Evidence. This Gentleman having gone from his Profession, hath been at *Rome*, was kindly receiv'd and entertain'd by the *Pretender*; thereupon he hath entered into an Intercourse with his Ministers: And, if we prove this, it is to induce Credit to the Evidence we have given by positive Witnesses. We therefore think it proper, and submit it to your Lordship.

L. C. J. They must go on, they are not going upon an Evidence of a new Overt-Act of Treason; the Overt-Acts are consulting, advising, and agreeing to raise a Rebellion.

Mr. *Hungerford.* I humbly beg your Lordship's Pardon.

L. C. J.

L. C. J. If you will not hear me, you will teach me not to hear you.

Mr. *Hungerford.* My Lord, I hope we have a Right to reply.

Mr. *West.* Upon the first Letter of Sir *William Ellis*'s he congratulates him, as his Friend, on his safe Arrival.

Mr. *Hungerford.* My Lord, I beg your Lordship's Pardon; I am in the Service of my Client, and in endeavouring to do him Service, I am verily persuaded I shall not offend your Lordship: Really, for my part, I cannot satisfy myself, that the Evidence which they tender to the Court is a proper Evidence.

This Gentleman is indicted upon the Statute *de Proditionibus*, 25° *Ed.* III. The Overt-Acts laid in the Indictment are, his consulting, conspiring and agreeing to raise a Rebellion, and to levy War against the King, *&c.*

There is an Act of Parliament in the last Year of King *William*, whereby the *Pretender* is attainted, which makes corresponding with the *Pretender*, or any of his Adherents High-Treason; and when any Man commits that particular Treason, he is liable to be taken up and prosecuted for it. Now, my Lord, shall they be admitted to give an Evidence of a Treason committed in breach of one Act of Parliament, when they are prosecuting him upon another, they may as well offer Evidence against him for counterfeiting the Great Seal, or clipping and coining for the Sake of Evidence: We hope this Practice shall not be allowed; if they are so full of Proof (as by their opening they seem'd to be) which by the Rules of Law can reach this Man's Life, which I cannot yet see, let Justice take its Course: But we humbly hope they shall not be permitted to give Evidence of Facts which are entirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Prisoner hath been at *Rome*. But if the King's Counsel will have it effectually publish'd that the Prisoner hath been at *Rome*, let them consent to have him found not guilty upon this Indictment, and let him then be prosecuted upon the Act, for corresponding with the *Pretender*, and see what will come of it.

Mr. *Ketelbey*. The Act of Parliament that makes this new Treason is the 13 and 14 of King *William*; which not only makes that Treason which was not Treason before, but puts it on a new Method of Trial in any County of *England*, where it is laid. Now they would give in Evidence a Fact, which Mr Serj. *Cheshire* says is Evidence of the same Kind of Treason, though in a lower Degree, and ought to be received to prove the Overt-Acts of consulting and conspiring to restore, and bring the *Pretender* to the Throne: As to the Evidence that hath been read we could not have objected to the Papers, because we did not know what they were, nor whether they related to a Foreign or Domestick Correspondence. Now, because they are read, as being found on a Person to whom he gave them; shall they, to support a Treason of compassing and imagining the Death of the King, give Evidence of corresponding with the *Pretender*?

My Lord, I don't apprehend the King's Counsel have given us any manner of Answer; and therefore shall not take up any more of your Lordship's Time, by repeating in a Reply, what I offered before by way of Objection: I submit it to your Lordship.

L. C. J. Sure as this Evidence is offer'd it is very proper; consider, in the Indictment the Overt-Acts are, meeting, consulting, advising and agreeing to raise a Rebellion. The next is, publishing a Traitorous Libel, in which Rewards are promised to those that would assist in this Rebellion; a third Overt-Act is, the engaging and listing Men for the Service of the *Pretender*; a fourth is, a designing to depose the King; and another is, to set up the *Pretender* on the Throne: Now, consider, if they have not given an Evidence of these Overt-Acts, whether sufficient or not, that must be left to the Jury; if they have given Evidence of these Acts, a Design to set up the *Pretender*, and to depose the King, *&c.* If they are not proper to shew for this Purpose this Gentleman corresponded with *Rome*, was with the *Pretender*, these Letters sent from Sir *William Ellis* to him: Letters (according to his Desire) purporting Receipts for Sums of Money to be signed by the *Pretender*, as a Foundation to oblige him to make Repayment: After this and these Things have been offer'd, is it not proper to go as far as they can on this Head, and shew how far he hath been engaged with the *Pretender* and his Accomplices? Sure it is proper, as a further Evidence of these Overt-Acts.

Don't trouble yourself as to that, no Use shall be made of that, to charge you with the Treason made so by another Act of Parliament, about corresponding with the *Pretender*, for Evidence it is proper here; and it neither can, nor shall be made use of to any other Purpose.

Mr. *Reeve*. Mr. *Stanyan*, pray go on, and give an Account of what he confess'd, when examined before the Lords of the Council about his being at *Rome*.

Mr. *Stanyan*. Mr. *Layer* did acknowledge he had been at *Rome*, and returned from thence in *July* 1721, he said he had had two Conferences with the *Pretender*.

Mr. *Ketelbey*. I think Mr. *Stanyan* said, he had taken Minutes of his Examination; I had rather see the Minutes than trust to his Memory. My Lord, in the Trial of the two *Bailiffs* in this Court, the Substance of what the Deceased said was reduced into Writing; and therefore the Parole-Evidence that was offered to be given was rejected. I submit it to your Lordship, whether the Rule is not the same in greater Cases, and much stronger in this Point before your Lordship. I have not the least Disrespect for Mr. *Stanyan*, and could take his Word for any thing but my Client's Life; therefore, we hope he shall produce those Notes, which he hath referr'd to once or twice, now he is going to give a further Account of his Examination.

Mr. *Hungerford*. My Lord, I was Counsel in that Case; the Justice of Peace who had taken Mr. *Lutterell*'s Examination did not appear, and that Examination could not be had; there was a Copy of it taken and produced, and proved in Court to be a true Copy, but your Lordship would not let that Copy be read, or the subject Matter of it to be given in Evidence, unless the original Examination itself were produced.

L. C. J. Mr. *Attorney*, you hear how the Matter is, Mr. *Delafaye* and Mr. *Stanyan* give an Account that they were commanded by the Lords of the Council to attend and take Minutes of Mr. *Layer*'s Examination before them; that they have those Minutes, and have look'd into those Minutes to refresh their Memories: If they desire they may be produced, do you oppose it? Have you the Minutes here?—Mr. *Stan.* Yes, my Lord.

Mr. Serj. *Pengelly*. There may be a great many Things that are not material to the present Case of Mr. *Layer*; why should they have all these Minutes read? It is not for the Sake of the Prisoner at the Bar, but for the Sake of some other People, who may be listening here.

In the Case of *Lutterel*, there was a complete Examination taken by a Justice of the Peace: In this Case there is no Examination completed and drawn up; it is nothing but an oral Confession, and amounts to no more. The Minutes the Witnesses may take in their Hands, as proper to refresh their Memories.

Mr. Att. Gen. Their desiring to have these Minutes read, is not so much for the Sake of their own Client as for the Sake of other People.

Mr. Serj. *Cheshire*. How the Matter in that Case was———

L. C. J. It is enough, I only ask'd Mr. *Attorney-General*, whether he thought fit to consent to it; and without his Consent, we are of Opinion, that they cannot be read.

I ask'd Mr. *Attorney* the Question, and was not aware of any ill Consequence.

Mr. *Attorney* says, the Minutes refer to the whole Examination, and to a great many other People, and it would be for the Disservice of the King to have these Things disclos'd. Mr. *Attorney* might have refused to consent without giving a Reason, but he hath given a good Reason, and therefore will not consent that they be read.

Mr. *Ketelbey*. We do not consent to wave them, but insist upon their being read.

Mr. Att. Gen. We don't ask your Consent.

Mr. *Ketelbey*. If you don't ask it, nor give it, we are so far even; but I assure you, Sir, we are retained only for one Gentleman, the Prisoner at the Bar, and we have as little Reason to be sollicitous for the Innocence of others, as some have for their Guilt.

L. C. J. You cannot read the Minutes taken against the King, because these Matters are not ripe yet, nor to be discover'd to the World.

Mr. *Hungerford*. Something drop'd, as if we did insist upon the Matter for the Sake of Others; they are mistaken, we contemn such an Insinuation. We are of Counsel for this Man, and for this Man singly.

L. C. J. You are assigned Counsel for him, and unless you had, I believe you would not have ventured to have said so much.

Mr. *Hungerford*. No, indeed.

L. C. J. Go on.

Mr. Serj. *Pengelly*. Mr. *Stanyan*, please to recollect, whether when Mr. *Layer* was examined before the Lords of the Council, (it is to confirm the Evidence of Mr. *Lynch*) any thing pass'd about the Declaration.

L. C. J. But before you was intending to ask him about his going to *Rome*, and having Conference with the *Pretender*.

Mr. Serj. *Pengelly*. My Lord, that he hath said already, therefore I ask you what was said by Mr. *Layer* relating to the Declaration?

Mr. *Stanyan*. The Lords ask'd Mr. *Layer*, if he had seen any Declaration; he said no, he had only the Heads of one which he drew himself: The Lords ask'd him where that Declaration was, he said, he believ'd one *Wilson* had it.

Mr. Serj. *Pengelly*. Was any Questions asked relating to the Persons that had seen it?

Mr. *Stanyan*. Yes; he said the only Persons that had seen it was, that *Wilson*, one *William Jeffries*, *a Non-juring Parson*, and one *Lynch*.

Mr. Serj. *Pengelly*. Where did he mention to have shew'd it to *Lynch*?

Mr. *Stanyan*. On his Way to my Lord *North* and *Grey*'s, at the *Green Man* at *Epping*.

Mr. Serj. *Pengelly*. Was there any thing more said by *Layer*, relating to that Journey to *Epping*, and what?

Mr. *Stanyan*. He said that he went to my Lord *North* and *Grey*'s, and dined at the *Green-Man* as he went; then he carried Mr. *Lynch* to my Lord *North* and *Grey*'s, and recommended him to my Lord *North* and *Grey* as a proper Person to be employed. I think it was employed in an Insurrection, or in any thing else, that his Lordship should command him.

Mr. *Ketelbey*. If he is not certain, I desire he may produce his Minutes, as he gives his Evidence *vivâ voce*, to refresh his Memory.

Mr. Att. Gen. We submit to it.

L. C. J. It is always so.

Mr. *Stanyan*. He recommended him, as a proper Person to be employed in an Insurrection, and that *Lynch* having told *Layer* before that he would seize the Earl of *Cadogan*, that *Layer* did mention him to my Lord *North* and *Grey* as a proper Person for such an Attempt.

Mr. *Ketelbey*. The first time you said in an Insurrection, as you remembred or thought; how come you now to be more certain on the second Repetition of your Evidence than at the first? On the first Account you gave, you say it was employed in an Insurrection, as you thought; now upon the second Repetition you give a positive Evidence, that this was confest by Mr. *Layer*.

Mr. *Stanyan*. I have recollected the Words, and Mr. *Layer* used those Words.

Mr. *Ketelbey*. From whence is it that you are now so positive, and were not so at first?—Mr. *Stanyan*. I did say the Words at first.

Mr. *Ketelbey*. But you said it with an Alleviation; I desire to know, if you are positive those were the Words?

Mr. *Stanyan*. I am very positive.

Mr. *Ketelbey* And yet you were not positive before?

Mr. *Stanyan*. I did not say I was not positive.

Mr. *Hungerford*. Did you give your Evidence, that you was certain he said that he had recommended *Lynch*, as a proper Person to be concerned in an Insurrection in General, or only as a proper Person to seize my Lord *Cadogan*, or both? How did he express himself?

Mr. *Stanyan*. I will tell you how the Words were: *Lynch* having told him he would seize my Lord *Cadogan*, *Layer* recommends *Lynch* to my Lord *North* and *Grey* as a proper Person for such an Attempt.

Mr. *Hungerford*. Then the Insurrection was out of the Case; he was only recommended to my Lord *North* and *Grey* as a proper Person to seize my Lord *Cadogan*.

Mr.

Mr. *Ketelbey*. I think you have repeated it three times, and different at each time; now pleaſe to rectify your Memory, and let us have it ſo as it may be underſtood.

I muſt deſire it in this Caſe, my Client is upon his Life, and he ſhould have right, I am ſure he will have it from the Court and the Jury.

We deſire to know whether you give ſuch an Evidence of this Part of his Confeſſion, with reſpect to his recommending Mr. *Lynch* to my Lord *North* and *Grey*, as you will ſtand by?

Mr. *Hungerford*. Mr. *Stanyan*, pray, give an Account once for all how that Matter was.

Mr. *Stanyan*. I can give no other Account.

Mr. *Ketelbey*. He hath vary'd every Time; I appeal to Mr. *Attorney*, I appeal to your Lordſhip.

L. C. J. Wherein is the Variation?

Mr. *Ketelbey*. Firſt he acquaints you, that he confeſſed, that he recommended *Lynch* to my Lord *North* and *Grey*, as a fit Perſon to be employed, he thinks, or believes, it was in an Inſurrection; and then he ſays, he is poſitive that he recommended him to my Lord *North* and *Grey*, as one that was fit to be employed in an Inſurrection, and at laſt he ſays, he was recommended by Mr. *Layer* to my Lord *North* and *Grey*, as the fit Perſon to ſeize my Lord *Cadogan*. I appeal to your Lordſhip's Memory, and his own Oath, whether this was not ſo, and yet he is poſitive of it, he is ſure of it.

L. C. J. Is there any Difference in all this?

Mr. *Ketelbey*. As much as between being certain, and being uncertain.

L. C. J. For what? You talk of the Variation between an Inſurrection and ſeizing my Lord *Cadogan*. The Inſurrection was partly to be made on the ſeizing my Lord *Cadogan*, at the ſame time as to facilitate the Inſurrection; both were to go together; if he was a proper Perſon to ſeize my Lord *Cadogan*, he was a proper Perſon to be employed in an Inſurrection.

Mr. *Ketelbey*. He is charging the Priſoner with his Confeſſion, and therefore, I ſay, he hath mentioned it with two or three Variations: Firſt, That he was fit to be employed in an Inſurrection, and he explains that by ſeizing my Lord *Cadogan*.

L. C. J. That is Part of the Inſurrection.

Mr. *Ketelbey*. Surely, my Lord, this ſerves to make our Objection ſo much the ſtronger againſt allowing Parole Evidence of a Confeſſion, which was put in Writing.

Mr. Att. Gen. I can't imagine what they mean; here is a Gentleman, that gives an Account, that the Priſoner confeſſed that he recommended *Lynch* to my Lord *North* and *Grey*, as a proper Perſon to be employed in the Inſurrection, and to ſeize my Lord *Cadogan*; where is the Variation in this?

Mr. *Sol. Gen.* Mr. *Stanyan*, you was giving an Account of Mr. *Layer*'s recommending *Lynch* to my Lord *North* and *Grey*; did Mr. *Layer* declare any thing further relating to that Matter?

Mr. *Stanyan*. He ſaid my Lord *North* and *Grey* received him civilly; he ſupp'd there, and lay there that Night, and they din'd there the next Day.

Mr. Sol. Gen. Did he give any Account of what paſſed at Dinner?

Mr. *Stanyan*. I don't know whether it was juſt at Dinner, or afterwards: But he ſaid that ſeveral Healths were drunk, which were begun by my Lord *North* and *Grey*; and after Dinner there came in a Man they called a Citizen, they drank the Pretender's Health, his Wife and the young Prince.

Mr. Sol. Gen. Did the Priſoner ſay any thing about the Chriſtening of his Child?

Mr. *Stanyan*. That was, when he confeſſed before the Lords that he was at *Rome*; in the Conference he had with the Pretender, he took Occaſion to ſpeak of the Diſcontents of the Nation, which had been occaſioned by the Loſſes ſuſtained in the *South-Sea*. The Pretender aſked him if he knew any Perſons of Diſtinction in that Caſe? He ſaid, That he knew a great many that were well-affected to his Intereſt; that he was not acquainted with People of Quality; but that he knew ſeveral of good Eſtates that were very well-affected to his Intereſt. Upon this the Pretender aſked him ſeveral Queſtions; ſays he, It muſt be very expenſive to you to come hither to *Rome*, it muſt coſt you 500*l*. No, ſaith he, not above half ſo much. Then the Pretender praiſed his Zeal, and commended him; after that Mr. *Layer* asked the Pretender to give him ſome Tokens or Credentials, that he might have ſomething from his Majeſty; that would be a Means of his gaining Credit among his Friends here. He ſays the Pretender ſcrupled that: Then Mr. *Layer* propoſed afterwards that the Pretender's Wife ſhould ſtand as God-mother to his Daughter, to Mr. *Layer*'s Daughter; that afterwards Col. *Hay*, to whom he was introduced at the Pretender's Court, brought him Word, that the Pretender's Wife would ſtand as God-mother to his Child: But then the Queſtion was, who ſhould repreſent her? And after ſome time it was propoſed to Mr. *Layer* to find out a fit Perſon to repreſent her. Mr. *Layer* propoſed the Dutcheſs of *Ormond*, which was agreed to; after that the Pretender agreed to ſtand God-father with his Wife, and then the Point was, who ſhould repreſent him? And Col. *Hay* told him that he muſt take care of that, to find a proper Perſon to repreſent his Majeſty.

Mr. Sol. Gen. What Account did he give of what was done in Purſuance of this, when he came into *England?*

Mr. *Stanyan*. When he came into *England*, he ſaid, he applied himſelf to one Mr. *Thompſon*, to ſpeak to my Lord *Orrery* to ſtand to repreſent the Pretender with the Dutcheſs of *Ormond:* But he ſaid my Lord *Orrery* declined it; and afterwards he got my Lord *North* and *Grey* to ſtand. That Mr. *Thompſon* did Chriſten his Child, my Lord *North* and *Grey* and the Dutcheſs of *Ormond* ſtanding as Proxies for the Pretender and his Wife; my Lord *North* and *Grey* did ſtand to repreſent the Pretender, and the Dutcheſs of *Ormond* to repreſent the Pretender's Wife, knowing they did ſo.

And he was aſked by the Lords, who were in Company at the Chriſtning? He ſaid, only the Dutcheſs of *Ormond*, my Lord *North* and *Grey*, Mr. *Thompſon* the Miniſter, himſelf, and his Wife, and another Woman, at whoſe Houſe the Chriſtning was performed: But he ſaid, ſhe was not preſent in the Room, tho' ſhe aſſiſted at the Chriſtning.

Mr. *Weſt*. Did he mention any Time when this Chriſtning was?

Mr. *Stanyan*. About the Spring: I can't ſay that Queſtion was asked him by the Lords, and I can't aſcertain the Time.

Mr. *Weſt*. Did he ſay any thing relating to my Lord *North* and *Grey?*

Mr. *Stanyan*. He told them of my Lord *North* and *Grey*'s being at the Head of theſe Deſigns.

Priſoner. What doth he concern himſelf with the Lord *North* and *Grey* for?

Mr. *Weſt*. Pray, Sir, be quiet.

Mr. *Stanyan*. He ſaid he told my Lord *North* and *Grey* that he had acquainted *Lynch* with his Lordſhip's being at the Head of this Deſign, therefore Mr. *Lynch* had expreſſed a great Deſire to wait upon his Lordſhip.

Mr. Att. Gen. Mr. *Delafaye*, pray, give an Account what Mr. *Layer* ſaid, when he was examined before the Lords of the Council, relating to his being at *Rome*.

Mr. *Delafaye*. Mr. *Layer* declared to the Lords of the Council that he had been at *Rome*, that he had had two Conferences with the Pretender, that he had acquainted the Pretender with the Diſaffection of the Nation, with reſpect to the Loſſes that had been ſuſtained by the *South-Sea*. He ſaid, in general, the Nation was well-affected, and that he knew Perſons of State, not Quality, that were in his Intereſt: Then he propoſed to have Credentials or Tokens of the Pretender's Regard to him, which was not granted him: Then he deſired the Pretender's Spouſe ſhould ſtand God-mother to his Child; the Pretender ſaid he would conſider of it; Col. *Hay* afterwards brought him Word, that ſhe conſented; then there were ſome Conferences who ſhould repreſent her.

Mr. Att. Gen. Give the ſame Account that he gave before the Lords of the Council.

Mr. *Delafaye*. Col. *Hay* brought Word to Mr. *Layer*, that the Pretender's Spouſe conſented to ſtand God-mother to his Child; and it was agreed the Dutcheſs of *Ormond* ſhould repreſent her; he deſired a Credential or Token to the Dutcheſs of *Ormond*. *Hay* told him, without that ſhe would ſtand; only, ſaith he, carry a Meſſage that the Duke is well, and gone to *Madrid*, that ſhe would do it; and *Layer* deſired to know who ſhould ſtand as God-father; why the King himſelf, that is, the Pretender; and *Layer* deſired to know who was to repreſent him; he deſired to be excuſed, but *Layer* would find out one upon his Return into *England*, that was proper for that Purpoſe; when he came into *England*, he was at a Loſs for a Perſon to repreſent the Pretender; he went to Mr. *Thompſon* to adviſe with him about it, who went to my Lord *Orrery*, to deſire him to ſtand as Proxy for the Pretender; my Lord *Orrerey* declined it; then he went to my Lord *North* and *Grey*, who accepted it. The Child was chriſtened, it was at *Chelſea*, I take it, at a Houſe, where there was a *China* Shop. It was in the Spring, what Day I can't tell. That he ſaid there was his Wife, my Lord *North* and *Grey* who ſtood for the Pretender, and Dutcheſs of *Ormond* who ſtood for the Pretender's Wife, the Woman of the Houſe, but ſhe was not within the Room at the Chriſtning.

Mr. Att. Gen. Do you remember any thing ſaid by *Layer* about any Declaration that was drawn?

Mr. *Delefaye*. Mr. *Layer* owned that he had drawn Heads of a Declaration; and that, when he was going to my Lord *North* and *Grey*'s, he did ſhew it to Mr. *Lynch* at the *Green-Man*, as he was on his Way thither.

Mr. Serj. *Pengelly*. What ſaid he of his recommending Mr. *Lynch* in his Examination?

Delafaye. He ſpoke of his recommending *Lynch* twice; that Mr. *Lynch* having told him he would ſeize my Lord *Cadogan*, he did recommend him to my Lord *North* and *Grey*, as a proper Perſon for that Attempt. The ſecond Time that he recommended him, he had propoſed carrying *Lynch* to my Lord *North* and *Grey*'s, he having told him that he was a very honeſt Man, fit to be concerned in an Inſurrection; that *Layer* having told *Finch* his Lordſhip was to be at the Head of the Deſign, *Lynch* was impatient to wait upon him.

Mr. Att. Gen. We ſhall now prove there were Arms at the Priſoner's Houſe when he was ſeiz'd. Mr. *Stanyan*, were you at Mr. *Layer*'s Houſe, when he was ſeized?

Mr. *Stanyan*. Yes.

Mr. Att. Gen. Do you know of any Arms there?

Mr. *Stanyan*. Yes.

Mr. Att. Gen. Give my Lord and the Jury an Account what Arms.

Mr. *Stanyan*. Juſt after Mr. *Layer* was ſeized I came in, he was juſt got out of his Bed. I obſerved in the Room, where he lay, there were a Pair of Piſtols hung by his Bed-ſide, and between them a Horſe-man's Sword, a riding Sword, and a pretty large Sword; on th' other Side of the Bed next the Chimney a little Caſe of Piſtols, and another Sword hung in another Part of the Room. In the Cloſet of the ſame Room we look'd, and I ſaw two Carbines or Guns, and two Muſquetoons or Blunderbuſſes; ſeeing ſo many Arms, I went to handle ſome of them, upon which he ſaid, have a Care, they are loaded, don't meddle with them; upon that I asked him what he had to do with ſo many Arms? He anſwered, You muſt know my Clerk and I are great Shooters, when we are in the Country. In another Room, looking further, we obſerved ſeveral Moulds for the making of Bullets. There was alſo a Cartridge-box, and a Number of Cartridges ready made up, as near as I can gueſs (I did not count them) there were about forty or fifty of them. There was a Gentleman of the Army, and he ſaid they were ſuch Cartridges as were uſed in the Army.

Mr. Att. Gen. Was there any thing relating to theſe Arms confeſſed by Mr. *Layer* before the Lords of the Council?

Mr. *Stanyan*. He did not deny it I believe.

Mr. Att. Gen. I would ask you whether there was any thing ſaid before the Lords relating to theſe Arms?

Mr. *Stanyan*. The Lords did ask Mr. *Layer*, what he did with forty or fifty Cartridges ready made up? He ſaid they were made up by *Bowers* the Gunſmith, and that, if there was any Diſturbance in the Nation, he ſhould have Occaſion for them.

Mr. Att. Gen. Mr. *Delafaye*, was you by when he was asked the Queſtion about theſe Arms?

Mr. *Delafaye*. Yes; he was asked what he did with ſo many Cartridges and Arms, and he ſaid they were proper for his Uſe, if there ſhould be any Diſturbance in the Nation.

(Col. *Huſke* ſworn.)

Mr. Att. Gen. Was you by when theſe Arms were ſeized in Mr. *Layer's* Houſe?

Col. *Huſke.* Yes; there were two Caſes of Piſtols, two Fuzees, and ſome other Arms, and a Blunderbuſs, and two or three Swords; there were about 40 Cartridges ready made up in the uſual Manner, as they are made up when our Soldiers are to charge their Pieces for Expedition in Caſe of Action.

Mr. Att. Gen. How many were there?—Col. *Huſke.* About forty.

Mr. Att. Gen. Did you ſee any Moulds for Bullets?

Col. *Huſke.* There was a Mould for Muſket-balls.

Priſoner. You ſay I had two Fuzees; will a Muſket-ball go into a Fuzee?

Col. *Huſke.* I can't tell but it may.

Priſoner. There were 40 Cartridges, which were ready made up, will thoſe Cartridges go into a Fuzee?

Col. *Huſke.* Theſe very Cartridges were only fit for the Army.

Mr. *Ketelbey.* Theſe Cartridges were not fit for the Muſket?

Col. *Huſke.* I did not try them.

Mr. *Ket.* Would they go into a Fuzee?—Col. *Huſke.* I don't know.

Mr. *Ket.* According to my Notions, there is a Difference in Bigneſs between a Fuzee and a Muſket; and a Cartridge fit for a Muſket will not go into a Fuzee.

Col. *Huſke.* A Cartridge that is fit for a Fuzee, will go into a Muſket.

Mr. *Ket.* I believe that, and ſo it will into a Cannon; therefore I aſk, whether a Cartridge that is fitted to a Muſket, and proper for the uſe of a Soldier going to Battle, whether that Cartridge will fit a Fuzee?

Col. *Huske.* The Bore of a Fuzee may be made as large as that of a Muſket.

L. C. J. Thoſe Cartridges that were there, would they have ſerved for the Fuzee?

Col. *Huske.* I am ſatisfied that they would ſerve for the Fuzee, and the ſmalleſt Arms there, except the Piſtols.

Mr. *Ket.* You ſay there were two Swords?

Col. *Huske.* Yes, I ſaw two Swords.

Mr. *Ket.* I believe you never are without two Swords?

Col. *Huske.* I believe I have a Dozen, but they belong to my Company.

Priſoner. Were they Horſe Swords, or Swords fit to walk with?

Col. *Huske.* I can't tell that.

Mr. *Hung.* I think you ſay, that thoſe Bullets, made into Cartridges, were, by the Size of them, intended for the ſmall Arms?

Col. *Huske.* I do believe they would fit the two Fuzees that I ſaw.

Mr. *Ket.* Did you open any of the Cartridges?

Col. *Huske.* I did, and there was a Ball made up at the End of each Cartridge.

(Mr. *Smeybert* ſworn.)

Mr. Sol. Gen. Do you know the Priſoner at the Bar?

Mr. *Smeybert.* Yes, I do.

Mr. Sol. Gen. Recollect whether you have ſeen him at *Rome?*

Mr. *Smeybert.* Yes, I have.

Mr. Sol. Gen. When?—Mr. *Smeybert.* About a Year and a Half ago.

Mr. Sol. Gen. For how long Time was he there?

Mr. *Smeybert.* I think about a Week or a Fortnight.

Mr. Sol. Gen. Did you or the Priſoner leave *Rome* firſt?

Mr. *Smeybert.* I left *Rome* firſt.

(Mrs. *Hay* ſworn.)

Mr. Serj. *Cheſh.* Did you ever ſee the Priſoner?——Mrs. *Hay.* Yes.

Mr. Serj. *Cheſh.* Where did you ſee him?

Mrs. *Hay.* I ſaw him at *Rome.*

Mr. Serj. *Cheſh.* When?—Mrs. *Hay.* Laſt Summer was Twelve-month.

Mr. Serj. *Cheſh.* What Time of the Year was it, as near as you can remember?

Mrs. *Hay.* I can't tell exactly what Time, but it was laſt Summer was Twelve-month.

Mr. Serj. *Cheſh.* You are ſure you ſaw him there?——Mrs. *Hay.* Yes.

Mr. Att. Gen. My Lord, we ſhall now prove the Priſoner's Eſcape out of the Meſſenger's Cuſtody, as was opened before. Call Mr. *Squire.*

(Mr. *Squire* ſworn.)

Mr. Att. Gen. Look upon the Priſoner at the Bar, do you know him?

Mr. *Squire.* Yes, I do know him.

Mr. Att. Gen. Do you know any thing of his being taken up? Give an Account when it was that he was taken.

Mr. *Squire.* He was taken the Eighteenth Day of *September* laſt.

Mr. Att. Gen. Whoſe Cuſtody was he in after he was taken?

Mr. *Squire.* He was in my Cuſtody.

Mr. Att. Gen. What became of him afterwards? Did he continue in your Cuſtody?

Mr. *Squire.* No, he made his Eſcape.

Mr. Att. Gen. How long after he had been taken was it that he made his Eſcape?

Mr. *Squire.* It was the next Day, he got out of the Window.

Mr. Att. Gen. How high was the Room he got out of?

Mr. *Squire.* It was two Story high; he lifted up the Saſh, and ſo got out of the Window.

Mr. Att. Gen. Did you purſue him?——Mr. *Squire.* Yes.

Mr. Att. Gen. What Account can you give of his being taken again?

Mr. *Squire.* He had not been gone long before I found he had made his Eſcape, and underſtanding which way he went, I immediately purſued him, and I took him in a Lane going towards St. *George's* Fields.

Mr. Att. Gen. What did he ſay?

Mr. *Squire.* He ſaid he was very ſorry to ſee me; I aſked him how he could offer to go away from me; and he ſaid, every Body elſe would have done the ſame in his Condition, and that Nobody could blame him for it; and that he believed my Lord *Carteret* would not blame him.

Mr. Att. Gen. But why?

Mr. *Squire.* Becauſe he looked upon himſelf in ſuch a bad Condition, and ſo much Danger, he ſaid, Nobody could blame him, becauſe he was in that Condition.

Priſoner. What Condition? I deſire to aſk you one Queſtion; Did not I aſk you to ſhew me your Warrant?

Mr. *Squire.* No, you never asked me.

Priſoner. Did not I ask you at my own Houſe?

Mr. *Squire.* No, you did not.

Priſoner. Did you ſhew me your Warrant?

Mr. *Squire.* You did not ask me for it.

Priſoner. Did not I tell you the Reaſon that I eſcaped was, becauſe I did not know what Authority you had to detain me?

Mr. *Squire.* No, you did not.

(*James Peterſon* ſworn.)

Mr. Att. Gen. Mr. *Peterſon,* Do you know any Thing of the Priſoner's Eſcape?

Peterſon. Mr. *Layer* was in Cuſtody at my Father's Houſe, in Mr. *Squire's* Houſe, in a Room up two Pair of Stairs backwards.

Mr. Att. Gen. Do you know any Thing of his getting away?

Peterſon. No, I was abroad then.

(*John Sweete* ſworn.)

Mr. Att. Gen. Look upon the Priſoner at the Bar; do you remember you ever ſaw him before?

Sweete. Yes, I ſaw him juſt going into St. *George's* Fields.

Mr. Att. Gen. Did any Body take him there?

Sweete. I was the firſt that took him.

Mr. Att. Gen. What did he ſay to you when you took him?

Sweete. He ſaid, for God's Sake let me go; and ſaid 'twas an Arreſt: Why then, and pleaſe you, my Lord, my Partner came up, and asked him, whether it was an Arreſt, and he ſaid it was; and then looking about me, I ſaw another Perſon coming after us, who was the Meſſenger: It ſeems he had broke out of the Meſſenger's Houſe. And then he clapt his Hand into his Pocket, and pulled out I believe about forty Guineas, and ſaid, we ſhould take what we would if we would let him go; but we would not.

(*Anthony Stephens* ſworn.)

Mr. Att. Gen. What did *Layer* ſay when he was firſt taken?

Stephens. We asked him, is it for an Arreſt? Yes, ſays he, it is an Arreſt; and when he ſaw Mr. *Squire's* Son coming after us, he would give us whatever we pleaſed to let him go; and more than that, he ſaid they had no Warrant, and he did not know that they could keep him without a Warrant.

Mr. Serj. *Pengelly.* My Lord, we have gone through our Evidence, and ſhall reſt it here.

Mr. *Hungerford.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel for the Priſoner at the Bar; and after ſo long an Evidence hath been given in this Cauſe, it will beſt become me to draw the Matter in Debate to a ſingle Point, if I can, and thereby to give Eaſe to your Lordſhip, the Jury, and the Counſel on both Sides. My Lord, the Priſoner is indicted upon the Statute of the 25th of *Edward* the Third, commonly called the Statute *De Proditionib'*, the Things made, or rather declared Treaſon by that Act, are firſt, The compaſſing or imagining the Death of the King, or of the Prince of *Wales.* Then the Statute goes on to declare other Things Treaſon which relate only to the Perſons of ſome of the Royal Family; and then it declares likewiſe, That it is Treaſon to levy War againſt the King, *&c.* It is not ſaid, That to deſign or contrive to levy War, but actually to levy War only ſhall be Treaſon.

This is the Text, this the Law upon which the Gentleman at the Bar muſt be either ſaved or condemned. The Treaſon laid to his Charge is compaſſing and imagining the Death of the King: The Overt-Acts laid to his Charge are, That he did conſult and conſpire to levy War.

That he did publiſh a certain treaſonable Libel, purporting, among other Things, a Promiſe of Reward to his Majeſty's faithful Subjects, to riſe in Arms and levy War againſt the King.

That he conſulted to put the Pretender upon the Throne.

That he liſted Soldiers for him.

And the laſt Overt-Act is, That he conſulted to ſeize and impriſon the King.

My Lord, and you Gentlemen of the Jury, there is no Evidence of any of theſe Overt-Acts attempted to be given in Evidence againſt him in *Eſſex,* ſave only that of publiſhing a treaſonable Libel, which the King's Counſel in their Evidence would inſinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be proved in *Middleſex.* And in Truth, the greateſt Part of the whole Tranſaction was by the King's own Evidence, proved to be in that County; and I wonder the Indictment was not laid there; but, Gentlemen, the Indictment being laid in *Eſſex,* if an Act of High-Treaſon is not proved to have been committed by the Priſoner in that County, he muſt be acquitted.

I might here, my Lord, inſiſt, that an actual levying of War, and not deſign to levy a War, being made Treaſon by the Statute of Treaſons, the publiſhing a Paper which purports at the utmoſt but an Intention only to levy War or raiſe a Rebellion is not Treaſon, and conſequently not a legal Overt-Act within that Statute. This Opinion is warranted by the expreſs Words of the Act of Parliament itſelf, which is a better Authority than all the Commentators upon it; and it is likewiſe the Opinion of * my Lord Chief Juſtice *Coke,* and my Lord Chief Juſtice *Hales*; and in Truth, if this be not the true Meaning of the Act, one Paragraph, *viz.* That which declares actual levying of War Treaſon, is ſuperfluous and redundant; for what is the Uſe of making actual levying of War, or a Rebellion a diſtinct Species of Treaſon, when the Intention of doing it, according to ſome modern Doctrines, was High-Treaſon within the firſt Clauſe of the Act, *viz.* Imagining the Death of the King? This Opinion likewiſe ſeems to be confirmed by the two Acts of Parliament, one in † Queen *Elizabeth's* Time, and one in King *Charles* the Second's, where conſulting or intending to levy a War or raiſe a Rebellion, is made High-Treaſon during the Lives of them

* *Coke's* Inſtit. Ch. 1. p. 9, and 10. *Hale's* Pleas of the Crown, p. 13.

† 1 *Eliz.* Ch. 1. 13 *Car.* II. Ch.

two

two respective Princes, for which temporary Provision there would be no Reason if the Law were so before. I know what hath been said to some Part of this Matter, that the levying of War meant in the Statute of 25 of *Edward* the Third, was not meant of such a Rebellion as was levell'd against the King's Person, Crown, Title, or Government; but of such public Commotions as disturbed the Peace of the Kingdom, as the pulling down of Inclosures, which was the Case in Queen *Elizabeth*'s Time, or of pulling down Bawdy-Houses, which was the Case in *Charles* the Second's Time: But to shew how unnatural a Construction of the Words *Lever le Guerre*, it is to say, that it relates only to such riotous Commotions as I have mention'd. Give me leave, my Lord, to make but one Observation. The Statute of Treasons is penned in the *French* of that Age, and the Words of the Statute *Lever le Guerre* against the King, I have here within the Reach, in Court, a Book of very great Note and good Authority, it is the History of *Froissart*, who writes the History of *England*, *France*, and *Spain*, from the Year 1326, to the Year 1340, and dedicates his Book to that very King, *viz. Edward* the Third, in whose Reign the Statute of Treasons was made, and in this whole Book, *Lever le Guerre*, is constantly mentioned to denote a public stated War; and in this Sense, it is likewise taken by *Du Fresne* in his *Glossary*, Vol. II. pag. 255.——I only hint this Matter to your Lordship, for I well know what Determinations my Lords, the Judges have of late Years given upon this Objection; but I humbly hope that there will be no Occasion for an intire Dependence upon this Objection, in this Case, for that I hope it will appear both to your Lordship, and the Jury, that no such Overt-Act, as is laid in the Indictment, that is, publishing the Pretender's Declaration at the *Green Man*, is at all proved.

The Evidence given touching that Matter is only by Mr. *Lynch*; and he gives an Account that the Prisoner and he met at *Alagate*, in order to go to the House of my Lord *North* and *Grey* at or near *Epping*: In the Course of their Journey thither finding themselves too late to be at my Lord *North*'s by Dinner; they called in at the *Green Man*, and there got a Beef-Stake: And before it was brought up the Prisoner gave Mr. *Lynch* a Paper, which Mr. *Lynch*, and not the Prisoner, calls the Pretender's Declaration: Mr. *Lynch* reads only one Paragraph in it, whereby, as he says, the Soldiers were tempted to be allured from his Majesty's Service; this is the whole Evidence given touching any Offence committed in the County of *Essex*: For as to any treasonable Discourse between *Aldgate*, and the *Green Man*; they cannot in Justice, and without a particular Proof to that Purpose, be charged upon the Prisoner to be done in *Essex*, a great Part of the Way, *viz.* from *Aldgate* to *Bow-Bridge*, being in *Middlesex*, and not in the County of *Essex*.

In the first Place therefore, Gentlemen of the Jury, we hope there is no Evidence to convince you that any such Declaration was published at all; and yet, *Secondly*, If there was a Paper read there, the Paper read was not an Act of High-Treason. The Time that the Prisoner and Mr. *Lynch* staid at the *Green Man*, seems to be very short, their Stay was so short that there was no Evidence that their Horses were put up: The Beef-Stake was bespoke before they went into a Room. Mr. *Lynch* came down twice out of the Room; he himself admits once, besides his gaping at some Persons in the Yard whom he knew, before the Beef-Stake was brought up; and yet, before the Beef-Stake was brought up, this Declaration is pretended to be published: For my part, considering how little Time there was for such a Transaction as this is, I cannot think there could be any such Thing as that transacted at that Time, the Compass of Time would hardly allow it; whatever was done, is admitted on all Hands, to be done before the Beef-Stake was brought up, and the other Incidents may very well be supposed to take up all the Time betwixt the bespeaking and dishing up the Beef-Stake; so there could be no Time for so solemn an Act as publishing a Declaration to overturn Three Kingdoms. But in the *second* Place, If the Prisoner, which I don't admit, did give Mr. *Lynch* any Paper to read, a Paragraph whereof was to the Purpose Mr. *Lynch* relates; yet such Paper cannot be imputed to the Prisoner as an Act of High-Treason, there were but a few Lines of the Paper read, and the rest were not read at all, either by Mr. *Lynch*, or the Prisoner; and I never knew that Part of a Deed or Writing was ever allowed to be given in Evidence, without producing or reading the whole. In the Case of my Lord *Russel*, where the Declaration for Rebellion was assigned as an Act of High-Treason, the whole Declaration was proved to be read, and not a Part only; and yet even that Evidence was upon the Revolution in the first year of King *William* and Queen *Mary*, look'd upon so imperfect an Evidence of High-Treason, that for that, and other Reasons, my Lord *Russel*'s Attainder was revers'd; we have a Copy of the Act of Parliament for the Reversal here attested, and we are ready to produce it if your Lordship thinks fit.—Can it be said that the Prisoner giving Mr. *Lynch* a Paper, of which he reads only a few Lines, and then the Prisoner takes it up again, is a publishing of a Treasonable Paper, or in Truth, a publishing of any Paper at all? Declarations for Rebellions are commonly published in public Places, to captivate Multitudes, and not handed from one Man to another when they are expecting a Beef-Stake; there was no appointed or solemn Meeting at the *Green Man*; no Concourse of People there, neither in truth, by Mr. *Lynch*'s own Evidence, can it be taken to be a real Declaration; for he says, as I remember, in that Paper it was mentioned that the Lord *Cadogan* was in Custody; that Fact is utterly false, his Lordship neither was, nor is so.

I must submit to the Consideration of my Lords the Judges, and the Jury, of how dangerous a Consequence Constructions of this Nature may prove to be. Before the Statute of Treasons, the People of *England* labour'd under vast Mischiefs by the great Incertainty there was of what was High-Treason, and what was not; the Parliament thereupon, to ease the People of that Perplexity, in the 25th of *Edward* the Third, passed the Law of Treasons, for which the People then paid a great Sum of Money; and for which that Parliament was called Blessed (*Parliamentum beatum*), and now if every Act a Man doth, though perhaps tending to Sedition, shall be interpreted to be an Overt-Act of High-Treason, the Subject will labour under the same Inconvenience, and under the same Perplexities, as they were before the Statutes of Treasons; this Practice may be so far improved, that if a Man delivers a Seditious Ballad to another to be read, that shall be interpreted an Overt-Act of High-Treason; much more if People in their Cups should drink such Healths, as were said to be drunk at my Lord *North* and *Grey*'s House; for no Man can deny but that *Bibere est agere*, whatever *Scribere* is: This, my Lord, is all that occurs to me at present concerning the Charge of High-Treason upon the Prisoner within the County of *Essex*; and if there be no Charge made out against him there, the Evidence given against him, of what he did or said elsewhere must go for nothing.

Mr. *Ketelbey*. May it please your Lordship, and you Gentlemen of the Jury, I likewise appear here as Counsel for the Prisoner, who having pleaded Not Guily to this Indictment, I must suppose him so 'till he be found otherwise; and 'tis my Duty (being assigned for him by the Court) to lay the Circumstances of his Case before you in as true and clear a Light as I can, and to offer to your Consideration what may occur proper for his Defence, and legally conduce to the clearing his Innocence.

The Charge laid to him is of the highest Nature that the Laws of *England* know; *Crimen læsæ Majestatis*; no less than the conspiring and compassing the Death of the King; and as it is an Offence not capable of any Aggravation, not to be alleviated by any thing that we can offer, we humbly hope your Lordship, and the Gentlemen of the Jury, will expect the strongest Evidence the Nature of the Case admits, such as the Law requires, and is, in some Measure, proportionable to the Greatness of the Offence.

The Act of Parliament upon which the Prisoner stands indicted, is the 25th of *Edward* III. It is there said, to make him attainted there must be an Overt-Act, and that Overt-Act must be fully and clearly proved: *Et de ceo provablement soit attaint de Overt-Fait*.

My Lord *Coke*, in his third Institutes, Fol. 12. in his Comment upon that Act, explains the Word (*Provablement*) by saying it must be upon direct and manifest Proof, not upon conjectural Presumption, or Inference, or Strains of Wit; It must not be *commune Argumentum*.

Since that Time, several other Statutes have been made in Favour of the Subject, and for regulating Trials in Cases of High-Treason: Particularly the late Statute *7mo Gulielmi 3tii*, which enacts, that there must be two lawful Witnesses to the same Overt-Act; or one of them to one, and the other of them to another Overt-Act of the same Species of Treason: And that no Evidence shall be admitted or given of any Overt-Act that is not expresly laid in the Indictment.

I think we need not, at present, enter into the whole of the Case, or trouble the Court with a long Detail of Circumstances and many Witnesses; but rather chuse to leave that on the Foot Mr. *Hungerford* hath put it for your Lordship's Consideration.

It must be admitted to us, that if the Prisoner is not Guilty of an Overt-Act, legally proved to be committed in the County of *Essex*, where the Species of Treason and all the Overt-Acts in the Indictment are laid; though all the other Facts in *Middlesex*, or at *Rome*, or any where else, should be never so clearly made out, yet they do fail upon this Indictment, and the Prisoner must be acquitted.

What have they to charge him with such an Overt-Act? Nothing, but the single Evidence of *Lynch!* He is the only Person that speaks to this Point.——He says, that they set out from *Aldgate* in Order to ride to my Lord *North* and *Grey*'s, and alighted at the *Green Man*; that what Discourse passed between them there was before Dinner: He owns he went down Stairs twice before Dinner, and spent some time in looking out of the Window, to see some Persons with whom he was acquainted, and when the Dinner (which was soon got ready) was brought up, Mr. *Layer*'s Servant came and waited, and no Discourse pass'd there during that Time; he tells you, that Mr. *Layer* pull'd a Paper out of his Pocket, and shew'd it to the Witness, who read Part of it, and that it contain'd treasonable Matter, as laid in the Indictment: This is the Substance of what *Lynch* swears, I took it, as well as I could, in Writing from his Mouth.

Now, my Lord, Is this sufficient to convict this Gentleman of committing an Overt-Act of High-Treason in *Essex*? A bare pulling a Paper out of his Pocket, and giving it him to read, where such and such a thing is set forth, as by him is call'd a treasonable Declaration!

My Lord, if he had pull'd out of his Pocket the most treasonable Paper that ever was invented, is it any more than publishing a Libel? Is that an Overt-Act of Treason? I will suppose it a Copy of the Pretender's Declaration, or an Original, such a one as was burnt by the Sheriffs of *London* two Days ago: If a Man had that, and pull'd it out of his Pocket, and gave it to another to read, is this High-Treason? I dare say, if any such Person falls into Mr. *Attorney*'s Hands, he, that always does his Duty to the Crown as he ought, will go no higher than an Information for publishing a Libel; and all this, my Lord, is upon a Supposition that the Facts are true which have been sworn by *Lynch*: But, on the other Hand, there are so many unaccountable Circumstances in the Relation, that an Affair of that Consequence should be transacted in such a Place; in so short a time; upon such an accidental Bait; when one of the Conspirators was either gazing at the Window, or running up or down Stairs the greatest Part of the while, and other Persons were continually going backwards and forwards into the Room, or within hearing of every Word that pass'd there, we think it carries with it such an Air of Improbability, that no reasonable Man can give Credit to it, much less convict a Person of so great a Crime upon such Evidence.

But suppose what pass'd at the *Green Man* (which I am very far from admitting) shou'd be adjudged an Overt-Act of High-Treason: How is it prov'd? Only by one Witness; one single Witness to the Fact in this County! The Law requires two Witnesses to convict a Man of High-Treason, and that the Jury shou'd be return'd out of that County where the Facts are laid; *De Vicineto*: Because the Law supposes them more connusant of the Circumstances of a Case which arises in their Neighbourhood: But if the Proof of one Overt-Act in the County where 'tis laid, by one Witness, should be sufficient to let them in to prove other Overt-Acts in distant Countries, or in foreign Kingdoms, these fundamental Rules of Law would be totally subverted: How is it possible for a Man to provide or defend himself

himself against such an Attack? 'Tis springing a Mine upon him! Sudden and unexpected Ruin!

Mr. Attorney won't shew any Precedent, where it ever was allowed to be good, that one Witness might prove the Overt-Act in the County where it is laid, and that then they might give Evidence of Overt-Acts committed in any other County: If your Lordship is of Opinion against us in this Particular, then we must beg leave to go farther, and observe upon the rest of the Witnesses they have called; not only to take off their Credit, but to contradict them in a great measure.

There hath been a great deal of other Evidence given by them, but we must submit it to your Lordship, whether it is material his escaping from the Messenger's House, and his being taken in St. *George*'s Fields; and the Evidence begins to run thin, or else I believe they would not have troubled the Court to call those Persons to that which is no ways conducive to the Point now in Judgment; if your Lordship is of Opinion with us, that this is not an Overt-Act in *Essex*, and legally proved, being there is but one Witness, and attended with such Circumstances, then the Matter is at an End; but if your Lordship is of another Opinion, then we must beg leave to go on, and likewise to offer what we have from the Mouth of our Witnesses.

L. C. J. You must go on, you have mixed your Discourse so that nobody knows what to make of it; sometimes though the Fact are clear as to the Overt-Act, you have said as much against, as for, the Improbability and Nature of the thing, in Point of Law, as for the other. I don't see how we shall come at it, unless you go through the Cause.

Mr. Sol. Gen. My Lord, in the Observations they have hitherto made, they have mixed Objections as to the Fact, together with some Matters of Law, that seemed to be aimed at, and fixed upon no Point; to which we cannot give any particular Answer; therefore we desire they may go thro' their whole Case, before we reply to any Part of it.

Mr. *Hung.* Since it is your Lordship's Pleasure that we shall now go on, I shall proceed to make some Observations upon the rest of the Evidence given against the Prisoner at the Bar out of the County of *Essex*. The Observations which I shall make will be in the general only, for I cannot descend to all the particular Instances of the Evidence given, having not taken proper Notes for that Purpose; for I depended upon the Insufficiency of the Evidence given touching any Act of High-Treason being committed in *Essex*; and I hoped that from that very Circumstance the Prisoner would have been acquitted; but, however I know the learned Gentleman who is joined with me, hath taken very exact Notes of the whole Evidence, and therefore what I omit, I am assured he will abundantly supply.

The second Witness produced against the Prisoner, is Mr. *Plunkett*, whose Evidence I think ought to weigh but very little with any Judicature whatsoever; the Prisoner's meeting with this Man was very accidental in *Lincoln's-Inn-Fields*, when they did not know each other, and yet they immediately entered into a Discourse of raising a Rebellion, and overturning two Kingdoms, and that great Secret of knowing who was to be the General; though Mr. *Lynch*, after long Acquaintance with the Prisoner, could not get it out of him; yet it was communicated to the eminent Witness Mr. *Plunkett* at the first Interview, with an Addition of mentioning the Names of two very great Men more, the Earl of *Strafford*, and General *Webb*, as well-affected to the Undertaking: But that noble Earl's and Great General's Services to their Country, are too well known to be blemished by such an incredible Evidence. After some Discourse betwixt the Prisoner and *Plunkett* about the Undertaking, in which there was an Incident of a Discourse of another Nature, whether the *Lutheran* Religion were not preferable to the *Popish*? And after (as *Plunkett* says) the Prisoner had communicated to him an Intention of invading the Kingdom by some Persons from abroad, the Prisoner in a very great Fit of Bounty, presents Mr. *Plunkett* with the Sum of half a Crown. This Relation seems to be so improbable, and in Truth, is delivered (or rather stammered out) in so wretched and incoherent a Manner, that I believe that no one that heard it believes a Word of it.

The Truth is, the Scheme itself seems rather to be a chimerical Plan of some crazy-pated Politicians, than a solid Project of any Men of Sense, or in their Wits. What Undertaking can there be so improbable, as that laid down by this Scheme, *viz.* Seizing the General of the Army, seizing the *Tower*, seizing the *Exchange*, and seizing the Bank of *England*; and all this with a Force which do not appear to consist of above three or four Men? And for Money, the Sinews of War, there seems to be no great Stock of that; *Plunkett* hath about half a Crown at one Time, and half a Guinea at another; for as to the Guinea *Jeffreys* gave him, it doth not affect the Prisoner. Mr. *Lynch* indeed, who seems to be a Man of greater Weight, upon his frequent repeating himself to be very uneasy, got about seven or eight Guineas. I mention these Things, Gentlemen of the Jury, to shew how improbable this Part of the Evidence is of itself, and we hope to make it appear to you to be the more so, by the Evidence we shall produce to the Reputation of the Witnesses.

As to the Papers of all Kinds produced as Evidence against the Prisoner, we hope he cannot be affected by them, none of them being proved to be of his Hand-Writing; as to the Arms found in the Prisoner's House, they are no more than what Gentlemen usually have for the Defence of their Family, or their Recreations; and as for his being at *Rome*, it is admitted that the Evidence is not given as a Fact of High-Treason; so ought not to be considered as any Ingredient in the Prisoner's Guilt: As to the Prisoner's endeavouring to escape, it is no Evidence of the Prisoner's Guilt; I do not enter into the Consideration, whether the Custody of a Messenger is a legal Prison, or no; but there is hardly a Man that is under any Confinement at all, but would willingly escape into Liberty: Besides, the Prisoner hath suffered already for that Offence, if it be one; he hath been put into Irons, and his attempting to escape is the only Reason that is assigned for it.

There was something spoke in the Introduction to this Accusation which was very remarkable, *viz.* That it was a Design, if it had took Effect, that would have engaged the whole Nation in Blood, and would have destroyed our civil and religious Rights: We who are of Counsel for the Prisoner, have as great an Abhorrence of a Thing of that Nature as any Men can have: But yet we hope, that Mankind is not to be led away with Shew and Colour, but to be guided by Reason and Matters of Fact. Is it possible that People could have been raised into a Rebellion by a Proclamation which was never published, but by Mr. *Lynch*'s reading two or three Lines of it? And which, by Mr. *Lynch*'s own Evidence (which I forgot to remark before) was imperfect; for he says, that the Prisoner told him, he intended to put it in the Pretender's Name, which it seems was not then done; and therefore what was produced, was at the utmost an imperfect Piece only——— Or that the Prisoner at the Bar, a Man of a Gentleman-like Family, indeed, but of no great Figure or Estate in the World, and having no Dependants or numerous Acquaintance, having no Provision of Men, Arms, or Amunition, should, with the Assistance only of a Bundle of Papers, and of Mr. *Lynch* and *Plunkett*, overturn and enslave this whole Kingdom. God be thanked, the Protestant *British* Government is not so easily to be brought to Destruction; They might much sooner (and yet I think that very difficult too) have borrowed 100,000 *l.* of the Bank of *England*, upon the blind Notes which they have produced, sent by Sir *William Ellis*, than have brought about a Revolution in this Kingdom, with such Materials as they seemed to be possessed of.

These things therefore, my Lord, I urge, are Circumstances which render all, or the greatest Part of the Evidence given, very improbable.

I shall close the Whole with two Paragraphs of *(a)* a Speech made by one of your Lordship's Predecessors, my Lord Chief Justice *Scroggs*, sitting in the same sacred Seat of Justice where your Lordship now sits; the Words are these:

"If once our Courts of Justice come to be aw'd or sway'd by vulgar Noise, and if Judges and Juries should manage themselves so as would best comply with the Humour of the Times, 'tis falsly said that Men are tried for their Lives or Fortunes; they live by Chance, and enjoy what they have as the Wind blows, and with the same Certainty.

"Let us pursue the Plot a God's Name, and not baulk any Thing where there is Danger or Suspicion upon reasonable Grounds; but not so overdo it, as to shew our Zeal, we will pretend to find what is not; nor stretch one thing beyond what it will bear, to reach another."

Mr. *Ketelbey*. I must beg leave to go on where I left off with *Lynch*'s Evidence.

All *Plunkett* saith was in *Middlesex*; but whether he is a credible Witness, you will hear by and bye. I cannot but take Notice of one Thing which is unaccountable in his Evidence, and renders it impossible to be true: He gives you an Account of a Letter which he received about ten Weeks ago; he's very positive as to the Words of the Letter, I ask'd him over and over again to it, he repeats it as such; when we examined him farther, it appears that he could neither write nor read; and how he came to remember so perfectly, when he could not write nor read himself, is very strange. Why, saith he, it was read over to me twice, and we have heard him repeat it three Times; and I appeal to the Jury, if any one of them can take upon him to repeat it again with that Exactness the Witness pretends to do.

Is it not equally strange, my Lord, that *Jeffreys*, a Man of Letters, the first Time he saw him, an ignorant common Serjeant in the Army, should immediately fall into a Discourse with him about a Plot, and raising a Rebellion, as if he had before been intimate with him? So likewise, he saith, of *James Plunkett*, the same Day, the first Day he came to him, he came to his own House, and there talked to him about this Affair; as if they had nothing else to talk of but Rebellion against the Government. And I submit it to your Lordship and the Jury, whether it is likely or possible, that any Man of common Sense should subject himself in so dangerous an Affair to another that was an utter Stranger to him: But here he gives you an Account of two several Persons under the same Imprudence, the same Infatuation, *James Plunkett*, and the Non-juring Parson. Besides, there is a manifest Contradiction in his Evidence; for, at first he said, that the Non-juring Parson told him his Name was *Jeffreys* the first Time he saw him; and afterwards being cross-examined, he said, the first Time he knew his Name to be so was upon the Receipt of his Letter, and finding the Name so subscribed.

The next Witnesses gave an Account of the seizing the Papers, and then Mrs. *Mason*. We asked her if those Papers had been seen by any body since she had them, and whether she had shown them, or any other Papers, to Sir *John Meeres*, or any of his Servants? She positively denies it, and saith they were not.

I don't know whether these Papers were seen by any body, for we have not one Word of them in our Briefs, and the very producing them is a Surprize to us; but we shall prove, that this Woman shew'd some Papers to Sir *John Meeres*, or his Man, and that thereupon Notice was given, and the Papers soon after seized. But whether these are they or not, I cannot tell. I observed before upon the Evidence of Mr. *Delafaye*, Mr. *Stanyan* and Mr. *Doyley*; and tho' your Lordship was of Opinion, that it was sufficient to have the Paper called the Scheme read, yet we hope 'tis far from being a concluslve Evidence against the Prisoner, it not being found in his Custody; and we shall produce several who now are, and for many Years have been well acquainted with his Hand-Writing, who will give your Lordship their Thoughts of it. I believe Mr. *Attorney* would not have endeavoured to call Witnesses that it was signed by him, and was his own Hand-Writing, if he had not thought it material; yet we hope that when our Witnesses are heard, no Credit will be given by the Jury to it, as a Fact to charge the Prisoner. We shall give you an Account, if my Instructions are true, that *Plunkett*, *Lynch*, and Mrs. *Mason*, who are the Persons chiefly concerned in the Course of this Evidence, are of so scandalous and vile a Character, that no Regard at all is to be had to their Testimony. The most honest Men may mistake in their Evidence, as Mr. *Stanyan* is pleased to say; if he made any Mistakes, I am satisfied they proceeded from a Defect of Memory, and no

(a) Lord Chief Justice *Scroggs* his Speech the first Day of *Michaelmas Term*, 1679. Printed that Year.

Design

Deſign, and he is certainly excuſable; but as for the other three, *Lynch*, *Plunkett*, and *Moſon*, when you ſhall have heard half what we have againſt them, I dare ſay they will not have the leaſt Credit, though they had given a much more probable Evidence than they have done. But ſurely as it is, their Evidence cannot have ſufficient Weight with you, to prevail againſt the Life, Eſtate, and Family of the Gentleman here before you, and to fix a perpetual Stain upon him and his Poſterity.

Mr. *Hung.* My Lord, we ſhall call our Witneſſes, and begin with my Lord *North* and *Grey*.

Mr. Att. Gen. We deſire to know what it is you call my Lord *North* and *Grey* to prove?

Mr. *Hung.* He is to give an Account of what paſſed at his Houſe, what Mr. *Lynch* ſaid when he was there.

L. C. J. Then you do admit that he was at the *Green Man*, and he went to my Lord *North* and *Grey*'s afterwards?

Mr. *Ket.* There is their Sheet-Anchor.

Mr. *Hung.* We admit we were at the *Green Man*, but committed no High-Treaſon there; your Lordſhip hath ſet us right in the Point of timing our Evidence in the Nature of this Tranſaction; it is proper to begin with the Maſter of the *Green Man*.

(Mr. *Mackreth* ſworn.)

Mr. *Hung.* Mr. *Mackreth*, Pray, give my Lord and the Jury an Account whether Mr. *Layer* or Mr. *Lynch* were at your Houſe laſt Summer, or how long they were there?

Mr. *Ket.* I think you are Maſter of the *Green Man?*

Mackreth. Yes, Sir, upon the Oath I have taken, I don't know that Mr. *Layer* was ever at my Houſe.

Mr. *Ket.* Do you remember any thing of the *Saturday* the 25th of *Auguſt?*

Mackreth. No, I can't.

Mr. *Ket.* Do you remember whether you were at Home that Day?

Mackreth. I can't tell: If it was on a *Saturday*; on *Saturday* I often attend the Juſtices at *Ilford*.

Mr. *Ket.* Do you know whether you was at Home that Day?

Mackreth. I cannot tell.

Mr. *Ket.* Do you know Mr. *Layer?*

Mackreth. I never ſaw him before in my Life, as I know of.

Mr. *Ket.* Was there never any Enquiry after him at your Houſe?

Mackreth. No: There was the Duke of *Grafton* and my Lord *Halifax* came to my Houſe ſome time ſince. The Duke of *Grafton* intimated ſomething of this Affair; the Duke of *Grafton* ſaid to me, You are to be hang'd: Hang'd, for what? ſaid I. You and your Friend *Layer* are to be hang'd. Said I, I never ſaw him in my Life. They walked to and fro in the Hall. What, ſaid they, do you know nothing of this *Layer?* No, I don't, as I hope to be ſaved, directly nor indirectly.

(Mrs. *Mackreth* ſworn.)

Mr. *Hung.* Pray, do you remember any Travellers at your Houſe upon the 25th of *Auguſt* laſt?

Mr. *Ket.* Do you remember when Mr. *Layer* was at your Houſe?

Mrs. *Mackreth.* I never ſaw the Gentleman in my Life, as I know of.

Mr. *Ket.* Are you conſtantly at Home?

Mrs. *Mackreth.* Yes, I have hardly time to go to Church.

Mr. *Ket.* Did you ever hear any thing of a Declaration read?

Mrs. *Mackreth.* I never heard any thing of it in my Days, my Lord.

Mr. *Hung.* Pray, do you know the Room one Pair of Stairs forward in your Houſe?

Mrs. *Mackreth.* They are all forward, my Lord.

Mr. *Hung.* How far is the Bar from the Room?

Mrs. *Mackreth.* My Bar is below Stairs even with the Stair-Caſe.

Mr. *Hung.* If any thing is read there aloud, in any of thoſe Rooms one Pair of Stairs, could you have heard it?

Mrs. *Mackreth.* To be ſure, my Lord.

(*John Paulfreeman* ſworn.)

Mr. *Hung.* Do you remember any thing of this Gentleman being at your Maſter's Houſe on the 25th of *Auguſt* laſt?

Paulfreeman. I remember nothing at all of it.

Mr. *Hung.* You remember nothing of it?

Paulfreeman. No; to my Knowledge I never ſee him before in my Life.

Mr. *Hung.* Do you remember any thing of ſome People dining there on a Beef-Stake?

Paulfreeman. No; I don't remember any thing of it.

Mr. *Hung.* Do you remember this Gentleman's Face again?

Paulfreeman. No; I don't remember that ever I ſaw him before.

Mr. *Hung.* Is my Lord *North* and *Grey* there?

Mr. *Hung.* We ſhall examine my Lord *North* and *Grey* only as to ſome Paſſages at his Lordſhip's Houſe, and chiefly as to the Character of this *Lynch*, and what a Character he gave of himſelf; generally, a Man will give a good Character of himſelf, but he did otherwiſe.

(Lord *North* and *Grey* ſworn.)

Mr. *Hung.* If your Lordſhip pleaſes to give my Lord and the Jury what Account you have of one *Lynch*.

Lord *North* and *Grey.* My Lord, that Gentleman that goes by the Name of *Lynch* I ſaw twice; he came twice to my Houſe in *Eſſex:* I little thought that my having ſeen him twice at my Houſe, ſhould be the Occaſion of my coming here in ſuch a manner. The Gentleman was wholly a Stranger to me, and I have never ſeen him ſince. As to myſelf, I cannot ſay I know any thing of him perſonally. The only thing I can ſay, is what he ſaid of himſelf. It is a little hard for a Man of Honour to betray Converſation, what paſſed over a Bottle of Wine in Diſcourſe; but ſince your Lordſhip requires it, I muſt ſubmit.

The chief of our Diſcourſe was——He was repreſented to me as a Stranger newly come to *England*, and had a Mind to ſee my Houſe and Gardens. He was introduced, and brought there accordingly by Mr. *Layer*, and I received him civilly. In proceſs of Time he told me the Hiſtory of His Life thus; that he was not a *Spaniſh*, but an *Iriſhman*, and, my Lord, I think, educated in the Camp under an Uncle of his. He told, that when he was a young Man, he had taken a great many Liberties.

Mr. Serj. *Peng.* My Lord, we humbly apprehend, this Evidence is not proper to be given: If they have any particular Queſtions to aſk of my Lord, let the Counſel propoſe them, or aſk my Lord *North* and *Grey* to the Character of Mr. *Lynch* in general: But thus to give an Account (by way of Repetition of a Diſcourſe between Lord *North* and *Grey* and Mr. *Lynch)* where he was born, and where he was bred up, and to give a Hiſtory of particular Facts, is what they ought not to do.

Lord *North* and *Grey.* I am glad to be interrupted by that worthy Gentleman. I only deſire to know to what Points you would be pleaſed to aſk me.

L. C. J. Mr. *Hungerford*, you know what the Rule of Practice and Evidence is, when Objections are made to the Credit and Reputation of the Witneſs; you can't charge him with particular Offences: For if that were to be allowed, it would be impoſſible for a Man to defend himſelf. You are not to examine to the particular Facts to charge the Reputation of any Witneſs; but only in general you are to aſk what his Character and Reputation is.

Mr. *Hung.* My Lord *North* and *Grey* is an entire Stranger to him: but he was only going to tell you what Account *Lynch* gave of himſelf.

L. C. J. That is very well. Conſider, if that is not the ſame as if you were to charge him with particular Facts. You ſay, he himſelf, when he was with that noble Lord at his Houſe, gave a Character of himſelf much to his Diſadvantage. It is impoſſible for him in ſuch a Caſe to give an Anſwer to it; therefore by the Rule of Evidence you cannot do it.

Mr. *Ket.* If that noble Lord was going to give any Character of him which he heard from other Perſons it might alter the Caſe. But ſurely when the Character he gives of him is grounded upon what he ſaid of himſelf, is not that much ſtronger than the Hearſay of others, the Talk of Strangers? The Character he had of this Perſon is from himſelf; therefore we hope he ſhall give it in Evidence.

Mr. *Hung.* If they won't let this noble Lord enter into a Relation of what Character this *Lynch* gave of himſelf, we cannot help it.

L. C. J. You know, if there be any Objections to him, to his general Character, he can anſwer them: But if Objections are grounded on particular Charges of his being a baſe, an infamous, and an ill Man, not having any Notice of this, it is impoſſible for him to defend himſelf.

If you will aſk my Lord *North* and *Grey* what general Character he gave of himſelf, you may.

Mr. *Hung.* If my Brief be true, the whole Ten Commandments have been broken by him.

L. C. J. Very well; and ſo you charge him with the Breach of the Ten Commandments, and he muſt let it go for Fact, becauſe he cannot have an Opportunity of defending himſelf.

Mr. *Ket.* What Character in general did he give of himſelf to your Lordſhip?

Lord *North* and *Grey.* I don't know how to anſwer it, as to his giving a general Character of himſelf. Thus much I muſt ſay, I ſaw him twice. The firſt Time he was brought down by the Gentleman at the Bar; the ſecond Time he came, he was ill received; and I ordered it ſhould be told him, that in caſe he deſigned to ſtay there, that I had no Room or any Lodging for him. As to particular Things, I don't care to ſpeak of them. I ſhould be very ſorry to ſay it when it was ſaid in my Company, and under my Roof.

Mr. *Hung.* We will not preſs it any farther.

Lord *North* and *Grey.* I muſt beg your Lordſhip's leave, if the Gentlemen have no farther to ſay to me, and your Lordſhip have no farther Commands, that I may return to my Priſon.

Mr. *Hung.* I hope you will make way for my Lord *North* and *Grey* thro' the Crowd: And, if your Lordſhip pleaſes, we will go on with our Evidence.

(*George Talbot* ſworn.)

Mr. *Hung.* Pray, give my Lord and the Jury an Account of what you know of Mr. *Lynch.*——Mr. *Stephen Lynch*, what Character hath he?

Talbot. Why, Sir, the Character I know of him is this, that he is a Man that hath been ſo extravagant, that he hath brought himſelf to Neceſſity by it; kept very infamous Company.

Mr. *Hung.* What Character hath he? Hath he the Character of an honeſt Man?

Talbot. He hath a very indifferent Sort of a Character.

Mr. *Hung.* Hath he got a good or a bad Character?

Talbot. The Character I can hear of him is a very bad Character.

Mr. *Ket.* We don't aſk you as to the Particulars of his Life and Converſation, but only the General Character he hath, and the Opinion the World hath of him; whether he hath the Character of an honeſt Man, and is a Perſon fit to be believed?

Talbot. The Character I have had of him, is, That he is not to be believed.

Mr. Att. Gen. How long have you known him?

Talbot. I have not ſeen him theſe ſix Years.

Mr. Att. Gen. What is your Employment?

Talbot. I am not able to follow any thing now.

Mr. Att. Gen. He ſays he hath not ſeen him theſe ſix Years: How long ago was your Acquaintance with him?

Talbot. I met him at the *Canaries*, when I was coming from thence, which is about ſix Years ago; I know nothing of him ſince, but what I have heard of him.

Mr. Att. Gen. Have you ever had any Dealings with him?

Talbot. I never had much Dealings with him; what I have had have been very little to my Advantage.

Mr. *Ket.* If Mr. *Attorney* deſires the Particulars——

Mr. *Hung.* We conform ourſelves to your Lordſhip's Rule, to aſk only to the general Character of the Man: But if Mr. *Attorney* will enter into Particulars, we will join Iſſue with him, and go into that Method too.

Mr. Att. Gen. I aſked him how long he had known him, he ſays he had not ſeen him theſe ſix Years.

Mr. *Ket.* Have you had a Character of him?

Talbot. The worſt I could ever hear of any Perſon; I know nothing of myſelf, but what I have heard from others.

(*Mr.* Winchman *ſworn.*)

Mr. *Hungerford.* Pray, give my Lord and the Jury an Account of what you know of this *Stephen Lynch.*

Winchman. I knew this Gentleman fourteen Years ago in the Iſland of the *Canaries*, there he kept an *Iriſh* Gentleman Company, one *Wilſon*; he was then well-belov'd by every Body: The Gentleman took him into his Company, and afterwards he grew extravagant, and the Gentleman turn'd him out of his Company.

Mr. *Hungerford.* Is he accounted an honeſt Man, or a Knave?

Winchman. I will not truſt him for any Thing.

Mr. *Hungerford.* You ſay you won't truſt him for any Thing?

Winchman. No.

Mr. *Hungerford.* The wiſer you.

Mr. *Ket.* Is he a Man to be credited? Can you believe what he ſays?

Winchman. I think I would not believe him.

Mr. *Ket.* You are right.

(James Darcy *ſworn.*)

Mr. *Ket.* How long have you known Mr. *Stephen Lynch?*

Darcy. About a Twelve-month.

Mr. *Ket.* I don't ask you as to his particular Life and Converſation, but in general what is his Character, is he a Man to be believed or credited?

Darcy. I don't take it that he is.

Mr. Att. Gen. Where did you know him?

Darcy. I firſt knew him laſt Winter in *London.*

Mr. *Hungerford.* Is Mr. *George Fitzgerald* there? My Lord, here is a Complaint made that the Witneſſes can't be let in.

L. C. J. They muſt be let in.

Mr. Sol. Gen. Who made the Complaint?

Mr. *Hungerford.* A Gentleman here in Court.

Mr. Sol Gen. It is the Buſineſs of your Sollicitors to take care that way be made for your Witneſſes.

Mr. *Hungerford.* It is not the Buſineſs of your Witneſſes to ſtop the Paſſage.

Mr. Sol. Gen. They don't ſtop the Paſſage.

Mr. *Hungerford.* No; what is your buſy Colonel there [*pointing to* Col. *Huske*] a-doing?

Mr. Serj. *Cheſh.* We muſt ſtay here half an Hour for every Witneſs.

(*Mr.* Fitzgerald *did not appear, then Mr.* John Blake *was ſworn.*)

Mr. *Hungerford.* Mr. *Blake*, do you know *Stephen Lynch?*

Blake. Yes, Sir.

Mr. *Hungerford.* Pray, give my Lord and the Jury an Account of him, whether he is a Perſon to be believ'd or not?

Blake. I heard a very ill Character of him about ſix Years ago. I have heard that he married two Wives.

Mr. *Hungerford.* Is he to be believed or no?

Blake. I know nothing but by Hearſay, I believe he is not to be believed, becauſe I have heard ſuch a baſe Character of him.

(Collins *ſworn.*)

Mr. *Hungerford.* Will you give my Lord and the Jury an Account of what you know of *Stephen Lynch.*

Collins. Sir, I never exchang'd a Word with him.

Mr. *Hungerford.* What Character hath he?

Collins. A very infamous Character. I know him by Eye-ſight only; I have ſeen him upon the Exchange of *London.*

Priſoner. Is he a Perſon to be credited or not?

Collins. No, I believe not.

(*Mr.* French *ſworn.*)

Mr. *Hungerford.* Do you know *Stephen Lynch?*

French. I know him by Eye-ſight.

Mr. *Hungerford.* What Character hath he, is he a Perſon to be believ'd upon his Oath?

French. I don't think he is.

Mr. *Hungerford.* How long have you known him?

French. Six or eight Months.

[*Mr.* Kelly *and Mr.* Blake ſworn.]

Mr. *Ket.* Mr. *Kelley*, how long have you known *Stephen Lynch?*

Kelley. I believe I have known him ſince the beginning or middle of *April* laſt.

Mr. *Ket.* What is his Character, is it an honourable Character?

Kelley. I never heard any give him a Character that was not very vile.

Mr. *Ket.* Mr. *Blake*, how long have you known *Stephen Lynch?*

Blake. Sir, I never had any Acquaintance with him, but I have heard he hath a vile Character.

Mr. *Hungerford.* Have you had any Diſcourſe about this Trial, have you heard any thing ſaid by *Lynch* himſelf, about the Matter that is now in Judgment before this Court?

Blake. There was one Mr. *French*, a particular Acquaintance with *Lynch*; I met Mr. *French*, hearing he was of the ſame Inn with me, (I belong to the Middle Temple) and he told me he wanted Money.

Mr. Sol. Gen. You know what he told you is not Evidence.

Blake. Saith he, there is one Mr. *Lynch* owes me a good deal of Money, and I want to go and ſee him, and I have no mind to go there by myſelf. Next Day I conſented to go along with him, as thinking there could be no Danger in that: when we came to him, I ſuſpect, ſays Mr. *Lynch*, that you come for ſome Money that I owe you. Upon that, he deſired him to ſit down, and told the Gentleman he was ſorry he had diſappointed him. Then he begun to talk of my Lord *North* and *Grey*, and my Lord *Orrery*, and Mr. *Layer* I believe I ſhall hang him; but as to my Lord *North* and *Grey*, and my Lord *Orrery*, I know nothing of them: I know nothing more of Mr. *Layer*, but what I had from him himſelf. Some Words paſs'd between him and me, and talking of my Lord *Townſhend*, he ſaid my Lord *Townſhend*, was of a moroſe Temper, but my Lord *Carteret* was of a better Temper.

Mr. *Ket.* Speak to the Purpoſe, I deſire to know what you can ſay of Mr. *Lynch*'s Character?

Blake. I don't know any thing of *Lynch*, but that he is of an infamous Character.

Mr. *Ket.* What did he ſay of Mr. *Layer?*

Blake. He ſaid he would hang him.

Mr. *Ket.* Did he ſay any thing about the Vileneſs of the Plot, or why or how far he thought it his Duty to diſcover ſuch Villainy?

Blake. No, I don't know of any ſuch thing. I heard him ſay, my Circumſtances are very poor; and the Motive that induc'd him to do this, was to ſave the Lives of a thouſand People.

Mr. *Hungerford.* Did he ſpeak any thing of getting Money?

Blake. No, I can't ſay any ſuch thing.

L. C. J. That is not a fair Queſtion.

Blake. I can inform your Lordſhip more: Saith he, I was forced to do this; but if I had got off from this Affair; I would fight any dozen People in *London* to come off from it.

Mr. Sol. Gen. Where do you live, Sir? Do you live in the Middle-Temple?

Blake. No; I live at Mrs. *Ireland*'s in *Portugal-ſtreet.*

Mr. *Hungerford.* In the Converſation you had with *Lynch*, was there talk of any Money he was to have?

Mr. Sol. Gen. You ask'd him that Queſtion before, and was told it was not a fair Queſtion.

Mr. *Hungerford.* I think I did not. Mr. *Darcy*, what do you know more of Mr. *Lynch?*

Darcy. Sir, I went to ſee Mr. *Lynch* on Account of ſome Money which I lent him, and when he was taken up in *Manchaſter-Court* I went to ſee him; there he received me civilly, I took him aſide and ask'd him for my Money. I told him ſo freely, and asked him how he got Money and ſeveral fine Cloaths which he had? he told me a Lady us'd to come twice or thrice a Week to viſit him, and this Lady was the Miſtreſs or Daughter of one of the Chief Miniſters of *England*; he ſaid this Woman———

L. C. J. You muſt not put him in this way.

Mr. *Ket.* Mr. *Blake*, have you given an Account of the Character of this *Lynch?* I only ask you the general Character.

Blake. I have told you already.

Priſoner. I have two or three more to the ſame Purpoſe.

(Terry *ſworn.*)

Priſoner. How long have you known *Lynch?*---*Terry.* Seven Years.

Priſoner. Hath he the Character of an honeſt Man?

Terry. He hath the Character of being a looſe young Fellow; that is all I know of him.

Priſoner. Is his Character good or bad?

Terry. His Character is looſe.

(*Mr.* Hamilton *ſworn.*)

Priſoner. Do you know this *Stephen Lynch?*--*Hamilton.* Yes.

Priſoner. What Character is he of, is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him Company; I believe him to be of a vile, infamous Character, that will do or ſwear any thing.

Mr. *Hungerford.* We leave the Character of this *Lynch* here, with the Weight of the Blemiſhes charg'd upon him by our Witneſſes, to the Conſideration of the Jury.

There is another of the Witneſſes, Mr. *Plunkett*, to whoſe Character we ſhall likewiſe examine. We ſhall call a Witneſs or two to that matter, and then we ſhall cloſe.

(*Mr.* Thomas Brown *ſworn.*)

Mr. *Ket.* Do you know *Plunkett?*

Brown. Yes, I have known him theſe ten Years.

Mr. *Ket.* What is his general Character?

Brown. He hath but an indifferent Character.

Mr. *Ket.* Is he a Man to be believ'd?

Brown. No, my Lord, I don't believe he is.

(*Mr.* Keating *ſworn.*)

Mr. *Ket.* Have you known Mr. *Plunkett*, and how long?

Keat. I never had any Knowledge of him before the Beginning of *July* laſt.

Mr. *Ket.* What Character and Reputation hath he? Hath he a good or an ill Character?

Keating. I will tell you: About the Beginning of *July* laſt a Man that owed me ſome Money on a Note of his Hand——

Mr. Sol. Gen. My Lord, we muſt oppoſe the going into Particulars; they know they are confined to examine as to his general Character only.

Mr. *Hungerford.* But if the Gentleman will follow ſome of your Examples, and introduce himſelf by Prefaces, we can't help it.

L. C. J. To a general Queſtion you muſt give a general Anſwer.

Keating. The Knowledge I have had of him, I never knew any thing tolerable in his favour; I never heard a good Character of him.

Mr. *Ket.* Did you ever hear a bad one?

Keating. Yes, a very bad one, that he was a drunken, idle Fellow, always kept Company with other Women.

Mr. *Ket.* And from the Character you have had of him, do you think there is any Credit to be given to him?

Keating. No, I don't think there is.

Mr. *Hungerford.* My Lord, here we produce a Man of Quality, Sir *Daniel O Carrol.*

(*Sir* Daniel O Carroll *ſworn.*)

Mr. *Hungerford.* Do you know *Plunkett?*

Sir *Daniel.* Yes, Sir, I do.

Mr. *Hungerford.* Pray, what is his general Character.

Sir *Daniel.* I can give no good one of him; for it is a mighty bad Character he hath; he caus'd his Colonel to be brought to Town to be examin'd——

Mr. *Ket.* I only ask you in general; don't enter into the Particulars: I only ask in general, from the Character he hath in the World, do you look upon him as a competent Witneſs to be believ'd againſt another Man?

Sir *Daniel.* I would not take his Evidence to hang a Dog.

Mr. *Hungerford.* And here he attempts to hang a Proteſtant!

(*Mr.* Thomas Spelman.)

Mr. *Ket.* Do you know this *Plunkett*, and how long have you known him?

Spelman. I have known him ſeven or eight Years.

Mr. *Ket.* What is his general Character in his Life and Converſation?

Spelman. I never knew any ill done by him.

Mr. *Ket.* What is his Character?

Spelman. I can't give any Character of a Man I don't know. All I know of him, is about a Diſpute between him and Sir *Daniel Carroll* about a Horſe, and his deſiring the Lawyer to ſue Sir *Daniel.*

Mr. *Hungerford.* Did he not ſay ſomething before that?

Spelman. He ſaid, the Lawyer he employed would do him Juſtice.

Mr. Att. Gen.

Mr. Att. Gen. You ſay you don't know any ill Character of him?
Spelman. No, I don't.

(*Edward Barnewell* ſworn.)

Mr. *Hung.* Do you know this *Plunkett*, what is his Character?
Barnewell. Pray, let me tell you; I have been examin'd twice upon this Account. The firſt time that I brought *Plunkett* to be acquainted with Mr. *Layer*, Mr. *Layer*'s Man brought me word and ſaid, Mr. *Layer* had his Goods ſeized wrongfully; upon that I ſent *Plunkett* to the *Savoy*, to have two Soldiers from thence; and I ſaid, go to Mr. *Layer*'s Houſe, there are ſome Bailiffs that have wrongfully ſeized his Goods, you muſt go and turn them out. He did go with the Soldiers, and turned the Bailiffs out of the Houſe; upon which Mr. *Layer* gave him Half a Crown: After this Mr. *Plunkett* had no Friend but me; and he came and preſs'd me, and deſired me to apply to Sir *Daniel Carrell*, for ſome Money he ſaid he owed him for a Horſe. I told him I thought it was wrong to preſs Sir *Daniel* upon that Account.

Then about eight Months ago he came to me, and ſaid he had met Mr. *Layer* in *Lincoln's-Inn-Fields*, and that Mr. *Layer* did not know him; I told him, ſays he, I am one of thoſe that ſerv'd him at ſuch a time, and that he had given me Half a Crown, and that then Mr. *Layer* remember'd him. This is all I know; I'm ſworn, and will tell the Truth.

Mr. *Hung.* Is he a Man as may be believ'd, even upon his Oath, or not?

Barnewell. I muſt tell you, that I found him in ſo many Miſtakes about his own Wife, that, by God, I would not take his Word for a Halfpenny.

Mr. *Hung.* This contradicts what Mr. *Plunkett* ſays paſs'd between him and Mr. *Layer* in *Lincoln's-Inn-Fields*, with reſpect to the giving him Half a Crown, it ſeems to be for former Service.

L. C. J. How doth it? I'm to learn again. *Plunkett* ſwore, that he came with him under a Gate-way, and there, after he had talk'd with him, he gave him Half a Crown. This Gentleman owns he gave it to him for the Service he had done at ſome diſtance of Time before.

Mr. *Hung.* Go on, but don't ſwear by God any more.

Barnewell. I am a Soldier, a Man of Honour, of eighty years of Age, and would not do an ill thing for the World.

Gentlemen, as I have been ſent for by the Miniſtry, and examin'd in the Council, it hath been ſaid, Mr. *Plunkett* hath made me write a Letter to his own Captain; and theſe Men were obliged to give in Bail, and he would pay for the Charges.

Mr. *Ket.* What did Mr. *Plunkett* ſay to you, in relation to what paſs'd between you and Mr. *Layer*?

Barnewell. He told me Mr. *Layer* gave him Half a Crown, in kindneſs for the Service he had formerly done him, in turning the Officers out of his Houſe.

(Mr. *Matthew Phylips* ſworn.)

Priſoner. Do you know *Plunkett*?---*Phylips.* Yes.
Priſoner. What Character hath he?
Phylips. I think, by what I have known by him, he is not to be believ'd.
Priſoner. Is that his general Character?
Phylips. It is; that every body gives him that knows him.

(*Alexander Phylips* ſworn.)

Mr *Ket.* Do you know *Plunkett*?----*Al. Phylips.* Yes.
Mr. *Ket.* How long have you known him?
Al. Phylips. I have known him about eleven Weeks.
Mr. *Ket.* What Character hath he?
L. C. J. I never heard the like; when you give the Character of a Man, you give that Character by Men that have not known him above eleven or twelve Weeks.
Mr. *Hung.* Have you ever had any dealings with him?
Phylips. No, not I; but my Uncle hath.
L. C. J. Moſt of your Witneſſes have known him but a little time, ſeven Weeks, eight Weeks, eleven Weeks, *&c.* It would almoſt make a Man ſuſpect, that ſome People have been ſet up on purpoſe to give an ill Character of theſe People on this Occaſion. To talk of ſeven or eight Weeks Acquaintance!
Mr. *Hung.* That Man is crouded in I don't know how, but Sir *Daniel Carrell* is tumbled about and cannot get out; Sir *Daniel* is a Gentleman of Merit, and as ſuch hath been diſtinguiſhed by the Government, and ought to be treated a little better.

(*Patrick Mahone* ſworn.)

Mr. *Ket.* What Character hath Mr. *Plunkett?*
Mahone. I have known Mr. *Plunkett* ſeveral Years, and that he was an idle, broken Man, and a great Liar, and not to be believ'd.
Mr. *Hung.* He would lye before and behind, I think you ſay?
Mahone. Yes, he did.
Mr. *Ket.* Do you think he is to be credited, if he comes to give Teſtimony againſt a Perſon?
Mahone. Upon my Word I think he is not, by what he told me: becauſe I have found him to lye backwards and forwards.

(Mrs. *Child* ſworn.)

Mr. *Ket.* Mrs. *Child*, Pray, have you had any Diſcourſe lately with Mr. *Plunkett* the Serjeant?
Mrs. *Child.* I never had any Diſcourſe with him but that Day my Huſband was confin'd, when I run to look for Mr. *Plunkett*'s Wife, and *Plunkett*'s Wife was not at home, but was gone to ſee her Huſband at the Meſſenger's; I went thither; Mr. *Plunkett* hearing I was at the Door, he deſired that I ſhould come in. Saith he, Mrs. *Child*, How comes it that your Huſband doth not come to ſee me? You know, ſays I, upon what Account my Huſband abſents himſelf. Why, he is not taken up yet? Yes, ſays I, he is, and confin'd upon your Account. He takes me by the Hand, he takes me into the Coal-Hole, and take notice what I ſay to you, and get to your Huſband and tell him quickly. And he told me, that he took my Huſband to a Lawyer that was going to pay off the 18 *l.* that Sir *Daniel Carroll* owed him, and the Lawyer would not ſee him, and ſo they came away together.

Mr. Att. Gen. She ſpeaks much to the Purpoſe: For ſhe confirms what Mr. *Plunkett* ſwore.
Mr. *Ket.* What did *Plunkett* ſay?
Mrs. *Child.* He ſaid, he was going to get a Settlement for Life.
Mr. *Ket.* What was he to get a Settlement for?
Mrs. *Child.* For what he ſaid of Mr. *Layer*; a Story he had told me of my Huſband.
L. C. J. You have called a great many Witneſſes to the Diſreputation of *Lynch* and *Plunkett*, to ſay they have generally ill Characters, and are vile, infamous fellows, and not to be believ'd; and there is the ſubſtance of all your Evidence if you ſtay here till To-morrow Morning.

(*Alice Dunn* ſworn.)

Mr. *Ket.* Do you know what Character *Plunkett* hath?
Alice Dunn. His Character I had from himſelf, that he liv'd with another Man's Wife.
Mr. *Ket.* Hath he a good or bad Character?
Alice Dunn. He hath a bad Character.
Mr. *Ket.* Is he to be believ'd?
Alice Dunn. No, he is not to be believ'd.

(*John Richmond* ſworn.)

Mr. *Ket.* Here, *Richmond*, have you ſeen *Plunkett* lately?
Richmond. No.
Mr. *Ket.* How long is it ago ſince you ſaw him?
Richmond. About three Weeks ago and more.
Mr. *Ket.* What Diſcourſe had you with *Plunkett* at that time when you ſaw him?
Richmond. Plunkett aſk'd me if I was a Servant of Mr. *Layer*'s? I ſaid, I was; and in Diſcourſe I aſk'd him if he had ever receiv'd any Money of Mr. *Layer* for the Uſe of the Pretender? He kneeled down upon his Knees, and ſtruck himſelf upon his Breaſt, and ſaid, he never had receiv'd any Money of Mr. *Layer* for the Uſe of the Pretender in his Life-time.
Mr. *Ket.* How long is this? Is it three Weeks?
Richmond. I believe 'tis about ſix Weeks ago.
Mr. *Ket.* Who was preſent beſides you?
Richmond. There was Nobody elſe in the Room.
L. C. J. I would be glad to know, that he never receiv'd any Money for the Uſe of the Pretender, What do you mean by that?
Richmond. He kneeled down upon his Knees, and ſaid, He wiſhed he might be damn'd if ever he received any Money for the Uſe of the Pretender.
Mr. *Hung.* Your Lordſhip may remember *Plunkett* ſwore, that *Layer* gave him Half a Crown at one time, and other Money at ſeveral other times; and now he ſolemnly ſwears upon his bended Knees that he never received any Money for the Uſe of the Pretender, that is, upon his Account.
L. C. J. When you are drawing Conſequences from the Expreſſions, conſider what thoſe Expreſſions are: He ſolemnly proteſted that he never received any Money for the Uſe of the Pretender. It doth not appear that he did; nor did he ſay that he did. Well, go on.
Mr. *Ket.* My Lord, we will leave it here as to *Plunkett*: We will beg leave to call ſome Witneſſes as to Mrs. *Maſon*'s Character.

(Mrs. *Clayton* ſworn.)

Mr. *Ket.* Do you know Mrs. *Maſon*, or Mrs. *Buda*, or Mrs. *Herbert*, or what do you call her?
Mrs. *Clayton.* I know her by all thoſe Names: *Buda* is the name ſhe always uſed to go by; ſhe hath gone by the Name of *Maſon*, and *Bevan*, and *Herbert*.
Mr. *Ket.* What is her Character and Reputation?
Mrs. *Clayton.* Very indifferent.
Mr. *Ket.* Is it bad or good?----Mrs. *Clayton.* Very bad.
Mr. *Ket.* Have you had any Talk with her at any time about Sir *John Meers* and his Man *Thomas?*
Mrs. *Clayton.* I have heard her ſay that———
Mr. Sol. Gen. They are aſking what the Witneſs hath heard Mrs. *Maſon* ſay at any time about Sir *John Meers* and his Man, which being to a particular Fact, ſurely is not a proper Queſtion.
Mr. *Hung.* What have you heard her ſay about any Papers?
Mrs. *Clayton.* I ſee her have a printed Book: I uſed to go often where Mrs. *Maſon* lodged; and going one Day there, I ſaw a Gentleman ſitting, which was Mr. *Layer*: He had ſent a Porter for Mrs. *Maſon*. When ſhe came, ſays he, the Parliament-man I was ſpeaking of is not provided of the 300 *l.* I have a good Mind to lend it him.
Mr. *Hung.* Pray, how does Mrs. *Maſon* get her living?
Mrs. *Clayton.* By deluding young Women, and carrying them about for Money.
Mr. *Hung.* That is to ſay a Bawd; is it not?---Mrs. *Clayton.* Yes.
Mr. *Ket.* Did you hear of any Rewards ſhe was to have by coming here?
Mrs. *Clayton.* She ſaid ſhe was to be paid, or elſe ſhe would not do it.
L. C. J. What do you mean? You have been ſo often admoniſh'd by the Court; but it ſignifies nothing. You are charging Mrs. *Maſon* with being a Bawd, when you ought only to enquire as to her general Character.
Mr. *Ket.* I aſk'd you generally the Queſtion, whether ſhe had a good or a bad Character?
Mrs. *Clayton.* I did anſwer that Queſtion.
L. C. J. At this rate the moſt innocent Perſons may be branded as the moſt infamous Villains; and it is impoſſible for them to defend themſelves.

(Mrs. *Peirce* ſworn.)

Mr. *Hung.* What do you know of this Mrs. *Maſon?*
Mrs. *Peirce.* I know I lodg'd in the Houſe where ſhe did lodge.
Mr. *Hung.* What Character hath ſhe; a good one or a bad one?
Mrs. *Peirce.* A very indifferent one.
Priſoner. Is ſhe to be believed or credited?
Mrs. *Peirce.* No, ſhe is not to be credited.
Mr. *Hung.* Had ſhe a good Reputation or an infamous one?

Mrs. *Peirce.* She hath a bad Reputation.

Mr. Serj. *Pengelly.* You have ſeen Mr. *Layer* there?

Mrs. *Peirce.* Yes.

(Mrs *Wilkinſon* ſworn.)

Mr. *Ketelbey.* Do you know this Mrs. *Maſon?*

Mrs. *Wilkinſon.* I don't know Mrs. *Maſon*; but I know Mrs. *Bevan.*

Mr. *Ket.* What Character hath ſhe?

Mrs. *Wilkinſon.* I know her to be a vile Woman, and doth not care what ſhe ſays, or what ſhe doth.

Mr. *Ket.* Is that her general Character?

Mrs. *Wilkinſon.* Always ſince I have known her.

Mr. *Ket.* How long is that?

Mrs. *Wilkinſon.* About two Years.

(Mr. *Dyer* ſworn.)

Mr. *Ket.* Mr. *Dyer*, Do you know Mrs. *Maſon?*

Dyer. I know one *Bevan.*

Mr. *Ket.* How long have you known her?

Dyer. She lived with me thirteen or fourteen Years ago.

Mr. *Ket.* What was her Character then?

Dyer. She robbed my Shop, and I ſent her to *Bridewell.*

Mr. *Ket.* What is her Character and Reputation now?

L. C. J. I deſire you to forbear this irregular Practice.

Mr. *Hungerford.* Is this Woman to be credited or not?

Dyer. I know nothing of that.

(Mrs. *Baskett* ſworn.)

Priſoner. Had you any Diſcourſe with Mrs. *Maſon?*

Mrs. *Baskett.* No, Sir, I don't know her.

Priſoner. Had you any Diſcourſe with her?

Mrs. *Baskett.* I don't know her.

Priſoner. Nor Mrs. *Buda?*—Mrs. *Baskett.* No, I don't know her.

Priſoner. Nor Mrs. *Bevan?*—Mrs. *Baskett.* I don't know her at all.

Priſoner. Do you know Mr. *Lynch?* Have you ſeen him lately?

Mrs. *Baskett.* I ſaw him laſt Night.

Priſoner. Did you hear him ſay what Reward he was to have for ſwearing againſt me?

L. C. J. That muſt not be.

Priſoner. Did you not hear him ſay he was to have 500*l.* for ſwearing againſt me?

L. C. J. We have a Compaſſion for you, and therefore bear this from you, which we would not from any body elſe.

Mr. Sol. Gen. My Lord, this is not to be endured. The Priſoner turns about to the Jury, and tells them that *Lynch* ſaid he was to have 500*l.* a Year.

Mr. *Hungerford.* I believe the Gentleman that ſat next to him did not hear him.

Mr. *Weeg.* My Lord, I did hear him ſay to the Jury, that *Lynch* ſaid he was to have 500 *l.* a Year.

L. C. J. I muſt tell you, if you did but conſider of what little Conſequence it would be to you, you would not do it: When you thought fit to make him your Confidant, carry him to the *Green Man* with you, and to my Lord *North* and *Grey*'s; and there he was entertained courteouſly by him; and do you come now to brand him with being an ill Man?

Priſoner. *Lynch* ſays himſelf, that he did not know me till *June* laſt; and how could I have ſo much Friendſhip for him on ſo ſhort an Acquaintance?

L. C. J. Then for this Woman, if you would do ſervice to yourſelf, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand; prove ſomething of that, and theſe Proofs will be of more Service to you than ten thouſand of theſe Witneſſes.

Priſoner. My Lord, if I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Mr. *Hung.* It was never proved to be his Seal.

L. C. J. You are miſtaken: The Woman ſwore it was his Seal, and the Officers ſwore they were under the Seals when they ſeized them; and it is proved now to be his Seal, for the Seal is viſible.

Priſoner. How do they prove it to be my Seal? My Lord, it is not my Seal. I deſire Major *Barnewell* may be asked as to this Woman's Character.

Maj. *Barnewell.* I know her: She is a vile Woman; ſhe had like to have cheated me of 1500*l.*

Priſoner. You are only asked as to her Character in general. Is ſhe a Woman to be credited, or not?—Major *Barnewell.* No, ſhe is not.

Mr. *Ket.* I hope you are ſatisfied with this general Anſwer.

Mr. *Hung.* They won't let us go into Particulars; that the Courſe of Practice won't allow.

Mr. *Ket.* It is impoſſible for us to direct the Anſwers to the Queſtions.

(Mr. *Lebatt* ſworn.)

Priſoner. Mr. *Lebatt*, pray, give my Lord and the Jury a general Account of this Mrs. *Buda*, or Mrs. *Maſon*, whether ſhe ought to be credited or not, or gain Credit?

Lebatt. No: She would take any Body's Life away for the Value of a Farthing.

Mr. *Hung.* Now, my Lord, we will cloſe our Evidence as to the Character of theſe Witneſſes againſt the Priſoner at the Bar: We hope we have proved their Characters to be ſo infamous, as no Jury upon Earth will believe them. Here is this to be obſerved ———

Priſoner. I beg Pardon; here is mighty Talk of my Arms: I am ſo for unate as to have a Perſon here that will give you an Account of them, and how they came to be brought thither.

(Mr. *Bowers* ſworn.)

Mr. *Ket.* What Trade are you of?

Bowers. A Gunſmith.

M. *Ket.* Did you make any Fuzees?

Priſoner. No; pray, let me aſk him: Pray, give my Lord and the Jury an Account of a Blunderbuſs, a Fuzee, a Carbine, and Piſtols; what you know of them. Did not you owe me ſix Pound on a Note under your Hand?

Bowers. My Lord, about five or ſix Months ago, Mr. *Layer* had a Law Suit for me: I ſold him a Pair of Piſtols, and a little after I ſold him another Pair. Mr. *Layer* had them for a Debt: He had in his Houſe two Guns. I promiſed Mr. *Bennet* a Gun when the Cauſe was over, inſtead of Money. I gave him one of thoſe Guns: There is another Gun, and a Musket which Mr. *Layer* had of me.

Mr. *Layer* had a Note of mine for ſix Pound, which I owed him: I importuned him to take a Carbine for a Man to ride with, and a Blunderbuſs for his Houſe, in order to ſet off this Debt; and I brought him them when he was going into the Country: I brought him ſome Powder, and I brought him three Dozen and a Half of Cartridges.

Priſoner. Did I order you to bring them, or did you bring them of your own Head?

Bowers. You bid me bring a Dozen and a Half, or two Dozen; and I brought three Dozen and a Half: The Reaſon was, that I might ſhorten my own Debt.

(Mr. *Raynham* ſworn.)

Priſoner. Pray, will you give my Lord and the Jury an Account of the Piece of Arms I had of you, and for what Reaſon.

Raynham. I went with him to one Mr. *Prichard*'s in *Friday-Street*, there was a Musket in his Compting-Houſe; he ſaid he would diſpoſe of it: Mr. *Layer* asked him his Price; he ſaid he would have fifty Shillings for it. Mr. *Layer* ſaid, that was too much; ſays he, You ſhall have a Trial of it; and if your Siſter carries her Cauſe againſt Mr. *Watſon*, you ſhall give me fifty Shillings for it.

Priſoner. Did he put it on me, or did I deſire it?

Raynham. You asked him what it was worth, and whether he would diſpoſe of it?

Priſoner. Did not he ſay ſeveral Times that he wanted to dipoſe of it, and deſired me to take it on thoſe Terms?

Raynham. Yes: He ſaid on that Condition that your Siſter got her Cauſe you ſhould have it, and give him fifty Shillings for it.

(Mr. *Samuel Steward* ſworn.)

Priſoner. Mr. *Steward*, only give my Lord and the Jury an Account whether or no I was not intruſted with Things of great Value, and what Occaſion I might have for a few Arms; whether you don't know of Money put out on Mortgages?

Steward. Yes, to the Value of thirty or forty thouſand Pounds within theſe two Years.

Priſoner. Don't you think it reaſonable as to theſe Arms, that I ſhould have them in my Houſe to guard my Houſe?

Steward. I thought it very reaſonable.

Mr. *Hungerford.* My Lord, we have done with examining Witneſſes, to the Credit of the Witneſſes produced againſt the Priſoner; and leave that Matter to the Conſideration of the Jury.

Mr. *Ketelbey.* Pray, Mr. *Steward*, do you look upon that Paper they call a Scheme, with a *French* Motto upon it. Before you look upon that Paper, I ask you if you are acquainted with the Hand-writing of Mr. *Layer?*

Steward. Yes, very well.

Mr. *Ket.* How long have you been acquainted with his Hand-writing?

Steward. Two Years and an Half.

Mr. *Ket.* Have you at any Time ſeen him write?

Steward. Yes, a thouſand Times.

Mr. *Ket.* Do you believe that to be his Hand?

Steward. I do not believe it to be his Hand.

Priſoner. Is it like the Character I write?

Steward. Not at all: You write a ſhorter Character; this is a long one.

(Mr. *Bennet* ſworn.)

Mr. *Ket.* Have you been acquainted with the Hand-writing of Mr. *Layer?*

Bennet. I have been very well acquainted with the Hand-writing of Mr. *Layer.*

Mr. *Ket.* You have ſeen him write?

Bennet. Very often, a thouſand and a thouſand Times.

Mr. *Ket.* Look upon that Paper: See if you believe that to be his Hand-writing?

Bennet. No, my Lord, I do not believe that to be his Hand-writing: I never ſaw him write a Hand like it in my Life. I don't think it to be his own Hand-writing at all; I never ſaw him write ſuch a Hand as this.

Mr. Att. Gen. Shew him that Paper: [*Which was a Paper ſeized among the Priſoner's Papers in the great Bundle.*] Look on that Paper, and give my Lord and the Jury an Account if you know whoſe Hand-writing it is.

Bennet. I believe it is my own Hand-writing.

Mr. Att. Gen. By whoſe Direction did you write it?

Bennet. By Mr. *Layer*'s Direction.

Mr. Att. Gen. For what Purpoſe was it writ?

Bennet. I can't remember.

Mr. Att. Gen. Did you write this for Mr. *Layer?*

Bennet. I believe I did; but I can't tell what particular Reaſon I writ it for.

Mr. Att. Gen. Now, my Lord, here is one of the Papers that were found in the Bundle, in which the Liſts were found, proved to be writ by Mr. *Layer*'s Clerk by his Direction.

Mr. Serj. *Cheſh.* He is poſitive as to its not being his Maſter's Hand-writing; yet as to his own, he owns it.

Cl. of the Cr. It is a Liſt of Names.

Mr. *Ket.* Before you read it, What did he ſay?

Mr. Att. Gen. My Lord, he ſaid it was his Hand.

Cl. of the Cr. It is Part of a Jury between *Layer* and one *Watſon.*

Mr. Att. Gen. This was found amongſt his Papers that were ſealed up. It was taken in that Bundle where the Liſts were.

Mr. Ket. We ſubmit it to your Lordſhip and the Jury: We apprehend we have proved this Scheme not to belong to Mr. *Layer.* We have called two Witneſſes that have known him many Years, and have ſeen him write a great many times, and that they verily believe it not

not to be his Hand-writing. We don't know how it is poſſible to leave it on a better Foot. Therefore, my Lord, we ſhall leave it to your Lordſhip's Direction, and the Conſideration of the Jury.

Mr. *Hung*. My Lord, all that I would now obſerve is, that this Gentleman is indicted for High-Treaſon. The main of the Charge againſt him is, that he was concerned in deſigning to raiſe an Inſurrection. How that appears to be proved, I have ſpoke to already; but this muſt be allowed, that whatſoever Deſolation and ill Conſequences might now have enſu'd, there hath been no Blood ſhed, no Armies raiſed, or Invaſions attempted: And I think upon ſuch an Evidence that comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reached: At leaſt we humbly hope it ſhall not.

Priſoner. My Lord, as to *Lynch*, it appears our going down into *Eſſex* was merely accidental: When we came to the *Green Man*, we did not ſtay there three Quarters of an Hour; and he ſays we went down twice in the Time. All this mighty Buſineſs, this publiſhing a Declaration, talking of an Inſurrection, which is the Treaſon, and laid as an Overt-Act in *Eſſex*; all this was done before Dinner by his own owning. It was not three Quarters of an Hour from the Time we went in, till the Time we came out. We went on to my Lord *North* and *Grey*'s; and when he was there, he is aſked, If there was any Diſcourſe there about any ſuch Deſign? He ſays, There was nothing ſaid of it there. Is it poſſible when ſuch a Deſign was on foot, he and I alone ſhould go together to the *Green Man*, and thoroughly recapitulate the Affair; which when we came to my Lord *North* and *Grey*'s nothing ſhould be ſaid of it?

When we come to *Plunkett*, he ſaith that he became acquainted with me firſt of all, by reaſon of ſome Goods that were ſeized in a Houſe in *Queen-ſtreet*; that he never ſaw me till five Years after this in *Lincoln's-Inn-Fields*. *Plunkett* did not at firſt know me: We looking upon one another, then he renewed his Acquaintance with me, and told me of the former Service he had done me; and thereupon I gave him Half a Crown, which he ſaid was given him by me to liſt Men into the Pretender's Service. He confeſſed, as I proved by Major *Barnewell*, that I gave it him for former Services. As to the thirteen Shillings, he was aſked, whether he did not come to borrow ſuch a Sum of Money of me? He ſaid he did; it was in order to releaſe Major *Barnewell* out of the *Marſhalſea*. Being aſked whether he was not acquainted with Sir *Daniel Carroll*, and whether there was not ſome Difference about a Horſe in *Spain* between them? He ſaid there was, and that he came to adviſe with me, whether he could recover the Money of *Daniel Carroll*? Is it not natural that the Guinea he talks of might be another Man's Money, that was told him by one *Jeffreys* was ſent to him by me: He talks to him as to that Guinea, when he comes to be aſked, whether it was not purely out of Kindneſs and Charity that I did lend him that Guinea? He doth not deny it; and now would inſinuate that it was given him to liſt Men for the Pretender. From the Improbability of the Thing, from his own owning, no Perſon could believe him. I believe there are ninety-nine out of a hundred that cannot believe one Word that either *Lynch* or *Plunkett* ſwore.

Then the next Matter they talk of, they produce a Scheme: How hard and difficult was it to give any Evidence that ſo it ſhould be read; and I humbly apprehend it did not ſtrictly amount to legal Evidence. Mr. *Doyley*, he ſaid, he knew my Hand fourteen or fifteen Years ago, and that he hath received Letters from me about five Years ago, and hath compared this Scheme with thoſe Letters; and therefore he believes it to be my Hand. When he comes to be aſked, Whether he hath thoſe Letters here with which he compared this Scheme? No, I have them not here: Yet chiefly his Belief was that it was my Hand-Writing, by comparing theſe Letters and this Scheme together. This amounts to nothing more, when it comes ſtrictly to be conſidered, than only a Similitude of Hands, and ſurely Similitude of Hand, with Submiſſion, is not Proof in criminal Caſes: And when it amounts to no more, it ought not to be receiv'd.

Here is, ſay they, a Circumſtance that what *Lynch* and *Plunkett* ſwore muſt be true, becauſe here was a Scheme for an Inſurrection. In this very Scheme or Paper, as I took Notice of, not one Man is mentioned by Name in it; only Soldiers to be had here, the *Tower* to be ſeized, the *Bank* and the *Exchange* to be ſeized, and the World to be turned upſide down; but by whom? There is no Time mentioned, there is no Date to it. This Thing if it be ſuch a Scheme, if it had been written by me, which I abſolutely deny that it was writ by me, it doth not appear but that it was written ſeveral Years ago. When they come to aſk thoſe Gentlemen, the Under-Secretaries, if this be ſo remarkable that they lay the whole Streſs upon this Paper, whether I acknowledged it to be mine, they could not ſay I owned it to be mine. One of the Lords lays his Finger on a Paper, and ſaith, Don't you ſay this about Arms? Which I deny to be ſo. How comes it that none of thoſe Lords directly offered the Paper to me, and aſk'd me, Is this your Hand-Writing? There was my Lord Chancellor, my Lord *Harcourt*, and ſeveral other Lords preſent, that very likely would have aſked that Queſtion; but either they did not think it material, or they had not the Paper there, or they did not think it of that Conſequence, or they knew I would deny it.

When we come to call Witneſſes to this Woman, this vile, this infamous Woman, I could ſhew you ſhe hath been privy to Forgeries. If it was not to take up your Lordſhip's Time, I could ſhew that this is a Contrivance between a Gentleman and her; I am very loth to name him, to carry on ſuch a Paper as this to get Money of the Government.

Here have been five or ſix Witneſſes, whoſe Credit ſtands unimpeached, who tell you her Word is not to be taken for a Groat. Another ſays, he would not hang a Dog on her Evidence. This Scheme muſt come from her: She ſays, ſhe had two Bundles of Papers that were delivered by me to her ſealed up; and ſhe ſays this Scheme was amongſt them; and ſhe can the better ſwear it, becauſe ſhe hath ſet her Mark upon it. One of the Meſſengers doth not know whether ſhe was in the Room or no. If this Woman is not to be believed, then all the other Evidence relating to this Paper falls to the Ground. It is a Maxim in Reaſon as well as Law; take away the Foundation, and the Work muſt fall.

Gentlemen of the Jury, I would have you to take Notice of this Evidence, and not go away with a miſtaken Notion, becauſe here is a vaſt deal of Talk about the Pretender, going to *Rome*, liſting of Soldiers for the Pretender's Service, *&c.* Your Lordſhip will tell them all that is nothing, unleſs they believed an Overt-Act to be done in *Eſſex*: That is the true State of the Caſe with humble Submiſſion. Therefore I hope ſuch Evidence as this Evidence of *Lynch* and *Plunkett* (but only to confine it to that of Mr. *Lynch*) hath proved nothing at all againſt me; and if what he hath ſworn doth not affect me, then all the other ſtands for nothing; that is the true State of the Caſe. I would not have the Jury think a Man is to be hunted out of his Life by fine Speeches, far-fetched Innuendoes, and the like. You will conſider the Character of this Man, that he is not to be believed. I'll leave it to you, and I hope God Almighty will direct you: I aſk you no more than Juſtice. If a Man's Life is to be taken away by ſuch ſcandalous Evidence as hath appeared againſt me, there is an End of all your Liberties, your Wives may be taken from you, your Children made Slaves, and all that is valuable to you, your Lives and Eſtates will be but very precarious.

Mr. Sol. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, you have heard a very long Evidence, and it is my Part, as exactly and faithfully as I can, to ſum up to you the Suſtance of it, and to reply to the Objections which have been made on the Behalf of the Priſoner; as well to ſuch Objections as have been made by the Priſoner himſelf, and by his Counſel for him, as to thoſe which ariſe from the Evidence that has come out of the Mouths of his Witneſſes: And after I have done this, I doubt not but it will appear to your Satisfaction, that the Evidence which has been given for the King ſtands unanſwered, and is a ſtrong Proof of High-Treaſon againſt the Priſoner at the Bar.

Gentlemen, the Treaſon with which the Priſoner ſtands charged is compaſſing and imagining the Death of the King. This high Crime conſiſts in the Imagination of the Heart; but it muſt be proved and made out againſt the Offender by Acts which he hath done. The Overt-Acts of this Treaſon alledged to be done by the Priſoner, are, in the firſt Place, conſulting and conſpiring to levy War againſt his Majeſty: In the next place, publiſhing a treaſonable Declaration, containing Exhortations, Encouragements, and Promiſes of Rewards, to ſtir up the King's Subjects to take Arms, and riſe in Rebellion againſt his Majeſty; conſulting and conſpiring to exalt the Pretender to the Crown of this Realm, and put him in Poſſeſſion of the Government by armed Force, and Troops to be levied for that Purpoſe; the actual liniſting and retaining of Men to ſerve in this Rebellion; and, finally, a Conſpiracy to ſeize and impriſon the ſacred Perſon of the King himſelf.

Gentlemen, the heinous Nature and deſtructive Tendency of theſe Facts were fully explained to you in the opening of the Cauſe. If they had met with Succeſs, the Event could, undoubtedly, have been no leſs than the entire Subverſion of our preſent happy Eſtabliſhment; and, in conſequence of that, the Loſs of every Thing that is dear and valuable to us. For this Reaſon it was rightly admitted by one of the Counſel for the Priſoner, that the Crime, if proved, is incapable of Aggravation; and being ſo, although it is impoſſible to ſay too much concerning it, yet to ſay a great deal to you muſt be unneceſſary, becauſe it is equally impoſſible for the Hearts of *Engliſhmen* and Proteſtants to ſuggeſt too little to themſelves on ſo important, ſo moving an Occaſion.

The Evidence which has been given conſiſts of ſeveral Parts and different Kinds, every one of which conduces to ſupport and corroborate the other, and taken together, they make up the fulleſt and moſt convincing Teſtimony that can be expected in any Caſe. In the firſt Place, living Witneſſes were produced to you who were privy to the treaſonable Acts and Conſultations; in the next Place, ſeveral Papers have been read to you, ſome of them written with the Priſoner's own Hand, but all of them belonging to him; and laſt of all, you have the Confeſſion of the Priſoner himſelf proved by two Witneſſes.

The firſt Witneſs was Mr. *Stephen Lynch*, who gives you an Account in what manner he was firſt introduced to the Priſoner at the Bar. He tells you he came into *England* about *April* laſt, and had ſeveral Meetings with one Dr. *Murphey*, who was his old Acquaintance. At theſe Meetings they had a Diſcourſe relating to the Pretender, and an Attempt to be made for a general Riſing in his Favour; and Dr. *Murphey* having thus diſcloſed the Secret, told *Lynch* that if he would be of the Party, he would recommend him to a Gentleman who had a conſiderable Share in the Management of the Affair. *Lynch* took Time to deliberate upon it, and in two or three Days after told *Murphey* he was reſolved to be of the Party.

Afterwards in *June* laſt, Dr. *Murphey* carries *Lynch* to the Priſoner's Houſe, who propoſed to them to go to the *Griffin-Tavern* in *Holbourn*. Thither they went, and the Priſoner ſoon came to them; and you have heard in what Manner *Murphey* preſented *Lynch* to the Priſoner, as being the Gentleman he had before ſpoke to him of, and what Propoſals were made at that Meeting by the Priſoner to *Lynch*. That there was to be an Inſurrection in the Kingdom in Favour of the Pretender, in which they ſhould be ſupported by a great many of the Army and the Guards, as well as by ſeveral of the Nobility and Gentry; and that he wanted a fit Perſon to take one of the firſt Steps in it by ſeizing the Perſon of ſome General, or other great Man.

It may be proper here to take Notice of an Objection which was made to this, which is the very Beginning of our Evidence: That *Lynch* being an abſolute Stranger to the Priſoner, it is very extraordinary that the Priſoner ſhould make a Propoſal of ſo dangerous a Nature to him at firſt Sight. But this is plainly accounted for by the Witneſs, who tells

tells you he was intimately acquainted with Dr. *Murphey*, and *Murphey* was very intimate with, and introduced him to the Prisoner as a Friend who might be confided in. Agreeably to this you observe, that the first thing the Prisoner accosted *Lynch* with, was, that he had had such strong Recommendations of *Lynch*, that he was fully satisfied in him.

This Witness goes on to give you an Account that in a Day or two after, in Pursuance of the Directions he had received from the Prisoner, he went to the same Tavern, and sent for the Prisoner. They had some further Conversation about a Rising, and the Inclination which appear'd in the Nation for a Revolution. And now it was that the Prisoner inform'd *Lynch* that there was a great Man at the Head of this Affair, who neither wanted Wit, Courage, or Resolution, and would at a proper time give *Lynch* Orders to effect something considerable. At this Meeting the Prisoner particularly engaged *Lynch* to seize the Earl of *Cadogan*. The Reason of this Attempt the Witness gives you, that it was in order *to discourage the King's Party, and animate the Pretender's*. And, Gentlemen, the meaning of this is plain and obvious; for if an Insurrection was begun, what could be more likely to create a Confusion in the Army, and dispose the Soldiers to revolt, which appears to have been a main Part of this Design, than the seizing of their General?

There were several other Meetings both before and after the Prisoner's going into the Country, where the Witness told you he had staid sixteen or seventeen Days. At those Meetings they discours'd concerning the Conspiracy; and at one of them it is remarkable the Prisoner told *Lynch*, that if they once made a Beginning here, they shou'd want no Assistance from Abroad. And at last *Lynch* tells you, that he being under Necessities, expressing great Uneasiness at the Delay of the Project, and, as I remember, talking of going beyond Sea, the Prisoner actually advanc'd to him a Sum of Money, no less than eight or ten Guineas at different Times, in order to engage him to stay in *England*, and to assist in the intended *Design of a Revolution*. This is one Proof of the Overt-Act laid in the Indictment of listing Men.

As they had consider'd how to dispose of the General, so it appears they did not neglect the Army; for *Lynch* acquaints you, that upon Discourse about that, he ask'd what Encouragement they had from the Army; upon which the Prisoner answer'd, That they had great Encouragement from thence, and several Serjeants and common Soldiers had given them Reason to believe they would join them. *Lynch* being ask'd as to the Time when this Design was to be put in Execution, he told you there was no certain Time fix'd, but the Prisoner inform'd him it was to be at the breaking up of the Camp; and at the same time gave a Reason for it, which is by no Means to be pass'd over, *That they could not have so good Opportunities to talk with the Soldiers* (that is, to seduce them from their Duty and Allegiance) *whilst they were encamped, as in their Quarters*. Pursuant to these Consultations, Mr. *Layer* afterwards told him 'twould be necessary to take a proper time to view my Lord *Cadogan*'s House. The Pretence for going thither was, that *Layer* had a Particular of an Estate which was to be sold to lay before his Lordship. He tells you that in Fact they went to the House, survey'd it, talk'd of the Feasibleness of the Attempt, and at that time they also discours'd of seizing the *Tower*; and the Prisoner told the Witness that the *Tower* would be immediately surrender'd to the Party on the Day the Plot should be put in Execution; for a certain Officer would take upon him to mount the Guard there that Day, who would facilitate the Delivery of it to them. And the People of the *Mint* were at the same time to have Arms put into their Hands.

This is a very remarkable Passage, and falls in with the Scheme which was afterwards produced to you in the Prisoner's Hand-Writing.

The next Meeting where any thing pass'd worth repeating to you, was at the *Queen's-Head-Tavern* in *Great Queen's-street*; and when the Witness came to the Prisoner there, he found one *Wilson* in Company with him, and another Man, who seem'd by his Cloaths to be a Serjeant of the Guards. The Use to be made of that Fact is, that it is a Circumstance which falls in with the written Scheme; for you obsery'd that one *George Wilson* is there mention'd as the Person who was to manage the Serjeants, and receive Orders from the principal Officer.

At this Meeting *Lynch* tells you they talk'd over the Business, and drank good Success to the Enterprize. When they parted, he complain'd to the Prisoner of the long Delay. Upon which Mr. *Layer* told him there was a Nobleman at the Head of the Design, who had full Power and Authority from the Pretender (whom he called King), who would lose no fit Opportunity to put it in Execution. He did not name this Nobleman, but told *Lynch* that he should be presented to him in due time, and also receive Orders from him to seize my Lord *Cadogan*.

Gentlemen, it will be very material for you to fix this Circumstance in your Memories, and to connect it with the Evidence which comes afterwards, and what was done in consequence of this Meeting.

For after *Layer* had thus declared that there was a Nobleman at the Head of the Conspiracy, and *Lynch* should be presented to him in due Time, then it follows that upon the twenty-fourth of *August*, the Day the Bishop of *Rochester* was committed to the *Tower*, which appears by the Evidence to be the Time of their next Meeting, Mr. *Layer* proposed to *Lynch* to ride out to take the Air, which was agreed upon for the next Day.

In that Journey the Prisoner persuaded *Lynch* to carry Arms, because, as he then declared, *he had that about him which he wou'd not lose for all the World*. Upon the Road *Layer* told *Lynch* they were to go to my Lord *North* and *Grey*'s, and when they were got pretty near the *Green-Man* at *Layton-Stone* in *Essex*, it was thought to be too late to go on to dine at Lord *North* and *Grey*'s; and therefore the Prisoner proposed to stop at the *Green-Man* to take a Dinner.

At this Place the Overt-Acts of High-Treason committed in *Essex*, which we were so much call'd upon to make out do arise. During their stay here, the Witness gives you an Account that they discoursed of the whole Project of the Insurrection, the Means of effecting it, the Uneasiness that was in the Nation, and in General all the several matters they had consulted of before; and after they had done this he tells you, Mr. *Layer* the Prisoner proposed to him that detestable and shocking Design of seizing the sacred Person of the King, which he sometimes call'd *sending a strong Guard to take Care of*——at other times *to secure* the King's Person.

He tells you farther, that Mr. *Layer* pull'd out of his Pocket a Manuscript Paper, and deliver'd it to the Witness in part folded down, and he read that Part of it which was left open. That this Paper contain'd a Declaration, with a Recital, that my Lord *Cadogan* was then actually in their Custody: That there were in it Invitations to the People to Rise in Arms and repair to their Party: Encouragements to the Soldiers to Revolt, with an Offer of *Three Guineas* to every Horseman and Serjeant, *Two Guineas* to every Corporal, and *One Guinea* to every Common Soldier, to be paid immediately on their joining the Party; and a Promise of further Rewards. *Lynch* acquaints you, that the Prisoner talk'd of this Declaration being of his own Composing, and that from the Discourse which pass'd between them, and the Appearance of the Paper, he apprehended it to be of the Prisoner's Hand-Writing.

My Lord, after this Declaration had been thus produced, the Prisoner took it back again, put it into his Pocket, and kept it; and therefore the Paper itself being in his Custody, we were properly admitted to prove the Contents of it by Parole Evidence; and I apprehend if we had no further Proof of these Overt-Acts which were done in *Essex*, this alone is fully sufficient to maintain the Indictment to be regularly and properly found in that County.

From the *Green-Man* they went on to *Epping*, to my Lord *North* and *Grey*'s, with whom it is admitted the Witness was not at all acquainted, and consequently could not of himself have any particular Reason for going thither, but it appears to have been upon the Motion of the Prisoner. When they came to the Lord *North* and *Grey*'s House, *Lynch* tells you that the Prisoner introduced him to his Lordship; and this brings back to one's Memory, and makes it impossible not to recollect what the Prisoner had told *Lynch* at their last Meeting, in time next preceding this Journey, that there was a great Man at the Head of this Design, to whom he should be presented in due time.

Gentlemen, after this *Lynch* went a second time to my Lord *North* and *Grey*'s at *Epping*, and there he found the Prisoner at the Bar; indeed he does not own to you that any thing pass'd between them relating to this Conspiracy in the Presence of my Lord *North*; but at that Place *Lynch*, in Conversation with Mr. *Layer*, express'd an Uneasiness that the Affair was delay'd; but *Layer* bid him be easy, for it might be done sooner than he expected.

Gentlemen, this is the Substance of the Evidence of what pass'd in *Essex*. But the Witness tells you he had afterwards several Conversations with Mr. *Layer*; and when he express'd his Concernment at the Delay of putting the Design in Execution, *Layer* told him he was so bent upon the Success of it, that rather than it should fail, he would be a second *Massinello*: This was represented as a ridiculous Expression by one of the Counsel for the Prisoner: But we have all heard what Confusions were rais'd by that profligate Fellow in the Kingdom of *Naples*; and it is plain, that was the Example the Prisoner referr'd to by this Expression.

Mr. *Lynch* was cross-examin'd by the Counsel for the Prisoner, with as much liberty as they thought fit to use; but I did not observe that his Evidence was at all weaken'd, I think I may say, it was rather confirm'd by it, since it was upon their own Questions he gave his Reasons how *Layer* came to deal so openly and unguardedly with him at first Sight. And those Reasons were strong; for it is not improbable, if *Murphey* and *Layer* were engag'd in a Treasonable Design, that one of them should have confidence in a third Person on so strong a Recommendation from the other.

The next Witness is *Matthew Plunkett*, and I apprehend, notwithstanding every Thing that hath been said against his Testimony, that it is rather strengthened, as to the Facts sworn by him, than weakened by the Evidence for the Prisoner. He tells you, his first Acquaintance with Mr. *Layer* was about five Years since, and had its Rise upon this Occasion: The Goods in the House where the Prisoner then lodg'd, being taken in Execution, (whether his own Goods or not, is not at all material) one Major *Barnewell*, who has been examined for the Prisoner, was employed to procure Persons to rescue those Goods; *Barnewell* applied to this Witness, who got two Grenadiers, that were let in at a private Door by Mr. *Layer*'s Clerk. They did their Work, drove out the Officers, and rescued the Goods; and for this Service Mr. *Layer* rewards them with a Crown and some Brandy. Since that, it appears he has been employed on other Messages between Major *Barnewell* and the Prisoner; and in what manner *Plunkett* is supported in these Circumstances, and by Consequence in the rest of his Testimony, by Major *Barnewell* himself, who has been produced to discredit him, I shall observe when I come to consider the Evidence for the Prisoner.

But the Witness having given you this Account of the Introduction to the Correspondence, tells you, that in *July* last, *James Plunkett* came to him from the Prisoner, enquir'd privately what Acquaintance he had amongst the Soldiers, and desired him to meet the Prisoner at the *Italian* Coffee-house in *Russel-Court*; but he did not meet him there, not having Money nor Inclination to go to a Coffee-house. He gives you an Account, that on the *Sunday* following, returning from St. *Andrew*'s Church, as he was going over *Lincoln's-Inn-Fields*, Mr. *Layer* met him. *Plunkett* had forgotten *Layer*'s Face; but *Layer* remembred him, and ask'd him if he knew him; to which *Plunkett* answering that he did not, the Prisoner told him his Name, which made him recollect. *Layer* then enquired if *James Plunkett* had not been with the Witness, to desire him to come to the *Italian* Coffee-House, a few Nights before; and having made himself known by these Circumstances, took *Plunkett* into a private Place. There they had a long Conversation, in which *Layer* began with declaring how

how well assured he was of *Plunkett*'s good Affections to the *Pretender*, and said, he wanted some old Soldiers, such as *Plunkett* was, that would head and discipline a Mob, for they had other Men enough. *Plunkett* said, he did know several old Soldiers, but he hesitated a little about the *Pretender*'s being a *Papist*. The Prisoner, to take off the Force of that Scruple, answered, *We had as good have a* Papist *for our King as a* Lutheran, *I don't know what Difference there is between them* (that is) between a *Popish* King and a *Protestant* one.——An important Difference! Which I wish with all my Soul, were not too much forgotten, or perhaps, too little valued, by many amongst us, who are not so frank in declaring as the Prisoner.

Mr. *Layer* proceeded to excite the Witness to join in his Treason, by a false Representation of the State of the Nation, and particularly of the Injustice, as he call'd it, which was done to old Soldiers who had served abroad; a Topic most likely to captivate an old Serjeant. After this Preface, he inform'd the Witness there was to be an Insurrection; and *Plunkett* asking who was the Promoter of the Design, told him it was my Lord *North* and *Grey*, whom he commended as a fine General; and then he went through a Sort of List of several other Persons of Consideration. The Witness has declared that he knew several Soldiers, said, he could procure five-and-twenty, whereupon Mr. *Layer* desired he would make a List of their Names, and the Places of their Lodgings, that they might be in Readiness upon Call; and at parting gave him Half a Crown.

After they had thus talk'd of the Conspiracy, there followed a very observable Passage; for the Prisoner declared that the Design had been put in Execution some time ago, if some Person had not discovered it to the *French* Ambassador, who writ of it to the Regent, and so it was notified to the King. However, even this Apprehension of a Discovery did not terrify them, for the Project was to go on. The late Duke of *Ormond* was to come in a single Ship, and General *Dillon* in another, and they were to bring others with them; which you take Notice falls in with the Evidence of *Lynch*, that *Layer* declared to him that they should not want Encouragement or Assistance from abroad, when once they had made a Beginning here.

The next Intercourse between the Prisoner and *Plunkett* was not personal, but by the means of one *Jeffreys*, a Non-juring Clergyman.

Gentlemen, you observed that the Prisoner told *Plunkett* at parting, that he would send a Messenger to him with Money; and afterwards at his own House, on the Morning he went out of Town for *Norfolk*, that he had left a Guinea with a Non-juring Clergyman to give him to do Service with;—and, says *Layer*, whilst I am abroad, you may be sure I shall not be idle. Accordingly Mr. *Jeffreys* came within a few Days after, and appears to be that Clergyman; for he said, he came from Mr. *Layer*. He tells you, they discoursed on the old Subject, and *Jeffreys* desired he would get Men in Readiness, and said he had several other Places to go to on the same Errand. *Jeffreys* gave the Witness no Money at that Time, but came a second Time, and gave him only Half a Guinea, which he said *Layer* had sent him for his Encouragement. Besides this, he tells you *Layer* gave him a Crown at the *Castle-Tavern*, in *Drury-Lane*, expressly to encourage him to list Men for the *Pretender*. Upon the Prisoner's Return to Town, a Letter was sent by *Jeffreys* to the Witness, to desire him to go to the Prisoner's House; and when he came there, the Prisoner gave him a Guinea with his own Hand. There were several other Conversations, several things said to keep *Plunkett* firm to the Design, and many groundless and malicious Slanders cast by the Prisoner upon his Majesty's Government; and in all those Conversations *Plunkett* tells you, the Prisoner always stil'd the *Pretender* King. 'Twould be tedious particularly to repeat all these things to you; but there is one thing I can't help observing, before I go off from this Part of our Evidence, I mean, that *Plunkett* told you more than once, that he was to procure five-and-twenty old Soldiers for the Service. Now that happens to be exactly the Number which is assign'd to each of the eight Serjeants in the Prisoner's own Scheme, which was produc'd to you, and is a strong Circumstance in Support of this Witness's Testimony.

Gentlemen, I have gone through the Evidence of these Witnesses, and I beg leave to say they are, within the Meaning and Intention of the Law, two Witnesses to prove the High-Treason charg'd upon the Prisoner; and it happens in this Case, that they make out all the particular Overt-Acts alledg'd in the Indictment. Both *Lynch* and *Plunkett* prove repeated Consultations to levy War, to bring in the *Pretender*, and the actual listing of Men; and *Lynch* alone proves the publishing the treasonable Declaration, and that Part of the Design, which No-body can hear without the utmost Indignation, the seizing his Majesty's Person. From henceforth I apprehend I may take it, that the Charge is proved; though in Truth we have gone a great deal farther in order to put the Testimony of these Witnesses beyond all doubt, to deliver them from all possible Objections, and to demonstrate to you the Nature and Extensiveness of this black Conspiracy.

The next Head of Evidence, is that of the Papers; and notwithstanding the *little* Cavils which have been urged against them, those Papers are fully proved to be the Prisoner's, and by him delivered to Mrs. *Mason*. It stands thus; Mrs. *Mason* swears, that the Prisoner deliver'd these Papers to her in two Pacquets, as things of great Consequence, seal'd up with his own Seal, which Seal is now remaining and appears on the Covers. That she lock'd them up safe in her Trunk till they were seiz'd by the Messengers, and out of that Trunk the Messengers took them. That she set her Mark upon each particular Paper, which appears to be the same Mark which by way of Experiment they would have her to make in Court; and she swears, that these are the very same Papers which the Prisoner deliver'd to her with his own Hands. The two Messengers gave you an Account, That they seized these Papers at Mrs. *Mason*'s Lodgings, on the twenty-ninth Day of *September* last; that they took the two Pacquets out of the Trunk, the same Seal being then upon the Covers, and that Mrs. *Mason* was by, and mark'd them in their Presence; that they likewise put their Marks upon, and never deliver'd them out of their Custody till they had so done. Indeed, *Turner* says he left them in the Hands of his Fellow-Messenger, *Spear*, during the little Time he went for Mr. *Stanyan*; but *Spear* swears they received no Manner of Alteration during that Space; and upon the whole, they swear them to be the same Papers which they took out of the Trunk.

Upon this Evidence, we apprehend we were intitled to have read the Papers, without giving any farther Account of them.

I did mention to your Lordship the Case of my Lord *Preston*, which was not so strong; for he lying, together with *Ashton*, in the Hold of the Ship, upon the Ballast, a Bundle of Papers lay between them; *Ashton* took them up, and put them in his Bosom, and there they were seiz'd; but being found together with my Lord *Preston*, those Papers, though the very Overt-Acts of the Treason laid in the Indictment, were read against him upon that Proof only. Indeed, after they had been read, the King's Counsel, in order to give a farther Strength to one or two Particular Papers, entered into a Proof of their being my Lord *Preston*'s own Hand-Writing.

The first Paper we call'd for was the Scheme, a regular Plan of this Conspiracy; and, Gentlemen, in order to prevent any Pretence of Hardship, before we read it, we call'd a Witness to prove this Scheme to be the Prisoner's Hand-Writing: It was Mr. *Doyley*, who swears he verily believes it to be his Hand. He gives you the Reasons of his Belief; That the Prisoner liv'd with him as a Clerk two or three Years, not whilst he was a Boy, but after he had serv'd some Time with another Master, had been us'd to Business, and gain'd a settled Hand; and during that Time he frequently saw him write. To support this farther, he tells you, that he had transacted Business for Mr. *Layer*, as his Agent, until about four or five Years ago, and had received several Letters from him, which he was sure were his, because he (Mr. *Doyley*) had done the Business requir'd to be done by those Letters, and Mr. *Layer* had paid him for it; that he had compar'd his Paper call'd *The Scheme*, with those Letters; that the Character of the Letters agreed with what the Prisoner wrote when he was Clerk to him; and the Character of the Scheme with that of the Letters.

But, Gentlemen, this Scheme is an Evidence so considerable in itself, and of that general Consequence to this whole Cause, that we went farther yet, and, not out of any Necessity, but in order to give you abundant Satisfaction, we proved it to be written by the Prisoner from his own Confession. Mr. *Stanyan* told you, That the Prisoner, upon his Examination before the Lords of the Committee of Council, where he was present, and took Notes, confess'd this Scheme to be of his Hand-Writing. The Counsel for the Prisoner objected, This Question was not directly ask'd him (*Is this your Hand?*) and consequently he did not say, *It is my Hand.* 'Tis true, that does not appear; can there be no other Evidence of a Confession, but such direct Questions and Answers. Upon the Examination, the Prisoner was ask'd, whether he knew of any Arms lodg'd in *Westminster?* He told the Lords he knew of no Arms being lodg'd. Thereupon this Paper was shew'd him, and he was ask'd, *How came you to write in this Scheme of your own Hand-Writing, that there were Arms lodg'd?* To this he made Answer it was a Mistake, I should have writ Arms that should be lodg'd. Can any Thing be more plain than this? It was so evident that the Paper was written by him, that it was taken for granted, and call'd his Hand-Writing in the very Terms of the Question; probably he had confess'd it before the Clerks were call'd in. If it had not been his Hand, would not the natural Answer have been, Why do you ask me about what is written in that Paper? I know nothing of it, it is not my Hand-Writing; but instead of that he admits it without the least Difficulty, and takes upon him to tell the Lords what he intended to have written.

The Gentlemen on the other Side endeavour'd to avoid the Force of this Evidence, by this ingenious Turn——*I should have written Arms that should be lodg'd* (that is) *If I had writ it, I should have written Arms that should be lodg'd.* But I desire to be inform'd, if he did not write it, how came he to know any thing about it? How could he take upon him to say it was a Mistake? Whose Mistake? He admits it to be his own. So that this Observation comes to nothing, and this Scheme, after all their Objections, stands confess'd, as well as prov'd, to be Mr. *Layer*'s Hand-Writing.

Upon the Foundation of all this Proof, which I beg leave to observe does support all the other Papers found in the two Pacquets, the Scheme was read, and when it was read, it required your strictest Attention; for in that Paper appears a regular Design, form'd for the total Destruction of this Government, to be executed in the City of *London*, the Capital of the Kingdom. This, if there was no more, shews a just Foundation for what was lately declared to us in a solemn Manner, That if this Conspiracy had not been happily detected, we should before now have seen that City involv'd in Blood and Confusion; such appears to be the plain Intent of it. The most profligate of the People were to have Arms put into their Hands, in order to subdue and pillage the better Sort.

In the first Place, the *Tower* was to be seiz'd, and a certain Officer expected to be upon the Guard that Day, who should be their Friend, and let in the Party who were to make themselves Masters of that Garrison. The *Royal-Exchange*, being in the Heart of the City, was to be the Head-Quarters of the General; and another Party was to plunder the *Bank*. So that to give us a Taste of the Views of these Conspirators, Spoil and Rapine were not, in the Execution of their Design, to have been accidental, proceeding from the Fury of Action, the common Excuse for such Outrages, but a premeditated avowed Part of the Measures concerted before-hand.

The Artillery was next to have been seiz'd, and a Stratagem is contrived to effect it: And to crown all, his Majesty himself was to be

be made their Priſoner: Horrid Reſolution! Colour'd indeed with the Name of Securing his Royal Perſon from the Inſults of the Mob; but how thin a Pretence this is, I need not ſpend Time to explain to you, ſince the Writer of the Scheme himſelf has called it but a Pretence.

The Scheme goes on, and the Conſpirators being ſenſible how much our future Hopes, as well as our preſent Happineſs depend on the Proteſtant Succeſſion in his Majeſty's Family, the next Step to be taken, is to get his Royal Highneſs the Prince into their Power———A Prince at *Richmond*, deſcribed under a Cant Name, but the Meaning of it is plain. When all this appears, how can the Counſel for the Priſoner object, that there is not ſufficient Foundation to accuſe their Client directly of compaſſing the Death of the King? Could this have ended in any thing elſe? Or can any one dream, that either of thoſe precious Lives, I have now mentioned, could have been preſerved in the Hands of ſuch Miſcreants?

Gentlemen, having obſerved thus much, in ſhort, upon the Nature of the Scheme, it will be proper to take Notice to you, that as this Paper, thus fully proved, is of itſelf a ſtrong Evidence, ſo it greatly corroborates and ſupports the Teſtimony of the two Witneſſes, as to every one of the Overt-Acts charged in the Indictment, and tallies with it throughout.

This is true as to the general Deſign, but appears moſt remarkably in ſome of the particular Facts. The Project laid down in the Scheme for ſeizing the *Tower* is exactly the ſame with what *Lynch* told you the Priſoner communicated to him whilſt they were viewing my Lord *Cadogan*'s Houſe: *That the Officer who ſhould be upon Duty there that Day might be their Friend, and favour the Deſign.* In like Manner, the Circumſtance of eight Serjeants being to have in Readineſs twenty-five Men a-piece, falls in with what *Plunkett*, the Serjeant ſwore, that he was to procure that Number of old Soldiers to engage in the Enterprize.

But there is one Obſervation ariſing from a Circumſtance of Time, which is extremely ſtrong in Confirmation of the Teſtimony of the Witneſſes, and ſhews manifeſtly, that the Account they give, muſt ariſe only from their Knowledge of the Truth of the Fact, and could not poſſibly be fram'd and modell'd to anſwer theſe Papers; it is this, that Mr. *Layer*, who was taken up on the Information of *Lynch* and *Plunkett*, was actually in the Cuſtody of a Meſſenger, and made his Eſcape on the 19th Day of *September* laſt; but theſe Papers, which thus fall in with, and ſupport the Facts they ſwear, were not ſeized, as the two Meſſengers acquaint you, till the 29th of that Month; which is near ten Days after.

Gentlemen, one would have thought there had been no Occaſion to go any farther-------

My Lord, I deſire that the Priſoner may not talk to the Jury, whilſt I am obſerving upon the Evidence.

L. C. J. Sir, you muſt not do it.

Priſoner. My Lord, I did not ſpeak to the Jury.

Mr. *Hungerford* offers to ſpeak.

L. C. J. I tell you, Mr. *Hungerford*, it is not right; Mr. *Layer* hath made his Obſervations to the Jury, and made his Nods, and ſometimes I have ſeen his Lips move.

Priſoner. You can't tell what I ſaid?

Mr. Sol. Gen. I ſaw you turn about to the Jury, and ſaw your Lips move at the ſame Time.

My Lord, I deſire he may ſtand up, and look towards the Court, which is his proper Poſture.

Gentlemen, I was ſaying, that after this Scheme had been produced, one would have thought the King's Counſel might ſafely have reſted it here. Can any body doubt of this Treaſon, and of the Priſoner's Part in it, when he himſelf hath thought fit to record the Conſpiracy with his own Hand? However, we did not leave it here: But in order to give you entire Satisfaction how deeply this gentleman was engaged, what a large ſhare he had taken upon him, and how dangerous and extenſive this Conſpiracy was, we read ſeveral other Papers. They conſiſt of Liſts of the Names of ſeveral Perſons, many of them Officers of the Guards, and of the Army; ſome of them general Liſts, others particular: For what Purpoſe theſe muſt have been made up or procured, by a Perſon engaged in ſuch a Deſign, is extremely plain.

My Lord, it hath been ſaid with great Juſtice, That this is not to be ſo underſtood, as to bring any Imputation on the Gentlemen named in theſe Liſts. I dare ſay, that by far the greater Number, if not all of them, are Perſons of the utmoſt Fidelity to his Majeſty, and Zeal for his Service. But Men engaged in ſuch Deſigns, who are plotting to overturn a Government, muſt weigh and calculate the Strength of that Government, as well as their own. They muſt know who is to be relied upon on one Side as well as the other, and conſider who are fit to be applied to, and who not; therefore they muſt take an Account of Perſons concerning whom they have no Hopes, as well as thoſe of whom they have Hopes. Thus it was in my Lord *Preſton*'s Caſe; he had got Liſts of Ships, and of the King's Officers and Troops: The meaning of it was well underſtood upon his Trial; the Court underſtood it, and the Jury underſtood it, that he had procured them, in order to the better Information of himſelf and his Accomplices in the Conduct of that Plot.

Gentlemen, in the next Place, ſeveral Letters were read to you, which were alſo found amongſt the Papers depoſited by the Priſoner with Mrs. *Maſon*. You will remember on this Occaſion, what Mrs. *Maſon* ſwore, that the Priſoner hath ſome time gone by the Name of *Fountaine*, and gave Directions to her, that if any Letters came directed to Mr. *Fountaine*, ſhe ſhould take them in, and deliver them to him. She tells you, a Letter did come directed to Mr. *Fountaine*; that ſhe delivered it to the Priſoner, who opened it, read it, and kept it as a Letter for him; which was an expreſs owning of that Name, and ſeveral of the Letters now produced are directed by the Name of *Fountaine*.

There was found, together with the Letters, a Cypher, that is, a Liſt of feigned Names for Perſons and Things, which has been in Part read; and in this Cypher the Cant-Expreſſions made uſe of in the Letters are contained, and the Perſons and Things ſignified by them decyphered in plain Words. Sir *William Ellis* (a Follower of the *Pretender*, with whom it appears the Priſoner had ſettled a Correſpondence) is there deſcribed by the Name of *Euſtace*; and the firſt Letter that was read, is ſubſcribed with that Name and directed to *James Fountaine*, Eſq. In that Letter Sir *William Ellis* tells him *he is entirely of his Opinion as to the Method of carrying on the Manufactory, and the procuring of good Workmen is the firſt Step to be made. Manufactory* wanted ſome Explanation, but it is fully cleared up by the Word---------*Workmen*, which follows. For look into the Cypher, and *Workmen* ſtands for *Soldiers*; ſo that the *Manufactory* muſt be ſuch as it was fit for *Soldiers* to work in. He goes on and adviſes him particularly *to get ſome of the ableſt of Mrs.* Barbara Smith's. *Barbara* in the Cypher means the *Army*; ſo the Advice amounts to this, That in order to raiſe a Rebellion, he ſhould ſeduce ſome of the ableſt Soldiers of the King's Army. A Counſel, which is now made very plain, the Priſoner has endeavoured punctually to follow. To encourage him in this, he tells him, *That it will be very agreeable to all concerned------particularly to Mr.* Atkins. Now, according to the Priſoner's own Explanation in this Cypher, *Atkins* is one of the feigned Names for the *Pretender*.

The next Letter is dated the 11th of *July* laſt, ſubſcribed *N. C.* and acknowledges the Receipt of a Letter dated the 8th of *May*, with another Letter incloſed, which the Writer ſays, *Was preſently delivered to Mr.* St. John, *who took it extreme kindly:* Look into the Cypher, and it appears that Mr. *St. John* is one of the fictitious Names for the *Pretender*; ſo that this Letter ſhews, that the Perſon to whom it was written, correſpond immediately with the *Pretender* himſelf. But it ſeems Mr. *St. John did not well underſtand what related to Mr.* Burford, *which* the Letter-Writer *hopes may be ſoon cleared by an Anſwer.* What this was which wanted Explanation, is in the Dark; but ſo much we know, that in the Priſoner's Cypher, *Burford* ſtands for the Earl of *Orrery*.

There is another Letter dated the 27th of *May*, in which the Writer tells Mr. *Layer*, that *their Friend had his Letter of the 22d of* March, *and took very kindly the Care he had taken of his little Concerns.* Who is meant by that Friend, whoſe Concerns were the Priſoner's Care, does not certainly appear; but it is very natural to think, it is the ſame Perſon before called *Atkins* and *St. John*. However, it ſeems their Friend was again at a Loſs about certain Names ------- *Burford*, ------- *Steel*, ------- *Digby*, ----- *the little Soldier*, and *Simons*, which were not in his *Rental*.

The Word *Rental* in Mr. *Layer*'s Cypher, is the Cant Term for a *Cypher*; and in that likewiſe are to be found the other Words, which his Friend did not then underſtand; particularly *Simons*, which is put there for the Lord *North* and *Grey*. But if that did not appear by the Cypher, yet the Deſcription which follows, would be enough to convince every Man in his private Judgment who was meant by it ------- *He is of the North, a Grey hair'd ancient Man*, Cant Expreſſions plainly, which take in both the Titles of that Noble Lord. The Letter-Writer adds, that *their Friend* (the ſame whoſe Concerns were taken Care of) *very well remembers this Perſon, and hath a very particular Eſteem and Value for him, and that he is* (in their Phraſe) *a very good Tenant, and a very honeſt Man.*

Gentlemen, Some of the Papers were read to you of a more extraordinary Nature than even theſe Letters; I mean the Notes ſigned *James R.* with the *Pretender*'s own Hand. Theſe are not only one Evidence of the Plot, but a Part of the Means by which it was to be effected; for they appear to be Receipts framed with Blanks, to be filled up with Sums of Money as Occaſion offered, with a Promiſe of Repayment with Intereſt. Theſe were ſome of the Ways and Means for raiſing Supplies out of the Pockets of ſuch People as ſhould be found weak and ſilly, as well as wicked enough, to advance Money on ſuch a Shadow of a Security, for ſo flagitious a Purpoſe. But they aſk us, Who proves the Subſcribtion to be the *Pretender*'s Hand? I anſwer, It is certain that is not material; but if it were, we have it ſufficiently from the Priſoner himſelf. The Account he hath thought fit to give of them, you have heard from Mr. *Delafaye*; that he had written to his Correſpondent Sir *William Ellis*, that if Sir *William* could ſend him over ſome blank Receipts under the King's own Hand (ſo he called the *Pretender*) he believed they might be made uſe of for the carrying on his Cauſe: That his Intention was to have tried his Friends, and to have raiſed Money on theſe Receipts. This ſhews the Priſoner received them as being ſigned with the *Pretender*'s own Hand; and ſhews likewiſe the Uſe intended to be made of them; and it appears he had the Confidence to juſtify himſelf in this Practice, by the like Method having been taken by King *Charles* the Second, juſt before his Reſtoration.

My Lord, this is the Subſtance of our Proof as to the Papers and the Obſervations which have occurred to me upon them; and I will preſume to ſay, with great Submiſſion to your Lordſhip's better Judgment and Obſervation, that upon this Evidence, taken together with the Teſtimony of the two Witneſſes, we might ſafely have truſted our Cauſe to your Lordſhip's Direction, and the Conſciences of the Jury. But we went farther ſtill, not becauſe we wanted it to convict the Priſoner, for we had already done ſufficient for that Purpoſe, but in order to give abundant Satisfaction, not only to the Gentlemen of the Jury, but to the whole World, of the Reality of this Conſpiracy in general, as well as of this Man's Part in it; that they may ſee and be convinced of the juſt Grounds there were for this Proſecution, and for the Treatment the Priſoner has met with. For this Reaſon it was, we called Mr. *Stanyan* and Mr. *Delafaye* to give an Account of his Confeſſion, upon his Examination before the Lords of the Committee of Council; and I apprehend, we were properly and agreeably to the Rules of Law, let into that Evidence. We have had the Judgment of the Court upon that Point, therefore I won't trouble your Lordſhip with any Authorities for it, but rely upon that as the beſt Authority.

Gentlemen,

Gentlemen, the Relation Mr. *Delafaye* and Mr. *Stanyan* gave, was, that the Prisoner declared to the Lords of the Council that he had been at *Reme* in the Year 1721, and staid there some Time, and had several Conferences with the Pretender in Person: that in one of those Conferences he asked for some Token or Credential, in order to give him a Credit with the Party when he returned to *England*; that it was not at first granted, but afterwards he put his Request into this Shape, that the Pretender's Wife (the Queen he called her) would be pleased to stand God-mother to the Prisoner's Child. Some Time was taken to consider of this Proposition, and then Word was brought by Colonel *Hay* to the Prisoner, that she would stand God-mother to the Child; and it was agreed, that the late Dutchess of *Ormond* should represent her. Afterwards the Pretender consented to be the God-father, but *Layer* was to procure some Person to be his Proxy.

What was then agreed upon was followed by the Fact. When the Prisoner returned Home, and the Child was to be christened, he applied to my Lord *Orrery* to represent the Pretender, and to the late Dutchess of *Ormond*, to represent the Princess *Sobieski*. The latter complied, but my Lord *Orrery* declined the Service; and thereupon the Prisoner made Application to my Lord *North* and *Grey*, who was pleased to accept it. The Child was christened at *Chelsea*, and my Lord *North* and *Grey* stood as Proxy for the Pretender, and the late Dutchess of *Ormond* for the Princess *Sobieski*; and the Prisoner said, they both were privy that they represented those Persons.

The Prisoner's Confession likewise verifies every material Circumstance of *Lynch*'s Evidence, as to what passed in the County of *Essex*. That he was at the *Green Man* with one *Lynch*, and there shewed him the Heads of a Declaration which he had drawn: that they went from thence to my Lord *North* and *Grey*'s, and there the Prisoner presented the Witness to his Lordship as a very honest Man, and a Person fit to be employed in seizing my Lord *Cadogan*; and afterwards he said, as a Person fit to be employed in an Insurrection. That the Prisoner and *Lynch* lay at my Lord's House that Night, dined with him at his own Table the next Day; and that the Healths of the Pretender, his Wife, and Child, were drank by them after Dinner, and the same Healths were drank, and (if I understood it right) begun by that noble Lord himself.

There was a farther Circumstance sworn by Mr. *Stanyan*, in which he is confirmed by Colonel *Huske*, that at the Time Mr. *Layer* was apprehended, a considerable Quantity of Arms, and about fifty Cartridges, made up with Ball, and fitted for the Use of Soldiers, were found in his House: and the Prisoner being asked, upon his Examination, what he did with them? he said, They were for his Use, in case there should happen any Disturbance in the Nation.

The Prisoner entered into an Examination of the Gunsmith, how he came by these Arms; but that is not at all material: in his house they were found, and he has confessed they were intended for his Use in Case of a Disturbance in the Nation. What Disturbance was there likely to happen, but from himself and his Accomplices?

Gentlemen, the Prisoner's Escape out of the Messenger's Custody is another strong Circumstance. In order to fly from Justice, he ventured to get out of a Window two Stories high, and had the Fortune to meet with a Sculler, which carried him cross the Water into *Southwark*. When the Witness first endeavoured to stop him, it appears he was in the utmost Concern; begged of him for God's Sake to let him go, pretending it was an Arrest; and then he pulled out of his Pocket a great many Guineas, and bid the Witness take what he pleased, so he would but let him go; but the Messenger pursued him pretty close, and he was retaken.

Gentlemen, this is a very material Piece of Evidence to shew the Guilt of the Prisoner. The Law of *England* supposeth Guilt from Flight, and though it was said, that any Man in Mr. *Layer*'s Condition would have done the same Thing, if he could; that can be true only in this Sense, that any Man in his Condition, as to the Consciousness of his own Guilt, would have done it; but an innocent Person would never have brought that Imputation upon himself, by endeavouring to escape.

This is the Substance of the whole Evidence which has been given for the King against the Prisoner at the Bar, as well as I can recollect it; and, Gentlemen, I persuade myself, when you have considered it seriously, you will be satisfied that it makes good every Part of the Indictment. But be that never so strong, the Prisoner ought to be heard against it, and have a full Opportunity of making his Defence: for if he hath a good Defence, either in Point of Law or Fact, to take off the Force of this Evidence, God forbid that he should suffer by it.

The Prisoner entered upon his Defence, and his Counsel were pleased to set out with making some Observations upon the Case, as we had left it.

My Lord, they first make an Objection in Point of Law, that the Treason, for which the Prisoner is indicted, is compassing the Death of the King, and one of the Overt-Acts laid is only a Consultation to levy War, which they insist is not an Overt-Act of that Species of Treason, nor indeed any Treason at all, because the Words of the Statute, 25 *Edw.* III. import a War actually levied; and for the Sense of those Words, which nobody ever doubted of, some ancient *French* Writers were quoted.

My Lord, I apprehend this Objection, if it be one, is rather to the Indictment than to the Evidence, of which they know they may properly take Advantage in Arrest of Judgment. But with great Submission to your Lordship, there is no Weight in it either Way. One cannot help being a little surprized to hear it mentioned, after that Point has been established by so many Resolutions, which at the same Time they tell us they are aware of; and in the very last Case of High-Treason, which was in this Court, I mean that of *Kerr*, *Dorrel*, and *Gordon*, it was solemnly determined by the unanimous Opinion of all the Judges, that a Consultation to levy War, in order to destroy or depose the King, is an Overt-Act of High-Treason, in compassing his Death. This was the received Doctrine before the Revolution, and it has been adhered to ever since; and though the Act of Reversal of my Lord *Russel*'s Attainder has been mentioned, yet if that were looked into, I dare say, no Declaration will be found in it, contrary to this Determination. But they go farther, and object, that here is no Overt-Act at all proved to be done in the County of *Essex*; and if so, then whatsoever Proof there may be of Facts done in *Middlesex*, that will go for nothing, and the Prisoner must be acquitted upon this Indictment. And, my Lord, so far I agree with them, that unless we have proved one Overt-Act at least to be done in *Essex*, we cannot maintain this Indictment.

In Support of this Objection they would have it, that the only Transaction in *Essex* is what passed at the *Green Man*, and the whole of that is reduced singly to the publishing the Declaration; and that, say they, is not legally proved, and if well-proved, yet it is no Overt-Act of Treason. As to the Proof, they object that the Paper itself is not produced, and Parole Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have given this an Answer already, by observing that the Prisoner took back the Paper, and kept it; so that the Writing itself being proved to be in the Custody of the Party, we were entitled within the ordinary Rule, to give Parole Evidence of the Contents. But, my Lord, this Declaration was a Part of the treasonable Consultation then had; and sure I am, it would be the finest Invention to secure certain Impunity to Plotters that ever was thought of, if, instead of discoursing, the Consultation shall be carried on by Papers handed from one to another, and nobody can be convicted, because the Paper is not to be found. As to that Part of their Objection, that it is no Overt-Act of Treason, one of the Gentlemen thought fit to treat it in a ludicrous Manner. 'Twas only *reading a Piece of Paper, suppose they had sung a Ballad.* That Gentleman will pardon me, if I say, those Expressions did not become this Occasion. An Accusation of High-Treason, which highly concerns the King and his Government, is an Affair of a serious Nature; and if he does but reflect upon the Contents of that Declaration, which the Witness related, he cannot think it a Matter to be sported with.

Mr. *Ketelbey* was pleased to say, that this could be no Overt-Act of Treason, because it was but publishing a Libel. But surely, that is very extraordinary. Publishing of a Paper may amount to one Crime or another, according to the Subject-Matter of that Paper; and can it be a Question at this Time of Day, whether the publishing a Declaration or a Book containing Arguments, or offering Rewards directly to stir up the King's Subjects to rise in Rebellion against him, be High-Treason? The treasonable Intent in this Case cannot be doubted, and 'tis as certain that the Publication is an Act; what is there then wanting to make it Treason? But, my Lord, this has also been adjudged, and therefore I won't argue it.

My Lord, I have said thus much about the Declaration for the sake of following the Gentlemen, who are Counsel for the Prisoner, in their Arguments; but after all, their Foundation, which is a Supposition that there are no other Overt-Acts proved in *Essex*, besides this of the Declaration, entirely fails them; for your Lordship will inform the Jury, that *Lynch* deposed that whilst they staid at the *Green Man* they did more than *talk a little Politics*, they consulted about the Project of an Insurrection, and the Prisoner there actually proposed to him (besides what was contained in the Paper) the Design of seizing the King's Person, which are two other Overt-Acts laid in the Indictment.

Upon this, another Objection was raised by Mr. *Ketelbey*, which, if it holds, will go to the whole; and that is, that we have but one Witness, *Lynch* alone, to the Facts in *Essex*; and this Indictment must fail, unless there are two Witnesses to some or other of the Overt-Acts in the County where the Indictment is laid.

But, my Lord, that is not now to be disputed. The Law is clearly settled, that on an Indictment for High-Treason, in compassing the King's Death, if several Overt-Acts are laid, and some of those Overt-Acts are proved by one Witness to be done in the County where the Party is indicted, and others of them are proved by another Witness to have been committed in a different County, that Evidence is sufficient to maintain the Indictment; they are two Witnesses of the same Species of Treason within the Meaning of the Law. So it was expresly resolved by all the Judges of the *King's-Bench*, in the Case of Sir *Henry Vane*, which is reported in *Kelynge* 15. and that has been since followed by a Current of Authorities; the Case of the Five Jesuits, the Opinion of the Judges delivered to the Lords upon the Trial of my Lord *Stafford*, 32 *Car.* II. and other Cases.

My Lord, as this is established by Authorities, so the Reason and Necessity of the Thing is strong, because otherwise treasonable Consultations might easily be carried on in such a Manner that nobody could be convicted of them. It would be but to lay the Scene upon the Confines of several Counties, and take Care not to consult with any two Persons in the same County; then there could not be two Witnesses, and all would be safe.

I have done with their Objections in Point of Law, and shall now endeavour to give some Answer to their Observations upon the Fact. And, Gentlemen, I think the whole of those Observations may be reduced to one Head, which is, that it is highly improbable, that what the Witnesses have sworn should be true. But upon that, before I give particular Answers to what they have offered, I beg leave to say in general, that though in a doubtful Case, where there is any Balancing in the Proof, the Improbability of the Thing is a Consideration of great Weight; yet where there is plain and positive Evidence on one Side, not weakened by any Counter-Evidence on the other Side, the Objection of Improbability can be of little Force.

But to consider this Improbability. They say, 'tis very strange, that Mr. *Layer* should be engaged in so dangerous an Undertaking with such Persons as have sworn themselves to be his Accomplices. To this, I say, 'tis always strange, that Men should venture to trust one another with such dangerous Secrets; but certain it is they often do; and as to the Witnesses in this Case, they are proved by the Prisoner's own Evidence, to be Persons with whom he thought fit to hold a Correspondence. How this great Confidence was at last created between them, has been accounted for by the Witnesses themselves, in a very natural and probable Way, of which I have already taken Notice.

Mr. *Ketelbey* insisted much upon the Improbability of *Plunkett*'s Evidence, in those Parts of it which concern *James Plunkett* and *Jeffreys* the Non-juring-Parson. That it is not credible that those two Men, whom *Plunkett* admits to be absolute Strangers to him, should at first Sight open themselves, with so great Freedom, to a Fellow of his Degree on a Subject of Treason. But that will receive this Answer: *James Plunkett* and *Jeffreys* were, as appears clearly from the Circumstances, in the Confidence of *Layer*. *Layer* had a Confidence in *Matthew Plunkett* the Witness, on the Recommendation of Major *Barnewell*, and by Means of *Layer*, both *James Plunkett* and *Jeffreys* might be induced to trust him. And thus the Chain of the Correspondence is made compleat.

Another Objection was made to *Plunkett*, that he had been guilty of a flat Contradiction in his Evidence. That he first swore, *Jeffreys* told him his Name upon his first coming to him, and afterwards that he did not know his Name till he received the Letter from him about the Prisoner's being come to Town. But that Observation was grounded upon a Mistake; for what *Plunkett* said was, that *Jeffreys* did tell him his Surname at first, but that he did not know his Christian Name till he received the Letter, which is very consistent.

But the Counsel for the Prisoner were well aware, that their Observations upon the Witnesses could be of little Effect, if the Paper called the Scheme found Credit; and therefore in the next Place they attacked that as being incredible; they represent it as *ridiculous and foolish—— The Scheme of a Madman, which could never have taken Place.*

Gentlemen, as to this Observation, the Scheme is indeed such an one, as I hope in God could never take Place any where, but in the Heads of those that framed it. But with great Submission, that is no Ojection to the Credibility of it, provided it be proved. For the Consideration is not, how it now appears to you or to me, who look upon it in a different Light, and on the contrary Principles from theirs; but the proper Consideration is, what the Conspirators themselves, with regard to the Views and Principles they went upon, might think of it. And, Gentlemen, in that Light examine it, go through the several Articles of it, compare them together, and you will find them consistent and coincident; all the Parts answering to one another. Every Quarter of the Town is provided for Dispositions made of certain Numbers of Men, and Care taken to preserve the Communication between them by Watch-Words agreed upon for that Purpose. These Things make it plain, that it was fully considered by those who drew it, and framed not at random, but upon Computation of a Force of which they thought themselves assured. And what, though it should be admitted to be extravagant, and not likely to succeed? If that should be given way to, as a certain Objection against a Plot's finding Credit after it is detected, I am afraid it would be a sure Method to make such Plots succeed, or at least to secure the Authors of them from Punishment. Do but intermix some absurd, extravagant Parts in the Plan of the Conspiracy, and then according to this Reasoning it is below Notice, and must be suffered to go on, or if a Stop be put to its Progress, yet it is incredible, and Nobody must be believed to be guilty of it.

But, Gentlemen, whatever Difficulties may be raised against particular Parts of the written Scheme, yet upon the Grounds and Suppositions which the Prisoner and his Accomplices proceeded on, their general Design might appear very feasible to themselves. For it is plain they had a Dependence, however ill-founded, upon Discontents raised in the Minds of the People, and on corrupting great Numbers of the Army, which would have diminished the Strength of the Government, and added to their own; and after they had made a Beginning here, it is proved that they expected Assistance from Abroad.

The next Thing to be considered, is the Testimony of the Prisoner's Witnesses: And, Gentlemen, you observe that they have scarce called any Witnesses to contradict the Facts contained in our Evidence, for the People of the House at the *Green Man* say nothing to the Purpose; but all their Evidence is applied to the Character and Credit of the Witnesses produced for the King.

As to that, I must observe to you, that it is not to be expected that Conspiracies and traitorous Machinations of this Kind should be proved by Persons of the best Characters. 'Tis necessary from the Nature of the Thing, that they should be proved by those who have been privy to them, and such Persons cannot possibly be of Characters absolutely unblemished. Therefore, to say that such Witnesses are not to be believed, is in effect to say, that no Evidence of a Plot is ever to be believed, which surely is an Argument that proves too much.

The first Witness they called on this Head was my Lord *North* and *Grey*. I am heartily sorry to see his Lordship here in his present Condition upon this Occasion; the rather, because it obliges me to observe, that here are Circumstances proved which affect him; I will carry it no farther, but some Circumstances are proved in this Cause which do affect him. But what is his Evidence? His Lordship was called to impeach the Character of *Lynch*; and however he may impeach his Character, I am sure he supports his Credit as to the Facts sworn by him. The Account his Lordship gave, was, that the Prisoner brought *Lynch* to his House at *Epping*, introduced *Lynch* to him, that he was never acquainted with him before; but upon Mr. *Layer*'s Introduction, received him civilly; and that *Lynch* came thither a second Time.

Now, these are the very Facts *Lynch* swore to, and consequently so far my Lord supports him. But then, as to his Character, his Lordship is pleased to say, that the first Time *Lynch* was there, he gave him a History of his Life; and in that gave so vile an Account of himself, that when he came a second Time, his Lordship would not give him a Lodging in his House. This, I think, was the Whole of my Lord's Testimony; and I can't help remarking upon it, that his Lordship gave no Account at all of any Business, which either the Prisoner or *Lynch* had with him, nor of any particular Occasion upon which the former introduced the latter to him. That was a Matter within his Lordship's own Knowledge.

There is another Thing which is little surprizing; and that is, that Mr. *Lynch* being an absolute Stranger, as is confessed, to this noble Lord, having the Honour to be introduced by a Friend to a Person of his great Quality, should have so little Regard to his Friend, or to the Opinion that Noble Lord was to conceive of him, as at the first Interview to take so odd a Way of being recommended, and give a most vile, infamous Character of himself. This is somewhat out of the ordinary Course; but you are told that so it was.

As to the other Witnesses to *Lynch*'s Credit, notwithstanding their Number, I apprehend their Evidence, when duly considered, will have little Weight. They were most of them going to enter into particular Facts; but the Court, agreeably to the constant Course of Evidence, overruled them in it; and that you, Gentlemen of the Jury, may be satisfied no Hardship was done by this to the Prisoner, I will mention the Reason of it. The Reason why particular Facts are not to be given in Evidence to impeach the Character of a Witness is, that if it were permitted, it would be impossible for that Witness, having no Notice of what will be sworn against him, to come prepared to give an Answer to it; and thus the Characters of Witnesses might be vilified, without having any Opportunity of being vindicated.

As to the Witnesses themselves, some of them say, they know no Ill of *Lynch*; many of them have known him but a little while; some of them give an Account of Declarations made since this Prosecution began, and how fairly they were drawn from him don't appear; and for some others of them, I submit it to the View and Consideration of the Jury, from their Habit, and the Appearance they made, whether they ought not themselves to have brought Witnesses to support their own Credit.

One appears plainly to be mistaken, and that is *Darcy*; he was asked how long he had known *Lynch?* And, I think, he said he knew him in *London* last Winter; now it appears that *Lynch* came into *England* but in *April* last.

Gentlemen, in the next Place they called Witnesses to *Plunkett*'s Credit, and there the same Thing befell them as in the Case of *Lynch*; for Major *Barnewell* their first Witness on that Head, though he is willing enough to give him an ill Character, yet he confirms several of the Facts which the other swore, and gives exactly the same Account of the Rescuing the Goods, and the Circumstances of *Plunkett*'s becoming acquainted with *Layer*, which he gave.

Mrs. *Child* likewise supports *Plunkett* as to the Circumstance of his carrying her Husband to the Prisoner's House, and the Prisoner's refusing to see him.

As to Mrs. *Mason*, they have taken a great deal of Pains to prove her a very ill Woman. What she is, or what those Persons are, whom they have called to her Credit, we can't tell; but so much appears even from their own Witnesses, that she is one with whom Mr. *Layer* thought fit to converse, and therefore 'tis not improbable that she might be intrusted by him: and it is from such only as he thought fit to converse with and entrust, that we can have any Discovery. The Prisoner has, indeed, brought two or three Women, who talk very fast, and seem very angry with her; and one of them tells the Jury in a Scolding Way, that *she don't care what she says or does*; another, that *she would take away any Man's Life for the Value of a Farthing*; and such kind of vehement Expressions. It is sufficient to say this, that People who talk thus loosely and passionately upon their Oaths, rather bring a Suspicion upon their own Credit, than upon the Credit of those against whom they swear.

But, Gentlemen, if they had brought a much stronger Evidence against the Characters of the King's Witnesses than they have done, what would it have availed them? Does this Case depend upon the Characters of these three Witnesses? It cannot be pretended that it does. Let their Characters be what they will, their Credit in this Cause is undeniably supported; supported as to several material Facts, by the Evidence for the Prisoner, but most strongly by the Papers; against which, I apprehend, nothing has been said to take off their Force. If those Papers are not genuine, how should the Notes signed with the Pretender's Hand, which the Prisoner received from Sir *William Ellis*, come to be amongst them? How should this Scheme, proved to be of Mr. *Layer*'s own Hand-Writing, have been there? The Prisoner, I must own, did call one Witness, *Bennet*, who was his Clerk, and is now his Sollicitor, to swear he believed the Scheme not to be the Prisoner's Hand. But it happened with *Bennet*, as it did with several others of their Witnesses, that though he is willing to carry his Belief as far as he can, that this is not his Master's Hand; yet he is forced to acknowledge another Matter, which still verifies the Papers contained in these Pacquets to be his Master's Papers: For being asked of whose Hand-Writing one of them was, he swears it was written by himself for the Prisoner, and by his Direction. This comes out of the Mouth of his own Witness, and confirms Mrs. *Mason*'s Testimony, that these Papers came from Mr. *Layer*.

But over and above all this, you have the Prisoner's own Confession, proved by two Gentlemen whose Credit is beyond all Dispute; and certainly the Prisoner must be allowed to be a good Witness against himself.

However, we shall not leave the Credit of our Witnesses singly upon these Observations, though I think we might safely do it; but shall endeavour to take off any ill Impressions their Evidence may have left upon you, and vindicate their Characters; and that, not by such Witnesses as some of those produced for the Prisoner were, who, I observed before, might stand in need of Witnesses to support their own Credit, but by Persons of undoubted Reputation, who will satisfy you that their general Character is such, that they very well deserve to be believed by you.

I have now done with repeating and observing upon the Evidence on both Sides; and I beg leave to insist upon it, that we have fully made good what was opened to you at the Beginning of this Cause, that in general there has been a horrid Conspiracy carried on, in order to overthrow our happy Constitution, and to deprive us of all the Blessings we enjoy and promise ourselves, under Establishment, in his Majesty and his Protestant Royal Family. The Part the Prisoner hath acted in this fully appears to you, and it appears to be a very considerable one.

It

It has been said, indeed, that he is but an inconsiderable Man, of no Rank or Fortune fit to sustain such an Undertaking. That Observation may be true; but since 'tis plain he did undertake it, that, joined with the other Circumstances proved in this Cause, serves only to demonstrate, that he was set on work, and supported by Persons of greater Abilities for such an Enterprize. And, Gentlemen, this is the most affecting Consideration of all.——But I would not, even in this Cause of your King and of your Country, say any thing to excite your Passions; I choose rather to appeal to your Judgments; and to those I submit the Strength and Consequence of the Evidence you have heard.

My Lord, I beg Pardon for having taken up so much of your Time; I have but one Thing to add, and that is, humbly to beg of your Lordship, for the Sake of the King, for the Sake of Myself, and for the Sake of the Prisoner at the Bar, that if I, through Mistake or Inadvertency, have omitted or misrepeated any thing, or laid a greater Weight upon any Part of the Evidence, than it will properly bear, your Lordship will be pleased to take Notice of it, and set it right, that this whole Case may come before the Jury in its true and just Light.

Mr. Serj. *Cheſh.* It is so late, that it will be inexcusable in me to trouble your Lordship with any thing by Way of Reply, especially since Mr. *Sollicitor-General* hath done it so fully. We shall only beg leave to call a few Witnesses to the Credit of the King's Witnesses.

Mr. *Ket.* I shall not take up much of your Lordship's Time, especially since your Lordship and the Court have been entertained so well and so long by Mr. *Sollicitor-General*, at least two Hours, as I have observed by my Watch; but 'twas impossible for me to think him tedious, though so late at Night, and especially since his Conclusion is exactly agreeable to the Conclusion of a late celebrated Sollicitor-General * on a like Occasion.

Mr. Att. Gen. We must beg leave to call some Witnesses we have, who will support the Credit of Mr. *Lynch* and *Matthew Plunkett*.

(Mr. *Vernon* sworn.)

Mr. Serj. *Cheſh.* Do you know Mr. *Lynch?*

Vernon. Yes.

Mr. Serj. *Cheſh.* What Account do you give of him?

Vernon. I keep a Tavern at the *Swan* and *Rummer* in *Finch-Lane*; this Gentleman hath frequented my House these four Months every Day, till he was in Custody; he hath been a very good Customer and paid me honestly.

Mr. Serj. *Cheſh.* Do you know the Prisoner at the Bar? Have you seen Mr. *Lynch* and him in Company together at your House?

Vernon. Yes; I have seen them twice in Company together at my House.

Mr. *Ket.* How long hath he been your Customer?

Vernon. From the Beginning about four Months.

Mr. *Ket.* About four Months! Did he spend his Money plentifully and freely?

Vernon. Yes; some Part of it I have had since he hath been in Custody.

Mr. *Ket.* How much was he in your Debt before he was in Custody?

Vernon. Ten or eleven Shillings.

Mr. *Ket.* How long had he been in Custody before he paid you?

Vernon. Not long.

Mr. *Hung.* He had the First Fruits of his being in Custody; he had some Money, and so he paid you your Reckoning.

Mr. Serj. *Peng.* We take it, that Mr. *Vernon* proves, that *Layer* and *Lynch* were conversant together.

(Capt. *Malthus* sworn.)

Mr. Serj. *Cheſh.* Do you know *Stephen Lynch?*

Malthus. Yes.

Mr. Serj. *Cheſh.* How long have you known him?

Malthus. About Nine Years. I knew him first, when he was a Merchant at the *Canaries*. I traded with him several Times; several Times I was consigned to him, and I have seen him at Home.

Mr. Serj. *Cheſh.* What Account can you give of his Behaviour?

Malthus. He always behav'd himself very well, I think.

Mr. Att. Gen. Do you think he would swear falsly to take away a Man's Life?

Malthus. No, I don't think he would.

Mr. *Ket.* How long is it since you have been acquainted with him?

Malthus. Nine or ten Years.

Mr. *Ket.* How long is it since your last Acquaintance?

Malthus. About four Months.

Mr. *Ket.* What Distance of Time did there use to be between your seeing of him?

Malthus. Two or three Years; every Time I came Home.

Mr. *Ket.* Doth he owe you any Money?

Malthus. No.

Mr. *Ket.* Would you trust him with Money?

Malthus. He never ask'd me.

Mr. *Ket.* Your Witness we may ask as to Particulars, Did you know his Aunt there at that Time?

Malthus. No.

Mr. *Ket.* Did you know any thing of his Behaviour?

Malthus. I never knew an ill Character of him in my Life.

(Capt. *Arnold* sworn.)

Mr. Serj. *Cheſh.* Do you know *Stephen Lynch?*

Arnold. Yes.

Mr. Serj. *Cheſh.* How long have you known him?

Arnold. 'Tis fourteen Years ago.

Mr. Serj. *Cheſh.* You have been acquainted with him since. What Account do you give of his Character? Do you think he would forswear himself?

Arnold. No.

Mr. Serj. *Cheſh.* Do you take him to be a Man of Credit?

Arnold. I never had any Dealings with him.

Mr. Serj. *Cheſh.* Would you have trusted him with five hundred Pounds?

Mr. *Ket.* Would you trust him with five Shillings?

Arnold. Five Shillings is a small Sum.

(Col. *Manning* sworn.)

Mr. Serj. *Cheſh.* Do you know *Matthew Plunkett?*

Col. *Manning.* Yes.

Mr. Serj. *Cheſh.* How long have you known him?

Col. *Manning.* Upwards of ten Years.

Mr. Serj. *Cheſh.* What Credit hath he? Do you take him to be an honest Man?

Col. *Manning.* He behaved himself well, and like an honest Man.

Mr. Serj. *Cheſh.* Do you think he would forswear himself?

Col. *Manning.* No; I believe not.

Prisoner. Have you and I had any Discourse about this very *Plunkett?* And did not you tell me he was a Scoundrel?

Col. *Manning.* No; I did not.

Mr. *Hung.* Did not you give him a bad Character to Mr. *Layer?*

Col. *Manning.* No, I did not.

Prisoner. Do you mean thus, that he behaved himself very well as a Soldier? What is that as to his Character in general?

Col. *Manning.* I know no ill Character of him while he was with me.

Mr. *Ket.* Did you never hear any thing in relation to Sir *Daniel Carroll*, that he made a wrong Demand upon him?

L. C. J. If he made an unjust Demand, will he therefore be perjur'd?

Mr. *Ket.* What have you heard about that Affair between Mr. *Plunkett* and Sir *Daniel Carroll?*

Col. *Manning.* I have heard Mr. *Layer* say——

Mr. *Ket.* Did you never hear any Body else speak of him? I ask you about making this Demand upon Sir *Daniel Carroll*, what you know of it?

L. C. J. I never heard any thing like it.

Mr. *Ket.* My Lord, we apprehend we may cross-examine, as to Particulars, a Person whom the other Side produces as a Witness to Character.

Prisoner. Did not you afterwards, in Discourse with Mr. *White*, mention it again with relation to this of Sir *Daniel Carroll?*

Col. *Manning.* I deny it.

Prisoner. Did you desire me not to examine you?

Col. *Manning.* No, I told you I had nothing to say in relation to *Plunkett*'s Character.

Mr. *Hung.* Let him alone, I would not ask him any more Questions.

Col. *Manning.* Why let him alone?

Mr. *Hung.* I would not have him examine you any further.

Col. *Manning.* You are very civil.

Mr. *Hung.* So I am, to give you no further Trouble.

(Major *Hamel* sworn.)

Mr. Serj. *Cheſh.* Do you know *Matthew Plunkett?*

Maj. *Hamel.* I have known him these seventeen Years.

Mr. Serj. *Cheſh.* What Character hath he?

Maj. *Hamel.* He was then a Drummer in the Regiment, and always did his Duty well; I never heard him complained of; he always had a good Character; he went from *Ireland* to *Spain*.

Mr. *Hung.* You speak to his military Conduct?

Maj. *Hamel.* I know of no other.

Mr. Serj. *Cheſh.* You say he always had a good Character?

Maj. *Hamel.* Yes, he always had.

(Captain *Crosby* sworn.)

Mr. Serj. *Cheſh.* Do you know Serjeant *Plunkett?*

Cap. *Crosby.* Yes.

Mr. Serj. *Cheſh.* How long have you known him?

Cap. *Crosby.* Three Years.

Mr. Serj. *Cheſh.* What Character had he for that Time?

Cap. *Crosby.* Whilst I knew him, he bore a good Character.

Mr. Serj. *Cheſh.* Did you hear any Ill of him?

Cap. *Crosby.* Not during the Time that I knew him.

Mr. *Ket.* Where was the Regiment at that Time?

Cap. *Crosby.* It was in Town about half a Year ago.

Mr. *Ket.* Were you not of the same Regiment?

Cap. *Crosby.* We were.

Mr. Serj. *Cheſh.* We won't give your Lordship any further Trouble.

Mr. *Ket.* And we apprehend we have no Occasion to give your Lordship any further Trouble by way of Reply.

Mr. Att. Gen. My Lord, as to my Lord *North* and *Grey*, we can prove he attempted to get away, and was endeavouring to go to *France*, and was taken in the *Isle of Wight*; and that when the Prisoner was seized, he sent a Messenger to give my Lord *North* Notice of it. This last was confessed on his Examination, and we can prove it.

Mr. *Ket.* I must submit it to your Lordship, whether his Examination can be admitted as Testimony, so as to affect a third Person.

L. C. J. It is not worth disputing.

Gentlemen of the Jury, This is an Indictment against Mr. *Layer*, the Prisoner at the Bar, for High-Treason. The Treason with which he stands charged, is the compassing and imagining the Death of the King; The Overt-Acts that are laid in this Indictment, as Evidence of this Treason, are several; first of all, that he did meet and consult, advise and agree, to levy War against the King; the second is, that he did publish a seditious and traitorous Writing, exciting and encouraging the People to an Insurrection, and offering Rewards for that Purpose; the third is, that he did engage in a Design to set the Pretender on the Throne; the fourth, that he listed Soldiers against the King; and the last, that he did consult and agree, to take, seize, imprison the King: These are the several Overt-Acts that are laid in the Indictment of the Treason, that is, the compassing and imagining the Death of the King. Gentlemen, I must tell you, before I go on to lay before you, and observe on

* Mr *Finch*, at Col. *Sidney*'s Trial.

the Evidence, what the Law is; and I muſt tell you, that the Law is undoubtedly ſo, if a Man is charged with Treaſon, in compaſſing and imagining the Death of the King, there muſt be an Overt-Act of that Treaſon proved in the County where he is indicted; and in the next Place, if there be ſuch Overt-Act in that County, he may be charged with any Overt-Act of the ſame Species of Treaſon in any other County whatſoever. This hath been frequently reſolved and agreed, and was hardly ever made a Queſtion. I obſerved in the Hands of one of the Counſel, and he took Notice of it, that he had the Trial of Sir *William Perkins*; he could not but obſerve there laid down by my Lord Chief Juſtice *Holt*, if Evidence be given of Treaſon in one County where the Indictment is laid, he may be charged with any Overt-Acts of the ſame Species of Treaſon in any other County whatſoever. The Law being ſo, I will, in the beſt manner I can, ſet out the Matters that have been given in Evidence, on this long Evidence, in the cleareſt Light that I can ſtate the Examination, the Objections that have been made, and the Obſervations that are proper to be made upon it.

To maintain this Indictment, the King's Counſel have produced ſeveral Witneſſes. The firſt Witneſs is Mr. *Lynch*; the ſecond Witneſs is Mr. *Plunkett*; all the other Evidence hath been offered to confirm the Evidence given by theſe two Witneſſes. As to Mr. *Lynch*, he tells you how he came to the Acquaintance of Mr. *Layer*; that he was an intimate Acquaintance of Dr. *Murphey*, and Dr. *Murphey* recommended him to Mr. *Layer*; being ſo recommended, he had ſeveral Meetings with Mr. *Layer* in *Middleſex* at the *Griffin-Tavern*, and in *Holbourn* at the *Caſtle-Tavern*, and I think at *Southampton-Buildings*.

He tells you, at theſe ſeveral Meetings it was declared, that there was to be a Riſing, and it was thought neceſſary, to make this Riſing the more effectual, that my Lord *Cadogan*, the Commander in Chief of the King's Forces ſhould be ſeized.

Mr. *Layer* ſaid to Mr. *Lynch*, he was looked upon as a Perſon proper for the Undertaking, and he declared that he was willing; and ſaid, if that was the Opinion of thoſe concerned in the Affair, he would undertake to do it: After this, they went to my Lord *Cadogan*'s Houſe, to view the Houſe, and the ſeveral Avenues about the Houſe; and after they had taken this View, *Lynch* declares his Opinion, that it was feaſible, and he would undertake to do it.

After he had given you an Account of what happened at the ſeveral Meetings in *Middleſex*, then he comes to what was done in the County of *Eſſex*: He tells you Mr. *Layer* came to him, and aſked him whether he would ride out with him to take the Air? He agreed to it; they both went out of Town together; he ſaid, that as they were going along, Mr. *Layer* told him his Intention was to go to my Lord *North* and *Grey*'s; he ſays, they went forward with that Intention, but before they came to the *Green-Man* at *Layton-Stone*, they thought it would be too late before they got to my Lord *North* and *Grey*'s for Dinner, therefore they thought proper to halt at the *Green-Man*, and take a Refreſhment there. He tells you, they did ſtop there at the *Green-Man*, and at that Time Mr. *Layer* did repeat the Diſcourſe of the Riſing that was intended to be; he ſaid, my Lord *Townſhend*, and my Lord *Carteret* and Mr. *Walpole* were to be ſeized, a Party were to be ſent to ſeize the King; and that a Scheme was laid for ſeizing my Lord *Cadogan*, and that it was propoſed as a proper Time to put this in Execution at the Breaking up of the Camp. He ſaid, when he was mentioned, at firſt he made ſome little doubt, whether that was a proper Opportunity; with that Mr. *Layer* told him, Pray conſider with yourſelf, if you do not think this practicable, will you propoſe ſomething elſe, and we will alter our Scheme?

He ſaith, at this ſame Time Mr. *Layer* pulled out of his Pocket a Declaration, purporting an Exhortation and Excitation for People to riſe and take up Arms againſt the King, and Rewards offered for that Purpoſe.

Afterwards they went to my Lord *North* and *Grey*'s, and that Mr. *Layer* introduced him to his Lordſhip, as his Friend; that they were civilly and kindly received, ſupped there, lay there that Night, and dined there the Day after. This is the Evidence given with relation to what was done in the County of *Eſſex*; and if this Relation be true, no doubt there is a good Overt-Act proved upon him in the County of *Eſſex*, and conſequently the Indictment is well laid in *Eſſex*, and then the Evidence in the County of *Middleſex* will be a proper Evidence againſt the Priſoner. But as to this Evidence of Mr. *Lynch*, they ſay for the Priſoner, Mr. *Lynch* is not to be believed, that he is a vile, profligate Wretch, and no Credit is to be given to him, though upon his Oath; and it muſt be admitted the Evidence that hath been given for that Purpoſe, by a great Number of Witneſſes, will be proper for your Conſideration: But you will conſider, in a Caſe of this Nature, if you are to expect Witneſſes without Exception, it is impoſſible to have any Evidence to convict a Man of High-Treaſon; nobody will engage in ſuch an Affair that is of a nice Credit and Reputation, and therefore it is not to be expected; for if it be, it is and will be impoſſible to convict any Perſon of Treaſon.

But then you will conſider, although Credit is not entirely to be given to a Man of ill Repute, yet if he is ſupported in his Evidence that he gives by other Evidences, you will conſider whether that will not remove all Sorts of Objections as to his Character.

As to the Overt-Act of publiſhing the Declaration, that is ſupported beyond Contradiction; for it appears in his Examination before the Lords of the Council, when he is aſked, whether he ever ſaw the Declaration? He ſays, he never ſaw any but one, and that was drawn by himſelf.

Priſoner. My Lord, what Mr. *Stanyan* ſays, I believe, he did not ſay that I confeſſed that it was drawn by me.

L. C. J. You muſt not interrupt me while I am directing the Jury. You have behaved yourſelf intemperately hitherto, but you muſt not interrupt me, I can't bear it. The Subſtance of what Mr. *Stanyan* ſaid is, that when it was demanded of you, whether you had ſeen the Declaration, you ſaid, you had ſeen none but a rough Draught that was drawn by yourſelf.

Priſoner. I beg your Lordſhip's Pardon, Mr. *Stanyan* is here in Court.

L. C. J. Is he in Court? Let him be aſked the Queſtion again.

Mr. *Stanyan.* My Lord, I believe I did ſay, that Mr. *Layer* did confeſs, that it was the Heads of a Declaration which he had drawn himſelf.

L. C. J. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the Matter, he doth at the ſame Time confeſs, That that was the Declaration which he had ſhewn to Mr. *Lynch* at the *Green-Man*, on the Way as they were going to my Lord *North* and *Grey*'s. So that Part of this Evidence is ſupported by Mr. *Layer*'s own Confeſſion. As to the other Part, that he did conſult and agree to levy War, conſider, that he confeſſes before the Council, that he did go to the *Green-Man*, and there ſhewed the Declaration to Mr. *Lynch*; whether that doth not give Credit to what the other ſaith, That he went to the *Green-Man*, and that there they talked of the Inſurrection, and the levying of War; and then went to my Lord *North* and *Grey*'s, with this, that he recommended Mr. *Lynch* to my Lord *North* and *Grey* as a fit Perſon to ſeize my Lord *Cadogan*, and to be concerned in the Inſurrection.

Gentlemen, This is not the only Matter by which he is ſupported in this Evidence, that the Priſoner deſigned an Inſurrection, and to levy War againſt the King; but he confeſſed before the Council, that he went to *Rome*, had two ſeveral Conferences with the *Pretender*, and was very kindly received by him: He ſaid he aſked the *Pretender*, if he would give him any Credentials that might recommend him to his Friends in *England*; that was objected to, and not complied with; but then he aſked a particular Favour, that the *Pretender*'s Spouſe would ſtand God-mother to his Child; that is granted; and the *Pretender* himſelf is willing to ſtand God-father.

Afterwards, when he returns into *England*, he conſidered of proper Proxies to repreſent the *Pretender* and his Spouſe; and aſking my Lord *Orrery*, he refuſed him; then he aſked my Lord *North* and *Grey*, who conſented: My Lord *North* and *Grey* ſtood as Proxy for the *Pretender*, and the Dutcheſs of *Ormond* as Proxy for the *Pretender*'s Wife.

He tells you, at this Time when he was at *Rome*, he had told Sir *William Ellis*, it would be of great Service if he could have a Fund of Credit to raiſe Money with. How muſt that be? Why, ſaith he, let me have blank Receipts ſigned by the *Pretender* himſelf; and accordingly he had.

This, he tells you, is what happened at that Time. Now the Evidence given by Mr. *Lynch*, being of an Inſurrection in Favour and for the Service of the *Pretender*, when Mr. *Layer* owns he had two Conferences with the *Pretender*, and was receiv'd ſo kindly by him, and had ſuch particular Marks of his Favour; conſider whether this doth not ſupport the Evidence which is given by Mr. *Lynch*.

The next Evidence is Mr. *Plunkett*; he tells you how he came recommended to Mr. *Layer* by one Major *Barnewell*, on this Occaſion. He tells you, Mr. *Layer*'s Goods were in Execution, and he was employed by Major *Barnewell* to reſcue them; accordingly he went and fetched a Couple of Soldiers, got into the Houſe, drove out the Officers, and reſcued the Goods. By this it appears, that Mr. *Plunkett* was a bold, daring Man, fit to be employed on ſuch an Occaſion, and they aſſign that as a Reaſon which anſwers the Objection made. Saith Mr. *Layer*, How came it to paſs, that when I had never ſeen this Man, that I of a ſudden ſhould have ſuch a Confidence as to truſt him in an Affair of this Nature? In anſwer to that, it is ſaid, he had done him a ſingular Service before, he had done a bold Act, he had got ſome Grenadiers and reſcued his Goods when they were taken in Execution; and likewiſe *James Plunkett* had given a Character of him, that he looked upon him as an honeſt Man, and therefore recommended him to Mr. *Layer*.

Then he tells you, that Mr. *Layer* ſaid they wanted a Man to ſerve on this Occaſion; that *James Plunkett* talked of Officers, but we don't want Officers ſo much as we do brave Serjeants, old Soldiers, ſuch as will be ready and qualified to ſupport the Mob, and to deſcipline and head them; theſe are the Men we want, can you get ſuch as theſe? Such as you are, that will be able to diſcipline the Mob and put them in Order. I told him (ſays the Witneſs *Plunkett*) I would do my Endeavours, and accordingly I adviſed him; that I had procured twenty-five ready for the Service; he deſired to have Liſts of their Names, and the Places of their Abode, that ſo he might know where to ſend to them upon Occaſion.

Now the Objection to this Evidence being only, How comes it to paſs that a Man ſhould be truſted with ſuch a Secret, and this on the firſt Sight or Acquaintance? Why, ſaith he, I had been employed before, and had ſhewn myſelf faithful on other Occaſions, and did ſerve him in reſcuing his Goods, when they were ſeized upon in Execution, and *James Plunkett* recommended me. This is the Evidence of *Matthew Plunkett*; and if *Plunkett* ſwears true, if he was deſired by Mr. *Layer* to procure and liſt Men for the Service of the *Pretender*, and he ſays and declares he did do it, then, if this Evidence is to be credited, the Priſoner at the Bar is guilty of the Treaſon wherewith he ſtands charged: But ſtill they rely upon it, and hope you will not give Credit to the Witneſſes. You hear what hath been anſwered by the Counſel for the King, and I obſerve to you now, that though here was ſuch a Charge againſt the Witneſſes, the King's Counſel have produced ſeveral Perſons that had good Aſpects, and ſeemed to be Men of Reputation, who ſay, they know them, and believe them to be Men of Reputation.

Then, Gentlemen, the next Thing inſiſted on is, that the Evidence given by *Lynch* and *Plunkett* is ſupported by the Papers that were ſeized in Mrs. *Maſon*'s Cuſtody. Conſider how that Matter ſtands; Mrs. *Maſon* tells you, that Mr. *Layer* brought two Pacquets of Papers ſealed up to her, and told her, they were Love-Letters; ſhe ſays, ſhe was deſired to keep them by the Priſoner; and accordingly ſhe did keep them for him; and you have it afterwards from the Witneſſes, who have been produced, and againſt whoſe Credit there is no Exception, that having a Warrant againſt Mrs. *Cook* and Mrs. *Maſon*, they came to Mrs. *Cook*'s Houſe to ſearch for Papers, and in Mrs. *Maſon*'s Room there was a Trunk which was locked; they ordered it to be opened, which Mrs. *Maſon* did, and they took out of the Trunk two Bundles of Papers ſealed

up as you have heard; they tell you the Bundles of Papers were opened, that they set their Marks upon each Paper; and one of them did not immediately set his Mark; but afterwards 'tis proved that he kept them from the Time they were delivered to him till the other came back again, and then upon his Return he delivered them back again to him; then he set his Mark upon them, both set their Marks upon them, and therefore they can swear that they are the same Papers that were taken out of Mrs. *Mason*'s Trunk: Then, if Mrs. *Mason* swears true, they are the Papers of Mr. *Layer*, which were delivered to her by him; and so tracing it from Hand to Hand, these are the same Papers that were found in Mrs. *Mason*'s Custody. Mrs. *Mason* swears the same; and she also set her Mark upon them.

But, saith Mr. *Layer*, there is no Credit to be given to Mrs. *Mason*, she is an ill Woman, an infamous Woman, therefore her Evidence is not to be regarded.

Gentlemen, consider how this Matter stands; in one of these Pacquets of Papers were found the *Pretender*'s Receipts, which Mr. *Layer* before the Council said, he had desired Sir *William Ellis* to procure for him from the *Pretender*, and which he had accordingly procured, and that he had received them; and these Receipts being in the Pacquet found upon Mrs. *Mason*, how came they there, if they had not been delivered to her by Mr. *Layer?* Therefore these Receipts being in this Pacquet, plainly demonstrate that these Papers are the Papers of Mr. *Layer*, and were by him delivered to Mrs. *Mason:* And if they were his Papers, these Papers, and what is contained in them, will be a strong Evidence against Mr. *Layer*. Notwithstanding all this, says Mr. *Layer*, these were never my Papers; it is Forgery or Perjury. Whether or no you will believe these Papers to be Mr. *Layer*'s, when it appears those Receipts were found amongst them; besides that, here is a Paper amongst them, that the Witness that is produced by Mr. *Layer*, one that was his Clerk, swears that it is his own Hand-Writing; how came that there, if this be not the Bundle and Pacquet of Mr. *Layer?* And on this they turn the Strength of their Case.

If this be so, consider, first here is a Scheme; whose Hand-Writing it is, here hath been Variety of Evidence as to that. It is insisted on by the King's Counsel that the Scheme is of Mr. *Layer*'s Hand-Writing; and if so, this is a stronger Evidence against Mr. *Layer*, than if the Papers had been only found in his Custody. How stands that? Here is one that was Mr. *Layer*'s Master formerly, who saith, he verily believes this to be the Hand-Writing of Mr. *Layer*; if that be so, then all is well, and it ought to be read, not only as a Paper that was in his Possession, but as a Paper that was writ by him: But they dispute, and say, 'tis not his Hand-writing; they ask this Witness how long it is since the Prisoner lived with him as his Clerk; about fourteen or fifteen Years ago, says the Witness: A Man's Hand, say they, may be changed in that Time: But, saith the Witness, I verily believe it to be his Hand-Writing, for I have within these five Years received several Letters from him about Business, there being a Correspondence between him and me, I being his Agent in Town, and these Letters are of the same Character he used fourteen or fifteen Years ago, therefore I believe it to be his Hand-Writing.

But, say the Counsel for the King, we won't only prove this by these Gentlemen, but the Prisoner himself hath confest it. Well, how stands that? He confest, when he was askt at the Council-Table, what he knew of Arms that were provided? He said, he knew of none. To which when it was said, how came you to mention it in this Scheme of your own Hand-Writing; there you take Notice of Arms that were provided? Doth Mr. *Layer* disown it? No, saith he, 'tis a Mistake, I should have writ, which *should be* provided.

Gentlemen, take this together, consider with yourselves, what the Import of it is. He saith, when he is asked about these Arms, I should have writ, which *should be* provided. Whether this doth not amount to a Confession of this Matter, must be left to your Consideration, as a confirming Evidence of what the other Witnesses swear. But, saith Mr. *Layer*, let me call a Witness to prove that it is not my Hand-Writing: He calls a Gentleman, and he says it is not his Hand-Writing; he calls his Clerk, and his Clerk saith it is not his Master's Hand. Here are two Witnesses: Then there is an additional Witness on the other Side, and that is, his own Confession. Whether it amounts to a Confession must be left to your Consideration; but if this Scheme be not of his own Hand-Writing, it was a Scheme which he had in his Custody, and that alone had been a considerable Evidence against him. How came he by this Scheme? What had he to do with it?

The Scheme hath been read to you, which tells you the several Methods to be proceeded in. In the first Place, the *Tower* is to be seized, an Officer is to mount the Guard that would be in their Interest, and at nine a-Clock at Night they are to seize the *Tower:* Then they are to go to the *Bank*, and set a Guard there, after they have taken out Money from thence: After this he tells you of several other Guards that are to be set in other Places, and then a Party is to be sent to seize the King; then he tells you, another Party is to be sent over the Water to seize his Royal Highness the Prince; he calls him by a Cant Name, but 'tis plain he is meant.

If this be all his own Hand-Writing, it is a strong Evidence that he was in this Conspiracy; but if he had only a Scheme of this Nature in his Custody, that will be an Evidence against him, tho' he did not write it.

Now, whether every Body is not satisfied that these Bundles were his, when in these Bundles these Receipts signed by the *Pretender* himself, and the Paper that was of his Clerk's own Hand-Writing, were found; it goes a great Way to confirm the Evidence of Mrs. *Mason*, who swears the Bundles to be his Papers.

These are Matters of Evidence, and must be left to your Consideration.

Then they go on and examine the treasonable Papers, the Notes, the Lists, *&c.*

To raise an Insurrection Money would be wanting; saith Mr. *Layer*, I told Sir *William Ellis* this. Upon that there are Receipts signed by the *Pretender*, by which the Prisoner said they might take up Money on that Occasion. Sir *William Ellis* agrees with me, saith Mr. *Layer*, and accordingly sends me Receipts, and I had them, and they were found in this Bundle of Papers; and how came they there, if they were not Mr. *Layer*'s Papers?

Consider the other Papers; the Design being for an Insurrection, they are to engage the Guards in their Service; you see that several Papers are found in these Bundles that contain an Account of the Number of Men that were in such a Troop of Guards, the Number in such a Troop of Grenadiers, and tells you what the Numbers were; what was the meaning of all this? How came this Gentleman to be so sollicitous in examining into the Number of Guards and Officers, but only to get a true State of this Matter, that he might know who were the Persons that were most likely to be corrupted, and what a Number of Enemies he might meet with on this Occasion?

These are very strong Circumstances against Mr. *Layer*, unless Mr. *Layer* can give any Account why he kept these Papers so carefully.

To go a little back, as to the Business of Mr. *Lynch*; it appears he did not know Mr. *Lynch* before this Affair was set on Foot; he rode out with him, goes to the *Green Man* with him, there they talked over this Affair, there he publishes that traitorous Declaration, and afterwards presented *Lynch* to my Lord *North* and *Grey*. How came they so intimately acquainted unless on this Occasion?

Then, Gentlemen, they go on and tell you, when this Gentleman was committed into the Custody of a Messenger he made his Escape, and this we look upon as an Evidence of Guilt, not a conclusive Evidence; a Man may escape tho' he is innocent, yet 'tis an Evidence that is material to be left to the Jury, and is proper for their Consideration; he is pursued and retaken; when he is retaken he is under great Consternation; he begs for the Lord's Sake they would let him go, and said it was an Arrest; he took out of his Pocket a great Number of Guineas, and said, They should have what Number they pleased, if they would let him go; this is a material Circumstance, and doth shew that this Gentleman was more than ordinary concerned in this Affair.

You will lay these Things together, and consider how far they satisfy you, that this Gentleman is guilty of the Treason.

Then they give you an Account how he did confess before the Lords of the Council every Thing that hath been sworn by the Witnesses: That he went to the *Green Man* in your County, and there consulted and agreed to carry on this Affair; that he did take out and read the Declaration; this is a strong Evidence, especially if compared with what he confessed, that he had Two Conferences with the *Pretender* at *Rome*, was kindly received by him, and had particular Marks of his Favour: He is desired to stand God-father, and his Wife to stand God-mother to his Child; and accordingly they stood; he desires my Lord *North* and *Grey* to stand as Proxy for the *Pretender*, and the Duchess of *Ormond* to be Proxy for the *Pretender*'s Spouse; and they were Proxies at the Christning of his Child. These are the Circumstances that have been laid before you on Behalf of the King against the Prisoner at the Bar. But 'tis said on the Behalf of the Prisoner, that he stands at the Bar upon his Life and Death, which will depend upon your Verdict.

I think you ought to consider of that, and that I hope will induce you to consider and weigh well the Evidence, and not to find the Prisoner Guilty, unless you are satisfied he is so.

It is true, here is the Life of a Man in the Case; but then you must consider likewise the Misery and Desolation, the Blood and Confusion, that must have happened if this had taken Effect, and put one against the other; and I believe that Consideration, which is on the Behalf of the King, will be much the strongest.

These Things are proper to be considered, in Order to prepare you to be careful in examining and weighing the Evidence well; but in giving your Verdict I hope you will lay them all aside; you will consider the Weight of the Evidence on either Side, and the Credit of the two Witnesses, and how far they are supported by a Writing under his own Hand, a Confession at the Council-Table; consider how far that will support their Evidence, though not Men of the clearest Reputation.

A Cypher hath been taken Notice of, by which were explained several Names that such and such Persons and Things were to be called by; there was the Name of *Atkins*, which was to signify the *Pretender*; there was another Name for the *Pretender*, and that was *St. John*; and conformable to these Names they have read several Letters, by which it appears that a treasonable Correspondence was carried on by Mr. *Layer*. This is the Circumstance of the Evidence that hath been laid before you. Consider this Evidence, and the Objections that have been made to it, and how far those Objections have been answered.

Discharge the Part of Honest Men, consider and weigh well the Evidence.

Upon the whole Matter, if you do believe that there was an Overt-Act of Treason in the County of *Essex*, and that it was proved by Mr. *Lynch*, and confirmed by the Confession of Mr. *Layer*; and if there be any Overt-Act in another County, as his listing or employing any to list or engage Men in the Service of the *Pretender*, then you will find the Prisoner guilty.

If you are not satisfied these Things are true, then you'll acquit him.

The Jury withdrew for about half an Hour, to consider of their Verdict, and when they returned into Court, were called over by the Clerk of the Crown, and answered to their Names.

Cl. of the Cr. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

Cl. of the Cr. Who shall say for you?—*Jury.* Our Foreman.

Cl. of the Cr. Christopher Layer, hold up your Hand. (*Which he did.*) You of the Jury look upon the Prisoner.

How say you? Is *Christopher Layer* guilty of High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands and Tenements had he at the Time of the said High-Treason committed, or at any Time since, to your Knowledge?

Jury. None.

Cl. of the Cr. Hearken to your Verdict as the Court has recorded it. You say that *Christopher Layer* is guilty of the High-Treason whereof he stands indicted; and you say he had no Goods nor Chattels, Lands nor Tenements at the Time of the said High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Mr. Att. Gen. We pray a Rule may be made to bring up the Prisoner to receive Sentence.

Mr. Just. *Eyre.* He must have four Days to move in Arrest of Judgment. Let there be a Rule to bring him again upon *Thursday* next.

Then the Prisoner was remanded back to the *Tower.*

Die Martis 27 *die* Novembris, 1722.

Christopher Layer, *Esq. was brought to the Bar of the Court of* King's-Bench, *in order to receive Sentence.*

Mr. Att. Gen. MY Lord, the Prisoner at the Bar stands convicted of High-Treason; I pray your Lordship's Judgment against him for the King.

Cl. of the Cr. Christopher Layer, hold up thy Hand. (*Which he did.*) Thou hast been indicted for High-Treason, for compassing and imagining the Death of the King, and thereupon been arraigned; and thereunto hast pleaded not Guilty, and for thy Trial put thyself upon God and thy Country, which Country hath found thee Guilty; what can'st thou now say for thyself why the Court should not give Judgment of Death against thee according to Law?

Mr. *Hungerford.* Is it your Lordship's Pleasure to give any Directions touching the Matter of the Prisoner's being in Irons? I hope your Lordship will order them to be taken off, at least during his Attendance here.

L. C. J. I don't know, there is none of the Cases that have been, which go further than during the Time of his Trial; his Trial is over, if he hath any thing to offer to the Court, and thinks he may not be able to do it so well while he is under these Irons, I would recommend it to Mr. *Attorney*, not to make a precedent of it, that his Irons may be taken off.

Prisoner. Yes, my Lord, I have a great deal to say, which I shall offer in Arrest of Judgment.

Mr. *Hungerford.* He hath complained since he hath been here, that he is in great Pain, in the Position he stands with his Irons.

L. C. J. Come, Brother *Pengelly*, have you any thing to object against his Irons being taken off, or do you consent to it?

Mr. Serj. *Peng.* My Lord, we don't oppose it.

(*Then the Irons were taken off.*)

Mr. Serj. *Peng.* My Lord, the Prisoner at the Bar, Mr. *Layer*, after a long and a fair Trial, hath been found guilty of High-Treason; and on Behalf of the King, we pray the Judgment of the Court against the Prisoner.

Mr. *Hungerford.* By your Lordship's Indulgence, I am Counsel for the Prisoner at the Bar; I have, and I hope shall continue to do him what Service I can: The Prisoner's Life is at Stake, and I hope I shall not be supposed to be troublesome, if I desire a Record to be read, which hath not been yet read in Court; it is the *Venire*, and that being part of the Record, we think we are proper to have it read.

Mr. Serj. *Peng.* We apprehend it is such a Request as has never been made: If they have any Objections to any Part of the Proceedings, or any Exceptions to take, they are at Liberty to take them, and to state their Objections, that the Court, if necessary, may refer to the Record, to see whether they are just or no; but to come and desire the Process to be laid before the Court for the Information of the Prisoner and his Counsel, it never hath been done: They are entitled now to offer any Thing, if they can, in Arrest of Judgment.

Mr. Att. Gen. If what they desire should be granted, it would be a Precedent which might be of very ill Consequence, and I apprehend what they desire, is directly contrary to Law; there are no Authorities that the Prisoner should either have Copies of the Process, or that the Process should be read to him, only to enable him to find a Fault. I believe no Instance can be given whatsoever, that it was ever allowed in a Case of this Nature; if it be done now, it will be a Precedent for the future.

The Act of Parliament went as far as was thought proper, Copies of the Indictment and Copies of the Names of the Jury are directed to be delivered to the Prisoner; but as to any of the Process, the Act gives no Direction, and therefore as what they desire is neither founded on Law, nor Precedent, we hope it shall not be granted.

Mr. Sol. Gen. My Lord, Mr. *Hungerford* has been pleased, in the Course of this Case, frequently to put us in mind, as he does now, that what he has insisted on was in favour of Life. That is a moving Argument; but it proves nothing, save that the Prisoner ought to have all the Indulgence which the Law and the settled Forms of Proceeding do allow; but I apprehend it is a Reason for no more. What is asked, is of more Consequence than appears in this particular Case; and whatsoever your Lordship doth now, will be made a Precedent for the future.

My Lord, before the Act of Parliament, which allows the Prisoner to have a Copy of his Indictment, and of the Pannel of the Jury, it is most certain, he was not entitled to have such Copies. Before that Law was made, he was informed of nothing but by having the Indictment read to him in Court upon his Arraignment, and that not barely to give him an Opportunity of taking Exceptions to it, but from the Necessity of the Thing, because it was the Charge to which he was to answer. Then comes the Act of Parliament, the 7th Year of King *William*, and allows the Prisoner a Copy of his Indictment, and of the Pannel of his Jury. But the Legislature, when they had these Matters under their Consideration, and seem to have intended to give at least all the Indulgence, consistent with Reason, to Prisoners in Cases of High-Treason, even at that Time they went no further, and did not think fit to direct that to be done, which is now desired on the Behalf of this Gentleman. Therefore this Motion of Mr. *Hungerford*'s must be understood to be made at Common Law; but I must beg leave to rely upon it, until some Precedent is produced on the other Side, that there is no Instance whatsoever, either before or since the Act of Parliament, wherein any Record of the Proceedings hath been read to the Prisoner besides the Indictment. This is a Consideration merely of Practice and Regularity; and in a Point of that kind, where there is no Precedent, I hope your Lordship will not make one.

Mr. Serj. *Chesh.* My Lord, the Carriage and Behaviour of the King's Counsel towards the Prisoner hath been so fair and candid, that it deserves Thanks from him, rather than Complaint; and I believe this Temper will hold on to the last: But, my Lord, we have no Authority to give up the Right of the Crown, or to fix that on the Crown, to grant which the Prisoner hath no Right to demand.

My Lord, it must be admitted, that this is a Demand made at Common Law; and if it be a Demand of Right, I don't know but it may go to every Thing in an equal Degree; that he hath the same Right to demand a sight of the Commission, *Certiorari*, &c. I don't know but he hath the same Right to enquire into every Step that is upon Record in this Case. The Officers concerned, I dare say, have done their Duty. There is nothing of Law, but what comes in upon the Statute of King *William*; that he hath had the Benefit of to the full extent of it; he hath had a Copy of the Pannel of the Jury; he hath had a Copy of the Indictment, and in such Time as was proper for him to make due use of it; and this they ask now, we apprehend, is only to lengthen out Time, and to introduce that which may be greatly inconvenient. We have very little Reason of apprehending that it can be of any Profit to him; but for Example sake, and as he hath no Right to it, we cannot come into a Consent to it.

Therefore we submit it to your Lordship's Consideration, from the Inconvenience that may ensue from the Precedent, whether the Prisoner hath any Right to make this Demand?

Mr. *Hungerford.* I acknowledge that before the 7th of King *William*, the Prisoner was not entitled to have a Copy of his Indictment, and therefore I so far concur with the Gentlemen of the other Side, that we are not entitled to a Copy of the Record of the *Venire Facias*. But what I humbly pray now, is, what I apprehend we were entitled to before the Act of Parliament for regulating Trials in Cases of High-Treason. The Instances are several, where in the Course of a Trial for High-Treason before that Act which gave the Prisoner several new Advantages, the Prisoner hath desired his Indictment to be read, and the Court never denied it; to have any other Part of the Record to be read, seems to be as reasonable as the Indictment. The Objection had been stronger, if we had desired for the Prisoner at the Bar the Copy of the *Venire*; there we should have been justly told, that we had been entitled to nothing but what the Act of Parliament had directed, *viz.* the Copy of the Indictment. We pray a Copy of nothing, but only pray that a small Part of the Record that makes up the whole Record of this Gentleman's Conviction, may be read. And this, with Submission, we hope we are entitled to have for the same Reason as the Indictment was read before the Act. Col. *Sidney* desired that his Indictment should be read, and it was so. And can any Reason be assigned, why the *Venire*, which is but a Part of the Record, should not be read as well as the Indictment? No one Part of the Record of Conviction is more sacred than the other; and why therefore should not one Part be read as well as the other?

Mr. Serj. *Peng.* Can you shew any Case where the Indictment was read upon the Prayer of the Prisoner, after Conviction, and before some Exception taken?

L. C. J. We would be far from refusing any Indulgence to the Prisoner that by Law we are warranted to grant him; what you ask now, you must own is without any Precedent whatsoever. You know, that before the Act of Parliament, you were not entitled to, nor could demand a Copy of the Indictment: It is very true what you say before the Act of Parliament; when it hath been desired by the Prisoner the Indictment hath been read, and that Method of proceeding having been allowed, gave him a Right to demand it; but you cannot produce any one Instance that ever he demanded this that now you offer; that ever he demanded the *Venire* should be produced and read to him.

Consider how strict the Law was in Cases of High-Treason; see the Act of Rights: The Course of the Court is the Law; this which you now desire was never so much as ask'd for, nor did this Court ever grant it; and if so, how can the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The Reason of it is, that every Body was satisfy'd by Law it could not be granted.

You have instanced in Cases of great Persons, Colonel *Sidney*, Lord *Russel*, and others that have been attainted of High-Treason, who could not want Advice to desire any Thing that was proper, or that they had a Right to demand. Neither they nor any of the greatest Quality that have had the Misfortune of being try'd for an Offence of this Nature, ever demanded it; which is an Admission that they were not entitled to it; and if the Course of the Court be so, we must not establish a new Course; we can't see what the Consequences may be.

Mr. Just. *Eyre.* The Case of reading the Indictment to a Prisoner is certainly very different, and can be no Authority to warrant the reading of the *Venire*; for the Indictment is the Charge to which the Prisoner is obliged to plead, and he must know his Charge before he can give it an Answer: Besides, the Merit and Justice of the Case depend entirely upon the Indictment, which must be read, in order to understand the true State of the Question, and to see the Fact to which the Witnesses are to be exemin'd. 'Tis therefore absolutely necessary, that the Indictment should be read; but none of these Reasons will serve for reading the *Venire*, which is only to summon the Jury, and bring them to the Bar: and therefore as it was never done, nor ever asked before, I can by no means think it fit for us to allow it now.

Mr. Just. *Powys.* I think it is a perfect Novelty what you demand, and not only so, but in its Consequences very dangerous: For, properly speaking, the common Usage to move in Arrest of Judgment hath been out of the Indictment; but to run back to those Things, which if you had a Right to demand, it had been proper to have done it before; and since you have many Times known that nothing but the Indictment hath been read, since the Judges were never mov'd, nor any Thing of

this kind done, and nothing in the World hath been demanded like it: if it ſhould be granted at this Time, when Men are to receive Judgment, and Exceptions are to be taken to the Indictment, if they ſhould run back to all the Proceedings, it would be a thing of ſtrange Conſequence. But beſides that, it is a Thing you have no Example for, it hath been never done; and it hath been obſerved, that nothing but the Copy of the Indictment hath been read before this Act of Parliament of King *William*. Now there are two Things given by this Act of Parliament of King *William*; The Priſoner is to have the Copy of his Indictment five Days; the Copy of the Pannel of the Jury two Days before his Trial; and theſe were propoſed as Advantages which the Common Law did not admit: Shall we come to unravel all the Matters preceding? It would be a Matter of ſtrange Conſequence, and what we can't do or warrant by Law: If you have any Thing to move out of the Indictment, we are ready to hear it.

Mr. Juſt. *Forteſcue Aland.* This is perfectly new, or elſe in Favour of Life I ſhould be ready to grant it: The true Reaſon of having the Indictment read is, that the Priſoner may know what his Charge is, in order to make his Defence at his Trial; but that Reaſon holds not in this Caſe, which is after Conviction; and what is aſk'd now is not relative to his Charge, but concerns the Acts of the Court only. The Court will aſſiſt in Matters of Law, when they appear, but will never aſſiſt the Priſoner with Facts, in order to make Points of Law; and therefore it has been denied the Priſoner to take Minutes even of the Indictment; and for the ſame Reaſon Counſel has ever been denied, in all capital Caſes, before the late Act of Parliament, unleſs a diſputable Point of Law did ariſe and appear.

You move this Matter as a Motion purely at Common Law; and as ſuch it will extend to all Indictments of Murder, and other capital Caſes, which may be of very evil Conſequence. It would be very ſtrange to have all the Proceedings upon Indictments read to the Priſoner; and there is as much Reaſon to call for all as for the *Venire facias*: I take it clearly there never was a Caſe, where the Acts and Proceedings of the Court have been called for to be read to the Priſoner, and for no other Purpoſe but to make an Error: It is a Thing that is entirely new, the Conſequences may be very fatal, and therefore I think it an unreaſonable Motion, and ought not to be granted.

Mr. *Hung.* I aſſure your Lordſhip I did not do it out of an Affectation of Novelty, neither ſhall I perſiſt in urging it further, ſince the Court hath given their Opinion; but I thought the Reaſon of the Thing, in reading the Indictment, before the Act of Parliament was with me; but ſince it is your Lordſhip's Opinion that it is otherwiſe, I deſire your Lordſhip to give me leave to go on.

Priſoner. I beg leave to ſay but a ſhort Word in reſpect to this Objection that hath been made by Mr. *Hungerford.* If I take the Thing right, it is, that the *Venire* may be read, to ſee if it is properly iſſued, and I hope thus far it ſhall be granted, to ſhew a Reaſon why this *Venire* is returned on one Day, and the Jury appear on another; and it doth appear that there is an Error in the Proceedings on the Foot of the *Venire*, I humbly hope I ſhall have the Benefit of it. The Objection, I take it, muſt be this; the *Venire*, I take it, is returnable the 19th of the Month of *November*, I was not try'd till the 21ſt; therefore, what I humbly offer is, whether or no, after the Return of the Writ, this is a good convening of the Jury together to try me on a Writ when there was no ſuch Writ in being, more eſpecially when the Proceedings againſt me are by Original, where the Returns in the Court are the ſame as in the Common Pleas; ſo I ſhall leave it to my Counſel to ſay the reſt, and humbly hope, that I ſhall have leave to look into the *Venire*, and if it come out ſo, I hope it is erroneous, and that Judgment ſhall be arreſted.

Mr. *Hung.* The Gentleman hath given Utterance to ſome of my Thoughts; and not by comparing of Notes, for I have not ſeen his Face, nor heard from him ſince I ſaw him here at the Bar at his Trial.

That which occurs to me on this Occaſion, but I can but gueſs at ſome Part of the Fact, is, I take it, that the *Venire* bears Teſte the laſt Day of *October*, and is returned the 19th of *November*; they are ſtated Return Days of the Law; and, my Lord, if a Man appears in a Court of Juſtice one Day, and he is not by the Courſe of Proceeding indulged with a further Day of appearing, there is a Diſcontinuance of the Proceſs, and the Man is out of Court. The different Days the Law takes notice of for this Purpoſe are, the Eſſoign Day, the Day of Exceptions, the Day of Appearance, the *quarto die poſt*; I take the *quarto die poſt* to be an Indulgence which a Court of Juſtice gives to a Suitor to appear at a further Day, when he ought to have appeared at a former Day; and this is the Practice in real Actions in the Court of Common Pleas. As to the Exception Day, the Uſe of that is, that a Man that is ſummon'd may object to the Summons, as not being a fit and regular Summons to draw him in Contempt.

But, my Lord, in Caſes of Juries, who are not Suitors in Court, I take the Law and the Practice to be, that they are obliged to attend upon the Proceſs of the Court; I take it, they muſt do Duty on the Return of the *Venire*, which, in this Caſe, is on *Monday* the 19th of *November*, and did not appear till *Wedneſday* the 21ſt; ſo that if they were to appear on *Monday* the 19th of *November*, and did not appear then, there muſt appear ſome Act of the Court, by which they are indulg'd to a further Day: And I put it upon Mr. *Harcourt* to ſhew, whether there is any Indulgence of the Court entered upon Record for the continuing of the Jury till *Wedneſday* following, and if there is not, there is then a Diſcontinuance of their being in this Court, and conſequently the Proceedings are irregular, and the Trial a Miſ-trial: I ſhall quote ſome Authorities which juſtify this Obſervation; when a Man by a Proceſs of Court appears on the Day of the Return of that Proceſs, unleſs there be a Continuance of that Proceſs, that *ulterior dies datus eſt* to the Party, or a ſubſequent Proceſs iſſues that Day, the Law deems that Chaſm in the Proceedings to be a Diſcontinuance, and that the Party is out of Court. It was ſo reſolved in *Yelverton*, 204; and 2d *Coke*, 284. It is the Caſe of *Bradley* and *Banks*; and reported in both Books, but moſt fully in *Yelverton*. There is an Authority which weighs with me ſomething more, and ſeems to be a Caſe in Point; it is the Caſe of *Peplow* and *Rowley*, 2d of *Creke*, 357. and there the Caſe is on a Writ of Error brought upon Proceedings in the Court of *Shrewſbury*, where the Uſage was, to hold Plea in ſome real Actions, and there was an Entry that the Parties did not appear on a preceding Day, but made Default: And the Entry was *habuit diem per default'* given to the Party by the Court, *ſecundum conſuetudinem villæ prædictæ*. This came before this Court by a Writ of Error, and it was adjudg'd, that both the Entry and the Cuſtom were naught. The Reaſon aſſigned why the Entry was ſo, is, for that the Party having made Default was out of Court, and the Court could upon that Proceſs give him no new Day to appear. And the Reaſon why the Cuſtom itſelf is naught, is, for that there can be no Cuſtom to help that (which the Book calls) a Diſcontinuance at Common-Law; for if the Man be out of Court, he can't be brought in there again by the ſame Writ.

My Lord, if that be the Caſe then, that the Jury were to appear on the 19th, and there is no Entry to continue them till *Wedneſday* the 21ſt, then by the Authority of theſe Caſes they had no Call nor Right to appear, but were out of Court, the Trial was no legal Trial, and conſequently no Trial at all.

I am told, that the Practice of all Trials at Bar is, that the Jury do appear here on the Return of the *Venire*, and immediately proceed to do Buſineſs; why ſhould it not be ſo too in a criminal Caſe, as this is? I think the Reaſon in both caſes is the ſame: I humbly hope therefore, my Lord, that if the Fact be as I have repreſented, that there is no Entry to continue over the Attendance of the Jury from *Monday* to *Wedneſday*, there is a Blemiſh in this Proceeding; and you can't proceed to Judgment againſt the Priſoner at the Bar.

Mr. *Ket.* If your Lordſhip will favour me——

L. C. J. You ſhall be fully heard; but becauſe Mr. *Hungerford* hath appeal'd to Mr. *Harcourt*, I ſhall aſk Mr. *Harcourt* this Queſtion about the Matter of the *Venire*.

Mr. *Harcourt.* I ſhall be very tender in this Matter, where the Life of the Priſoner is at Stake, as Mr. *Hungerford* has obſerv'd, and will not ſay any thing but what I am ſure is the Courſe of the Court. If a *Venire* be returnable the firſt general Return of the Term, the Appearance-Day of the Jury is the *quarto die poſt*, which is the firſt Day of the Term. If the Court be not pleaſed to try the Priſoner then, they may adjourn the Jury over to any Day before the next Return in the Term; but no Entry is ever made on Record of ſuch Adjournment, and the Proceedings are always enter'd on Record to be at the Return of the Writ. In all other Returns in the Term, there is the ſame Courſe obſerv'd: The Jury is never obliged to appear before the *quarto die poſt*; nor can the Priſoner be try'd ſooner. What makes this clear is, to conſider the Proceedings on *Diſtringas*, where the Priſoner is not try'd on the *Venire*: In ſuch Caſes the *Diſtringas* is never teſted on the Return-Day, but the *quarto die poſt*; which, if what is inſiſted on by the Priſoner's Counſel is Law, would make a Diſcontinuance, and that has always been held otherwiſe; for till there has been a Default of the Jury's appearing on the *Venire*, no *Diſtringas* can iſſue, and no Default can be objected to the Jury for not appearing till the *quarto die poſt*; nor are they amerciable ſooner for not appearing. This Matter was ſettled on great Deliberation by my Lord Chief Juſtice *Holt*; and, I am confident, has been ever ſince ſo practis'd.

Mr. *Ket.* My Lord, it was my Misfortune not to get into Court ſooner; ſo that I did not hear the firſt Application Mr. *Hungerford* made to your Lordſhip on Behalf of the Priſoner, nor ſhall I preſume to break in upon what your Lordſhip has already determin'd; but whether or not we are entitl'd to ſee the *Venire*, or hear that Part of the Record read, I hope we ſhall be able to make out, that there has been a Miſ-trial in this Caſe. The *Venire*, it is agreed on all Hands, was returnable *octabis Martini*, which was *Monday* the 19th of *November*. That the Priſoner was not tried till the 21ſt, is moſt certain. The general Return was *octabis Martini*, and he was not tried till two Days after; and notwithſtanding what Mr. *Harcourt* hath ſaid, I muſt beg Leave humbly to inſiſt, that there hath been a Miſ-trial, and Judgment ought to be arreſted; and for that I have as ſtrong an Authority as any that can be cited in this Court, 'tis the Trial of *Rookwood*; and for the greater Certainty, I have brought the Book along with me, and have it in my Hand; where it is agreed by the Court, and all the King's Counſel, that the Trial muſt be on the Day of the Return of the *Venire*, or elſe that it would be Error: And my Lord Chief Juſtice *Holt* declared, the Iſſue could not be tried after the Day of the Return: This Matter came before the Court upon an Exception taken by Sir *Bartholomew Shower*.

Mr. Juſt. *Eyre.* That was on a Commiſſion of *Oyer* and *Terminer*, which was quite different; there is no *quarto die poſt* there, no Day of Appearance, but the Day of the Return of the Writ.

L. C. J. It muſt be ſo, becauſe there is no ſuch Thing as a *quarto die poſt* in Commiſſion of *Oyer* and *Terminer*.

Mr. *Ket.* I ſubmit it to your Lordſhip, whether there is any *quarto die poſt* in a *Venire?*

L. C. J. It is always ſo.

Mr. Juſt. *Eyre.* You know we had the Conſideration of this when we appointed the Trial.

Mr. *Ket.* I beg leave to offer one Word, that, in caſe of a *Venire*, there is no *quarto die poſt*, becauſe there is no *Eſſoign*, no Exception-Day for the Jury. The Authority in firſt *Roll's Abridgment*, 822. *Placit.* 4. & 6. is expreſs, that in a *Venire facias* or a *Scire facias*, there is no *Eſſoign*: And where there is no *Eſſoign*, there can be no Day of Exception, becauſe the Exception depends on the *Eſſoign* Day, and conſequently the Day of the Return and of the Appearance muſt be the ſame. The Caſe of Eſſoign, Exception, Return, and Appearance-Days, concerns only original Writs, and the Plaintiffs and Defendants therein; there if the Defendant appears the *quarta die poſt*, his Appearance ſhall be accepted as good, and no further Proceſs made againſt him. But whoever heard that a Jury were eſſoigned? There are ſeveral other Authorities for this. *Dalton*, 415. 2*d. Inſtit.* 125 & 33 *H.* VI. 5. *b.* that no *Eſſoign* lies upon a *Venire facias*; and the *Eſſoign* was quaſhed.

L. C. J. This you now offer will ſet aſide all the Proceedings either on the Plea Side, or the Crown Side.

Mr.

Mr. *Ketelbey*. There is a Case reported in the Year-Book, *Mich.* 33 *Henry* VI. *fol.* 35, 36. and abridged in *Brooke*, Title *Nisi prius*, *Pl.* 32. It was disputed by the Judges of the Bench, and at first there was a Difference of Opinion among them; but at last it was unanimously resolved, That the *Nisi prius* was not well taken. I will state the Case as it appears in the Year-Book and the Abridgment. There was a Writ of *Nisi prius* made with a certain Return, and the Justices tried the Issue upon a Day *mesne* during the Interval between the *quarto die post*, and the Return of the Writ. This was objected to, and said to be a Mis-trial; and afterwards the Judges agreed in their Opinion, that it was a Mis-trial, because it was not upon the Return-Day of the Writ of *Nisi prius*; and if not upon that Day, the Trial ought not to have been at all. And I don't apprehend any Difference between that Case and this, but only that was at *Nisi prius*, and this a Trial in Bank. There is no Continuance lies on a *Venire facias*; and if so, I shall submit it, whether there is any Day of Appearance.

Mr. Just. *Eyre*. Sure there is a Day of Appearance on the *Venire facias*; the Proceedings in this Case are like those upon an Original. The same Day which is the Day of Appearance for the Party upon an Original, is the Day of Appearance for the Jury upon a *Venire*.

Mr. *Ketelbey*. I believe it will be hard for Mr. *Harcourt* to shew where there is an *Essoign* on a *Venire facias*.

L. C. J. We have heard already what Mr. *Harcourt* hath said. I desire Mr. *Simmonds* may inform you how it is on the Civil Side.

Mr. *Simmonds*. Our Process where the Suit is commenced by Bill, is return'd on a Day certain in Court; that doth not respect this Case.

L. C. J. How is it when it is by Original?

Mr. *Simmonds*. Where it is by Original, it is always returnable as the Process is in the *Common Pleas*; and the Day of the Appearance of the Jury, I take to be the *quarto die post*.

Mr. *Harcourt*. If this was to be a Discontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the *Distringas*, which always bears *teste* the *quarto die post* after the Return of the *Venire*? Every one of these Records, which are many every Term, would be discontinued.

L. C. J. You can't but be sensible that there is nothing in this Exception.

Mr. Serj. *Pengelly*. There is no Foundation for it in Practice.

L. C. J. You need not labour it.

Mr. Serj. *Pengelly*. The Sheriff, or the Jury, are not amerciable, tho' they did not appear on the Day of the Return, if the Jury do appear upon the *quarto die post*; that shews it——

Mr. Att. Gen. If this Objection prevails, it will overturn all the settled Course of Trials at Bar.

Prisoner. One Thing I would humbly offer to your Lordship. I have not had my Books by me, but only what occurs to my Memory, I cannot be so exact as I ought to be. This Overt-Act in *Essex* of Treason found by the Jury to be so, I humbly apprehend, and I offer it to your Lordship's Judgment, in Law is no Overt-Act at all. All the Reason, I shall humbly offer to your Lordship, that tho' it hath been said, that there was a consulting and agreeing in order to levy War, yet it doth not appear that War to be levied was such a War as in the Law is adjudged to be Treason. My Lord, this differs from the levying War itself. An Intention and Consultation, or a Conspiracy barely to levy War, unless War be levy'd, it is no Treason. If it be a Consultation to levy War against the King's Person, to imprison the King, to dethrone and murder him, it ever hath been adjudg'd to be Treason. If it be only a Consulting to levy War, as if to agree to break open Meeting-Houses, to throw down Houses, was the same as doing of it. There must be a War that is levy'd, or else it is no Treason. Not only that, but I beg leave to say one Word more. In my Case, all the Evidence given in respect of this Overt-Act in *Essex*, there is no Foundation for it; and if there is no Overt-Act in *Essex*, no Overt-Act elsewhere can affect me. It stands on the Evidence only of Mr. *Lynch*: He talks of a Declaration. Who read it? The only two Things are, a Discourse between us, and a Declaration which I gave him to read. If that, as I humbly submit it, be an Act of Treason, it is carrying the Matter further than it hath been in those few Cases I beg leave to mention that just occur to my Memory. If I state them wrong, I shall be sorry. The Case of *College* the *Oxford* Joiner. It was asked the Court, Do you take my Words distinct from my Actions? No, says the Court, we do not do so. You declared you would go down to *Oxford*, and assassinate the King's Person. In order to that, you went down with Pistols before you. That at that Time was declared to be an Overt-Act; the going down to *Oxford* in that Manner; and the Court seemed to rely upon it, as the Overt-Act of the Treason, and not the talking here, or conspiring that he would assassinate the King, but the going down in a hostile Manner. So likewise in the Case of my Lord *Preston*; there the Question was, whether those Letters that were found with him in the Ship; whether that was an Overt-Act of Treason? The Judges seemed to be of Opinion, that the taking those Letters with him as he was going to *France*, and there to consult the stirring up an Insurrection here, and to invite the *French* King to invade us, was an Overt-Act of Treason. But there is a stronger Case, the Case of my Lord *Russel*. He was indicted, as I am, for compassing and imagining the Death of the King. The Overt-Act laid in the Indictment to manifest that Intention, was, that he, with the rest of the Conspirators, consulted to seize upon the King's Guards: In pursuance to that Discourse and Conspiracy which they had had, it appeared that Sir *Thomas Armstrong* was sent to take a View of the Guards in order to carry on the Design. Notwithstanding there was a pursuing of their Design of seizing the King's Guards, in sending Sir *Thomas Armstrong* to view them, yet the Case was thought so very hard in respect to my Lord *Russel*, that his Attainder was reversed by an Act of Parliament. Therefore I only argue, with great Submission, that in my Case, where nothing is done but accidentally calling in at the *Green Man*, staying a little while there, and, as hath been sworn, here was nothing but a mere Discourse, and then I gave him a Declaration to read. If I did so, it was only Words. As to the second, it was nothing but publishing a Libel. And shall this be a Foundation to deprive me of my Life and Estate, to the utter Ruin of myself and Family? It is an unprecedented Thing, hath it ever been? Therefore I hope your Lordship, before you give any Judgment in this Matter, will take it into your Consideration, whether any Thing done in *Essex* doth amount to an Overt-Act of Treason.

Mr. *Hung*. My Lord, I humbly hope, as it is my Duty to do what Service I can to my Client, and as it is in Case of Life, that I shall have your Lordship's Indulgence for a few Words. My Lord, he hath justly observed——

Mr. Serj. *Pengelly*. My Lord, I would not interrupt Mr. *Layer*, because it may be supposed he is not so well acquainted with the Method of Proceeding. But I hope I may take the Liberty to interrupt his Counsel, who know by very great Experience the Method of Proceedings, that they are not now to insist on the Nature of the Evidence, whether the Evidence that hath been given is sufficient to maintain the Indictment; that is not the Business of this Day. If they have any thing to offer, any Objections to make in Arrest of Judgment, that is the Business of the Day; But to arraign the Proceedings upon the Trial, as it is said that the Evidence given did not amount to a Consultation, or to prove any Overt-Act of the Treason alledg'd, I don't apprehend it to be proper at this Time: I did not interrupt the Prisoner himself; but I hope his Counsel, who know the Method of Proceeding better, in Cases of High-Treason, shall not be permitted to go on in that Manner.

Mr. Att. Gen. The Gentlemen that are Counsel for the Prisoner know very well, that the Evidence given on the Trial is not now before your Lordship; the single Question that can now be made is, Whether the Indictment is good, and the Facts charged and found by the Jury, are well laid, and do amount to sufficient Overt-Acts of the High-Treason, of which the Prisoner stands indicted? Mr. *Layer* hath been giving an Account of the Witnesses, and making Observations on the things which they swore; he was borne with: But the Gentlemen that are his Counsel, seem to be opening in the same Manner, but as to them, we must insist upon it, that they should be confin'd to what is proper, and apply themselves to move in Arrest of Judgment, if they can find any thing upon the Face of the Record of which they can take Advantage. But I think they are not entitled to go on with Observations upon the Evidence in the Manner they were beginning.

Mr. *Hungerford*. I assure your Lordship I did not design it, I did not intend to recapitulate any part of the Evidence, or to observe upon it. And therefore there was no Occasion for the Caution. I thank your Lordship for the Indulgence you give me, and I will conform myself to the Rules the *King's Counsel prescribe*, to observe upon nothing but the Record.

My Lord, the Indictment is in this Manner; the Species of the Treason laid to the Charge of the Prisoner, is the compassing and imagining the Death of the King. The first Overt-Act of that Treason, is, that he did meet, consult, conspire and agree to raise a Rebellion, and a *Guerram* in the Kingdom, which is no Overt-Act of compassing and imagining the Death of the King.

I know how the Authorities have been; but in the Case of Life, your Lordship will give me leave to observe, that by the Statute of 25 *Edw.* III. compassing and imagining the Death of the King——

L. C. J. Mr. *Hungerford*, we would hear you in any thing that is proper, but consider if you are not offering a matter in Arrest of Judgment that hath been determined against you a hundred times. Hath it not been constantly allowed as an Overt-Act of Treason in compassing and imagining the Death of the King, if the Parties did meet, consult, and agree to levy War? Hath it not been constantly agreed, and doth it not stand allowed to be so? Now to persuade us at this Time to overthrow those Resolutions taken by our Predecessors, is such a thing as is not right. Do you think we will give a Judgment contrary to what our learned Predecessors have given in Cases of the greatest Moment? If I thought it was of any Effect, I should not grudge spending time to hear you, but you must agree, it hath been over-ruled a hundred times.

Mr. Just. *Eyre*. It hath been settled a great many times, particularly in the Case of *Dorrel*, *Gordon* and *Kerr*, in which it was argued over and over again, and the Court was of Opinion that the consulting and agreeing to levy War, was an Overt-Act of Treason in compassing and imagining the Death of the King, and gave Judgment accordingly.

Mr. Just. *Fortescue Aland*. Mr. *Kettelbey* was Counsel for the Prisoners in that Case, which was in this Court, in the 1st Year of this King, when this Objection was made; and very well knows, that the Court, upon that Occasion said, that they ought not to have suffered this matter to be made a Question, for that it was arraigning the Judgments of very many learned Judges.

Mr. Just, *Powys*. No one thing relating to Treason is more settled; and in that Case, as hath been mentioned, it was agreed, and it was the Judgment of all the Judges that tried that Cause.

Mr. *Hungerford*. My Lord, I humbly hope——

Mr. Just. *Eyre*. It must not be admitted, we must not suffer so plain a Point to be disputed; it is not only mis-spending of time, but shaking what has been established by every Trial, in which any thing of this kind has been mentioned, from the Case of the Regicides to this Day.

Mr. Just. *Powys*. In the Cases of the Regicides, these Matters are printed in *Keyling*.

L. C. J. And in all the Trials ever since, there is scarce one Case hath happened, where the Case hath been for compassing and imagining the Death of the King, but that it hath been laid for an Overt-Act, that the Party charged, did consult and agree to levy War to bring his wicked Intentions to Effect.

Mr. *Hungerford*. There is no Doubt, but that the Regicides were the worst and most notorious Criminals that were ever brought before a Court of Justice; and yet there is one Circumstance of those Trials, quoted in the very Book which Mr. Justice *Powys* mentions, which was never practised before, and I am sure never was since; that is, the Judges who were to try the Criminals, and the King's Counsel who were to prosecute them, met and consulted together to form and fix the Accusation.

But if it is your Lordship's Pleasure, I shall speak no further to that Matter.

L. C. J. You have the Opinion of the Court, and I dare say it is your own Opinion; and as the Resolutions are so positive, it is not for us to make Indictments at this Day.

Mr. *Hungerford*. I shall not press it any further. There is another thing arises upon another Overt-Act laid in the Indictment, that is, *Publicavit quoddam Scriptum*, &c. I apprehend the Substance of the *quoddam Scriptum* ought to be mentioned in the Indictment.

L. C. J. It is mentioned in Effect, that it was to excite People to a Rebellion and an Insurrection.

Mr.

Mr. *Hungerford.* Your Lordship will observe, that the criminal Words in the *Scriptum* are not mentioned in the Indictment; and by the Rule given by all the Judges of *England* in Dr. *Sacheverell*'s Case, in all Accusations, whether by Information or Indictment, the Words supposed to be criminal ought to be inserted; and since that is not done in this Case, the Overt-Act is not well laid, and the Judgment ought to be arrested.

L. C. J. You know, Mr. *Hungerford*, if but one Overt-Act is well-laid and prov'd, it is sufficient.

I don't know, I was sorry you forced me to remember what I would willingly have forgot. I remember, on that Occasion, you was pleased to compare it to a Ballad, which is an Expression that ought not to be used. Is that a Thing, when a Prisoner is on Trial for his Life, and a Matter of Insurrection is intended against the King, to be treated in so ludicrous a Manner? It is laid as an Overt-Act of Treason, and what is an Overt-Act of Treason, if a Man's publishing a traitorous Libel, and exciting Persons to a Rebellion and Insurrection against the King is not? This is undoubtedly so: And when we are upon this Consideration, to compare it to a Ballad, and say he might as well publish a Ballad, and lay it as an Overt-Act of Treason in the Indictment: it is an Expression that ought not to be us'd, and I was very sorry you did use it.

Mr. *Hung.* I am sure I did not say he might as well publish a Ballad and make it Treason; I have a greater Duty, and a more tender Regard to his sacred Majesty, and the Quiet of his Kingdom and People, than to express myself so. What I then observed, as near as I can recollect, was, that there were but few Minutes to transact the Business at the *Green Man*; that what was done could not amount to the publishing of a Declaration, when there was nothing done but a Man's reading to himself: I knew the whole Accusation did turn upon that Transaction at the *Green Man*; and in Service to my Client, I thought it my Business to make it appear as inconsiderable as I could; and if in this I have offended your Lordship, or the Court, I am heartily sorry for it, and beg their Pardon.

Mr. *Ketelbey.* If your Lordship please to favour me with a few Words.

I shall be very tender of offering to your Lordship any Thing on this Indictment, which hath been over-ruled in any of the Cases where I have been before concerned; whether conspiring to levy War, unless War be actually levy'd is an Overt-Act of High-Treason, was mentioned on the Trial of *Derrel*, *Gordon*, and *Kerr*, and I think took that among other Exceptions in Arrest of Judgment, which were not allowed; but the Statute of 13 *Eliz. cap.* 1. was not at that Time mentioned; and I have some other Matters to offer on that Head, if it is now open to me.

L. C. J. Consider a little how you treat the Court; the Objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that Judgment that was then given.

Mr. *Ketelbey.* I shall go off from that, and say no more upon it, since your Lordship is of Opinion that it is a Point settled. But, my Lord, I must beg Leave to take Notice of what Mr. *Attorney* has observed relating to the five Overt-Acts laid in the Indictment, and submit to your Lordship; for I don't know that it was ever determined otherwise, but that if one of the Overt-Acts appears to be bad, Judgment must be arrested.

L. C. J. Alas! quite the contrary: I believe you will find in *Rookwood*'s Trial, which you have in your Hand: There it is said, if one Overt-Act held, the Indictment is good.

Mr. *Ketelbey.* If I am not mistaken, in Sir *John Freind*'s Case it was not so: We can't take upon us to say, That all the Overt-Acts are wrong. Is it not like an Action in a Civil Case, where there are several Counts in the Declaration? If there be one wrong, that will stay Judgment for the whole.

L. C. J. Because it is an entire Declaration; and the Jury, instead of giving Damages on one Count, may have given it on the Count they ought not.

Mr. J. *Eyre.* But if one Count be sufficient, the Plaintiff shall certainly have Judgment upon Demurrer.

Mr. *Ketelbey.* What I had to offer was, that if one Overt-Act is bad, the Indictment is bad; but if it be otherways, and if there be any one Overt-Act well laid, that that shall make the Indictment good; and your Lordship will maintain that Indictment: I have nothing else to offer.

Mr. Att. Gen. Say what you have a Mind to say.

Mr. *Ketelbey.* I did not know but I was right in what I was going to say; and I think it a Point too material to be easily given up.

L. C. J. You allow one of the Overt-Acts is well laid; consider if there is no Overt-Act but that one; must there not be Judgment against the Prisoner? Suppose one Overt-Act that is not good, must that take off the Force of that which is good?

Mr. *Ketelbey.* I submit it, whether this is a Parallel Case in a Declaration for Work and Labour done, if there be but one Count, and that well laid, the Plaintiff shall recover: But if in a second Count, he comes and says in Court, that he had done such Work and Labour; that the Defendant promised to pay him such a Sum, if either these Counts are naught, it may be moved in Arrest of Judgment.

Mr. J. *Eyre.* If the Damages are taken generally, otherwise not.

Mr. Serj. *Pengelly.* You find in *Rookwood*'s Case, it is there held, if the Jury found him guilty of any one Overt-Act, that it would maintain the Indictment: But what is your Objection?

L. C. J. We will hear any Thing that you think material to offer.

Mr. *Ketelbey.* I would not have offered it, if I did not think it material; and, for my Part, I cannot find any such thing in *Rookwood*'s Trial, or any where else, (I beg Pardon if I have overlooked it) that one good Overt-Act should maintain the whole Indictment; I admit three or four of them to be good, as they are laid in this Indictment; the only Objection I have, is to the Uncertainty of that which relates to the publishing of a malicious, scandalous, seditious, and traitorous Writing, *continen' & purportan' exhortation' incitament' & præmiorum promission' ad suadendum & excitand' subditos Domini Regis ad arma & guerram contra Dominum Regem*, &c. My Lord, the Rule that my Lord Chief Justice *Coke* lays down in his first *Institutes*, *f.* 303. *a.* is, That in Indictments, a Certainty to a common Intent is not sufficient, no more than in Counts, Replications, or other Pleadings of the Plaintiff. Now whether this, as it is laid, hath the Certainty which that Rule requires, your Lordship will determine. In all capital Cases, especially in High-Treason, the Indictments must be drawn with the utmost Accuracy and Certainty. The Words here are, that he *publicavit quoddam malitiosum, seditiosum, & proditorium scriptum*: And then sets forth only the Substance of the Libel in general. Is there not the same Reason that the Words should have been set forth in this Indictment, as in an Indictment for a Libel, that so the Court might judge, upon the Face of the Indictment, whether they did import Excitement and Exhortation, *levare Guerram?* I must own, in two or three late Cases, the Words have not been set forth.

L. C. J. Remember *Francia*'s Case.

Mr. *Ketelbey.* I am going to mention *Francia*'s, and hope I shall be able to account for that, as well as the others: In *Francia*'s Case the Indictment was, that he wrote several Letters, notifying his Intention to levy War, and requiring Aid from abroad, without particularizing the Words of those Letters, or the Substance of them. The Question was not upon an Arrest of Judgment; but it came on in the Course of the Trial, whether such Evidence should be allowed. It was insisted upon, that there was a Letter mentioned, and the Substance of that Letter ought to have been set forth in the Indictment; or else the Letter itself ought not to be read, much less a Copy of it entered in the Prisoner's Copy-book, as Evidence against him: And I must beg Leave to rely on the solemn Resolution of all your Lordships in Dr. *Sacheverell*'s Case, that the very Words should be expressly set forth in all Indictments whatsoever. In *Francia*'s Case, there was no Motion in Arrest of Judgment; for there was no Verdict against him: Therefore, whether that Precedent will stand in our Way, so as to stop us in our present Objection, your Lordship will determine: And in the Case of Colonel *Sidney*, the very Words are set forth, the Title of the Book, and the Part charged to be Treason. In *Keylinge* 22. in *Twine*'s Case, he was indicted for compassing the Death of the King; and his Overt-Act was, the publishing a Book call'd, *A Treatise of the Execution of Justice*; and the Title of that Book, and the very treasonable Part objected against the Prisoner were set forth at large. In *Coleman*'s Indictment, two Letters were mentioned which were declared to be his Hand: There was no Counsel, nor Motion made in Arrest of Judgment. I don't remember any Case where they are laid so general as in this Indictment, except *Francia*'s and *Coleman*'s. I shall only beg Leave to add, that where there is a Libel, a Book, or Letters, charged as the Overt-Act of that which is supposed to be Treason, and upon which the Offence is grounded, they ought to be so far set forth, that a Person may have an Opportunity to clear himself of the Accusation: I don't know any Precedent to the contrary, but that of *Francia*'s Case, where there was not any Opportunity of debating it, he being acquitted on his Trial; and the Case of *Coleman*, which was before any Counsel was allowed.

Keylinge 22. *Trial* 64.

L. C. J. The Objection was taken then in *Francia*'s Case as properly, as if it had been taken in Arrest of Judgment; for the Act of Parliament says, that no Evidence shall be admitted or given of any Overt-Act, that is not expressly laid in the Indictment, against any Person or Persons whatsoever. You took the Objection, and said, that this Overt-Act of Treason is not expressly laid in the Indictment; and therefore it ought not to be given in Evidence: You know, that that was over-rul'd at the Time of making the Objection, and that the Opinion of the Court was against you. As to what you say, that the Words must be set forth, it is perfectly wrong; a Man may set forth the Substance of the Words, without shewing the Words themselves: That is the Way that is proper to be taken, and when it is otherwise, it is not so as it ought to be done.

Mr. J. *Eyre.* It was indeed the Opinion of the Judges who were present at Dr. *Sacheverell*'s Trial, that the particular Words supposed to be criminal ought to be expressly specified in every Indictment or Information for any Misdemeanour by writing or speaking; and since it is urged as an Authority to conclude our Judgments, I can't forbear saying, that it was a great Surprize to *Westminster-Hall*, and particularly to those who attended this Court, to hear that any such Opinion had been given; for it had never been laid down in any of our Books as the Rule of Law or Practice, that the particular Words supposed to be criminal, ought to be specify'd in the Indictment or Information; and we had learned from my Lord Chief Justice *Holt*, that a Libel might be described either by the Sense and Substance, or by the particular Words, and that an Indictment or Information in either of these Forms would be good. If you look into the Books of Entries you will find several Instances where Slanders and Prejudices are charged in *Latin*, as false and scandalous Assertions, and not in the Words as spoken. And in *Staley's (a)* Case, who was indicted for treasonable Words upon the Stat. 13 *Car.* II. it was charged in the Indictment, that he speaking of the King, had traitorously declared, *quod ipse prædictus* Staley *ipsum Dominum Regem interficeret*; and the Fact was, that *Staley* in Conversation had spoke Words to this Effect in *French*, which were proved by two Witnesses; and this Evidence was thought sufficient to convict him of High-Treason; and yet the particular Words supposed and adjudged to be criminal, were not specified in the Indictment; and there was an Information for Perjury *(b)*, in which all the great Counsel of *England* were concerned on one Side or other, which was tried at Bar in my Lord Chief Justice *Holt*'s Time, and the Offence was charged in the same Manner; for the Substance of what the Defendant had sworn was set forth in *Latin*, and the Evidence which he gave in *English* being prov'd to be false, he was convicted of the Perjury without any Objection; and yet the particular *English* Words in which he gave his Evidence were not expressly specified in the Information; and I don't find that the specifying of the particular Words was ever said or suggested to be necessary, till this sudden Opinion

Trial 181.

(a) Mich. 30 Car. II. B. R. *Trial* 74.

(b) Don. Rex. v. Griepe, Trin. 8 Will.

was given; and therefore as I never thought it right, I can't hear it urged as an Authority without offering my Reaſons to the contrary, and acknowledging that I have been long in a great Miſtake, if there be any one Reſolution in the Books to ſupport it.

Mr. Juſt. *Powys.* In the Caſe of *Francia* it was inſiſted on in order to ſtop the Trial; the main of the Objection was, that they ought not to produce Evidence of the Letters, becauſe thoſe Letters were not expreſly ſet forth in the Indictment, and that very Objection was made in order to ſtop the Trial. What was ſaid there in Caſes of Libels is intended when ſet forth *in hæc verba*, and not in *Latin*, the more common Way: But it is another Thing where it is an Overt-Act of the Imagination of a Man's Heart in Treaſon, it is ſufficient to ſet forth the Subſtance of them; therefore it was ſo fully ſettled in *Francia*'s Caſe, that I thought it would be never mentioned again; the Point was argued, the Objections were made and over rul'd, and it was the very Point on which the Trial proceeded.

Mr. Att. Gen. In my Lord *Preſton*'s Caſe there were ſeveral Notes, Memorandums and Writings, that were the very Overt-Acts of the Treaſon, yet they were not particularly ſet forth in the Indictment.

Mr. Serj. *Peng.* There it was alledged, that the Lord *Preſton* prepared and compoſed ſeveral Writings, ſeveral traitorous Notes and Memorandums, for the giving Inſtruction and Information for the *French* King how to invade *England*. I deſire to put Mr. *Ketelbey* this Caſe: Suppoſe any one had proclaimed the Pretender at *Charing-Croſs*, or elſewhere, and had read his Declaration, exciting the People to revolt and to come in to him, and promiſing them Rewards; and then the Declaration had been carried off, or ſo diſpoſed of that it could not be recovered and produced in Evidence; I would be glad to know, whether that Perſon might not be indicted for Treaſon, without ſetting forth the particular Words which he read out of ſuch Declaration; or whether he ſhould eſcape Puniſhment for want of being able to ſet out the particular Words?

Mr. *Ket.* The reading of the Paper in that Caſe would be ſufficient.

L. C. J. Have you done, or have you any thing further to offer for the Priſoner?

Cl. of the Cr. Chriſtopher Layer, hold up your Hand. You have been indicted of High-Treaſon, *&c.*

Priſoner. I know nothing more to ſay now, becauſe my Counſel have given it up. But after your Lordſhip hath paſſed Sentence upon me, I hope and deſire, for the Sake of other People more than myſelf, thoſe that I have had very great Dealings and Correſpondence with, particularly my Lord *Londonderry*, and ſeveral others, that I would do Juſtice to, that your Lordſhip would give me a reaſonable Time to make up their Accounts; and when that is done, I hope your Lordſhip will give me ſtill a further Time to make up that great Account which I have in another Place: When this is done, if his Majeſty doth not think fit graciouſly to continue me in this World, I will dare to die like a Gentleman and a Chriſtian, not doubting but that I ſhall meet with a double Portion of Mercy and Juſtice in the next World, tho' 'tis denied me in this.

L. C. J. Chriſtopher Layer, You have been indicted, and after a long Examination and fair Trial, have been convicted of High-Treaſon in compaſſing and imagining the Death of the King.

You have had all the Indulgence and Advantage that the Law would allow you. You have had Counſel aſſigned you of your own chuſing, to adviſe you preparatory to your Trial, and to aſſiſt you in making your Defence at your Trial.

Theſe Counſel have been permitted to ſay whatever they thought proper for your Service; and I heartily wiſh that I could ſay that they had not exceeded, that they had not taken a greater Liberty than they ought to have done: But however that was, the Court thought fit to permit it in them, that they might not be diſcouraged in offering any thing that was proper for your Defence; we did not cenſure it then, on this Conſideration.

The Jury that have found you guilty, are ſuch, as may be juſtly ſaid, you yourſelf approved of; for tho' the Law gives you a Liberty of challinging five-and-thirty, you challenged but four-and-thirty; ſo you allowed the reſt to be an indifferent Jury, to paſs between the King and you as to your Life and Death.

The Evidence on which you have been convicted, is the cleareſt and plaineſt that ever I heard. Your perſonal Conferences with the Pretender at *Rome*; your conſtant Correſpondence with him and his Agents afterwards; the Scheme you had formed for the Executing this Treaſon; your Confeſſion of the greateſt Part of it before the Lords of the Council; and at laſt your Flight when in the Hands of Juſtice, out of a Window two Pair of Stairs, and the Endeavours you uſed when retaken to corrupt and prevail with thoſe that took you, by Rewards, to let you go off; theſe are Matters ſo very clear and plain, and did concur ſo exactly with the Evidence of the Witneſſes, that it did not reſt on their Credit; the only Queſtion was, Whether the Jury did believe what you yourſelf had declared on your Examination before the Lords of the Council, and by the Scheme that was found in your Cuſtody?

This being the Nature of the Evidence, I muſt, according to what is uſual, put you in mind of the horrid Wickedneſs you have been found guilty of.

The firſt Matter projected to be done, was to ſeize the Tower of *London*, to ſet a Guard at the *Exchange* and other Places; to ſeize the Bank, and take from thence what Money you had Occaſion for; by which the whole City of *London*, and in conſequence the whole Nation, would inevitably have been involved in Blood and Confuſion; This was to have been the firſt Fruits of this projected Scheme.

The next Step to be taken by this execrable Scheme, was to ſeize the ſacred Perſon of the King: a King, who during the whole Courſe of his Reign hath been the moſt religious Obſerver of our Laws, the moſt careful Preſerver and Protector of all our Civil and Religious Rights, and the moſt merciful Prince that ever ſat on the Throne of theſe Kingdoms; yet this, this moſt excellent Prince, was to be ſeized and made a Sacrifice to Popery and arbitrary Power.

The next Step to be taken, was to ſeize the Prince; and when that was done, Nobody can doubt but the young Prince and Princeſſes muſt and ſhould have followed the Fate of their Father: So that the Project muſt and would have ended in the Deſtruction of all the Royal Family on this Side the Water; and when that was done, 'twas thought 'twould be an eaſy Matter to ſet the Pretender on the Throne.

This being done, the King and the Royal Family deſtroyed, and the Pretender advanced to the Throne; what the Conſequence of that muſt and would have been, is obvious to every body; it muſt have ended in the entire Deſtruction and Diſſolution of our moſt happy Eſtabliſhment and Conſtitution; the happieſt, I think, that ever any People enjoyed; it muſt have ended in the Deſtruction of our Laws, our Liberties, our Religion, and the Church of *England* as by Law eſtabliſhed; and we muſt have become, from the moſt happy, the moſt miſerable People on Earth.

Theſe horrid and execrable Deſigns are ſo very heinous in themſelves, that they hardly will admit of any Circumſtance of Aggravation: But I muſt ſay, I can't avoid ſaying, that there are Circumſtances with reſpect to you, that make them more heinous, if poſſible. You were bred up to the Law, and you muſt be ſuppoſed to know the Excellency of our happy Conſtitution and Government, and the Laws which you profeſſed; which makes your Crime much the greater.

Another Matter, which is a great Aggravation of your Offence, is, that you were, or at leaſt profeſſed yourſelf a Proteſtant, and a Member of the Church of *England*, whilſt you engaged yourſelf in Meaſures which muſt inevitably have deſtroyed that Church which you profeſs yourſelf a Member of.

Theſe are the Treaſons which you are convicted of; and being ſo, the Law adjudges you not fit to live; and the Judgment of the Law is, and it is conſidered by the Court, that

You Chriſtopher Layer, *be led to the Place from when whence you came, and from thence you are to be drawn to the Place of Execution, and there you are to be hang'd by the Neck, but not till you are dead, but you are to be cut down alive, and your Bowels to be taken out, and burnt before your Face; your Head is to be ſever'd from your Body, and your Body to be divided into four Quarters; and that your Head and Quarters be diſpoſed of where his Majeſty ſhall think fit.*

Then the Priſoner was carried back to the Tower of *London*; but on *Wedneſday November* 28. the Attorney and Sollicitor General moved for a Rule for his Execution, and that the Court would appoint a Time and Place for that Purpoſe; and ſaid, that the chief Deſign of executing ſuch Criminals was to be an Example to others not to offend in the like Manner, and to deter them from committing Treaſon; and therefore they moved that the Execution might be in *Middleſex*. though the Fact was done in *Eſſex*, and ſaid, that there were many Precedents for executing Criminals in ſuch Places as this Court ſhould think proper.

Thereupon the Court aſked the Clerk of the Crown if he knew any ſuch Precedents, who replied, that one *Fitzpatrick* *, who was an Aſſociate with the Lord *Audley*, was executed in *Middleſex* for a Fact committed in *Wiltſhire*, and two other late Precedents of the ſame Nature.

So a Rule was made to the Lieutenant of the Tower, to deliver the Priſoner to the Sheriffs of *London* and *Middleſex*; and another Rule to the ſaid Sheriffs to execute him on *Monday December* the 12th, at *Tyburn*.

Then the King's Counſel moved the Court to alter the Rule made the Day before, for Mr. *Morgan*, the Clergyman, to attend the Priſoner, for that he was taken into Cuſtody upon Suſpicion of Treaſon, and had given Bond to appear in Court this Day.

The Court anſwered, That any Clergyman ſhould be admitted to the Priſoner, who was a Perſon of known Honeſty, Integrity, and Learning, but not ſuch who might harden him in his Iniquity in his laſt Moments; ſo two more Clergymen were joined in the Rule, and the other two ſtruck out.

Afterwards, and on that very Day before he was to be executed, he had a Reprieve, and there being ſome Opinions, that he could not be executed by Virtue of any Warrant ſigned by the King; but that a new Rule muſt be made in the Court of *King's-Bench* for his Execution, he was accordingly brought to the Bar in *Hilary-Term* following, and a Rule was made for his Execution on the 27th of *March*; but before that Time he procured another Reprieve, and afterwards another Rule was made to execute him on the 17th Day of *May* following, which was done accordingly. He made a ſhort Speech to the Aſſiſtants, wherein he avow'd the Principles for which he ſuffered, recommended the Intereſt of the Pretender; and delivered a Paper to the Under-Sheriff, and alſo another to a Friend of his. His Head was afterwards carried to *Newgate*, and was the next Day, fixt upon *Temple-Bar*; but his Quarters were delivered to his Friends; who took care to get them decently interr'd. The Paper abovementioned was incloſed in a Cover, ſuperſcribed,

To Mr. Walter Price, *Under-Sheriff, at his Houſe in* Caſtle-Yard, *in* Holbourn; And was as followeth, *viz.*

Mr. SHERIFF,

I Having previouſly reſolved to imploy all the Time allowed me at the Place of Execution, in Devotion, and making my Peace with God, thro' the All-Sufficient Merits and Mediation of my Gracious Saviour, I have, inſtead of any Speech I could make to the Spectators, on this unfortunate Occaſion, committed my laſt Thoughts of all Worldly Affairs to Writing †, while I had ſome Intervals of Time for ſo doing; and have ſent two Authentic Duplicates thereof, with my Hand ſubſcribed to the Bottom of each Sheet, to two truſty Friends, to teſtify thereby to the World, in due Time, and as Occaſion offers, the *True Principles* of both my *Religion* and *Royalty*, as well as the *unparallel'd Hardſhips* and *Injuſtice* I have lately met with; for which I pray God forgive the Authors thereof.

And to the End, that none of my Friends, who had Acceſs to me ſince I was ſentenced to die, may be liable to come into any Trouble upon the Score of publiſhing my ſaid Writings, I ſent the Draughts thereof ſealed up, together with Draughts of two ſeveral Letters directed to certain Perſons in the *Adminiſtration*, to one of my Friends abovemention'd, deſiring him to copy them all over fair, and return them to me: And then I ſubſcribed them, and returned them to my Friends, without letting the Bearers, Firſt or Laſt, know any thing of the Contents.

So, taking Leave of this vain World, God in Mercy, Receive my Soul! *Amen.*

Chriſtop. Layer.

* *See* Trials *Vol.* I. No. 32. *p.* 374.

† *This Writing never appeared in Public.*

CXCIV. *Proceedings in Parliament againſt* John Plunkett, George Kelly *alias* Johnſon, *and Dr.* Francis Atterbury, *Biſhop of* Rocheſter, *upon Bills of Pains and Penalties for a* Treaſonable Conſpiracy, May 1723. 9 Geo. I.

THE abovenamed Perſons having been taken into Cuſtody by Order of the Government, for a treaſonable Conſpiracy, it was thought proper to lay the Letters, Papers, and Examinations relating thereto before the Parliament; whereupon the Houſe of Commons appointed a Committee, *Jan.* 15. conſiſting of the following Perſons:

The Right Honourable *Spencer Compton* Eſq. Speaker.
Robert Walpole Eſq. Chancellor of the Exchequer.
Sir *Joſeph Jekyll*, Maſter of the Rolls.
Paul Methuen Eſq. Comptroller of his Majeſty's Houſhold.
William Poulteney Eſq.
John Smith Eſq.
Richard Hampden Eſq.
Lieutenant General *Wills.*
Sir *Robert Sutton.*

The Committee choſe *William Poulteney* Eſq. their Chairman, and made their Report to the Houſe, *March* 1. which was as follows:

THE Committee appointed to examine *Chriſtopher Layer* and others, in relation to the Conſpiracy mentioned in His Majeſty's Speech, to be carrying on againſt his Perſon and Government, having peruſed the ſeveral Papers and Examinations referred to them, and having gone through the Examination of thoſe Perſons, have agreed on the following Report.

In ſuch various and ſo long Examinations, and in ſo extenſive an Inquiry, your Committee are in Hopes that they need not be ſtrictly tied to the Method and Order in which they were appointed, but may, for the Eaſe of the Houſe, range the ſeveral Matters occurring to them, as near as they can, in the Order of Time in which they were tranſacted, or as they beſt ſerve by their mutual Connection to illuſtrate each other, without adding any Obſervations of their own, but ſuch as naturally ariſe from comparing the ſeveral Papers and Examinations together, and ſuch as are neceſſary to help the Houſe the more eaſily to perceive the Contradictions and Inconſiſtencies of the Confeſſions made by the Priſoners, as well as the Confirmations and Coincidence of the Facts inquired into.

The Committee obſerve in general, That a Deſign has long been carrying on by Perſons of Figure and Diſtinction at home, in Conjunction with Traitors abroad, for placing the Pretender on the Throne of theſe Kingdoms. That various Methods have been attempted, and various Times fixed for putting this Deſign in Execution. That the firſt Intention was to have procured a regular Body of foreign Forces to invade theſe Kingdoms at the Time of the late Elections; but that the Conſpirators being diſappointed in this Expectation, next reſolved to make an Attempt at the Time that it was generally believed His Majeſty intended to go to *Hanover*, by the Help of ſuch Officers and Soldiers as could paſs into *England* unobſerved from abroad, under the Command of the late Duke of *Ormond*, who was to have landed in the River with a great Quantity of Arms, provided in *Spain* for that Purpoſe; at which Time the *Tower* was likewiſe to have been ſeized, and the City of *London* to have been made a Place of Arms: but this Deſign being alſo diſappointed, by the Diſcoveries made in *England*, and his Majeſty's putting off his Journey; by the Incampment of his Forces at home, as well as the ſending for thoſe from *Ireland*; and by the Readineſs of his Majeſty's good Allies *The States General* to aſſiſt him in Caſe of Need; by the Orders given in *Spain*, that the late Duke of *Ormond* ſhould not be ſuffered to embark, and the like Orders iſſued in *France*, that he ſhould not be ſuffered to paſs through that Kingdom; the Conſpirators found themſelves under a Neceſſity of deferring their Enterprize till the breaking up of the Camp: during which Interval they were labouring by their Agents and Emiſſaries to corrupt and ſeduce the Officers and Soldiers of His Majeſty's Army, and depended ſo much on this Defection, as to entertain Hopes of placing the Pretender on the Throne, though they ſhould obtain no Aſſiſtance from abroad, which nevertheleſs they ſtill continued to ſollicit for.

The Truth and Reality of theſe wicked Deſigns, your Committee are of Opinion will appear confirmed to the Houſe by concurrent and unqueſtionable Advices from almoſt all Parts of *Europe*, ſent by Perſons who appear to have had no Communication with each other; which Advices have again been verified and ſupported by ſeveral Diſcoveries made at home, by the Informations and Confeſſions of ſome of the Perſons concerned, as well as by a long and regular Series of Correſpondence, which the Conſpirators have furniſhed the Government with againſt themſelves, and the ſeveral Branches of which appear to the Committee connected with one another, and all concurring in one continued Deſign of ſubverting our preſent happy Eſtabliſhment, and involving theſe Kingdoms in Blood and Confuſion.

The ſeveral Examinations, Letters, and other Papers, are all contained in an (*a*) Appendix to this Report; and as they are all ſeverally numbered, ſo the ſeveral Paragraphs which are quoted from them have References to thoſe Numbers, that they may the eaſier be turned to upon Occaſion, and be ſupported by the Authorities from whence they are taken.

That the firſt Deſign was to have been executed during the Elections, and to have been ſupported by foreign Forces, is collected from the following Circumſtances:

Philip Neynoe Clerk (who was drowned in attempting to make his Eſcape from the Meſſengers) declared upon his (*b*) Examination before ſome of the Lords of the Council, 'That he had been employed by 'George *Kelly*,' and one *Watſon*, whom he took to be the late Earl Marſhall, and who was in *England* laſt Spring, to draw up three ſeveral 'Memorials to the Regent of *France*, to ſollicit him to ſend Forces to 'the Aſſiſtance of the Conſpirators. That the laſt of theſe Memorials 'was drawn up in *December* 1721, and contained a Demand of Five thouſand Men, to be ſent over by the Regent to invade theſe Kingdoms.'

This is confirmed by unqueſtionable (*c*) Advices from *France*, the 19th of *April* laſt, in which it is expreſly affirmed, 'That repeated Application had been made to the Regent for ſome Time paſt, to furniſh 'only a Body of Three thouſand Men, by the help of which the Conſpirators made no Doubt but to be able to place the Pretender on the 'Throne.'

Layer at his (*d*) Examination before a Committee of Lords of the Council, confeſſed, 'That being in Diſcourſe with Lord *Orrery*, ſoon 'after his firſt Acquaintance with him, (which was before the Incampment) Lord *Orrery* ſaid, Nothing could relieve the Nation, but a Reſtoration; and that he would be glad if he could contribute to bring 'it about: That it muſt he done by foreign Forces, and could be done 'no other Way. That he often asked Lord *Orrery*, what Methods they 'had taken to procure them? That Lord *Orrery* ſaid, They had Friends 'abroad *that had made Application to the Regent for Aſſiſtance to bring about* 'a *Revolution*; but he does not know whom his Lordſhip meant; General *Dillon* might be his Correſpondent for aught he knew: That Lord 'Orrery likewiſe told him, the Regent might be brought to wink at any 'Thing, but was ſo perfidious that he was not to be truſted; and that the 'French had made a Tool of the Pretender.'

Layer repeated the ſame in part, at two other (*e*) Examinations before his Trial, and has ſince confirmed to your Committee, upon his (*f*) Examination at the Tower, 'That Lord *Orrery* declared himſelf conſtantly 'of Opinion, that nothing could be done to any Purpoſe in the Pretender's Favour, without foreign Forces.'

About the latter End of *April*, a (*g*) Letter was intercepted here, coming from *Spain*, incloſing the (*h*) Copy of one from *O*——to *L*——, which will be ſhewn in the Sequel of this Report, to have been from the late Duke of *Ormond*; in which *Ormond* ſays, 'Pray tell Mrs. *Chaumont*, 'that ſince the Parliament is dead and gone, I think it is a good Time to 'make an Effort, when the Elector is gone to *Hanover*.' It will appear from the Sequel of this Report, that by Mrs. *Chaumont* is probably meant the Pretender.

On the 23d of *April* (*i*) another Letter was intercepted, ſigned 1387, and directed to Mr. *Jackſon*, which your Committee have good Reaſon to believe was from the Biſhop of *Rocheſter* to the Pretender, as will be ſhewn in the following Part of this Report. In this Letter he ſays, 'Notwithſtanding *this Opportunity* is elapſed, I agree with you another 'may offer before the End of the Year, though not perhaps every Way 'ſo favourable.' This Letter was writ on the 20th of *April*, when moſt of the Elections were over, and conſequently that Opportunity was elapſed.

That an Inſurrection was thought of at the Time of the Elections, is farther confirmed from the following Particulars; *Layer* (*k*) confeſſed before the Lords, 'that *Green* the Gunſmith being in Company with 'Lord *North* after Dinner, and talking of five thouſand Arms, and ſeven 'thouſand Arms that were ready, ſaid, *When the* Weſtminſter *Mob were* 'up, *if they had had Arms!* Upon which Lord *North* interrupted him, 'and ſaid, Don't talk, you are a Citizen, you know there are no Arms; 'but that the Man inſiſted there were five thouſand Arms ready in the 'City.'

Neynoe (*l*) declared, 'that *Tho. Carter*, Clerk, made two Expeditions in 'the Spring (during the Elections) one into *Cornwall*, and another into 'the Counties of *Warwick*, *Nottingham*, *Derby* and *Stafford*; and that upon '*Neynoe*'s blaming the riotous Conduct at the *Coventry* Election, *Carter* 'replied, Hang the Election, you never ſaw Fellows of ſuch Mettle, ſo 'well trained, ſo fit for Buſineſs.'

Among Mr. *Dennys Kelly*'s Papers was ſeized an exact (*m*) Liſt of the Quarters of all his Majeſty's Forces in *Great Britain*, about the Time that they were drawn out of moſt of the great Towns and Boroughs, on Account of the Elections.

From all theſe Circumſtances the Committee ſee Reaſon to conclude, that the firſt Deſign was to have been executed with the Aſſiſtance of foreign Forces, at the Time of the Elections; that the Pretender, the late Duke of *Ormond*, Lord *Orrery*, and the Biſhop of *Rocheſter* were of this Opinion; that Memorials were drawn up here, to be preſented to the Regent for this Purpoſe; and that thoſe Memorials were actually preſented, or at leaſt Application made to the Regent in Conſequence of them, by Directions from Perſons in *England*; and that ſuch Diſpoſitions had been made for this Enterpriſe at that Time, as broke out into Riots at ſome of the Elections: which muſt be allowed to have been no unfavourable Juncture for ſuch an Attempt, conſidering the Diſcontents occaſioned by the late *South Sea* Scheme, which the Conſpirators have all along flattered themſelves they ſhould be able to improve into a Spirit of Rebellion; and the Liberties uſually taken at ſuch a Seaſon, when all the Freeholders of *England* are neceſſarily and legally aſſembled together, and when the whole Nation is too apt to be in a Ferment, even in the quieteſt Times.

This Deſign failing, on Account (as 'tis reaſonable to believe) of the Conſpirators not being able to obtain the Forces they ſollicited from abroad,

(*a*) The Appendix conſiſts of twelve Sections, marked A. AA. B. BB. C. D. E. F. G. H. I. K. (*b*) E. 10. (*c*) A. 2. (*d*) B. 11. (*e*) F. 8. 10. (*f*) B. 38. (*g*) AA. 4. (*h*) AA. 5. (*i*) D. 12. (*k*) B. 11. (*l*) E. 10. (*m*) F. 9.

and of their being themſelves divided in Opinion as to the Time and Manner of Execution, their next Endeavour was to attempt an Inſurrection at the Time when they ſuppoſed his Majeſty would be going to *Hanover*.

Of the Reality of this Deſign your Committee have found ſuch evident and concurrent Teſtimonies, that they think ſtronger could not reaſonably be expected, in an Affair where it was ſo much the Intereſt of the Conſpirators to act with the utmoſt Caution and Secrecy.

It has already been obſerved, that the late Duke of *Ormond* (*a*) thought the Time of the King's going for *Germany* a favourable Opportunity for making an Effort, and that the Perſon who ſigns 1378 (*b*), ſays, 'Notwithſtanding this Opportunity is elapſed, I agree with you another 'may offer before the End of the Year, though not perhaps every way ſo 'favourable.'

Layer confeſſed to the Lords at (*c*) two ſeveral Examinations previous to his Trial, and has ſince (*d*) confirmed to your Committee, 'That he 'made Application to Lord *Orrery* to ſtand God-father to his Child for the 'Pretender, intending that this Mark of Kindneſs from the Pretender 'ſhould ſerve as a Credential to Lord *Orrery* to induce him to converſe 'freely with him, in relation to the Pretender's Affairs: That their Acquaintance having begun in this Manner (*e*), Lord *Orrery* ſent to him 'to enquire into the Pretender's Character and Qualifications, and aſked 'him ſeveral Times, whether he had any Recommendation from the Pretender to any Perſon? That upon his anſwering No; his Lordſhip told 'him, that he ſeemed to be an honeſt Man, and People of his Integrity 'ſhould be always welcome to him, whether they had any Credentials or 'no: That he, *Layer*, then gave his Lordſhip an Account of what had paſſed between the Pretender and him during his Stay at *Rome*, and asked his Lordſhip what Hopes there were? To which his Lordſhip anſwered, That there were Hopes, for all the Nation were generally for 'the Pretender, except ſuch as had Places, or Money due to them from 'the Government. That Lord *Orrery* farther told him, That Lord *North*, 'Sir *Harry Goring*, Lord *Strafford* and others were going to do a raſh 'Thing in Favour of the Pretender, which he, Lord *Orrery*, was ſorry 'for, becauſe it would prove abortive, and hinder its ſucceeding another 'Time: That *Layer* asked him, Who was to have the Command? And 'Lord *Orrery* told him, he believed Lord *North* and *Grey* was to have the 'Command, and that the ſaid Lord had a Commiſſion from the Pretender; that the Lord *Orrery* called this Deſign raſh, becauſe not duly concerted, nor ſupported by foreign Forces, without which, he ſaid, he 'thought they muſt be more than Madmen to hope to do any Thing to 'Effect for the Pretender's Service. That he, *Layer*, the next Time he 'ſaw Lord *North* and *Grey*, which was before the Encampment of the 'Troops, acquainted him with what Lord *Orrery* had ſaid about the 'Raſhneſs of the Deſign; that Lord *North* and *Grey* replied, Lord *Orrery* 'was a timorous Fellow, and was always making Difficulties, and 'Schemes out of his own Brain; that he knew nothing, nor ſhould 'know; but that it was his [Lord *North*'s] Opinion, the Pretender 'might be reſtored by the People of *England*, without the Aſſiſtance of 'any foreign Force. That he, *Layer*, talked to Lord *North* and *Grey* of 'his Lordſhip's being General; but Lord *North* ſaid, he was not popular 'enough, that the Duke of *Ormond* would be fit for it; and if they had 'him here, his Lordſhip believed moſt of the Soldiers would join him: 'That he, *Layer*, continued to preſs Lord *North* and *Grey* on this Head, 'by telling him, that he was fitter for a General, and was popular; the 'ſaid Lord anſwered, No, the Duke of *Ormond* was the Man, he was the 'Soldiers Darling. That he, *Layer*, often talked of this Affair to the 'Lord *North*, being induced ſo to do, by the Impatience he obſerved in 'him, and in Lord *Orrery*, that ſomething ſhould be done.'

Matthew Plunkett, Serjeant of Invalids, has (*f*) depoſed upon Oath, 'That *Layer* told him (in *July* laſt) that the Duke of *Ormond* would 'come in a ſingle Ship with ſome Officers, and that it had been done 'long ago, if the *French* Ambaſſador had not been told of it, who told it 'again to the King.'

(*g*) It appears to your Committee from ſeveral Depoſitions on Oath, as well as from Informations and written Intelligence, that in conſequence of this Deſign of bringing over the late Duke of *Ormond*, Captain *Charles Halſtead*, a *Lancaſhire* Man (who was concerned in the Inſurrection intended at *Oxford* in the Year 1715), ſet ſail from the River for *Bilboa*, about the 12th Day of *March* $17\frac{21}{22}$, on board the Ship *Phineas* of *Briſtol*, *William Arnold*, Maſter, with a Proviſion of Arms and Powder on board, which one of the Sailors on his (*h*) Examination declared, 'He appre'hends to have been greater than was neceſſary for an ordinary trading 'Voyage. (*i*) That the ſaid Ship was hired at one Hundred Pounds 'Freight *per* Month, two Hundred being paid in Advance (as *Halſtead* 'himſelf owned), and had no Goods nor any Paſſenger on board, except 'the ſaid *Halſtead*, who went by the Name of *Nowell*, and was known to 'the Maſter and Sailors by that Name only, during the Voyage to *Spain*. '(*k*) That the ſaid Ship was cleared at the Cuſtom-houſe in Ballaſt for '*Lisbon*; but that when they came into the Bay of *Biſcay*, the Maſter, 'who had orders to follow *Nowell*'s Directions (*l*), gave private Inſtructions to the Pilot to ſteer to *Bilboa*; that they arrived there on the 25th 'of *March*, *O. S.* and that *Halſtead* went on Shore, and lay that Night 'at Mr. *Brown*'s, an *Iriſh* Merchant, and the next Day went forward 'towards *Madrid*, being furniſhed with Horſes by the ſaid *Brown*, on 'which Journey he was abſent about a Fortnight; that during his Abſence, a (*m*) Report was current all over the Town of *Bilboa*, and particularly among the Convents, that the ſaid Ship was come to fetch over 'the Duke of *Ormond*.' And *Thomas Carter*, one of the Sailors of the ſaid Ship, who was employed by *Halſtead* to wait on him as a Servant, has (*n*) depoſed upon Oath, 'That three Days after the ſaid *Nowell*'s Return, 'the Deponent heard him propoſe to go to the above-named Captain '*Arnold* to carry the late Duke of *Ormond* and four other Paſſengers 'to *England*; which the ſaid Captain *Arnold* refuſing to do, the ſaid 'the ſaid *Nowell* inſiſted, ſaying, the Ship was his ſo long as he paid the Hire 'of her, and the Wages and Victualling, and they had high Words upon 'it. *Carter* farther depoſed, That *Halſtead* received a Letter directed to 'Colonel *Nowell Butler*, which was the Name the ſaid *Nowell* went by 'when he was in *Spain*. That when the Ship was releaſed, they plied 'off and on about four Hours off St. *Andero*, expecting ſome Body to 'come off in a Boat; but No-body coming, and Night drawing on, they 'made the beſt of their Way to *England*, and arrived in the *Downs* the 'Beginning of *July* laſt.' *Alliſon*, who came over to *England* a Paſſenger in the ſaid Ship, has (*o*) depoſed upon Oath, 'That he left *Madrid* 'on the 4th of *June*, *N. S.* and that ſome time before he came away, 'the late Duke of *Ormond*, who had reſided a conſiderable Time at *Madrid*, had ſent away his Horſes and Equipage from thence, and put his 'Servants on Board-wages, and that it was reported he was to go to '*Ventoſilla*. That he, *Alliſon*, upon his coming to *Bilboa*, found the Ship '*Phineas* bound for *England*, but ſtopt; that he agreed to take his Paſſage 'on board her; and going to the Corregidor of *Bilboa* for a Paſs, he 'found there Mr. *Brown* a Merchant, and one who went by the Name 'of *Nowell*; that *Brown* asking the Corregidor why the Ship was ſtopt? 'He ſaid, it was not the Ship, but *Nowell*'s Perſon that was detained, by 'Orders from *Madrid*; that he, *Alliſon*, heard a Report at *Bilboa*, that 'the late Duke of *Ormond* was on the Coaſt in Diſguiſe, and that *Nowell* 'had been at *Madrid*, and come back again in fifteen Days; the Expedition of which Journey, and the Ship's coming in Ballaſt, had raiſed 'a Suſpicion in *Bilboa*, that *Nowell* came over to the late Duke of *Ormond*, on Account of the Conſpiracy. The Sailors (*p*) obſerved, that 'during *Nowell*'s Stay at *Bilboa*, Brigadier *Campbell* (a Perſon concerned 'in the *Preſton* Rebellion) was frequently on board with him, but did not 'care to own his Name.' The ſame Particulars are confirmed by (*q*) Letters from Sir *Anthony Weſcomb*, who was ſent to *Spain* to gain Intelligence, with ſeveral other (*r*) Circumſtances relating to Ships, Arms and Recruits, provided for the Pretender's Service in *Spain*.

During theſe Tranſactions (*s*), Colonel *Stanhope*, his Majeſty's Ambaſſador at *Madrid*, who does not appear to have known any thing of this Ship's being come to *Bilboa*, having received Intelligence from other Hands, that the Duke of *Ormond* was preparing to ſet out for *England* with ſome *Iriſh* Officers, in order to put himſelf at the Head of the Rebels, obtained Orders from the Court of *Madrid*, to hinder the late Duke of *Ormond*'s Embarkation, as will appear more fully in the remaining Part of this Report.

In conſequence of theſe Orders, the King of *Spain*'s Officers (*t*) came on board the Ship, and laid an Embargo upon her for about a Fortnight, till *Halſtead*, finding himſelf diſappointed of his Deſign, agreed that Part of a Cargo of Wooll and Iron ſhould be put on board the ſaid Ship by *Brown* and *Slinger*; and then returned to (*u*) *England* with one *Maxwell*, whom the Sailors underſtood to be a Relation of the late Lord *Marr*'s, and two other Paſſengers, and arrived in the River about the 7th or 8th of *July*.

About the Beginning of *May*, a (*x*) Letter was intercepted here coming from *Spain*, directed to Monſ. *Dumville Procureur*, and incloſed under Cover to one *Wilmore*, at Mr. *Stokoe*'s Bookſeller near *Charing-Croſs*. Who is meant by the Name *Dumville*, the Committee have not been able to diſcover.

In this Letter was incloſed the (*y*) Copy of a Letter, which the Committee have Reaſon to believe was from the late Duke of *Ormond* to ſome Perſons abroad, the initial Letters of whoſe Name is diſcovered by the Decypherers to be *L*.

The Letter to *Dumville*, as well as the Copy of the late Duke of *Ormond*'s Letter, was writ partly in Cypher; and among the Words out of Cypher ſeveral fictitious Names were made Uſe of, which the Committee obſerve is the Caſe alſo in ſeveral others of the intercepted Letters referred to them.

It was reaſonable to expect, that in managing Correſpondences of ſo hazardous a Nature, all Sort of Art and Induſtry ſhould be uſed, and all the Help of Cyphers and Jargon called in, to diſguiſe the real Deſigns, and to conceal the true Names of the Perſons concerned, in order to their avoiding the Danger of legal Conviction: But your Committee likewiſe obſerve, that ſeveral of theſe Diſguiſes are ſo groſs and obvious, that they only ſerve to betray themſelves; others of them are explained by the Skill of different Decypherers, agreeing in the ſame Explication; which Explication is again confirmed by Facts unknown to thoſe Perſons at the Time of the decyphering. Others are explained by Cyphers and Liſts of fictitious Names, ſeized on the Conſpirators themſelves, as well as by comparing the ſeveral Parts of their Correſpondence together; and others again by direct Informations upon Oath. And, as the Degrees of Evidence, in a Search of this Nature, muſt be various, the Committee have taken all the Care they can to diſtinguiſh what appears to them fully proved, from what is ſupported by ſtrong and probable Conjectures only.

In this (*z*) Letter to *Dumville*, dated the 27th of *April* 1722, (*N. S.*) Mention is made of its being publicly known in *Spain*, by Letters from *Bilboa* and other Parts, 'That a Ship came to *Bilboa*, with an Expreſs to '*Ormond*, in order to bring *Ormond* to *England*; that the ſaid Expreſs 'went to the Place where *Ormond* was; that this made ſo much Noiſe, 'that it was neceſſary to ſend to *England* with all poſſible Diſpatch; that 'a Ship's coming *with Ballaſt only* gave Occaſion to thoſe Reports, 'and that in order to ſtifle them it was neceſſary to put in the Ship Goods 'for *England*; that this would be a conſiderable Expence to *Tom*, who 'hopes that Friends will conſider it, and ſend him if poſſible a greater 'Supply than the Five Thouſand Pounds that he wrote for in his of the '6th and 20th of *April*; that the Bills muſt be ſent directly to *B*———, 'and may be bought at the *Exchange* of *London*.'

The Committee are of Opinion, that by *B*. is meant *Brown*, the *Iriſh* Merchant at *Bilboa*, becauſe the (*aa*) Cargo was put on board by the ſaid

(*a*) AA. 5. (*b*) D. 12. (*c*) B. 10. 11. (*d*) B. 38. (*e*) B. 11. (*f*) B. 6. (*g*) AA. (*h*) AA. 15. (*i*) AA. 13. (*k*) AA. 11. (*l*) AA. 9. (*m*) AA. 9. (*n*) AA. 14. (*o*) AA. 16. (*p*) AA. 8. 9. 11. (*q*) A. 38. (*r*) A. 34—40. 43. A. 26. 27. 28. (*s*) A. 15. (*t*) AA. 8. 9. 11. 16. (*u*) AA. 9. (*x*) AA. 4. (*y*) AA. 5. (*z*) AA. 4. (*aa*) AA. 11.

Brown and *Slinger*; and it appears by subsequent (*a*) Letters that this *Brown* had twelve Thousand Arms in his Custody for the Service of the late Duke of *Ormond*. It is also proved (*b*) by the Sailors, that *Halstead* was frequently in Company with this *Brown* and his Nephews, and lay sometimes at his House.

Who is meant by *Tom* in the said Letter, the Committee will not take upon them to determine; but they believe it will appear probable to the House, from the Connexion and other Circumstances, that it must mean the late Duke of *Ormond*.

The Person that writes this (*c*) Letter to *Dumville*, adds, 'That since 'Mrs. *Chaumont* cannot meet *Ormond* at any Place on the Road, it is ab-'solutely necessary that *Ormond* should have as good a Preparation of Arms 'as can be had there, and in order to make it, he will want more Money 'from Friends.'

The same Person says, that he had that Day received a Letter, importing, 'That *M*——could get more Arms if he had more Money.' The Committee are of Opinion, that by *M*—— is meant *Morgan*, who is mentioned in several (*d*) Letters from *Spain*, as Intendant of the Pretender's Ships at *Cadiz*, and active in procuring Officers and Arms; which Letters are confirmed by the Seizure of the Ship *Revolution* at *Genoa*, of which it appears by Captain *Swet*'s (*e*) Letter from *Genoa*, that *Morgan* had the chief Care, going by the Name of *Walton*; which is again confirmed by a (*f*) Letter from Sir *Anthony Wescomb* at *Bilboa*.

The Person that (*g*) writes to *Dumville*, farther adds, 'That *Ormond* 'hopes *Onslow* and *Hawley* will send a Part of the Money they have rais-'ed directly to *Ormond*; for *Ormond* upon the Hopes of it, has sent Cre-'dit to *M*——; he desires *Dumville* to mind this, and not to lose a Mo-'ment.'

Who are meant by *Onslow* and *Hawley*, the Committee cannot determine; but they are inclined to believe, that they are the same Persons, who in another (*h*) Letter, enclosed to *Wilmore* soon after, and writ in the same Cypher, are found by the Decypherers to have the initial Letters of their Names *G*—— and *N*——; in which Conjecture they are the more confirmed, by (*i*) a Cypher seized on *John Plunkett*, in which the real Names beginning with *G.* are constantly designed by fictitious ones beginning with *H.* the Letter immediately following in the Alphabet, and the real Names of the Letter *N.* by others beginning with *O.*

In the (*k*) Letter to *Dumville* above-mentioned, was enclosed the (*l*) Copy of a Letter from the late Duke of *Ormond* to *L.* which was sent to *Dumville* as being in part an Answer to one received from him; who is meant by *L*, the Committee cannot determine.

In this Letter, the late Duke of *Ormond* mentions his having received an Account from *D*—— (General *Dillon* probably), that he had procured ten Thousand Arms, and advises the joining Stocks with D——, since they cannot have too many Arms; and says he can only depend on two Thousand Arms from *M*—— (*Morgan* probably); but that he could have had more Arms, if he had had more Money.

The Committee observe, That this Account of ten Thousand Arms procured by *D*——, and of two Thousand by *M*——, agrees exactly with an (*m*) Account sent soon after from Mr. *Stanhope* at *Madrid*, and (*n*) confirmed by Sir *Anthony Wescomb*, that twelve Thousand Arms were lodged in the Hands of *Brown* at *Bilboa*, for the Pretender's Service; and that *Morgan* was ordered to the Bay of *Biscay*, in order to transport the said Arms to *England*.

The Committee take Notice likewise, that the very same Number of Arms is mentioned in a (*o*) Letter, writ, as they have good Reason to believe, by *George Kelly*, to General *Dillon*'s Secretary; and the Arms are there spoken of, as provided by *Mansfield*'s Relations, which Name *George Kelly* (*p*) explained to *Neynoe* to mean the late Duke of *Ormond*.

The Circumstance of *Kelly*'s mentioning these Arms to *Dillon*'s Secretary, makes it probable, that by *D.* in *Ormond*'s Letter, is meant the said *Dillon*, who, as your Committee are informed, is an *Irish Roman* Catholick, and quitted *Ireland* on the Capitulation of *Limerick*, and is at present a Lieutenant-General in the *French* Service, and has the Command of one of the *Irish* Regiments in *France*; and he appears to your Committee, from several Parts of the Intercepted Correspondence, to have the chief Management of the Pretender's Affairs, and to be the principal Agent and Director of carrying on this Conspiracy.

Ormond in his (*q*) Letter to *L*—— afterwards says, 'That since the 'Parliament is dead and gone, he thinks it will be a good Time to make 'an Effort when the Elector is gone to *Hanover*; and adds, I hope you 'have agreed with *D*—— the Time of going for *England*, and when that 'is fixed between Mrs. *Chaumont* and *D*——, you will let *Ormond* know 'the Place of landing in *England*. I desire an Express may be sent to 'me, with particular Accounts of what is agreed on.' This, the Committee take Notice, agrees with Mr. *Stanhope*'s (*r*) Intelligence, that *Ormond* was going for *England*, and likewise with (*s*) Intelligence sent from *Rome*, that the Pretender was to embark, as soon as two Officers, Relations of the late Duke of *Ormond*, should arrive at *Porto Longone*; which Circumstance makes it not improbable, that by Mrs. *Chaumont* may be meant the Pretender.

In the same (*t*) Letter to *L*——, *Ormond* says, 'I have ordered *H*——'s 'Ship, that I depended on, to return to *England*; it was not proper to 'make use of it, for Reasons not necessary to trouble you with. There 'was no Message sent by him, because of the Uncertainty of the Time 'of his getting to *England*.'

This Passage, the Committee are of Opinion, evidently relates to *Halstead*'s Ship. Upon mentioning his sending back this Ship, he immediately adds, 'I have ordered *M*——'s Ship to come to *A*——;' which agrees exactly with Mr. *Stanhope*'s (*u*) Account, that *Morgan*'s Ships were ordered to the Bay of *Biscay*, to transport to *England* the Arms above-mentioned, together with *Ormond*, and what Officers could be got; and it appears by subsequent (*x*) Letters from Sir *Anthony Wescomb* at *Bilboa*, that the said Ships, under the Command of *Morgan*, did put in at *Sainto Andero*, which the Committee understand to be the Place meant by *A*——, to which *Ormond* says he had ordered *M*——'s Ship to come. The said Ships having put in at *Andero*, and staid there fifteen Days, is again confirmed by a (*y*) Letter from *Genoa*, writ by Captain *Gardiner*, who commanded the Ship *Revolution* lately taken.

Soon after this Letter to *Dumville* (*z*), another was intercepted here coming from *Spain*, directed *A Monsieur Dodsworth*, not signed, enclosed under Cover to *Wilmore* as the former, and writ in the same Cypher; the most material Paragraph of which is thus explained by the Decypherers.

'I must again entreat you to use your utmost Endeavours, to get the 'five Thousand Pounds from Friends returned to *O* —— directly; the 'Hopes given by *G*—— to expect a great Sum, and by *N*——, that he 'had raised twenty Thousand Pounds, induced *O*—— to supply *M*——, 'and to make other necessary Provisions. If that Money be not return-'ed, it will fall heavy upon *O*——, and he will be disabled from an-'swering the Expectation of Friends, therefore ought to be your first and 'greatest Concern. All other Actions are Trifles in Comparison of it; 'for the Hopes of Success depend principally on *O*——. I mentioned 'this in former Letters, and Friends are desired to return more than five 'Thousand Pounds, if possible. If they do, more Arms and Ammuni-'tion, and Officers can be had here; and the End of raising Money by 'Friends, is to procure Arms, Ammunition and Officers.'

To whom these Letters were writ does not appear; but the Committee observe that they are writ in the same Cypher with three (*aa*) Letters, which they have Grounds to believe were from the Bishop of *Rochester*. They observe likewise that the same Cypher is sometimes made use of by (*bb*) *George Kelly*.

Mr. *Stokoe* the Bookseller being examined about *Wilmore*, under whose Cover these Letters to *Dumville* and *Dodsworth* came enclosed, could give no other (*cc*) Account of him, but that he was one who once writ a Letter in his Shop, and desired him by a Letter, dated *Epsom* the first of *March*, 1722, to take in such *French* Letters as should come directed to him; and by another Letter, dated *Harwich* the 14th of *May*, desired him to take in no more; that he, *Stokoe*, did receive two Letters from abroad so directed, which were fetched away, and paid for by Persons to him unknown.

That the late Duke of *Ormond* was expected to head an Insurrection in *England*, is farther confirmed by the following Particulars:

Neynoe, upon his Examination before a Committee of Lords of the Council, (*dd*) declared, 'That the first Design in the Spring was to have 'been executed in *London* by seizing the *Tower*, and that the late Duke 'of *Ormond* was then to have landed in the River; but upon Discovery of 'the Plot, and the King's not going beyond Sea, it was put off for some 'Time; that the Bishop of *Rochester*, Lord *Orrery*, Lord *North*, and Sir '*Harry Goring*, were the principal Leaders and Directors of the whole 'Design; and that *Watson* (whom he took to be the late Earl Marishal) 'had told him, Lord *North* and *Grey* was thought of for the Command.'

On the 29th of *April, O. S.* (*ee*) Intelligence came from *France*, 'That 'the Week before the late Duke of *Ormond* had made Application to the 'Regent by a Person of great Distinction, for Leave to pass thro' *France*, 'under a Pretence of going into *Italy*; but that the Regent had absolutely 'refused him, and at the same Time had dispatch'd the necessary Orders 'to the Frontiers of *Spain*, to hinder him from passing either openly or in 'Disguise.'

On the 2d of *May*, *O. S.* Sir *Luke Schaub* sent Advice, '(*ff*) That one '*Lesley* had been looking out for Lodgings at *Paris* for the late Duke of '*Ormond*; and (*gg*) on the 9th, that Alderman *Barber* carried with him 'Bills of Exchange for fifty Thousand Pounds Sterling for the Pretend-'er; and that the same Sum was sent to *Ormond* by another Hand, to en-'able him to make the necessary Preparations in *Spain* and *Italy*.' The Committee observe, that this agrees, as to the Division of the Money, with a Passage in another (*hh*) Letter from *Dillon*'s Secretary to *George Kelly*, dated the second of *May*, *N. S.* which will be farther explained in its proper Place.

On the 23d of *May*, *O. S.* Sir *Luke Schaub* sent (*ii*) Advice, 'That the 'late Duke of *Ormond* was to set out from *Madrid* about the 20th of that 'Month, with his Family, without its being known whither he was go-'ing; that it was believed he would give out that he was going to settle 'at a certain Distance from *Madrid*, from whence he might steal away 'afterwards unobserved.'

On the 28th of *May*, *O. S.* Mr *Stanhope* (*kk*) writes Word from *Madrid*, 'That having had Intelligence to be rely'd on, that the late Duke of *Or-'mond* intended speedily to pass into *England*, with a great Number of '*Irish* Officers at that Time in the Service of his Catholick Majesty, in 'order to put himself at the Head of the Rebels there, and for that Pur-'pose was to set out from *Madrid* the next Day, under Pretence of going 'for the rest of the Summer to *Ventosilla*, a House of the Duke of *Medina* '*Celi*, half-way between *Madrid* and *Bilboa*, but in reality to be thereby 'readier to pass to that Port, and with less Suspicion to embark from 'thence for *England*, whenever Matters should be ripe for his so doing; 'he made Application to his Catholick Majesty by the Marquis *de Gri-'maldo*, for Orders to be sent to all the Ports of *Spain*, to prevent the 'said late Duke's embarking with the Officers above-mentioned, and re-'ceived a Letter from the Marquis *de Grimaldo*, (a Copy (*ll*) of which is 'annexed to this Report) acquainting him, that the King of *Spain* had 'directed such Orders to be issued, and was ready on all Occasions, more 'particularly on this which regarded the Quiet and Tranquillity of his '*Britannick* Majesty's Kingdoms, to contribute all in his Power towards 'his Majesty's Satisfaction.'

(*a*) A. 15. 35. (*b*) AA. 9. 14. (*c*) AA. 4. (*d*) A. 26. 34. 36. 40. (*e*) A. 44. (*f*) A. 40. (*g*) AA. 4. (*h*) AA. 6. (*i*) C. 51.
(*k*) AA. 4. (*l*) AA. 4. (*m*) A. 15. (*n*) A. 35. (*o*) F. 35. (*p*) E. 10. (*q*) AA. 5. (*r*) A. 15. (*s*) A. 23. (*t*) AA. 5.
(*u*) A. 15. (*x*) A. 36. (*y*) A. 45. (*z*) AA. 6. (*aa*) D. 10. 11. 12. (*bb*) E. 35. (*cc*) AA. 1. (*dd*) E. 10. (*ee*) A. 4. (*ff*) A. 5.
(*gg*) A. 4. (*hh*) E. 30. (*ii*) A. 11. (*kk*) A. 15. (*ll*) A. 17.

Andrew Pancier, formerly Captain-Lieutenant of Lord *Cobham*'s Dragoons, has (*a*) depoſed upon Oath, 'That being grown intimately acquainted with *Skeene* (now in Cuſtody) a Perſon related to *Marr*, and engaged in the Rebellions of *Preſton* and *Glenſheild*, *Skeene* began to acquaint him, about *June* laſt, that there was a Deſign carrying on in *England* for placing the Pretender on the Throne, of which he at different times told him the following Particulars: That ſix or eight Battalions of *Iriſh* Foot, double Officer'd, were to have come over from *Spain*, which were quarter'd upon the Coaſt of *Gallicia* for that purpoſe; that the nine *Spaniſh* Men of War which have joined the *Dutch*, and four more to have been fitted out at *Barcelona*, and three at *Alicant*, (as he beſt remembered) being in all ſixteen *Spaniſh* Men of War, were to have been imployed in this Service. That theſe Troops were to have landed either in *Cornwall*, or near *Briſtol*: That there were forty Thouſand Stand of Arms in *Great Britain*, Part in *Scotland*, other Part in *London*, other Part in *Briſtol*, and other Part in *Cornwall*. That there were ſeven or eight hundred Men, with Officers among them, in *London*, ſubſiſted, and in readineſs for ſuch an Occaſion. That a Sum of two hundred Thouſand Pounds had been raiſed by Contribution for carrying on this Deſign, and put into the Management of the Biſhop of *Rocheſter*, who with the Lord *North* and *Grey* were the leading Men among them; and that the Lord *Strafford* and Lord *Kinoule* knew the Thing. That the Managers of this Affair in *Spain*, were the late Duke of *Ormond* and the late Earl Mariſhal; and thoſe in *France* the late Lord *Marr*, and Lieutenant General *Dillon*. That the Court of *Spain* was in their Intereſt, but as to the Regent and Cardinal *Du Bois*, they could not tell what to make of them: That this Deſign was to have been executed ſome time ago, but was then diſappointed by the Regent: That the late Duke of *Ormond*, and the late Earl Mariſhal, were to have come with the Troops beforementioned from *Spain*, and the Pretender about the ſame time was to have left *Rome* privately, and to have lain conceal'd ſomewhere near, from whence he would have come over when there had been a fair Proſpect of Succeſs. That as to any Oppoſition they could expect, we had but fourteen Thouſand Men in all, of which three Thouſand were neceſſary to guard *London*, three Thouſand more for *Scotland*, and two Thouſand for the Garriſons; ſo that the Remainder would never dare to attack thoſe who came from *Spain*: and, in the Confuſion, their (meaning the Pretender's) Friends would have been able to have got together, and made a Head. That in the Conduct of this Affair there paſſed little in writing, and only the four Lords before mentioned, *viz.* the Biſhop of *Rocheſter* and Lord *North* and *Grey* principally, and Lord *Strafford* and Lord *Kinoule*, were concerned in the Management of it here. That the Buſineſs was to have been done before the *Dutch* Troops could come to our Aſſiſtance.'

The Committee have laid theſe ſeveral Particulars together, though of different Dates, that the Houſe may ſee at one View, the Reaſon there is to believe, that the late Duke of *Ormond* was to have landed in *England* with Officers and Arms about the Time that it was generally ſuppoſed his Majeſty intended to go to *Hanover*. The reaſon of *Ormond*'s not coming, is ſufficiently explained by the Orders iſſued at *Madrid* and in *France*, by the King's not going abroad, and by the Diſcoveries, and Diſpoſition of the Forces made in *England*. And notice is taken, in (*b*) Letters to one of his Majeſty's Secretaries of State from *Rome*, that a Perſon of great Diſtinction at that Place, had declared it as his Opinion, that the grand Project formed in the Conclave for placing the Pretender on the Throne of *Britain*, was going to be put in execution; but that the ſame Perſon afterwards aſſigned four Reaſons for its having miſcarried; which were the Want of Money, the ſuſpected Faith of the Regent, the Want of Skill in thoſe who were to conduct it, and the Puſillanimity of the Pretender, who, to avoid hazarding his own Perſon, propoſed to ſend his Child: which laſt Particular is again mentioned in another (*c*) Letter from *Rome*.

The Committee now return to ſhew what other Evidences they have before them, of a Deſign laid for beginning an Inſurrection in *London*, at the Time when it was ſuppoſed the King intended to go to *Hanover*.

About the latter End of *April*, his Majeſty received (*d*) Intelligence from abroad, upon which he can intirely depend, 'That a Deſign was laid for bringing in the Pretender, which was thought to be ſo well concerted, and conducted by Perſons of ſuch Experience, that, if the Secret was but kept, as was propos'd, the Succeſs was looked upon as infallible; and that it was to be put in execution about the end of *April*, or beginning of *May*.' The original Letter containing this Intelligence, has been communicated to your Committee, and an (*e*) Extract of it is annexed to this Report.

On the 29th of *April*, the ſame (*f*) Intelligence was repeated, with theſe farther Particulars, 'That the Conſpirators did no longer think it neceſſary to inſiſt on foreign Aſſiſtance, flattering themſelves that great part of the King's own Forces would declare in their Favour. That they now contented themſelves with deſiring the Regent ſhould obſerve a Neutrality between his Majeſty and the Pretender; and that Lord *Lanſdowne* was to preſent, or cauſe to be preſented, a Memorial to the Regent to this effect, that Day or the next. That the Deſign was probably to be executed in *London*; that the Beginning of *May* was the Time fixed on; and that the Pretender was ſpeedily to ſet out for *England*.'

Your Committee do not find that the above-mentioned Memorial was preſented to the Regent; but in (*g*) Letters from *Plunkett* to *Dillon* they find the ſame repeated in theſe Words; 'If the Regent ſtands neuter, we will ſoon bring the *Law-Suit* to bear:' which *Layer* (*h*) explained to be the Pretender's Cauſe.

On the 24th of *April*, *O. S.* Mr. *Davenant*, His Majeſty's Miniſter in *Italy*, ſent an Expreſs from *Rome*, with (*i*) Advice, 'that the Pretender's Adherents were making Preparations in *Cadiz*, and other Ports of *Spain*, for an Attempt on *England*; that the Pretender was ſpeedily to embark at *Porto Longone*, and was retired from *Rome* for that Purpoſe:' And (*k*) it appears, that the ſame Advice was ſoon after confirmed to his Majeſty, by a foreign Miniſter reſiding in *England*, who received the Intelligence from a Perſon of great Diſtinction abroad, and communicated it to his Majeſty.

On the 9th of *May*, Mr. *Craufurd*, his Majeſty's Reſident at *Paris*, (*l*) writes word, 'that the *Jacobites* in *France* expected ſoon an Inſurrection in *England*, which was to be begun by the Heads of their Party here ſoon after his Majeſty's ſetting out for *Hanover*, and was to be ſupported by *Iriſh* Officers and Soldiers, who lay ready at *Cadiz*, beſides ſuch as ſhould be able to paſs over into *England* from *France* by Stealth:' and in his (*m*) Letter of the 26th of *May O. S.* he adds, 'that the Grounds of this expectation were Aſſurances given from *England*, that the Conſpirators would immediately make themſelves Maſters of the Tower, and City of *London*.'

This Intelligence agrees with a (*n*) Paper delivered to the Secretaries of State of *July* laſt, by one of the Lords of his Majeſty's Council, who, as they have (*o*) certified, aſſured them that a Perſon, whom he had good reaſon to belive to be deeply concerned in the Conſpiracy, came to him in the Month of *July*, and brought him a Paper, which he affirmed he had copied by Stealth out of the Scrutore of a noble Lord, whom he refuſed to name; and that the ſaid Perſon writ out a fair Copy of the Paper in his Preſence, which contains Minutes of Reſolutions taken at a Conſultation, and is in the following Words:

'*R.* That the Arms be dug up immediately, and diſperſed in ſmall Parcels. Begin in *Southwark*, *Whitechapel*, *Wapping*, *Holborn* and *Smithfield*. March into City. Poſſeſs the Gates. Againſt the Horſe, Barricades in the narrow Streets, eſpecially at both Ends of *Fleet-bridge*, *Shoe-lane*, *Fetter-lane* and *Chancery-lane*. Poſſeſs St. *Clement*'s Churchyard by a Party from *Holborn*. A ſtrong Barricade in the narrow Part of that Street. Line the two firſt Stories. Bricks, Stores, *&c.* may be uſeful in the upper Rooms, and may be thrown by Women and others unfit to bear Arms. Lighters with Ammunition under Coals lie at *Black-fryars* and *Milford-lane*. No Dependance or Aſſiſtance from *Weſtminſter* and thoſe Parts, except ſome few by Water, the Communication being cut off. Meſſage to the Lord Mayor by three Lords. Proclamation made to oblige all who ſhall not come in, to bring in their Muſkets, and Militia Arms. Declaration ready printed, to be diſperſed among the People. Twenty three Officers of the Guards to be depended on: a great many others well-affected, eſpecially the common Centinels. Day reſolv'd on *April* the 30th. *R.* That forty determined Perſons be immediately pitch'd upon, arm'd with Swords and Piſtols, to execute all Orders; and that for the Subſiſtence of the ſaid forty Gentlemen, Money be advanced out of *the Fund*, at the Rate of ſeven Shillings *per Diem* for Man and Horſe. Commander in Chief Lord *N.* Time ſeven in the Morning.'

Dis: *C. W. M.*

The Committee make no doubt but the Houſe will readily obſerve that this Scheme, drawn up in *April*, and delivered as aforeſaid to one of the Lords of the Council in *July* laſt, has a near Affinity with (*p*) that of *Layer*, and appears to be the Groundwork of it, tho' *Layer* (*q*) denies his having ever ſeen any ſuch Paper of Reſolutions, or having received any Inſtructions relating to his Scheme, except from *Wilſon* a Surgeon, *Murphey* a Phyſician, and *White* a Serjeant.

The Committee likewiſe obſerve from this and *Layer*'s Scheme, as well as from a (*r*) Letter of *Sample*'s (of which notice will be taken in its Place), that the involving the City of *London* in Blood and Confuſion, appears to have been univerſally underſtood and agreed on among all the Conſpirators, as the firſt Step to be taken, and the Foundation of their future Hopes.

By another (*s*) Paper delivered in *July* laſt by the ſame Perſon, it appears, that when the Stroke was ſtruck in *London*, there were to be Inſurrections in ſeveral Counties of *England*; and that the Numbers of Gentmen and private Men, to be depended on both in *London* and the Country, were computed and ſet down: and the Committee obſerve, that the extending the Inſurrection to the Country, after *London* was ſeized, makes likewiſe a Part of (*t*) *Layer*'s Scheme, and (*u*) *Sample*'s Letter.

The Committee farther take notice that in theſe Schemes, as well as in (*x*) *Pancier*'s Depoſition mention is made of great Quantities of Arms concealed for the Uſe of the Conſpirators; and *Layer* having confeſs'd at his (*y*) Examination before the Lords, that he ſuppoſed there were Arms provided, and that *Green* the Gunſmith being in company with Lord *North*, had mentioned five Thouſand Arms, and ſeven Thouſand Arms, and inſiſted, in contradiction to Lord *North* who bid him hold his Tongue, that there were five Thouſand Arms ready in the City; the Committee examined him particularly on this Head, but could draw nothing more from him, than (*z*) that *Green* had told Captain *Bonyn* at Lord *North*'s, that he could help him to five or ſeven Thouſand Arms at an Hour's Warning. And tho' your Committee is fully ſatisfied that no Care has been wanting elſewhere to diſcover theſe Arms, and to defeat the Conſpiracy in ſo eſſential a Circumſtance; yet they cannot but think it a melancholy Conſideration, that through the determined Obſtinacy of the Conſpirators, theſe Endeavours have hitherto proved unſucceſsful.

The Committee obſerve farther, that in the (*aa*) Paper of Reſolutions, Mention is made of a Fund of Money provided, and of a great Number of determined Perſons ſubſiſted in *London* for the Purpoſes of the Conſpiracy, for the Execution of which a Day was likewiſe fixed on and appointed, and the Commander in Chief known. All which ſeveral Particulars correſpond exactly with the (*bb*) Intelligence received at the ſame Time from abroad, with (*cc*) *Pancier*'s Depoſition, with what *Layer* (*dd*) own'd Lord *Orrery* had told him, that he believed Lord *North* and *Grey* had a Commiſſion for commanding in chief; and with what *Neynoe* (*ee*) was told by *Watſon*, that Lord *North and Grey* was thought of for the Command; as likewiſe

(*a*) D. 1. (*b*) A. 8. 23. (*c*) A. 22. (*d*) A. 2. (*e*) A. 1. 2. (*f*) A. 4. (*g*) C. 59. 61. (*h*) B. 38. (*i*) A. 3. (*k*) A. 3. (*l*) A. 7. (*m*) A. 14. (*n*) BB. 2. (*o*) BB. 1. (*p*) B. X. 1. (*q*) B. 83. (*r*) G. 9. (*s*) BB. 4. (*t*) B. X. 1. (*u*) G. 9. (*x*) D. 1. (*y*) B. 11. (*z*) B. 38. (*aa*) BB. 2. (*bb*) A. 2. 3. *&c.* (*cc*) D. 1. (*dd*) B. 11. (*ee*) E. 9.

with what *(a)* was told *Matthew Plunkett* by *Layer* and *John Plunkett*, that Lord *North* and *Grey* with others, were ready to head an Insurrection.

Your Committee having thus laid before you the general Evidence, which convinces them that a Design was formed by Persons of Distinction, to invade these Kingdoms with a foreign Force; that being disappointed in this Expectation, they still persisted to make an Attempt, with such Officers and Soldiers as could be procured privately from abroad; that the late Duke of *Ormond* was to have landed for this Purpose, and to have been followed by the Pretender; that Arms and Money were provided, and Men subsisted for this Service; that the Insurrection was to have been begun in *London*, and thence to have been extended over the whole Kingdom. They will now proceed more particularly to explain the several Parts, which the Leaders and inferior Agents appear to have taken in conducting this Design, as far as the same can be collected from the intercepted Correspondence, and other Papers referred to them, and from the Examinations of the Persons concerned; by which it will farther appear to the House, that the Design was constantly prosecuted in all Parts, without any other Relaxation or Intermission, than what the Necessity of their Affairs, and the Discoveries made, obliged them to, in order to lay their Measures deeper, and to make the Success of them more certain: And that the Enterprize, which was first calculated for the Spring, was to have been afterwards put in Execution at the breaking up of the Camp, with the Help of Officers and Soldiers from abroad, if they could be obtained; if not, on the Strength of such as they hoped to be able to corrupt and seduce among his Majesty's own Forces.

The Leaders, in order (as 'tis natural to believe) to save themselves from the Danger of legal Conviction, chose to manage their Correspondences by the Intervention of Persons of a meaner Rank and Figure, and of desperate Fortunes; who, they hoped, might escape the Observation of the Government, being no otherwise considerable, than as the Trust reposed in them made them so.

The Committee think proper to take notice, that of these inferior Agents, *Layer* appears to have been principally intrusted by Lord *North* and *Grey*, and Lord *Orrery*; and that *Plunkett*, who travelled with *Layer* to *Rome*, and whose treasonable Practices and Correspondences are closely connected with those of *Layer*, writes of himself as transacting Part of his Treasons with Lord *Orrery*'s Clerk, and sending frequent Accounts to the Pretender's Agents abroad, of Matters relating to the said Lord.

George Kelly, a Non-juring Clergyman at present (tho' in the late Queen's Time, the Committee is informed, he took the Oaths to the Government, and likewise the Abjuration) appears to have been the Person principally entrusted by the Bishop of *Rochester*, and to have been imployed in writing for him, and conveying Letters to him, until the Time that he, *Kelly*, was first taken into Custody; after which it appears to the Committee, that *Thomas Carter*, another Non-juring Clergyman, was entrusted and employed by the Bishop in the same manner. And the Committee observe, that *George Kelly*'s Correspondence has a close Connexion with that of *Dennis Kelly*; and likewise that he appears to have been privy to *Plunkett*'s and *Neynoe*'s Transactions.

The Person imployed by the Duke of *Norfolk*, in conveying Letters between him and *George Jernegan*, an Agent of the Pretenders in *Flanders*, they find to be Mrs. *Spelman*, alias *Yallop*; who has likewise owned her conveying Letters in the same Manner between Mr. *Harvey* of *Comb*, and one *Moor* of *Brownlow-street*, and the said *Jernegan*. The Committee observe, that *John Sample* acted under the Direction of Mr. *Sempill* (commonly called Lord *Sempill*) and his Son at *Paris*, and that he wrote Letters to the late Duke of *Ormond* and the Pretender; but whom he transacted Matters with in *England*, your Committee do not find, by his Examination, he would declare.

The Committee farther observe, that this treasonable Correspondence extended itself into *Scotland*; that *William Erskine* remitted Money to *France* for the Service of the Pretender's Friends, and had a Letter under the late Lord *Marr*'s Hand found upon him, when he was taken into Custody. That Mr. *Cockran*, now in Custody, and others of that Country yet unknown, were concerned in the same treasonable Correspondence, carried on under the same fictitious Names and Expressions that are made use of by several of the Correspondents in *England*; and that the same Cant was likewise made use of, for the same Purposes, by Persons in *Ireland*. That all these several Negotiations and Correspondences concurred in one common Design, of stirring up an Insurrection in these Kingdoms, and placing the Pretender on the Throne.

The Committee have thought it proper to lay before the House such Particulars as occur to them relating to each of these Negotiations, and to begin with those of *Layer* and *Plunkett*, as being closely connected with one another, and set on foot earlier than it yet appears the others were; and as being likewise what the House thought fit first to refer to the Examination of the Committee: And by comparing the Substance of the Papers, and Examinations of these two Persons together, the House will be enabled, at one View, to form a true Judgment of the Sincerity of their Confessions.

Before the Committee examin'd Mr. *Layer*, they acquainted him that the several Questions they intended to propound to him were reduced into Writing, and that to avoid all Mistakes, his Answers should be so likewise, and before they were reported to the House he should have the Perusal of them. Accordingly he did review his first Confession to the Committee, and made several Additions and Alterations, which will be taken Notice of in their proper Places.

Mr. *Layer* has own'd partly to a Committee of Lords of the Council before his Trial, and partly to your Committee (as will appear by reference had to his *(b)* several Examinations annex'd to this Report), 'That being 'bred up under an Uncle who was a Non-juror in *Norfolk*, he early im-'bib'd those Principles; that having a private Affair to transact at *Venice*, 'this and a natural Inclination and Curiosity, which he had always had 'to see the Pretender, carried him on to *Rome*; that he set out from '*England* on the first of *April* 1721, in company with *John Plunkett*, now 'in Custody, who went sometimes by the Name of *Rogers*, whose Ex-'pences he bore on Account of his being useful to him, as speaking se-'veral Languages. That he believes from the Time of his first acquaint-'ing *Plunkett* with his intended Journey (which was some Months before 'their setting out), the said *Plunkett*, in order to magnify his Services to the 'Pretender and his Adherents, might write to General *Dillon*, and 'others of them, that he was going to *Rome* with a Friend, and that his 'and his Friend's Journey would be of great Consequence to the Pre-'tender's Affairs.' But this Particular he did not own till the Review of his Examination, when he found the Committee were apprised that Notice had been sent to *Rome* of his Journey; for he insisted at first that his Journey to *Rome* was purely accidental, and not concerted with the Pretender or any of his Agents.

He farther owned, 'That in their Way to *Italy*, they passed through '*Antwerp*, and that *Plunkett* there received a Letter from General *Dillon*, 'which he shewed to *Layer*, directing them whom to apply to on their 'Arrival at *Rome*, to introduce them to the Pretender.' And on his reviewing his Examination, when he found your Committee were in Possession of that Letter, he own'd, 'That *Francis Kennedy* was the Person 'they were directed by *Dillon* to apply to.' A Letter *(c)* to that Effect being found among *Plunkett*'s Papers, signed *Dixwell*, and the same being shewn by your Committee to *Layer*, he declared, 'That, to the best of his 'Memory and Belief, it was the very Letter which was shewn to him by '*Plunkett* at *Antwerp*, and affirmed by *Plunkett* to be from General *Dillon*: 'That he, *Layer*, believes *Dillon* goes by the Names both of *Dixwell* and '*Digby*; and that by the Name of *Joseph*, in the said Letter, is to be un-'derstood the Pretender.

'That he and *Plunkett* arrived at *Rome* the latter End of *May* 1721; 'and that after he had been a Day at *Rome*, he sent to *Francis Kennedy*, 'Secretary to the Pretender, to let him know he should be glad to see 'him, and to renew Acquaintance with him.'

Being asked when and where he first became acquainted with *Francis Kennedy*, he said, 'That *Kennedy* has a Brother, Secretary to the late 'Duke of *Ormond*, with which Brother he had some Acquaintance; and 'he thinks he has formerly been in *Francis Kennedy*'s Company at *London* 'along with the other Brother: But as to this Particular he cannot be 'positive.' This is what he said relating to *Kennedy* at his first Examination; and your Committee observed by his Behaviour, that he was under Difficulties how to account for his applying to *Kennedy*, not having owned at that Time he had any Directions so to do, and being willing to have your Committee believe, that his Journey was not known of at *Rome*: But after *Plunkett*'s Examination, being uncertain what *Plunkett* might have confess'd, he thought it proper to be more open upon this Head, though contradicting in some Measure his own former Confession. He farther said, 'That upon his sending to *Francis Kennedy*, as above, the 'said *Kennedy* came to his Lodgings, which at the same Time he said he 'was surprized at, it being in the Face of all the *English* Gentlemen; 'but that *Kennedy* told him, he needed not be uneasy at his coming to his 'Lodgings openly, since he frequented the Company of all the *English* 'Gentlemen that came to *Rome*, without Distinction. That at the first 'Visit he desired *Kennedy* to introduce him to the Pretender, which he 'promised to do. That *Kennedy* came to him again the next Night, and 'promised to introduce him to the Pretender privately in an Evening, so 'that nobody should be able to prove his having been there.'

And when he reviewed his Examination, being asked by your Committee, whether he knew of any Letter to *Plunkett*, on their first coming to *Rome*; and being asked it in such a Manner as let him understand that they knew from whom it came, and by whom it was writ; then, and not till then, he owned, 'That he believed *Kennedy* delivered to *Plunkett* a 'Letter under the Pretender's own Hand, when *Kennedy* and *Plunkett* were 'alone together; for the next Morning, as he, *Layer*, was in Bed, in a 'Room next adjoining to that where *Plunkett* lodged, *Plunkett* came to 'his Bedside, and told him with seeming Satisfaction, that he had got a 'Letter under the King's (meaning the Pretender's) own Hand; but 'that *Kennedy* never said one Word of this Letter to him, *Layer*. That '*Plunkett* shewed him, *Layer*, the said Letter, the whole of which he be-'lieves to have been writ in the same Hand in which the blank Receipts 'taken amongst his Papers at Mrs. *Mason*'s are signed, which he believes 'to be the Pretender's own Hand. That the Substance of the Letter was, 'that the Bearer, *Francis Kennedy*, would introduce *Plunkett* to the Pre-'tender. He said he could not be positive whether it was said in that 'Letter, that *Kennedy* would introduce *Plunkett* only, or whether he him-'self was mentioned likewise to be introduced by *Kennedy*. That *Plunkett* 'told him he saw the Pretender the Night before *Layer* was introduced to 'him.'

This Original Letter has since been deliver'd to your Committee, with the *(d)* Depositions relating to it; by which it appears, that *Plunkett* delivered it with other Papers to one *Mary Fagan*, about *Michaelmas* last, which was near the Time of *Layer*'s being taken up; it is dated *Thursday* Morn. signed *James* R. and directed to Mr. *Plunkett*, and is in the following Words:

'This is only to direct you not to mention any Thing of Business to 'any Body, till I have seen you. I have not much Leisure to-night, ex-'pecting Visits; but however I shall be glad to see you alone, and agree 'with you the most private Way and Manner for your *Companion* and me 'to meet. The Bearer *Fr. Kennedy* will bring you very privately to my 'House to-night about eight a-Clock. *James* R.

For Mr. Plunkett.

Your Committee observe from this Letter, as well as from other Papers before them, what a Degree of Trust and Confidence *Plunkett* was admitted to (notwithstanding he would endeavour by his present Appearance to make it seem incredible) and perceive likewise by this Letter, that his and *Layer*'s Journey to *Rome* had been represented to the Pretender as an Affair of some Importance.

(a) B. 6. (b) B. 8, 9, 10, 11, 38. (c) B. 24. (d) C. 70. 71.

Layer

Layer farther ſaid, 'That *Kennedy*, in his ſecond Viſit, appointed him 'to meet him and Colonel *Haye* in the Square before the Pretender's 'Houſe at Ten the next Night; that he met them there, and that they 'conducted him up a Pair of Back Stairs to the Pretender.'

Before the Committee proceed to give an Account of the Converſation which Mr. *Layer* ſays he had with the Pretender, they think it proper to obſerve, that among *Plunkett*'s Papers were found two foul Draughts of Letters, which are ſworn to be *Plunkett*'s Hand-writing, which give ſome Light to the Occaſion of his and *Layer*'s Journey to *Rome*. The firſt is without Date or Direction but appears evidently by the Matter to have been writ to the ſame Perſon, and about the ſame Time as the ſecond, which is dated the 22d of *March*, 1721. (about ten Days before his and *Layer*'s ſetting out) and directed *To Mr. Jackſon*, which Name is found in a (*a*) Cypher taken among *Plunkett*'s Papers, and ſworn likewiſe to be his Hand-Writing, to denote the Pretender.

In the (*b*) firſt of theſe foul Draughts are theſe Words: 'There is one 'that ſets out from *Norfolk* in a few Days to let you know they (that is the *Tanners*, which (*c*) he explained to *Layer* to mean the Tories) will 'ſtand by you on Occaſion: He only ſtays for me, and offers to bear my 'Expences, ſo that I ſhall wait on you, and have the Satisfaction to tell 'you by Word of Mouth what will be acceptable. He carries *The Liſt* 'with him, no doubt on't you may have many ſuch now.'

In the (*d*) Letter to *Jackſon* of the 22d of *March* are theſe Words: 'The Gentleman I mentioned to you formerly, is come out of the Coun-'try, with Inſtructions to wait on you, and tender you his Service. He 'offers to bear my Expences.'

From theſe Paſſages compared with the (*e*) Letter received by *Plunkett* from *Dillon* at *Antwerp*, in which *Dillon* ſays, 'I have ſent *Joſeph* Advice 'of your Journey, in which I wiſh you and your Companion, tho' un-'known, all Happineſs:' And then directs him to apply to *Kennedy* at *Joſeph*'s Houſe for Introduction; and compared likewiſe with the Pretender's (*f*) Letter to *Plunkett*, in which he directs him not to mention any thing of *Buſineſs* to any Body till he had ſeen him alone, in order to agree with him the moſt private Way and Manner for meeting his Companion. It appears to your Committee to be moſt evident, that *Layer* did not undertake ſo long and expenſive a Journey on uncertain Proſpects of private Buſineſs, or out of mere Curioſity; but that his Journey was concerted with the Pretender's Friends at Home, and notified to the Pretender and his Agents Abroad; and that he carried over with him Tenders of Service to the Pretender from Perſons in *England*, as likewiſe a *Liſt* of Names, which was of ſuch Importance, and ſo well underſtood and expected at *Rome*, as to be mentioned by *Plunkett* in one of his Letters to the Pretender, without any other Deſcription than barely that of *The Liſt*.

The Committee thought this Obſervation the more neceſſary to be premiſed, becauſe *Layer* did of himſelf own to them his giving to the Pretender a Liſt of Names, and the Pretender's aſking him at a ſecond Interview, what he had to ſay in relation to *his Liſt*; but yet endeavoured to explain that Affair in ſuch a Manner, as your Committee apprehend to be no Ways conſiſtent with *Plunkett's* foul Draughts above-mentioned; nor with the Expectations that ſeem to have been raiſed in the Pretender and his Agents, from *Layer*'s and *Plunkett*'s Journey.

Layer told your Committee, 'That on his being introduced to the 'Pretender by *Kennedy* and *Haye*, as above-mentioned, the Pretender aſked 'him the Occaſion of his coming, and whether he had any Credentials 'from People in *England*? That he anſwered, Nothing but Curioſity, and a 'Deſire of paying my Duty to your Majeſty, has brought me hither. 'That the Pretender aſked him, what Lords he was acquainted with? 'To which he anſwered, None, but ſuch as he was concerned with in the 'Way of his Profeſſion. That the Pretender again expreſſed himſelf 'ſurprized at his having no Credentials nor Recommendations from any 'Perſon in *England*; and ſaid, This Journey muſt have been very expen-'ſive to you, I believe it cannot coſt you leſs than five hundred Pounds. 'To which he anſwered, That a private Affair, which brought him to '*Venice*, would have defrayed the Expence, if it had ſucceeded; but that 'being diſappointed in that, his Inclination drew him on to *Rome*, to pay 'his Duty to the Pretender, which he had long had in his Thought, ſo 'took this Opportunity of doing it. That one *Plunkett*, who was now in '*Rome* with him, had often told him that he need not fear being introduced, 'or to that Effect. That the Pretender ſaid, He believed that *Plunkett* 'was a very honeſt Man, and as proper a Perſon as *Layer* could have had 'for a Companion.'

The Committee obſerve, that what is here ſaid concerning the Pretender's good Opinion of *Plunkett*, and *Plunkett*'s having given Aſſurances to *Layer* of his being introduced, was not mentioned by *Layer*, till after *Plunkett* had been examined.

Layer farther ſaid, that the Pretender again repeated his Surprize at his having no Recommendation from any Perſon in *England*; but ſaid, I am informed by *Francis Kennedy*, who knows you, that you have a good Character, and for that Reaſon you are welcome without any Credentials. Yet your Committee obſerve, that Dr. *Blackerby Fairfax* (an intimate Acquaintance of *Layer*'s) (*g*) has depoſed upon Oath, 'That *Layer*, ſince 'his Return from *Rome*, told him, that while he was in private Audience 'with the Pretender, a *Scotch* Colonel broke in upon them, upon which 'the Pretender took him into another Room; and that he, *Layer*, did 'there deliver his *Credentials* to the Pretender.'

Layer told the Committee, 'That the Pretender, after the Diſcourſe 'above-mentioned, aſked him what County he was of, and what Gentle-'men he knew: That he anſwer'd he was of *Norfolk*, and knew all the 'Tory Gentlemen of that County. That the Pretender aſked him if he 'could recollect their Names, and put them down in Writing: To 'which he anſwer'd, He could eaſily do that, having brought with him 'Memorandums of their Names. That accordingly he drew up a fair Liſt 'of the Tory Gentlemen of *Norfolk*, and gave the ſaid Liſt to the Pretender 'at a ſecond Interview, thinking it would be agreeable to him. That the 'Pretender then aſked him, whether he would ſee the Queen (meaning his 'Spouſe), and promiſed ſhe would admit him to kiſs her Hand.

'That about three Weeks or a Month after, *Francis Kennedy* and Colo-'nel *Haye* appointed him to meet them at the ſame Place and Time as 'before, and introduced him to the Pretender and his Spouſe. That the 'Pretender then called him to him, and aſked him, Whether he had any 'Thing to ſay in Relation to his Liſt? That he anſwer'd, He forgot ſome-'thing which he had to communicate to his Majeſty; that the Pretender 'ſaid, His Wife would go out of the Room preſently, and ſoon after 'ſpoke to her in *Italian*, to withdraw, as he believes. That the Pre-'tender then aſked him, What he had to ſay? To which he replied, I have 'nothing ſo material to offer as ought to have procured me this great Ho-'nour and Indulgence; but if there be any Service on Earth I can do, I 'am moſt ready. That the Pretender ſaid, What can you do? Have you 'any Acquaintance? To which he replied, that all the Perſons mentioned 'in his Liſt were entirely devoted to the Pretender's Intereſt, and all the 'Gentlemen in *England* the ſame, except thoſe in Places of Profit and 'Truſt, and that all Parties were united in his Intereſt. That the Pre-'tender then aſked him, What the Gentlemen were whoſe Names were on 'his Liſt? To which he anſwer'd, They were all Tories, and that he had 'not put down any of the *Roman* Catholicks of *Norfolk*, of whom there 'were ſeveral, Men of Eſtates. That the Pretender ſaid, he believed 'the People of *England* were generally well-inclined to his Cauſe, and 'pretty well convinced of their Error; and then ſpoke of the Diſcon-'tents occaſion'd by the *South-Sea* Scheme.'

The Committee obſerve that in the Cypher which *Layer* received from Sir *William Ellis*, the Names of ſeveral *Norfolk* Gentlemen are inſerted; who, they think it probable, made a Part of the Liſt delivered by *Layer* to the Pretender; but at the ſame Time they think it a Juſtice due to thoſe Gentlemen, to obſerve, that *Layer* has owned to the Committee, that, in order to magnify the Number of the Pretender's Friends, he did in ſeveral of the Liſts found among his Papers inſert the Names of Perſons as well-affected to the Pretender's Service, without having the leaſt Authority from them for ſo doing: And his falſe Aſſertion to the Pretender, that all the Gentlemen in *England*, except thoſe in Places of Profit and Truſt, were entirely devoted to his Intereſt, ſhews, that he made no Diſtinction between the Innocent and the Guilty.

He next acquainted the Committee, 'That after the Diſcourſe before-'mentioned with the Pretender in relation to the Liſt, the Pretender com-'mended his Zeal, and told him, he might depend on any Service he 'could do him. That he, *Layer*, then deſired ſome Token, by which 'he might obtain Credit among the Pretender's Friends of the Nobility 'in *England*, and obtained that of the Pretender and his Spouſe's anſwer-'ing for his Child;' which the Committee avoid repeating, the Account he gave them agreeing with that printed in his Trial. He ſaid, 'That 'upon his deſiring a Letter to the Dutcheſs of *Ormond*, for her repreſent-'ing the Pretender's Spouſe, Colonel *Haye* told him, no Letter could be 'ſent by him, but that Care would be taken the Dutcheſs ſhould ſtand. 'That he likewiſe gave him a Meſſage to the Dutcheſs, to this Effect, 'that *the Duke of* Ormond was *well, and gone to* Madrid, by which he told 'him, ſhe would underſtand the Buſineſs he came about.

'That he returned to *England* about the End of *Auguſt*, or Beginning of '*September* 1721, and waited on the Dutcheſs with his Requeſt; adding, 'that he hoped ſhe was not altogether a Stranger to that Affair; to which 'ſhe returned him no particular Anſwer, but promiſed to ſtand God-'mother, as he deſir'd.

'That he then made Application to Lord *Orrery* to ſtand with her, by '*Thompſon*, whom he took to be her Chaplain, and by *Swortfegger*, Lord '*Orrery*'s Secretary, who underſtood that Lord *Orrery* was deſired 'to repreſent the Pretender. That the ſaid Lord ſent to the 'Dutcheſs to know whether ſhe ſtood? Who anſwered that ſhe did; yet 'Lord *Orrery* refuſed; but upon farther Acquaintance, and hearing that 'Lord *North* and *Grey* had conſented to ſtand, he ſent for *Layer*, and 'made Excuſes to him for his Refuſal. That he made uſe of this Cre-'dential to Lord *Orrery*, to induce him to converſe freely with him in re-'lation to the Pretender's Affairs, having heard that the ſaid Lord was in 'the Pretender's Intereſt.

'That upon his being refuſed by Lord *Orrery*, he made his Applica-'tion to Lord *North* and *Grey*, as mention'd in his Trial, who ſtood; 'knowing, as he believes, that he ſtood for the Pretender. That this 'Tranſaction was the Beginning of his Intimacy with Lord *North* and *Grey*.

'That the firſt Converſation he had with Lord *North*, relating to the 'Pretender's Affairs, was ſoon after the Chriſtning; that he then aſked 'Lord *North*, whether nothing could be undertaken in the Pretender's Fa-'vour, his Lordſhip being a military Man? That his Lordſhip replied, 'he believed the Pretender had Friends enow, if they did but underſtand 'one another; that the Army in general, and moſt of the Half-pay Of-'ficers, were well-inclined to the Pretender.

'That in *July* laſt, he, *Layer*, going down to *Norfolk* on the Circuit, 'called on Lord *North* at *Epping*, and again at his Return; that he then 'aſked the ſaid Lord again, whether nothing could be done in Favour of 'the Pretender? That Lord *North* ſaid, How can any Thing be done, 'while ſo great a Body of Forces is encamped under the very Walls of '*London*, beſides the Encampments in other Parts of the Kingdom? 'That *Layer* told him, he found moſt of the Gentlemen in *Norfolk* that 'were Tories before, Jacobites now; that Lord *North* and *Grey* ſaid, it 'was the ſame in other Counties, but that nothing could be done till the 'Camp ſhould break up. That upon *Layer*'s preſſing him to know whe-'ther any Scheme was formed, Lord *North* ſaid, What does your Friend 'Lord *Orrery* think of things? That he anſwered, Lord *Orrery* was of 'Opinion, nothing could be done without a Foreign Force; that Lord '*North* and *Grey* replied, I cannot be of his Opinion, I believe the 'People of *England* may do it of themſelves.

'That *Layer* viſiting him during the Vacation, and ſtaying two or three 'Days at his Houſe, continued to preſs him about forming a Scheme; 'that Lord *North* reply'd, We Soldiers do not trouble ourſelves much

(*a*) C 51. (*b*) B 23. (*c*) B 38. (*d*) C 42. (*e*) B 24. (*f*) C 69. (*g*) B 36.

'about Schemes: *Be you quiet; something will be done.*' And at his *(a)* Ex-'amination before the Lords, he owned, 'Lord *North* and *Grey* said, If 'there be a Rising, you shall not want Men, or Money, or Arms.'

Layer farther gave your Committee an Account of his becoming acquainted with *Lynch*, and of his carrying him to Lord *North* and *Grey*, upon *Lynch*'s telling him that he had something to propose to that Lord that might be of great Service to the Pretender's Cause. But in giving an Account of what passed between *Lynch* and him at the *Green-Man*, your Committee observed, that *Layer* took great Pains to shew, that he did not communicate any Papers to *Lynch till after Dinner*, and that he then only shewed him Memorandums, transcribed out of the Prince of *Orange*'s Declaration, tho' *Lynch* has *(b)* deposed upon Oath, that Mention was made in that Paper of Lord *Cadogan*'s being seized, and remaining in the Custody of the Conspirators.

He owned to your Committee his having carried *Lynch* to Lord *Cadogan*'s, but said, 'He went thither only in relation to the Purchase of an 'Estate; that while they were waiting there in a Room next the Garden, '*Lynch* viewed the Garden and House, and said, I can easily seize you 'this General: but he deny'd their having had any previous Discourse 'to this Purpose, and said, the Proposal arose from *Lynch*, and that he, '*Layer*, was mad enough to make it Part of his Scheme.'

He said, 'That when *Lynch* and he came to Lord *North* and *Grey*'s, 'his Lordship asked him who *Lynch* was? That he said, He was an 'honest Gentleman, recommended by a particular Friend. That his 'Lordship said, I wonder you would bring him, you know I am not 'easy nor free before Strangers. That, however, Lord *North* and *Grey* 'entertained *Lynch* civilly, and after Supper inquired of him, whe-'ther he was in the Army? To which *Lynch* answered, That he was bred 'up to Merchandize, but had been with the Pretender in *Scotland*, and 'had the Command of a Ship under the King of *Spain* in the Descent on '*Scotland*; and enlarged much on his Loyalty and Zeal for the Pretender; 'but that Lord *North* waved the Discourse.

'That not long after, *Lynch* came down again to Lord *North* and *Grey*'s 'to *Epping*, while *Layer* was there a-shooting, and was civilly received 'by his Lordship; and that after he was gone, *Layer* making Apologies 'for *Lynch*'s intruding, Lord *North* and *Grey* said, *Lynch* was a good, 'honest Fellow, and had entertained them with several merry Stories.'

The Committee observed, That *Layer*, in relating what passed while *Lynch* was at Lord *North*'s, took so much Pains to shew that Lord *North* and *Grey* could have no private Discourse with *Lynch*, that he left no room for the said Lord *North*'s having had any private Discourse with him, *Layer*; which yet is inconsistent with his *(c)* Examination taken before the Lords, as well as with his Confession to your Committee; in another Part of which he owns, that while *Lynch* was at Lord *North*'s, he, *Layer*, shewed Lord *North* some Part of his Scheme, or Heads relating to a Declaration, as he was walking with him in the Garden, and that they had some Discourse upon it.

They observe likewise, That what he owned to the Committee in relation to his introducing *Lynch* to Lord *North* and *Grey*, falls very short of what he confessed to the Lords of the Council on the same Subject, previously to his Trial. For he *(d)* then said, 'That *Lynch* having told him he 'would seize Lord *Cadogan*, he carried *Lynch* to Lord *North* and *Grey*'s, 'and recommended him as a proper Person for such an Attempt. That 'he had before-hand proposed to Lord *North* and *Grey* the carrying *Lynch* 'to him; that his Lordship made a Difficulty of seeing him; but that he, '*Layer*, insisted on *Lynch*'s being an honest Man, fit to be employed in an 'Insurrection for the Pretender; saying, *Lynch* would do any thing his 'Lordship would have him, if there should be a Rising: That he was fit 'to be sent with a Party to seize any particular Person, and that *Lynch* 'was impatient to see his Lordship, *Layer* having told him, that his 'Lordship was at the Head of those Designs.'

Layer farther acquainted your Committee, 'That during his Stay at 'Lord *North* and *Grey*'s at *Epping*, in the Vacation, he again pressed his 'Lordship to bring Matters to some Issue in Favour of the Pretender, say-'ing, If something be not done speedily, we shall all be taken up; that 'his Lordship replied, Is not the Camp there still? If you can find some 'Expedient it would be well, it is more than I can do. That *Layer* said, 'It was his Opinion something might be done even during the Encamp-'ment; and in order to discover whether Lord *North* and *Grey*, and Lord '*Orrery* had any Scheme of their own, he drew up a Scheme himself, and 'having so done, lodged it with Mrs. *Mason* the Day before he was taken 'up. That he intended to have communicated this Scheme to Lord '*North* and *Grey*, and Lord *Orrery*; that he had some Discourse with '*George Wilson*, Dr. *Murphey* AND OTHERS, on the Subject of it, before 'it was drawn up.' Being asked, Who those OTHERS were? He said, 'He 'could recollect no one else but one who called himself Serjeant *White*, 'whom he saw in Company with Dr. *Murphey* at a Tavern, and inquired 'of him, how far some Parts of his Scheme were practicable?'

Being asked whether he had shewn this Scheme to any Body? He said, 'He did shew the Heads of it to Lord *North* and *Grey*, as he was walking 'with him in the Garden, and that his Lordship said, all was impracti-'cable during the Encampment: but that he never shewed his Scheme to 'any Body, after it was drawn up *in the Form in which it was left with Mrs.* 'Mason.' Which last Part of his Answer, the Committee observe may be evasive; since by his own Account, as soon as he had drawn it up in *that Form*, he lodged it with Mrs. *Mason*, and the Day after was taken into Custody.

The Committee farther take Notice, That the Account he gave when he was questioned before the Lords, whether he had shewn this Scheme to any Body, are inconsistent and contradictory.

For in some Part of that *(e)* Examination, he says, 'Lord *North* and '*Grey* would not hear of any Thing till the Camp was broke up; That 'the said Lord would not see his Scheme; That the said Lord said, He 'might keep his Heads and his Schemes to himself, for there was nothing 'to be done; That the said Lord said there was Time enough for form-'ing a Scheme;' and yet in another Part of the same Examination, he says, 'Lord *North* did not dislike a Scheme in general, but disapproved 'his Scheme.'

Your Committee beg leave to make the following Observations on these Passages, with a Design to shew the Insincerity and Inconsistency of *Layer*'s Confessions, and without presuming to draw from them any other Conclusions.

First, That if what *Layer* said was true, Lord *North* must have perused and examined *Layer*'s Scheme; since a Man that did not dislike a Scheme in general, could not be said to disapprove any particular Scheme, unless he had first considered and examined it.

The Committee observe farther, that the Scheme itself does not appear drawn up by a Man of *Layer*'s Profession, assisted only, as he would insinuate, by *Murphey* a Doctor of Physick, *Wilson* a Surgeon, and *White* a Serjeant; and they cannot but think it very extraordinary, that his Scheme, drawn up in *August* or *September*, should have so great an Affinity with the *(f)* Paper of Resolutions, for *the digging up the Arms*, &c. mentioned above, which was drawn up the *April* before; and yet that *Layer* should have had no Sight of that Paper, nor have received any Instructions or Assistance from any Persons, who were privy to those Resolutions, which he has declared to the Committee he had not. And the Committee are farther confirmed, that the Scheme was not drawn up by himself, from a Particularity contained in a *(g)* Deposition of Dr. *Blackerby Fairfax*, who has sworn, That being for four or five Years past employed in reading Civil Law and *French* to the said *Layer*, he recollects that *Layer* once asked him the Meaning of the *French* Motto, since prefixed to his Scheme in these Words, *Au defaut de la Force il faut employer la Ruse*; and that upon *Fairfax*'s explaining it to him, *Layer* said, it had been explained to him in the same Manner by others. Neither does the Scheme appear drawn up at a Venture, or merely with a View of engaging the Pretender's Friends in the Execution of this or some other Scheme of their own, as *Layer* would insinuate; but several Passages in it, compared with his other Papers, make it probable, that the Officers, Serjeants, Soldiers and Arms mentioned in the Scheme, were first engaged and prepared, and then the said Scheme drawn up, for employing, in the best manner possible, such a Force as had been so prepared.

This appears by comparing these Words in the third Paragraph of his *(h)* Scheme ('And as there is eight Serjeants, *viz.* Three of the first 'Regiment of Foot-Guards, Three of the second, and Two of the third, 'all ready at an Hour's Warning to obey Orders'), with two of his Papers taken with his Scheme at Mrs. *Mason*'s, *viz.* *(i)* That which contains a List of Thirteen Serjeants of the Guards, and another *(k)* Paper of *Layer*'s Hand-writing, which contains Eleven of these Thirteen Serjeants Names, and Eight of those Eleven Serjeants have Marks set against their Names; so that it may be concluded from thence, that *Layer* had been able to engage but eight of the said Thirteen Serjeants; and therefore, in his Scheme, he mentions no more than Eight Serjeants.

The Truth of this Observation farther appears, by comparing *Layer*'s said *(l)* Examination of the 1st of *October*, with the fourth Paragraph of his Scheme; for in that Examination, he says, that *George Wilson* had assured him, that two hundred of the Soldiers in the Camp had been spoken to and were ready: and therefore *Layer*, in the said Fourth Paragraph of his Scheme, mentions only two hundred Soldiers to be ready, and gives every one of his eight Serjeants the Command of Five-and-Twenty of the said Two Hundred Men. From whence it may be concluded, that the Officer that was to seize the *Tower*, and the Arms for executing the Scheme, were also in a Readiness.

It is farther remarkable, that *Layer* intended, as he owned to your Committee, to communicate this Scheme in its present Form to Lord *North* and *Grey*, and Lord *Orrery*; and yet several principal Parts of it are not explained as Things new, but referred to as Matters already known and understood by the Persons that were to see it, which could only be by previous Consultations on that Subject; for Instance,

In the First Paragraph it is said, 'Let the General *and only one Officer of* '*note in the Camp* agree upon a Day for Execution;' which must have appeared a most absurd Beginning to any Body that had not had some previous Discourse or Notice, of several Officers in the Camp engaged in the Design. And the same Observation will hold, with respect to the Paragraphs where Arms were mentioned as provided; which shews, at least, that *Layer* believed those Persons that were to see his Scheme, had heard of Arms that *were* provided.

In the Third Paragraph, *George Wilson* is named in such a Manner, as makes it probable he was already known to those who were to have a Sight of this Scheme; and the Committee observe that *Layer (m)* confessed to the Lords that he had told Lord *North* and *Grey*, that *Wilson* was a Fellow who had served in the Army, had a general Acquaintance, and was fit to be employed if his Lordship would make use of him; to which the said Lord replied, That when he had Occasion he would employ him.

In the Thirteenth Paragraph of the Scheme it is said, 'Let the General 'order four of *the Half-pay Captains*,' without any farther Description; which shews that *Layer* thought those to whom his Scheme was to be communicated, knew already of Half-pay Officers that were engaged, agreeably to what Lord *North* and *Grey* had *(n)* told him, that most of the Half-pay Officers were well inclined.

In the Nineteenth Paragraph, he allots Part of the Execution of the Design to *the Duke's Barge-men*, without any other Addition: which is a Manner of Expression no one would have used in a Paper to be shewn to Persons, who were entire Strangers to the Affair.

Layer being in the Course of his Examination desired by the Committee, to explain by what Services or Merit on his Part, the Shyness, which he would have it believed, the Pretender expressed towards him at his first coming to *Rome*, and the little Acquaintance he then had with Persons of Distinction at home in the Pretender's Interest, came soon after to be changed into so great a Degree of Confidence both at *Rome* and here, that he should be trusted with negotiating Blank Receipts, under the Pretender's own Hand, for unlimited Sums; he told the Committee, that

(a) B. 11. *(b)* B. 1. *(c)* B. 11. *(d)* B. 11. *(e)* B. 11. *(f)* B B, 2. *(g)* B. 37. *(h)* B. X. 1. *(i)* B. X. 9. *(k)* B. X. 7. *(l)* B. 11. *(m)* B. 11. *(n)* B. 38.

during his Stay at *Rome*, he contracted a Friendſhip with Sir *William Ellis*, who is a Servant of the Pretender's, and that at his leaving *Rome* he ſettled a Correſpondence by Cypher with the ſaid *Ellis*, and acquainted him from time to time how the Pretender's Affairs went on here: but the Committee obſerve, That this general Anſwer does by no means account for the Terms of Thankfulneſs and Reſpect, with which (a) *Ellis* writes to him from the Pretender, nor lay a ſufficient Foundation for his being admitted to ſo particular a Truſt. He ſaid that in the Courſe of his Correſpondence, he writ to *Ellis* that he had got acquainted with *Burford* and *Symms* (by the firſt of which Names he meant Lord *Orrery*, and by the latter Lord *North* and *Grey*) and that if he had but blank Receipts under the King's (meaning the Pretender's) own Hand, he believed he could raiſe a conſiderable Sum of Money upon them, and put the Pretender's Affairs in a great Forwardneſs, by engaging a conſiderable Part of the King's Army in the Pretender's Intereſt, with the Money ſo raiſed. That he did not name any particular Sum to *Ellis*, but hoped himſelf to have raiſed twenty thouſand Pounds by this Method. He ſaid he received from *Ellis* only the ten Receipts taken among his Papers at Mrs. *Maſon*'s; that he received them at different Times by the Poſt, and that the firſt of them came to his Hands the latter End of *July* laſt. He ſaid farther, he intended to have tried to put off theſe Receipts among the *Norfolk* Gentlemen named in the Liſt which he gave to the Pretender, but that he never had ſpoke to any of them on this Subject, nor received any Aſſurance from them.

Being aſked by the Committee whether he had ſhewn theſe Receipts to any other Perſons, or had any Diſcourſe with any Body about raiſing Money this Way? He ſaid, He believed he had mentioned to Lord *North* and *Grey*, and Lord *Orrery*, his having ſuch Receipts in his Poſſeſſion; and that the ſaid Lords told him, they believed they would be of little Uſe, for that People would ſcarce venture to keep ſuch Receipts by them, or to have them in their Cuſtody, or Words to that Effect.

The Committee take Notice, That when he was examined before the Lords, he prevaricated in Relation to the Cypher received from Sir *William Ellis*, which he ſaid was an old Cypher, in Uſe before the *Preſton* Rebellion. But being ſhewn the Names of ſeveral Perſons in that (b) Cypher, with the Addition of their Employments, which they did not enjoy at the Time of that Rebellion, nor ſome of them till very lately, he ſaid that he applied to *Plunkett* for ſuch Names as were not in the old Cypher; though the Committee obſerve, that the whole Cypher is in the ſame Hand with the Letters he owned he received from *Ellis*, and that the Perſons deſigned by late Employments are not added or interlined, but placed in their Alphabetical Order in the Body of the Cypher. Being aſked by the Committee, whether he had ſeen or knew of any other Cyphers? He anſwered in the Negative; yet they obſerve that in the (c) Letter from Sir *William Ellis* dated the 1ſt of *October*, he deſired to make uſe of a Pattern of Lace of Mrs. *Kinders*, (which Name he owned to the Lords to mean Mrs. *Hughes*, Nurſe to the Pretender's Child) Sir *William Ellis* having loſt or miſlaid his own. Now the Word Pattern in *Ellis*'s Cypher denotes Cut-Paper, which ſhews that *Layer* was privy to another Cypher of that Kind, in Uſe among the Pretender's Agents.

He likewiſe denied his knowing any fictitious Names made uſe of by the Pretender or his Agents for carrying on their Correſpondences, except thoſe mentioned in his Examinations before the Lords; yet afterwards, upon being asked by the Committee, who was meant by *Joſeph* in *Dillon*'s (d) Letter to *Plunkett*? He confeſſed that he knew *Joſeph* was one of the Names made uſe of to denote the Pretender.

The Committee farther obſerve, that the Accounts he has given do by no means clear up ſeveral Paſſages in Sir *William Ellis*'s Letters, particularly one in the (e) Letter of the 30th of *Jan.* in which *Ellis* ſays, 'That '*Layer* having read over ſeveral Times the Paper he ſhewed him, and 'having a good Memory, *Ellis* does not think it neceſſary to ſend a Copy 'of it.'

Layer being queſtioned by the Committee about the Liſts of Names taken at Mrs. *Maſon*'s, ſays he employed *George Wilſon* and Dr. *Murphey* to enquire into the Characters of Officers and Soldiers, and that he received moſt of the Liſts from *Wilſon*, who told him, he believed if the late Duke of *Ormond* were to come over, and Lord *Cadogan* were ſhot, the Soldiers mentioned in thoſe Liſts would readily joyn *Ormond* in favour of the Pretender.

That *Wilſon* made moſt of the Marks againſt the Names, to explain what Men might or might not be confided in; from which Circumſtance your Committee obſerve, that there were Perſons in thoſe Liſts whom the Pretender's Friends could not confide in. He told the Committee, that *Roath* or *Roach* in the (f) Liſt No 15, againſt whoſe Name is ſet 1000, is one whom he does not know; but that *Murphey* told him the ſaid *Roath* or *Roach*, was a Perſon of great Intereſt in *Staffordſhire*, and able to raiſe a thouſand Men. That the (g) Paper No 11, at the Bottom of which is writ *Enquire of North and Grey*, was a *Memorandum* for enquiring of the ſaid Lord whether he knew Cornet *Redding* in the Service abroad.

Being ſhewn the two Liſts endorſed (h) *Briquett*'s Liſt, and (i) Lord *Yarmouth*'s Liſt, he ſays *Briquett* is an eminent Tobacconiſt in the City; that the ſaid two Liſts only contain Names of a Jury for a Relation's Cauſe, but that he intended to ſhew thoſe two Liſts to Lord *Orrery* and Lord *North* and *Grey*, as containing an account of Men to be raiſed for the Pretender's Service, in order to magnify to thoſe Lords the Number of the Pretender's Friends.

Being asked by the Committee what was the Occaſion of his taking away his Papers from Mrs. *Maſon*'s, when he went down to *Epping*, and what Papers he at that time took out? He ſaid, he only took out a Paper containing a Tranſcript of the Prince of *Orange*'s Declaration, and ſome other *Memorandum* Papers. He farther added, That he was to have gone to Lord *North* and *Grey*'s to Dinner the Day that he was taken up, and that he ſent his Servant to the ſaid Lord's, to let him know he was arreſted for High-Treaſon, that his Lordſhip might not be ſurpriſed at his not coming, and likewiſe that his Lordſhip might provide for his own Security: and before the (k) Lords he ſaid, That he thought it reaſonable to ſend this Notice to Lord *North* and *Grey*, apprehending that the Government would ſeize the ſaid Lord immediately, on Account of what had paſſed between his Lordſhip and him.

It appears to your Committee, that Lord *North* and *Grey* did, in purſuance of this Meſſage from *Layer*, endeavour to provide for his own Security, by making his Eſcape. *Layer* ſent that Meſſage to Lord *North* and *Grey* on *Tueſday* the 18th of *September*, the Day that he was taken into Cuſtody; and *Hugh Floyd*, his Lordſhip's Servant who attended him to *Portſmouth*, (l) has declared, that Lord *North* and *Grey* came to Town from *Epping* on *Wedneſay* the 19th of *September* (which was the Day after his receiving this Meſſage from *Layer*). That his Lordſhip did not go to his own Houſe, but to the *King*'s Arms Tavern in *Paul*'s Church-yard, and there diſmiſſed him, *Floyd*, with Orders to meet him at four in the Morning on the *Friday* following, over againſt St. *James*'s Church in *Picadilly*. That his Lordſhip came at the Time and Place appointed, in a hired Coach and Six, without Servants, and ordered the Coachman to drive on to *Kenſington*, and then to *Brentford*, and ſo on from Town to Town, and bid him, *Hugh Floyd*, have nothing to ſay to any Body, nor take any Notice that he was travelling with his Lordſhip; ſo that in the whole Journey to *Portſmouth*, he remembered no Town but *Kenſington*, *Brentford*, and *Egham*. That the ſecond Morning his Lordſhip proceeded on his Journey, with hired Saddle-horſes, without Boots, with a Guide, and ſeveral other minute Circumſtances, which may be ſeen in the (m) Examination of *Hugh Floyd*, and (n) others, in relation to his Lordſhip's Journey to the *Iſle of Wight*, and to the Manner of his endeavouring to eſcape from thence; which ſerve to ſhew the Precipitancy of his Lordſhip's Flight, and of what Importance he thought it to take Advantage as ſoon as poſſible of the Notice given him by *Layer*.

Layer being asked by the Committee from whom he received the (o) Names found in his own Hand-writing among his Papers, *viz.*

Digby.——*D'llon.*
Orrery——*Burford.*
Regent.——*Steele.*
Tories.——*Tanners.*
Whigs.——*Waggs.*
Rogers.——*Plunkett.*

ſaid, the Names of ſome Perſons whom he had Occaſion to mention in his Letters to Sir *William Ellis*, not being inſerted in the Cypher he had from *Ellis*, he applied to *Plunkett*, now in Cuſtody, to know by what Names he ſhould denote thoſe Perſons, and that *Plunkett* gave him the ſix fictitious Names above-mentioned; which Names the Committee find frequently repeated in *Plunkett*'s Letters and Papers. Being aſked if *Plunkett* ever explained to him who were meant by *Burford*'s Club (an Expreſſion which is often uſed by *Plunkett* in his Letters to *Dillon*, as will be obſerved in its Place)? He ſaid, that *Plunkett* had told him, it was an Appellation made uſe of by the Pretender and his Agents, to denote a Club of Tory Lords and others, of which Club Lord *Orrery* was Chairman. That *Plunkett* had named to him ſeveral Perſons of Diſtinction, as Members of that Club, whoſe Names *Layer* repeated to the Committee, as contained in his (p) Examination annexed to this Report. But the Committee think it a Juſtice due to ſeveral of the Perſons named by *Layer*, to obſerve, that the Matters aſſerted of *Burford*'s Club in *Plunkett*'s Letters, ſeem utterly inconſiſtent with the known Characters of ſome of thoſe Perſons.

Layer being aſked by the Committee, whether he ever was employed by *Plunkett* to tranſact Buſineſs with this or any other Club, in *Plunkett*'s Abſence (which appears to the Committee to be aſſerted in (q) one of *Plunkett*'s Letters), he abſolutely denied it; but admitted that he went often to viſit Lord *Orrery*, and had frequent Converſations with him relating to the Pretender's Affairs, and the Neceſſity of foreign Aſſiſtance. And that Mr. *Swortſegger*, Lord *Orrery*'s Secretary, came to him once and told him, that Lord *Orrery* had left a Note in Writing, that if *Layer* came to Town, he ſhould come down to Lord *Orrery*'s in the Country, which Invitation he underſtood to be with an Intention of their diſcourſing more at Leiſure about the Pretender's Affairs, having never had any Buſineſs with Lord *Orrery* in the Way of his Profeſſion, nor any other private Buſineſs, that could give Occaſion to ſuch a Meſſage; but that he did not go down at that Time.

The Committee obſerve, that a (r) Paper of *Memorandums* was taken in the Book-Caſe of *Swortſegger*, Secretary to Lord *Orrery*, which he declared to the Lords on his Examination, to be Lord *Orrery*'s own Writing, in which the Meſſage to *Layer* is contained, and *Swortſegger* (s) owned, that he delivered this Meſſage to *Layer*, and that he had ſometimes ſeen *Layer* at his Lordſhip's Houſe.

Layer being ſhewn by the Committee a (t) Letter taken among his Papers, ſigned *J. Plunkett*, and dated the 8th of *November*, 1720, owned that he received that Letter in *Norfolk* from *Plunkett*, now in Cuſtody; that it relates to the Pretender's Affairs; that by *Plunkett*'s *Friend* in the ſaid Letter is meant, as he believes, *Dillon*; and by his *Law-ſuit*, the Pretender's Cauſe; in which Senſe the Committee find the Word *Law-ſuit* frequently made uſe of in others of the intercepted Letters. *Layer* farther owned that *Plunkett* gave his Wife a Letter of Recommendation to General *Dillon*, when ſhe went to *Paris*, which Letter was ſigned *Rogers*.

Being asked by the Committee, whether *Plunkett* had any Conferences with the Pretender or his Agents, during their Stay at *Rome*, or had owned to him his being employed by the Pretender in *England*, he ſaid that *Plunkett* had two private Conferences with the Pretender, and converſed often with *Francis Kennedy*, Secretary to the Pretender, and with others of his Agents at *Rome*. That *Plunkett* has frequently owned to him, that he was employed in the Pretender's Affairs, but never explained to him by which of the Pretender's Agents particularly: and that he, *Layer*, never opened himſelf to *Plunkett* in Relation to the Pretender's Affairs, after their Return from *Rome*.

Yet the Committee obſerve, that *Plunkett* in his (u) Letters to *Dillon*, ſpeaks frequently of himſelf as privy to *Layer*'s treaſonable Tranſ-

(a) B. Y. 38. 40. 41. (b) B. Y. 1. (c) B. Y. 39. (d) B. 24. (e) B. Y. 38. (f) B. Y. 15. (g) B. Y. 11. (h) B. Y. 14. (i) B. Y. 18.
(k) B. 11. (l) B. 18. (m) B. 18. (n) B. 13---17. (o) B. Y. 10. (p) B. 38. (q) C. 61. (r) B. 35. (s) B. 35. (t) B. 33. (u) C. 61. 62. 65.

actions,

actions, and grounds his (*a*) Recommendation of Mrs. *Layer*, on his Knowledge of her Husband's Merit and Industry in the Service of the Pretender.

They likewise observe, that *Layer* owns he received the Names of *Digby*, *Burford*, *&c.* from *Plunkett* since his Return from *Rome*, which they think plainly implies, that *Plunkett* and he were privy to each other's treasonable Correspondence.

The several Particulars above-mentioned contain the Substance of what *Layer* confessed on his Examinations before the Lords, and before your Committee. And after this long Account given by him, in which there appear so many and such convincing Proofs of the Conspiracy in general, your Committee think it proper to observe, that though he affected a great Openness and Frankness, when such Questions were put to him as tended only to a general Discovery, to accuse himself, or such as he knew were escaped and fled out of the Kingdom; yet when such Questions were put to him, as he apprehended might affect or discover any others of the Conspirators, he always gave Answers with great Shyness and Reserve: and this Care to say as little as possible that might affect others in a criminal Way, joined with a Desire to seem candid and ingenuous, often produced the Inconsistencies and Contradictions, upon which the Committee have thought it their Duty to make the foregoing Observations.

Your Committee will now proceed to lay before you what they have been able to collect from the Papers and Examinations of *John Plunkett*, whose treasonable Practices and Correspondences, as has been observed before, appear to be so closely connected with those of *Layer*, that they give great Light and Confirmation to each other.

The Committee observe, from a careful Perusal of the Letters and Cyphers seized at *Plunkett*'s Lodgings, that he not only of late, but for many Years past, has been employed in carrying on several treasonable Correspondences with Persons of high Rank and Distinction abroad; that a very great Share of Confidence has been placed in him by the Pretender, and several of the most considerable Agents for him, and that he has been a principal Actor in the late horrid Conspiracy, and too much, as they have Reason to believe, concerned in the blackest Part of it. And though the Evidence against him, in several Particulars, is most full and undeniable, yet his Behaviour on his Examination was so hardened and obstinate, and attended with such bare-faced Prevarications and Falshoods, that the Committee are very much confirmed in the Opinion of his Guilt, from the Pains he took to deny, with solemn Imprecations, the most evident Truths.

Layer (*b*) confessed to the Lords, that *Plunkett* recommended *Wilson* to him as a Man of Integrity; that *Plunkett* went by the Name of *Rogers* in *Italy* and since; and (*c*) signed the Letter which he gave Mrs. *Layer* for General *Dillon*, by the Name of *Rogers*. But the Committee observe, that *Layer* let them remain in the Error of believing that *Plunkett*'s Christian Name was *James*, till the Question was put to him, on his second Examination, in such a Manner, that he found the Committee was already apprized of his true Name, which he then owned to be *John*. He farther owned, as has been observed above, that *Plunkett* received a Letter under the Pretender's own Hand at *Rome*, was twice in private Conference with the Pretender, conversed with *Kennedy* and other Agents of the Pretender, had assured him, *Layer*, of a good Reception at *Rome*, was kindly spoken of by the Pretender, had owned to *Layer* his being employed in the Pretender's Service, and his corresponding with *Dillon*, writ to *Layer* in *Norfolk*, in relation to the Pretender's Affairs, and gave *Layer* fictitious Names for *Dillon*, Lord *Orrery*, the Regent, *&c.* and among the rest, the Name of *Rogers*, to denote him, *Plunkett*; which fictitious Names the Committee find all of them frequently used in *Plunkett*'s Papers.

It appears farther to the Committee from (*d*) Depositions upon Oath of *Matthew Plunkett*, that *John Plunkett* came to him in *July* last from *Layer*, to desire him to meet *Layer* at the *Italian* Coffee-house in *Russell-Court*, and named to him the same Persons, as ready to head an Insurrection, who were at some other Time named to the said *Matthew Plunkett* by *Layer* on the same Occasion.

That he (*e*) farther ask'd *Matthew Plunkett*, whether he was well acquainted in the Army among the Soldiers? To which he replied, he knew many of them that had been with him in *Spain* and at *Preston*. That *John Plunkett* then told him, he came from Mr. *Layer*, and under the Arch going into *Drury-Lane*, desired him to pick out as many Serjeants as he knew in the Guards to recommend them to Mr. *Layer*: That the next time he saw *Matthew Plunkett*, which was in two or three Days, he invited him to his Chambers, and there told him Mr. *Layer* was a very good Man, and the only one he could depend on to do him Service: That the Design on which he, *Matthew Plunkett*, was to introduce the Soldiers to *Layer*'s Acquaintance, was to serve the Pretender by disciplining the Mob, who were to rise in his Favour. And that all the Transactions of *John Plunkett*, with him, *Matthew Plunkett*, were, to engage him in Person, and by his Aquaintance among the Soldiers, to serve the Pretender: That *John Plunkett* meeting him afterwards in *Covent-Garden*, asked him what he had done? To which he replied, he went on very well, and *John Plunkett* bid him go and tell Mr. *Layer*.

Matthew Plunkett farther deposes, That *John Plunkett* told him, the Business (meaning the Invasion and Rebellion) had been done before, but that the *French* Ambassador wrote to the Regent, and the Regent wrote it to King *George* (or Words to that Effect) and it was upon that Account the Army was sent to Camp.

Dr. *Blackerby Fairfax* has (*f*) deposed upon Oath, that being in Company with *Plunkett* and one *Jeffereys*, *Jeffereys* among other Discourse said, Plunkett, *give the Doctor a Commission*, adding, Plunkett *has Commissions*, which *Fairfax* understood to mean Commissions from the Pretender; but that *Plunkett* answered, *The Doctor does not wear a Sword.*

The Committee observe, that among *Plunkett*'s Papers was found a large (*g*) Cypher of Names with fictitious Names over-against them, (*h*) sworn to be all in *Plunkett*'s own Hand-writing, which Cypher tallies with, and explains an original (*i*) Letter of the 23d of *July* 1722, directed to Mr. *Digby* at *Paris*, and signed *J. Rogers*, which was stopt at the Post-Office, and is likewise (*k*) sworn to be *Plunkett*'s Hand-writing. And several other Letters directed to *Digby*, and signed *J. Rogers*, having likewise been opened and copied at the Post-Office, and then sent forwards, the Clerks who were employed in copying them have sworn, that, to the best of their Memory and Belief, the Originals of the said Letters were all writ in the same Hand with that of the 23d of *July*, which was stopped, and is sworn to be *Plunkett*'s Hand-writing; and the said Copies of Letters treat of the same Matters as the other, and contain the same fictitious Names which are found in the Cypher sworn to be in *Plunkett*'s Hand-writing.

The Committee are informed, that it was thought proper to stop but one of the original Letters from *Plunkett*, and to suffer the others to go on; because it was judged that one was sufficient to discover the Writer, and that the permitting the Correspondence to be continued, might help the Government to farther Lights in this Affair.

The Committee likewise observe, that there was found among his Papers an (*l*) original Letter signed *Digby*, dated the 20th of *May*, 1722; which is sworn by the Clerks of the Post-Office to be the same which they opened and took a Copy of, and which was directed to Mr. *James Rogers*, at Mr. *Arthur*'s, Banker in *London*, tho' the Direction is since torn off. From this Direction your Committee observe, that his Christian Name was disguised as well as his Surname. The Receipt of this Letter is acknowledged in the (*m*) Copy of one to *Digby* signed *J. Rogers*, and dated the 21st of *May*, *O. S.* 1722.

The Committee observe, that the original Letter signed *Digby*, is in the same Hand with (*n*) another signed *Dixwell*, found also among *Plunkett*'s Papers, and owned by *Layer* to be the very Letter shewn him by *Plunkett* at *Antwerp*, as from General *Dillon*; that the Letter signed *Digby* is also in the same Hand with (*o*) another Letter signed *A. D.* and directed to *Robert Dillon* Esq. which, as your Committee are informed, was taken on one *Blunt* a Popish Priest coming over from *France*, and owned by *Blunt* to be from General *Dillon* to his Nephew. And the Committee farther observe, that these three Letters signed *Digby*, *Dixwell*, and *A. D.* are in the same Hand with (*p*) another signed *C. Howell*, found also among *Plunkett*'s Papers, which Name of *Howell* is explained in *Plunkett*'s (*q*) Cypher to mean *Glasgow*, whom the Committee see Reason to believe to be *Christopher Glascock*, an *Irish* Officer in *Dillon*'s Regiment, who appears to be employ'd by *Dillon* in writing the treasonable Letters signed by *Dillon* himself, as well as in writing others of the same Kind, signed by fictitious Names belonging to him, *Glascock*.

The Committee observe, that in the (*r*) Copy of the Letter, signed *J. Rogers*, directed to *Digby*, and dated the 5th of *July*, 1722, the Person who writ that Letter, says, that his Fellow-Traveller's Wife parted hence the Day before for *Paris*; and that he gave her a Letter to him, *Digby* which agrees with *Layer*'s (*s*) Confession, that *Plunkett* did give Mrs. *Layer* a Letter of Recommendation to *Dillon*, signed *Rogers*, and that he received from *Plunkett* the Name of *Digby* to denote General *Dillon*, which Name was also (*t*) confirmed to *Layer* by Lord *Orrery* to mean *Dillon*. But that *Dillon* went by the Name of *Digby* is put past all doubt, by a Discovery made by Mr. *Craufurd*, his Majesty's Resident at *Paris*, who being ordered to discover the Person meant by that Name, made use of the following Contrivance, mentioned thus in his own (*u*) Letter.

'I have just now found out who Mr. *Digby* is. I folded up a Paper 'in the Form of a Letter, and sealed it, and directed it to Mr. *Digby* at 'Paris, then wrapt it up in a Piece of waste Paper with a Memorandum 'in it, to be informed at Mr. *Waters*'s, Banker in *Christine* Street, in what 'Part of *Paris* Mr. *Digby* lived; I gave it thus made up to a sharp young 'Fellow who speaks both *French* and *English*, and ordered him to go boot-'ed and a little dirtied to Mr. *Waters*'s, to open before him the Sham Let-'ter and read his Memorandum, and to shew him the Direction of the 'Letter, and to desire him at the same time to send somebody with him, 'to conduct him to the Place where it was to be delivered; that as soon as 'he should come to the Door, where he was to deliver it, he should pre-'tend to have left a Packet at Home, and making as if he would go back 'to fetch that Packet, he should slip away from the Person who shewed 'him thither. The thing succeeded better than I expected, for *Waters* 'was not at home, and my Man acted his part so well, that *Waters*'s chief 'Book-keeper, without giving himself the trouble of going, wrote the 'Direction for him upon my Sham Letter, in the manner your Excel-'lency will see in the enclosed. The Book-keeper was very desirous to 'have the Letter in order to deliver it himself; but my Man insisted to de-'liver it with his own Hand, and answered boldly to some Questions 'which the Book-keeper asked him, pretending he was to return the next 'Day for *England*.' The Direction writ by Mr. *Waters*'s Book-keeper under the Name of *Digby* was, *A Monsieur Dillon, Rue Colombier à l' Hotel d' Hollande*; which, as your Committee are informed, is the ordinary Residence of Lieutenant-General *Dillon*.

Upon this Discovery (*x*) Notice was sent from *France*, by *Dillon* and his Agents, to his Correspondents in *England*, to forbid them making use any more of that fictitious Name, as shall be more fully taken Notice of hereafter in this Report.

Notwithstanding all this Evidence of *Plunkett*'s corresponding with *Dillon*, when he was examined (*y*), he denied his knowing General *Dillon*, or his having ever exchanged a Letter with *Dillon* or his Secretary in his Life; he denied the Letter to *Digby* of the 23d of *July*, stopped at the Post-Office, and the Cypher found at his Lodgings to be his own Hand-writing; he denied the Receipt of the Letters from *Howell*, *Dixwell* and *Digby*, found among his Papers; but owned he had once received a Letter from one *Farelly* a Popish Priest, formerly Governor to the Duke of *Berwick*'s Children, signed by the Name of *Digby*, and relating to Stocks of *Nicholas Wogan*'s and others. The Committee observe that in this prevaricating Answer he was labouring to account

(*a*) C. 61. (*b*) B. 11. (*c*) B. 11. 38. (*d*) C. 42. 43. (*e*) C. 44. (*f*) B. 36. (*g*) C. 51. (*h*) C. 47. (*i*) C. 62.
(*k*) C. 47. 72. (*l*) C. 54. (*m*) C. 57. (*n*) B. 24. (*o*) C. 56. (*p*) C. 53. (*q*) C. 51. (*r*) C. 61. (*s*) B. 38. (*t*) B. 10.
(*u*) A. 31. (*x*) E. 58. D. 38. (*y*) C. 73.

for

for the Meaning of the Word *Stocks*, which is mention'd in the Letter from *Digby*, but will be ſhewn, in the Sequel of this Report, to be meant in a very different Senſe from its natural Import, and to mean the Conſpiracy only; and in *Plunkett*'s own *(a)* Cypher the fictitious Word *Brokers*, is explained *Agents*. Upon preſſing him farther to ſee if he would own the Correſpondence with *Dillon*, and acknowledge the Letters the Committee had ſuch full Evidence were his, they found that, in order to avoid the owning it, he run himſelf into ſuch an evident Abſurdity and Inconſiſtency, as appears to them a ſtrong Argument of his Guilt.

(b) He affirm'd the Cypher (which is ſworn to be his own Hand-writing) to belong to one *Hugh Thomas*, formerly of the Herald's Office, who had lodged in the ſame Houſe with himſelf; that he had heard this *Hugh Thomas* own in Company with *Neynoe*, that he correſponded with *Dillon*; that *Hugh Thomas* went by the Name of *Rogers*, and that he, *Plunkett*, found this Cypher, and ſeveral Letters directed to *Rogers*, among *Hugh Thomas*'s old Books and Papers. Being aſked whether *Hugh Thomas* ever ſign'd *Plunkett?* He ſaid, Not to his Knowledge; and then endeavoured to impoſe on the Committee, by telling them his own true Name was *Plunkett*. Being aſked what was become of this *Thomas?* He ſaid, he had been dead a Year and a Half, and that he, *Plunkett*, could not keep him alive. But the Committee obſerve, That the original Letter to *Digby*, ſigned *J. Rogers*, is dated the 23d of *July* laſt, and yet is in the ſame Hand with that Cypher, which he pretends to be the Writing of a Man who has been dead a Year and a Half. They obſerve likewiſe, that the Letter from *Digby* directed to *Rogers*, is dated the 20th of *May* 1722, and that moſt of the Letters directed to *Rogers* (which *Plunkett* pretends were writ to *Hugh Thomas)* had the Name of *Rogers* blotted out, and that of *John Plunkett* writ over it; and yet he owns, he never knew that *Thomas* went by the Name of *Plunkett:* Beſides which, it is notorious, that *Plunkett* himſelf went by the Name of *Rogers* in *Italy*, and *Layer* has *(c)* owned not only that *Plunkett* went by that Name, but that he ſigned Mrs. *Layer*'s Letter of Recommendation to *Dillon*, by the Name of *Rogers*, and alſo gave him, *Layer*, the Name of *Rogers* to denote himſelf, at the ſame Time that he gave him the Name of *Digby* for General *Dillon*.

Your Committee are of Opinion, that theſe Circumſtances laid together, leave no room to doubt but that *Plunkett* writ and received the Letter above-mentioned; the Contents of which will be explained in their Place.

Plunkett being ſhewn a *(d)* Letter without Direction, ſigned *N. Wogan*, encloſing a *(e)* Cypher, which is called in the Letter the Duke of *Berwick*'s Key, he ſaid, this Letter and Cypher likewiſe belong'd to *Hugh Thomas*, who, he ſaid, correſponded with the Duke of *Berwick* about getting Subſcriptions to a Book; which Matter, the Committee obſerve, neither needed any Cypher, nor could well be treated of by the Help of that. They likewiſe take Notice, that *Plunkett* owned the receiving a Letter from *Digby* in relation to the ſaid *Wogan*'s Stocks, and that *Wogan* is inſerted in *Plunkett*'s own *(f)* Cypher by the Name of *Xoland*, which Circumſtances make it probable he did correſpond with *Wogan*.

There is one farther Particular relating to this Cypher, which the Committee think it proper to remark to the Houſe, which is, that *Plunkett*, while he he was in Cuſtody, deſired a certain Book might be brought to him from his Lodgings, but the Meſſenger's Wife, ſearching the Book before ſhe deliver'd it, has *(g)* depoſed upon Oath, that ſhe found in it this Letter from *N. Wogan*. And as the Committee are informed, that moſt of his other Cyphers and Papers were found hid in the Leaves of his Books, they think it probable, that he ſingled out this Book, in hopes of recovering and deſtroying the Cypher that ſerves to explain his Letters; the Contents of which the Committee will now proceed to lay before the Houſe, and to avoid Repetition of Names, where-ever they can, will make uſe of the real Names found in his Cypher, inſtead of the fictitious ones, by which they are expreſſed in his Letters annexed to this Report.

Among his Papers was found the *(h)* foul Draught of a Letter, dated *March* the 22d, 1721, and directed to Mr. *Jackſon*, which in his own *(i)* Cypher is explained the Pretender. In this foul Draught (which is ſworn to be his Hand-writing) are the following Paſſages.

'I look, Sir, on your Law-Suit to be in ſuch a Forwardneſs, that a 'ſpeedy and happy *Replication* muſt inevitably enſue; the *Waggs*, as well 'as the *Tanners* (which Names he explained to *Layer* to denote the Whigs 'and Tories) ſeem convinc'd that nothing leſs can redreſs their Ruin: 'Nay the latter is apprehenſive the former will compliment you with 'it on your own Terms, in order to engroſs your Favour for the future. 'The *Precepts* my Friend and I gave in lately, have contributed much 'to this Emulation: We have more to give in; and if they improve them 'as they have the former, you will have a good Game on't.' The Words *Replication* and *Precepts* are not found in his Cypher, but the Senſe of the former may eaſily be gueſſed at.

He afterwards adds; 'The Gentleman I mentioned to you formerly, 'is come out of the Country, with Inſtructions to wait on you, and 'tender you his Service; he offers to bear my Expences if I go with him: 'As I take it that my going will be of more uſe than my ſtaying now, 'I believe I ſhall accept of his Offer.' In *(k)* another foul Draught of the ſame Letter, he ſays (as has been before obſerved), 'There is one 'ſets out from *Norfolk* in a few Days, to let you know the *Tanners* 'will ſtand by you on Occaſion, and offers to bear my Expences; ſo that 'I ſhall wait on you, and have the Satisfaction to tell you by word of 'Mouth what will be acceptable. He carries *the Liſt* with him.' And in *(l)* Heads or Minutes of the ſame Letter, he ſays, '*Wag* and *Tanner* 'will equally concur.—My Friend will wait on you to tender *their* 'Service—*Our Meſſage* will pin the Baſket—You may have daily Meſſages 'of this Kind; you will be courted. 'tis the *Engliſh* Way—.'

The Committee think it unneceſſary to repeat here, how inconſiſtent theſe Accounts of *Layer*'s Journey, are with *(m)* thoſe given by *Layer* himſelf: and how ſtrongly they contradict *Plunkett*'s bold *(n)* Aſſeveration, that he knew nothing of *Layer*'s intending to go to *Rome* before they ſet out.

(o) Another foul Draught of a Letter was found among *Plunkett*'s Papers, and is ſworn to be his Hand-writing; the Matter of which appears to your Committee very remarkable. It is not dated nor directed, but appears plainly to have been writ the beginning of the laſt Year, and in it are the following Paſſages. 'I had four of Count *Bothmar*'s 'Letters ſince my laſt to you; Mr. *Burford* had them all; his Clerk 'gave me to underſtand they were ſent to Mr. *Joſ.*— This made me not 'to trouble you. This only to wiſh you a happy new Year. I hope it 'will bring the Law-Suit to bear, afore 'twill end; if they would have 'Courage and Integrity, they may walk K. *George* out afore Lady-day 'next—' (and in another Part he ſays, afore *May* come) 'He is weary of 'them, and thinks no more of ſtaying among them.' It appears from this Paper, that *Plunkett* had conveyed Copies of ſome Letters of Count *Bothmar*'s to Lord *Orrery*; that Lord *Orrery*'s Clerk had given him to underſtand, thoſe Letters were ſent to the Pretender (from whence it may be concluded, that either Lord *Orrery* or his Clerk had a direct Correſpondence with the Pretender), and that *Plunkett* was privy to ſome Deſign for walking K. *George* out (as he calls it), which Deſign required Courage and Integrity, and was to have been executed either before Lady-day, which was during the Elections, or by the Beginning of *May*, which was the ſecond Period fixed (as has been obſerved) for beginning the Inſurrection. *Simon Swortfegger*, Secretary to Lord *Orrery*, owned upon his *(p)* Examination before the Lords, that he was acquainted with *Plunkett*, and had been in company with him and *Layer* at Mr. *Aaron Thompſon*'s Chambers. And *Plunkett (q)* owned to the Committee his being acquainted with *Swortfegger*, and his having been in company with him and *Layer*, at *Layer*'s Houſe; but denied his knowing any thing of the foul Draughts of the Letters above-mentioned.

Plunkett, in his *(r)* Letter to *Digby* of the 21ſt of *May*, ſays, 'I hope 'in a little Time Mr. *Joſeph* (which *Layer* owned to be the Pretender) 'will be the Miniſtry's only Refuge. *Burford* (whom *Layer* declared 'likewiſe to be *Orrery*) and his Club ſeemed to think ſo: They will have 'a Finger in the Pye if they can; I know they can come in for a good 'Share in it, if they can have a little Concert and Regulation; there 'are thoſe that will undertake to do the Job in twelve Hours Time. A 'little Time will ſhew whether they will give fitting Encouragement; 'if two or three are taken off, no matter how, King *George* will go off 'by hook or by crook, and of courſe the *Lowty* will be for *Joſeph:* This 'has been communicated to your Friends.'

What is meant by the *Lowty*, does not appear by his Cypher; but by the Senſe, and the alphabetical Order of the Cypher, it is not improbable but it may mean the Miniſtry.

Whether the Job that was ready to be undertaken on fitting Encouragement, and to be performed in twelve Hours Time, relates to the raſh Enterprize for ſupriſing the City of *London*, which has been already taken Notice of, or to the wicked and execrable Deſign for ſeizing and deſtroying his Majeſty's Sacred Perſon, of which Mention is expreſly made in *(s)* two ſubſequent Letters of *Plunkett*'s, is left to the Conſideration of the Houſe.

But the Committee, from comparing the Memorandum at the End of the *(t)* Paper of Reſolutions, in the following Characters *Diſ. C. W. M.* with *the two or three* that are mentioned in this Letter to be taken off, and likewiſe with *Wilſon*'s Intimation to *Layer*, that if Lord *Cadogan* were but ſhot, the Soldiers would declare for *Ormond*; and alſo with *Layer*'s Negotiation about ſeizing Lord *Cadogan*, and with the Paragraph in his Scheme for ſeizing ſome great Perſons at their Houſes, ſee Reaſon to believe, that by the firſt of thoſe Characters is meant *Diſpatch Lord Cadogan*; and by the others, two other Officers of Diſtinction.

In the ſame *(u)* Letter of the 21ſt of *May*, *Plunkett* takes Notice, 'That *Johnſon*, an Acquaintance, was taken up the Day before, but had 'burnt his Papers, and ſeemed to be eaſy in the Matter; and adds, I 'believe they will get nothing by him.'

Plunkett being aſked by the Committee, whether he was acquainted with *George Kelly*, alias *Johnſon*, ſaid he knew him by Sight and Coffee-houſe Acquaintance only; that he did not remember his having ever received a Letter from him; and *Kelly* gave the ſame *(x)* Account in relation to *Plunkett:* Yet a *(y)* Letter from *Kelly* was found among *Plunkett*'s Papers; and *John Malone*, who waited on *Kelly* at his Lodgings, has named *Plunkett* in his *(z)* Depoſition, as one who often viſited *Kelly*, there. And the Committee are ſatisfied, that they were privy to each other's treaſonable Correſpondence, by ſome Paſſages in the *(aa)* Letters to and from *Kelly*, in which Mention is made of *Plunkett* by the Name of *Rogers*, as will be ſhewn in its proper Place. *Plunkett* concludes his Letter of the 21ſt of *May* with theſe Words: 'The Motive of my 'Journey is over at preſent, my Pocket feels it, the Man muſt be fed 'with Money now and then; the labouring Oar will, I believe, be laid 'on me.'

As he denied the writing theſe Letters, the Committee could not draw from him any Explication of this Paragraph; but comparing it with the other Part of his Letter, where it is ſaid, that a Little Time will ſhew whether *Burford* (Lord *Orrery*) and the Club, would give fitting Encouragement for undertaking the Job; they think it appears probable, that ſome part in this Job is the labouring Oar referred to, for which he expected to be fed with Money.

His next *(bb)* Letter to *Digby* is of the 31ſt of *May*, in which he ſays, 'He finds the Regent had a Hand in keeping K. *George* from going 'Abroad, ſo that the Miniſtry will carry on their Game ſafely and leiſurely without any Oppoſition whatever from the Club, or any of the Pre-'tender's Friends.' He adds, 'Let them be ever ſo ſanguine, they can 'do nothing as long as the Regent ſtands by the Miniſtry: But ſhould '*Ormond* come, with half a dozen Regiments only, he would carry his 'Point, and make K. *George* run for it.' This Paſſage confirms what hath been ſet forth above, that the late Duke of *Ormond*'s coming over made a Part of the Original Scheme, and agrees with the *(cc)* Accounts received from *Spain*, of *Iriſh* Soldiers provided there for the Pretender's Service.

(a) C. 51. (b) C. 73. (c) B. 10. 38. (d) C. 49. (e) C. 50. (f) C. 51. (g) C. 49. (h) C. 41. (i) C. 51. (k) B. 23. (l) B. 23. (m) B. 38, (n) C. 73. (o) B. 22. (p) B. 35. (q) C. 73. (r) C. 57. (s) C. 58. 60. (t) BB. 2. (u) C. 57. (x) E. 81. (y) C. 40. (z) E. 14. (aa) C 66. 67. 68. (bb) C. 58. (cc) A. 28. &c.

Plunkett then adds, 'If *Burford* (Lord *Orrery*) and the Club have a 'Mind to have K. *George* delivered up to them *he shall*; there *are those* 'that will undertake it, and offer to do whatever required.' And in his *(a)* Letter of the 4th of *July*, he says, '----- I can assure you, *Despair has* 'made some to take a Resolution to lay violent Hands on K. George; but 'there is a Stop put to them at present: It is not the Pretender's In-'terest; but you can't do so always; an ill Precedent is dangerous.'

The Black and villainous Design expressed by these two Paragraphs, needs no Explication from your Committee, who are sensible the House cannot have heard them read without the utmost Horror and Indignation.

He speaks of himself in these Letters as knowing the Men, who had taken a Resolution to lay violent Hands on the sacred Person of his Majesty; and was himself so far engaged in this execrable Design, as to say in one of his Letters, If the Club desire it, *His Majesty shall* be delivered up into their Hands: And in another Letter dissuades it, not out of any Conscience or Remorse for the Crime, but merely for fear the same Barbarity should be retaliated on the Pretender: Yet this Man still continues so hardened and obstinate, as to renew his Guilt by refusing to make the least Discovery of his Accomplices, or to give this only Reparation and Atonement he is capable of, to a Country which he has been labouring to involve in the greatest Calamities.

He afterwards *(b)* says, 'That tho' there should be a Rising in most 'Parts, if the Mob is beat in one Place, the rest will go home and be 'quiet for seven Years more.'

His next *(c)* Letter is of the 21st of *June*: In this he says, 'That '*Burford* and the Club think themselves slighted by the Regent and Mi-'nistry of *France*; and conceive, that the Regent joins with King *George* 'to be revenged on them. That he may have room to repent it early or 'late; for should the Parliament be broke, and a new one called, he might 'find himself more embarrassed than he is aware of.' He adds. 'If the 'Regent stands neuter, they will soon bring the Law-Suit to bear; so far 'I am satisfied of it, that four or five hundred Men, and as many Arms, 'with 1500 *l.* will complete the Matters in a little Time, and give a 'good Account of King *George* and the Ministry. The Army want only 'an Opportunity to do their Duty. This Scheme, if duly and discreetly 'managed, will give them an Opportunity to do it. Were *we* sure the 'Regent would not interpose, *we* would take it in hand forthwith.'

The Committee make no doubt but the House has prevented them, in observing how exactly this Letter agrees with the *(d)* Accounts sent some Time before from *France*; that the Conspirators reckoned on great Part of the King's own Forces; and only desired the Regent that he would keep himself neuter between the Pretender and his Majesty. And this Letter appears to have been writ at the Time when *Layer*, *Wilson*, *Murphey* and *Plunkett* were labouring to corrupt the Officers and Soldiers of the Army.

Plunkett adds in the same Letter, 'If the Regent and Court of *Spain* 'will but ply K. *George* with large Demands, and bring the *Czar* down 'to *Hanover*, the Pretender will have a *Carte Blanche* from the Ministry 'and King *George*, as also from all the rest of his Friends and Foes: This I 'take to be the best and safest Way, both for the Pretender and his Well-'Wishers.'

This Expression of the Pretender's getting a *Carte Blanche* from the King and Ministry, is repeated several Times in *Plunkett*'s Letters; and however extravagant and ill-founded such Suggestions were, yet the Committee cannot but observe, that his Representations appear to have met with such a Spirit of Credulity and Delusion in the Pretender and his Agents, that not long after he was vain enough to entertain Hopes of capitulating with his Majesty for the Crown, by that traitorous and insolent Declaration, against which both Houses have so lately expressed their just Resentment and Abhorrence.

Plunkett's next *(e)* Letters are of the 4th and 5th of *July*, 1722; in which he has the Vanity to tell *Dillon*, 'That he had been desired, by 'some leading Members of the then Parliament, to acquaint the Regent's 'Agent here, that it was now in the Power of the Regent and *Spain*, to 'send away King *George*, and to send home Mr. *Jos.* with a *bonne grace*, and 'much to their Advantage; that it was only to insist on the Stipulation 'King *George* had made with them, and they would have a fair Pretence 'to do it.'

It appears by other Passages, that this supposed Stipulation relates to the Cession of *Gibraltar*.

He afterwards gives an Account, 'That he did, both on the 4th and '5th of *July*, wait on the Regent's Agent with this Message; and says, 'That as that Agent was acquainted with some of the Members of Par-'liament who imployed him, he gave some Attention to him: But the 'Objections which the Regent's Agent made, appear to have been, That 'the Pretender had not the Name of a Man of great Parts or Resolution: 'That he had hitherto no great Opinion of *Burford* and the Club; and 'that such a Procedure on the Part of the Regent, would be a Violation 'of the *bonne Foy*. To which last *Plunkett* replied, That it would be no 'Breach of their *bonne Foy* to be grateful to those *who were their Deliverers* '*formerly*.' However, *Plunkett* says, 'He convinced the Agent, that it 'was now in the Regent's Power to make the Ministry and King *George* 'give the Pretender a *Carte Blanche*; and by so doing, to make the Em-'peror vomit up what he has now in *Flanders*, without striking a Stroke. 'That the Common People, the Country Party, and all the *English* Gen-'tlemen might be brought to join with the Regent in proper Measures to 'do it; or, that if the Regent would but stand neuter, they would soon 'bring the Pretender's Law-Suit to bear independent on any whatever.' He adds, 'That he is satisfied the Agent would write these Sentiments to his 'Court; and that it is *Dillon*'s Buness to let the Regent see he has the 'same Sentiments from other People here.'

Plunkett being examined by the Committee, in relation to this Letter, *(f)* owned, he had frequent Access to one of the *French* Ministers on private Affairs: And that *Layer* knowing him to be acquainted with him, asked him, Whether he could find out, by the help of that Minister, whether the Regent might not be brought into Tory Measures? And *Stephen Lynch* has *(g)* deposed, That *Layer* told him, Application had been made, either by himself, or some other Person, to one of the *French* Agents here, to the Effect mentioned in *Plunkett*'s Letter. However, *Plunkett* denied his having ever spoke to that Minister in relation to State-Affairs, or his having writ any such Account to *France*.

The Committee, from comparing this Relation of these two Conversations with what he says in other Letters, of bringing the *Czar* down to *Hanover*, in order to oblige his Majesty to withdraw from *England*, observe, that the Conspirators were so intent on compassing their wicked Designs by any Means, that having failed in their Applications for foreign Assistance, they were now labouring to make *France* and *Spain* insist on the Restitution of *Gibraltar*, to throw *Flanders* into the Hands of *France*, and to bring the *Czar* into *Germany*, in hopes to involve all *Europe* in Confusion, and thereby to pave the Way for bringing in the Pretender.

In the same *(h)* Letters he tells *Dillon*, 'Now is the Time for the Re-'gent and Ministry of *France* to serve you: If they do not, I can assure 'them, they may have room to repent it: For the Pretender's Friends will 'find Means to get into the Saddle, in spite of the Ministry and K. *George*.'

He adds, 'That the Army will not stand by the King and Ministry, 'against the great Bent of the *English* Gentlemen, the common People, 'and the Country Party; who are so incensed against the Court, that the 'least Accident would surely overturn what they have been doing these 'seven Years past.'

He then says, 'That his Fellow-Traveller is, and has been very active 'since his coming from his Travels, and is more serviceable than those 'who move in a higher Sphere: That he is spurring on the Club daily, 'and has made many of them more active in the Law-Suit than they 'otherwise would have been. That his Wife parted the Day before for '*Paris*; and that he gave her a Letter for *Dillon*; his Fellow-Traveller 'thinking himself intitled to it, or any other Civilities *Dillon* could shew 'her, during her stay there.' He adds, 'Your Friends continue their 'Preparation, and resolve to hold themselves in readiness on Occasion.'

The Committee take Notice, that these Letters were writ just about the Time that *Layer* went down to *Norfolk*. And they think the sanguine Manner in which *Plunkett* writes, is in part accounted for by what Lord *North* and *Grey (i)* told *Layer*, That the Encampment had spoiled the Project: But we shall have them again. And by his Lordship's saying, *(k)* Be you quiet, something will be done: If *(l)* there be a Rising, you shall not want Men, or Money, or Arms. And that these Letters and Passages make it highly probable, that the Substance of *Layer*'s Scheme had not been only seen, but approved of.

Notwithstanding the Account which *Plunkett* gives in this and other Letters, of *Layer*'s Proceedings, yet *Layer* denied that he had ever opened himself to *Plunkett*, in relation to the Pretender's Affairs, after their return from *Rome*; and *Plunkett* affirmed, that he only knew *Layer* by Coffee-house Acquaintance, and never conversed with him but in the Streets publickly.

Plunkett's next *(m)* Letter is of the 23d of *July*, the Original of which being stopped, and being sworn to be his own Hand-writing, the Committee think it proper to lay the Whole before the House, with the Explanation of the fictitious Names taken out of the Cypher, which is sworn to be his own Hand also.

A Monsieur Digby *à* Paris.

Under a Blank Cover to Waters.

July 23d, 1722.

'BY the Time this comes to hand, King *George*'s Agent will arrive 'there: I'm glad on't, because I hope all the Negotiations and Pro-'ceedings of the Ministry and King *George* will be laid before the Par-'liament, which will be a Means to send him to *Hanover*. Though he 'thinks to bring the Country Party to approve of whatever he will pro-'pose to the Parliament, he will hardly even bring the Court Party to do 'it. He thinks to disculpe himself at the Expence of the Dead. This 'I told some of the Parliament-Men; they say 'twont do for Love or 'Money. Certain Persons are forming Projects that will distress the 'Court of *Spain*, in case of War between *Spain* and the Emperor. Count '*Bothmar* comes into it by King *George*'s Connivance; 'tis now in Embrio: 'When it comes to Perfection, I shall be Master on't. I gave a Hint 'on't to the Regent's Agent; he was not a little surprized at it. They 'must not linger much longer; if they do, the Emperor and King *George* 'will find Means to distress the Court of *Spain* and the Ministry in '*France*; they must hasten the Peace to prevent it.

'My Companion, who has been in the Country this three Weeks past, 'came to Town Yesterday: He seems to be sure of his Game, *viz.* that 'Mr. *Joseph*'s Friends will run down the Ministry and King *George* in a 'little Time, and bring the Law-Suit to bear on their own Bottom, 'and independent of the Regent, or any Body else. I am resolved 'to know nothing of their Proceedings; I am for having every Thing 'laid before the Parliament first, and then every Body will see we want 'the Pretender more than he wants us. Both Friend and Foe will join in 'any Enterprize that will be made in his Favour: Neither will they ever 'dare upbraid him, if, on any Occasion, he should look asquint on 'em 'hereafter. I hinted often, the only Way to spirit them up, was to con-'vince 'em the Law-Suit would be brought to bear without them; and 'that by the Regent and King *George*. The Construction they put upon 'this was, that the former was subtle enough to make use of the Folly of 'the Latter, to play the Game to his own Advantage at our Cost, and 'that he will govern Mr. *Joseph*, when here, as he does now King *George*. 'This, or some such Imagination, gave them an uncommon Resolution; 'and I believe they will struggle hard for a Start in the Race of Honour. 'Tis in the Regent's Power to make King *George*, the Ministry, and the 'Club, to give Mr. *Joseph* a *Carte Blanche*: 'Tis incumbent on you to con-'vince him of it. I am sure his Agent here is already; for I gave him 'this Morning demonstrative Proof, that King *George* designs to support 'the Emperor against the *French* King and his Coss. and that without be-'ing seen in it.

(*a*) C. 60. (*b*) C. 58. (*c*) C. 59. (*d*) A. 4. (*e*) C. 60, 61. (*f*) C. 73. (*g*) B. 2. (*h*) C. 60, 61. (*i*) B. 8. (*k*) B. 38. (*l*) B. 11. (*m*) C. 63.

'I would be glad to know how the Duke of *Berwick* does, and if he 'continues there this Summer. I have little to do in Town, ſo I deſign 'to go to the Country for three Weeks. The Town is dull and empty.

'We hear the *Czar* is in Motion, I wiſh it may be towards *Hanover*, 'for King *George* would ſoon move from his Country Seat here.

'I believe Mr. *Joſeph* will laugh, when he'll hear of the Stratagem I 'made uſe of to bring his Friends to ſo good a Temper of Duty. I hope 'they will keep to it, which is the Wiſh of,

S I R,

Your humble, obedient Servant,

'JO. ROGERS.'

In his (*a*) Letter of the 16th of *Auguſt*, he ſays, 'The Pretender's 'Law-Buſineſs continues in the ſame Plight. My Companion goes on, as 'he thinks, very ſucceſsfully, and is confident he will bring the Buſineſs 'to bear in a little Time.'

This Letter was writ nine Days before *Layer* went down to Lord *North* and *Grey*'s with *Lynch*.

Plunkett ſays in the ſame Letter, 'That the Pretender muſt promiſe the 'Regent and Miniſtry of *France* fair, and that he will be a faſt Friend, 'when in his Power, and muſt ſeem to rely more on them, than any here; 'that this is the only Game he has to play at this Time.'

In his next (*b*) Letter of the 23d of *Auguſt*, he ſays, 'That his Friend 'came out of the Country a few Days ago, and told him that his Cli-'ents ſeem now to deſpair of bringing the Law-Buſineſs to bear this 'next Term, except the Regent were made a Party; that he, *Plun-'kett*, told him, in caſe the Regent were apply'd to in a proper Manner, he 'might be prevailed on to come into proper Meaſures, at leaſt indirectly, 'and that without Breach of the *bonne Foy* he owes King *George* or the 'Miniſtry.' He adds, 'That they (his Friend's Clients) are for any 'thing but under their Hands; and that if they ſhould apply to *Dillon*, or 'the Regent (as his Companion had told him they ſoon would), they might 'ſafely offer at leaſt to come into their Meaſures, to ſtop their Mouths here-'after; And he thinks, with Submiſſion, 'tis pity to hinder them from plung-'ing themſelves, as they did before.' He adds, 'That it is in the Pow-'er of the Regent and Miniſtry of *France*, to make the enſuing Parlia-'ment give the Pretender his own Terms, and that as the *French* King is 'ſoon to be of Age, *he* may do every thing with a good *Grace* and *bonne* 'Foy; and ſettle the Pretender ſo, that it will always be in his Power to 'ſerve him, and the Court of *Spain*.'

Plunkett, who aſſumes to himſelf ſo conſiderable a Part in theſe Tranſ-actions, being aſked by the Committee to give ſome Account of his Life and Education (*c*), ſaid, that he was born at *Dublin*, and bred up when a Boy at the *Jeſuits* College at *Vienna*; that he is a *Roman* Catholick, but not in any Orders. And tho' he endeavoured (as has been obſerved above) by his Dreſs, Appearance, and Behaviour, to repreſent himſelf to the Committee as very inconſiderable, and no ways equal to the Part he was taxed with, yet a great Number of (*d*) Letters from Perſons of the firſt Quality abroad, were found among his Papers, in which the Committee obſerve he is treated with great Intimacy and Confidence. And in a (*e*) Letter from the Lady *Middleton*, of an old Date, Mention is made of her being to introduce him to the late King *James*'s Queen in *France*; to whom, as he owned to the Committee, he had been introduced. And that the Truſt and Confidence repoſed in him ſtill ſubſiſts undiminiſhed, appears to the Committee, not only by his own (*f*) confeſſing, that he did walk and converſe with the Pretender publickly in his Garden at *Rome*, but from *Layer*'s Account, that he had two private Conferences with the Pretender; and above all, from the (*g*) Letter under the Pre-tender's own Hand, which he ſhewed to *Layer* at *Rome*, and which has been communicated to the Committee, as before-mentioned, in which the Pretender treats him with ſuch Diſtinction, as to charge him not to mention any Thing of Buſineſs to any Body, till he himſelf had ſeen him alone; than which, the Committee think a ſtronger and a more con-vincing Proof of Truſt could not well have been given. It appears alſo by (*h*) foul Draughts of Letters taken among his Papers, that he writ directly to the Pretender himſelf.

Mention being made in *Plunkett*'s Letters of *Johnſon*, alias *George Kelly*, and ſome Extracts of Letters to and from the ſaid *Kelly* having been re-ferred to the Committee among *Layer*'s and *Plunkett*'s Papers; by which it appeared to them, that *Kelly*'s treaſonable Correſpondence had a Connec-tion with the others, and particularly, that he was privy to ſome of *Plun-kett*'s Tranſactions; your Committee thought that their having a general View of all the Papers relating to the Conſpiracy, might help to illuſ-trate and explain the ſeveral Parts of it, in the ſame Manner as *Layer*'s and *Plunkett*'s Papers mutually confirm and give Light to each other.

For this Reaſon they moved the Houſe to have thoſe Papers laid before them, and to empower them to take ſuch farther Examinations, as might be neceſſary to lead them on in tracing out the Source of the Treaſons enquired into.

Having accordingly peruſed thoſe Papers, and examined ſome of the Perſons principally concerned in them, they now proceed to lay before you the Reſult of that Enquiry.

It appears to them, that *George Kelly*, Clerk, has been of late Years conſtantly employed in carrying on ſeveral treaſonable Correſpondences and Negotiations between the Pretender's Agents abroad, and Perſons of great Diſtinction at home, tending to the bringing in the Pretender with an armed Force, and to the overturning the preſent happy Eſtabliſhment in Church and State.

And here your Committee find themſelves obliged to mention the Lord Biſhop of *Rocheſter*, as principally aiding, directing and employing the ſaid *Kelly*, in the Proſecution of his treaſonable Deſigns.

As *Kelly*'s Correſpondences ſeem to derive their Weight and Signifi-cancy chiefly from his being employed by the Biſhop of *Rocheſter*, your Com-mittee will firſt lay before you the ſeveral Reaſons that induce them to be-lieve he was ſo employed, and the Part which it appears to them the Biſhop has had in this Conſpiracy.

It appears to your Committee, from ſeveral (*i*) Informations of *Philip Neynoe*, Clerk, formerly mentioned, 'That *George Kelly*, alias *Johnſon*, 'frequently told him, that the Biſhop of *Rocheſter* held Correſpondences 'with the Pretender and his Agents: That he, *Kely*, was employed by 'the Biſhop in writing for him, and carrying on the ſaid Correſpon-'dences; that *Kelly* told him, the Pretender relied more on Advices from 'the Biſhop, than from any other Perſon; that he had ſeveral times left '*Kelly* at the Biſhop's Door, when *Kelly* went into the Biſhop's Houſe, and 'ſtaid there an Hour or two, and upon coming back to him, *Kely* made 'Apologies for ſtaying ſo long, and told him, he had been writing the 'Biſhop's Letters, which he always apprehended to be the Foreign Corre-'ſpondence of the Biſhop with the Pretender's Agents; and that *Kelly* told 'him, the Biſhop never ſuffered him to take a Bit of Paper of the Bi-'ſhop's Hand-Writing out of the Room.

'That he knows Letters were directed to *Kelly* by the Name of *Moſes* '*Hancock* and *Hatfield*; and that he has ſeen at *Burton*'s Coffee-Houſe a 'Letter to *Kelly* from *Howell*, (whom he takes to be Agent or Secretary to '*Dillon*, and employed by *Dillon* in the ſame manner as *Kelly* was by the 'Biſhop of *Rocheſter*) in which Letter there were Compliments to the 'Biſhop, by the Name of *Naunton*, which Name *Kelly* explained to him 'to mean the Biſhop. That *Kelly* has told him, the Biſhop of *Rocheſter* 'went ſometimes by the Name of *Jones*; that he had likewiſe heard the 'Biſhop went ſometimes by the Name of *Illington*, which laſt he was 'told by Mr. *Carter*, to the beſt of his Memory. That in the Letter 'which *Kelly* ſhewed him at *Burton*'s Coffee-Houſe, Mention was made of '*Manſfield*, which *Kely* explained to him, to mean the late Duke of '*Ormond*. That he has ſeen ſeveral Cyphers in *Kelly*'s Hands, one in 'Figures, another of fictitious Names, in which laſt, *Carpenters* ſtood 'for *Scotch Soldiers*; *Sailors* and *Sophiſters*, for *Iriſh Soldiers*, and the like; 'that he has ſeen *Kelly* make uſe of theſe Cyphers, and that *Kelly* with 'great Freedom owned, that theſe Cyphers were carrying on the Corre-'ſpondence with the Pretender's Agents. That he, had likewiſe ſeen 'Cyphers in *Carter*'s Hands, who was alſo employed in writing Diſ-'patches to the Pretender's Agents abroad. That he, *Neynoe*, had 'been employed to draw up three ſeveral Memorials to the Regent of '*France*, to ſolicit him to ſend Forces to the Aſſiſtance of the Conſpira-'tors, the laſt of which was in *December*, 1721. and contained a De-'mand of five Thouſand Men, to be ſent to invade theſe Kingdoms; that 'the Heads of theſe Memorials were given him by *Kelly*, and one who 'went by the Name of *Watſon*, whom he took to be the late *Earl Mariſchal*.

'That in *March* laſt, *Kelly* brought him the Heads of a Letter, to be 'drawn up with a Deſign of its being intercepted by the Government, 'in order to amuſe them into a falſe Security. That he drew up the ſaid 'Letter in a Paper, writ Column-ways; that this Paper was brought 'back to him, corrected by the Biſhop of *Rocheſter*, as he believed.'

Your Committee are informed this Letter was not intercepted, but that a Copy of it was ſent about that Time to one of the Secretaries of State, from an unknown Hand.

Neynoe farther declared, 'That the Biſhop of *Rocheſter*; Lord *Orrery*, 'Lord *North*, and Sir *Harry Goring*, were the principal Leaders and Di-'rectors of the Conſpiracy, which was firſt to have been executed in the 'Spring of the Year 1722, by ſeizing the *Tower*, upon which the late 'Duke of *Ormond* was to have landed in the River; that upon the Diſ-'covery of the Plot, and the King's not going abroad, it was put off for 'ſome Time; but that it was afterwards reſumed to be attempted in the '*Weſt*.' *Neynoe* farther added, 'That *Kelly* aſſured him, the Biſhop got 'Notice of his being to be taken up ſome Days before it happened; 'and that this Notice was given the Biſhop by one of the Lords of the 'Council.' But he afterwards confeſſed, (as your Committee are in-formed) that in this, and other Examinations, he had endeavoured all he could, to create Diffidence and Suſpicions among his Majeſty's Servants.

Theſe Informations of *Neynoe* are contained, great Part of them, in a Paper (*k*) writ with his own Hand, and deliver'd by him to a Committee of Lords of the Council. The other Part is extracted out of (*l*) Papers, which he dictated at his ſeveral Examinations; which Papers were read to him Paragraph by Paragraph, and agreed to by him before the Lords.

That *Neynoe* was intimately acquainted with *Kelly*, viſited him often, and ſometimes lay at his Lodgings, and thereby had a better Opportunity of being informed by him, appears from the (*m*) Depoſitions of *Stephenſon* and his Wife, *Margaret* (*n*) *Kilburn*, Landlady to *Kelly*, and *John* (*o*) *Malone*, Servant to Mrs. *Barnes*, who waited on *Kelly* at his Lodgings.

That the Biſhop of *Rocheſter* was acquainted with *Kelly*, invited him to dine with him, ſent his Servants to enquire after his Health, and wrote to him, appears from (*p*) *Stevenſon*'s and *Kilburn*'s Depoſitions, as alſo in Part from (*q*) Mrs. *Lovett*'s.

But what gives the greateſt Weight to the ſeveral Particulars contained in *Neynoe*'s Information, is, that they are corroborated and ſupported in every material Circumſtance, by ſeveral concurrent Proofs, as will ap-pear from the Sequel of this Report.

Pancier has (*r*) depoſed upon Oath, that *Skeene*, among other Particu-lars of the Conſpiracy, told him that the Biſhop of *Rocheſter*, in Con-junction with the Lord *North* and *Grey*, had the principal Direction of the Conſpiracy; and that two Hundred Thouſand Pounds had been raiſed, and put into the Management of the Biſhop of *Rocheſter*, which was called *the military Cheſt*, and was to be kept together till the Project was put in Execution.

Your Committee are informed, that when the Biſhop was taken into Cuſtody, vaſt Numbers of Letters and Papers were found in his Houſe, bearing Date before the Year 1712; but from that Time downwards, few of any Conſequence, except theſe which follow.

(*s*) One was from the Dutcheſs of *Ormond*, dated *January* 14, 1721, in which are theſe Words:

'I reſolved to ſend what I received: For tho' it had not happened to 'belong to the Perſon I addreſſed it to, I was ſure it could not be put into 'better Hands.'

(*a*) C 64. (*b*) C 65. (*c*) C 73. (*d*) C 1——36. (*e*) C 34. (*f*) C 73. (*g*) C 69. (*h*) B 23 C. 41. (*i*) E 7——10. (*k*) E 7. (*l*) E 8, 9. (*m*) E 12. (*n*) E 13. (*o*) E 14. (*p*) E 12, 13. (*q*) E 6. *a*. (*r*) D 1. (*s*) D 5.

This Passage makes it highly probable, that the Bishop used to receive Letters from abroad directed by fictitious Names; which is still further confirmed by the following Circumstances:

In the (*a*) Cypher which *Layer* owned he received from Sir *William Ellis*, the Bishop of *Rochester* is designed by the Name of *Justus*.

Neynoe (*b*) declared, that in the Letter which *Kelly* shewed him from *Dillon*'s Secretary, there were Compliments to the Bishop of *Rochester*, by the Name of *Naunton*.

Among the Bishop's Letters was found one directed to Mr. *Dubois*, not signed with any Name, nor dated from any Place. It was in the following Words:

SIR,

'FORGIVE my Silence. You easily conceive the Difficulties I 'am under in that Regard. I write this only to assure you of my 'sincerest and unalterable Respect; and refer you to the worthy Bearer for 'News, and for every Thing, which otherwise, I should have found *some* 'Way or other of writing to you myself. I have heard nothing from you since 'the Letter I had about two Months ago by Mr. *Johnson*, to which I im'mediately in his Hand returned my Answer. A Rumour has reached me 'of your having written hither since; but I can find nobody that *owns* he 'has seen your Letters.

'*I am always*, SIR,

Dec. 16. '*Your truly Obedient, and*

'*most Humble Servant.*

Your Committee observe, That *Johnson* is the Name by which *Kelly* constantly went, as appears to them from several (*c*) Affidavits: And that he was at *Paris* the 16th of *December*, 1721. *N. S.* and set out in two or three Days after for *England*, as appears from the (*d*) Pocket-Book taken upon him: And the Letter to *Dubois* seems to intimate such a Correspondence as made it unsafe to write openly, and without Disguise.

Among the Bishop's Papers was found another (*e*) Letter, dated *Rouen*, *Jan.* 15th, 1722. without any Name; and the Superscription torn off, Which Letter is mentioned to be sent by an honest Gentleman; and the Writer of it desires to know how he may direct; and desires to be directed to by the Name of *Wishart*, at Mr. *Arbuthnot*'s at *Rouen*, which is probably a fictitious Direction, no Name being subscribed to the Letter. He likewise mentions a former Letter sent under Cover to their common Friend Sir *Red.* Who Sir *Red.* is, does not appear to your Committee; but they find one Sir *Red. Everard* inserted in *Plunkett*'s (*f*) Cypher, and designed by the fictitious Name of *Fly*.

Among the Bishop's Papers were likewise found two (*g*) Letters from Captain *Charles Halstead* of *Greenwich*; the Person who, as has been mentioned above, was sent to *Bilboa*, to transport the late Duke of *Ormond* to *England*.

Some Letters having been intercepted, which there is good Reason to believe were from the Bishop of *Rochester*; and (*h*) one of these Letters being signed *T. Jones*, and another (*i*) *T. Illington*, your Committee will now lay before the House the Evidence they have found of the Bishop's being designed by those two Names, collected from Circumstances, which being in themselves seemingly minute, and of little Consequence, were for this Reason more frankly confessed by those who were obstinate in concealing stronger Proofs; and yet at the same Time lead directly to the Discovery of the Person meant by those Names.

Mrs. *Barnes* being examined before a Committee of Lords of the Council, obstinately refused to make the least Discovery relating to *George Kelly*; but when she came to be asked what she knew about a Dog sent over to *Kelly* from *France*; not suspecting this could lead to any Discovery, she readily (*k*) owned, That a spotted little Dog, call'd *Harlequin*, which was brought from *France*, and had a Leg broken, was left with her by Mr. *Kelly* to be cured: That the said Dog was not for her, but for the Bishop of *Rochester*; and that *Kelly* promised to get the Dog of the Bishop of *Rochester* for her, in case it did not recover of its Lameness. This Declaration she made and signed in the Presence of the Committee of Council: And *Kelly* himself made no Difficulty (*l*) to own the receiving such a Dog from *France*.

But it appears to your Committee, by Letters intercepted between *Kelly* and his Correspondents in *France* (the Proofs of which will be set forth in the Sequel of this Report), That a Dog so named and hurt, was sent over to *Kelly* from *France*, to be delivered as a Present to the Person denoted by the Names of *Jones* and *Illington*.

For in his (*m*) Letter to *Howell* (who is explained in *Plunkett*'s Cypher to mean *Glasgow*, and has been observed above to be *Dillon*'s Secretary), he mentions his having received the Present, and the Accident of a Leg being broken in the Voyage; and adds, "I will inform Mr. *Jones* soon of "it, to whom I know any Thing from that Quarter will be very accept"able." In the same Paragraph he says, "Mrs. *Jones* died last Week; "and when the Days of Mourning are over, he will, I hope, be fit for "Business." This Letter was writ on *Monday* the 30th of *April*; and the Bishop's Lady (*n*) died the Week before, on *Thursday* the 26th of *April*.

Kelly in his (*o*) Letter to *Musgrave*, (which Name will be hereafter shewn to signify the late Lord *Marr*) dated the 7th of *May*, says, "Mrs. 'Illington is in great Tribulation for poor *Harlequin*, who is in a bad Way, 'having slipp'd his Leg again, before it was thoroughly well: However 'his Obligations to the Lady are as great as if he had come safe, which *he* 'desires you to let her know.'

The Words *He* and *His* being relative to Mrs. *Illington*, shew it is a Man that is spoken of: The Bishop's Lady was dead at the Time this Letter was writ. And this Disguise of putting *Mrs.* for *Mr.* is frequently made use of in the intercepted Letters, and is confirmed by a parallel Instance immediately following.

May the 9th, *Dillon*'s Secretary (*p*) writes to *Kelly*, and says, 'Mrs. 'Chivers, (which will be shewn to be General *Dillon*) prays you will con'dole in his Name on the Death of Mrs. *Illington*.'

It appears by these Passages, that the Dog was for Mr. *Jones*, alias *Illington*: And upon *Kelly*'s writing word that Mrs. *Jones* was dead, the Correspondents condole on the Death of Mrs. *Illington*; which shews *Jones* and *Illington* to be the same, and both to be made use of to denote the Bishop.

On the 11th of *May*, *Motfield* (who is the same with *Musgrave*, that is, the late Lord *Marr*) sends a (*q*) Letter to Mr. *Illington*; enclosed under Cover to *Kelly*; in which, after acknowledging the Receipt of *Illington*'s Letter of the 20th of *April*, he adds, 'I did not expect so soon after to 'have heard of a Loss you have had since; for which I condole with you; 'and nothing which concerns you so near can fail touching me, as in 'Friendship it ought. It is, tho', becoming us, as it is our Duty, to sub'mit with Resignation to what the Just and Great God thinks fit to or'der for us in this vain and transitory World; but you know such Things 'so much better than I, that I will not trouble you with saying any more 'upon it.'

This last Paragraph seems to point out the Character and Function of the Person to whom the Letter was writ.

Motfield adds, 'I would fain hope that your own Distemper will soon 'give you ease;' which agrees with the Circumstance of the Bishop's being ill of the Gout at the Time of his Wife's Death.

This Particularity, as also several others, which will be taken Notice of, as to the Bishop's being in Town or in the Country, at the respective Times mentioned in the intercepted Letters, have been carefully inquired into; and it appears by a (*r*) Paper annexed to the Report, that these several Circumstances do exactly agree with what is mentioned in the Letters.

Kelly (*s*) writing to *Musgrave* (the late Lord *Marr*), the 7th of *May*, says, Mrs. *Jones* is come to Town: The same Day writing to *Chivers* (*Dillon*) he says Mr. *Illington* is now in Town; which again confirms *Jones* and *Illington* to be the same, and agrees with the Inquiry made at that Time.

On the 10th of *May*, *Kelly* (*t*) writes to *Dillon*'s Secretary, *Illington* is gone into the Country, and sent me word he would be in Town on *Tuesday* Night, when he has desired to see me at a particular Hour, by which I conclude it may be about Business. And on *Monday* the 14th of *May*, (the Day before, it is said, *Illington* was come to Town) (*u*) writing to the same Person, he says, *Jones* is still in the Country, but has sent me Word he will be in Town To-morrow.

These several Circumstances, join'd to *Neynoe*'s Declaration, that *Kelly* had told him, the Bishop went sometimes by the Name of *Jones*, and that *Carter* had told him, the Bishop went by the Name of *Illington*, shew, that wherever *Jones* and *Illington* are named in *Kelly*'s Correspondence, the Bishop of *Rochester* is to be understood by those Names.

Your Committee therefore will next proceed to lay before you the Part which *Jones* or *Illington* appear to have borne in the treasonable Correspondence.

It appears by *Kelly*'s (*x*) Pocket-Book, that *Kelly* set out for *Paris* on the 22d of *February* 1721-2, and return'd to *London* about the 8th of *April* following. It appears by (*y*) Mrs *Lovett*'s and (*z*) *John Malone*'s Deposition, that he came to Mrs. *Barnes*'s on *Wednesday* the 11th of *April*, at eight in the Morning, extremely fatigued, and went immediately to bed. Mrs. *Lovett* has deposed upon Oath, 'That Mrs. *Barnes* told her he was 'then just arrived from *France*, and brought over Letters with him: That 'several of the Disaffected had been at her House to enquire after him be'fore his Arrival, and express'd the utmost Concern for fear he should be 'taken.' And *Neynoe* declar'd, 'That he saw a great Bundle of Letters 'which *Kelly* brought over from *France*.' Mrs. *Barnes* farther told Mrs. *Lovett*, 'That the Day after, (*viz. Thursday* the 12th of *April*) the Bishop 'of *Rochester* sent his own Coach to fetch him, and that *Kelly* was absent 'in the Country till *Saturday* the 14th.' Two (*aa*) Depositions, annexed to this Report, shew, that the Bishop of *Rochester* came to Town on *Wednesday* the 11th, and went to *Bromley* on *Thursday* the 12th of *April*.

It appears by a (*bb*) Letter writ to *Kelly* from *France* by the late Lord *Marr*, and intercepted, that on *Monday* the 16th of *April* (which was the first Post-day to *France*, after the Bishop had sent for *Kelly*), *Kelly* had writ to *Marr* an Account of his Negociations with *Illington*, and of *Illington*'s Willingness to be reconciled to one, designed by the Name of *Hacket*. Who *Hacket* is does not appear to your Committee, but he is described in several of the Letters as a Person in ill Health retired in the Country, and one in whom the Pretender's Agents at *Paris* place their greatest Hopes and Confidence next to *Illington*. This Reconciliation with *Hacket*, *Illington* was desirous might be kept secret for some Time, that it might not be known they acted in concert.

It appears by another (*cc*) Letter to *Kelly* from *Dillon*'s Secretary at *Paris*, that *Illington* had writ a mysterious Letter thither, and that *Kelly* had writ a subsequent one in Explanation of it, which had been shewn to *Dillon*.

The first (*dd*) Letter that was intercepted from *Kelly* himself, was dated the 22d of *April*, signed *James Johnson*, (the Name he always went by, and often signed by) and directed to *Gordon junior*, Banker at *Boulogne*, at whose House, it is probable, he had been entertained in his last Return from *Paris*; which *Gordon* is mentioned in a (*ee*) Letter from Mr. *Cranfurd*, as being formerly the Pretender's Banker, and as one employed in hiring a Vessel to transport some of the Chiefs of the Conspiracy to *England*. In this Letter to *Gordon*, *Kelly* recommends to his Care a Packet enclosed.

This Packet was directed to Mr. *Chivers* (which will be proved to be *Dillon*), and consisted of three Letters, one to *Chivers* himself, signed *J. Jones*; another to *Musgrave* (which will be prov'd to be *Marr*) sign'd *T. Illington*, a third to Mr. *Jackson* (which will be proved to be the Pretender) sign'd 1378; which Number is found by the Decypherers, to denote the proper Name of a Person beginning with the Letter *R*, in the Cypher made use of in these three Letters, the Order of which, as your Committee is inform'd, is alphabetical. All the three Letters were dated the 20th of *April*, and appear by the Matter to be from the same Person, which prove 1378 to be the same with *Jones* and *Illington*. The Letters to *Musgrave* and *Jackson* were enclosed in that to *Chivers*.

(*a*) B. Y. 1. (*b*) E. 10. (*c*) E. 6. 12. 13. 14. (*d*) E. 17. (*e*) D. 7. (*f*) C. 51. (*g*) D. 8. 9. (*h*) D. 10. (*i*) D. 11. (*k*) E. 4. (*l*) E. 1. (*m*) E. 35. (*n*) D. 47. 48. (*o*) E. 42. (*p*) E. 43. (*q*) D. 24. (*r*) D. 47. (*s*) E. 42. (*t*) E. 44. (*u*) E. 45. (*x*) E. 17. (*y*) E. 6. (*z*) E. 15. (*aa*) E. 9. (*bb*) D. 47. 48. (*cc*) D. 13. (*dd*) D. 14. (*ee*) E. 26.

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The Perſon who dictated theſe Letters ſpeaks of himſelf as being in ill Health, in great Pain, under ſome ſad and melancholy Circumſtances, which made him uncapable of doing any thing regularly at that time, but which he expected would ſoon blow over; which agrees with the Biſhop's (*a*) Circumſtances at that time, whoſe Wife was extremely ill, and died ſix Days after; and he himſelf, as has been obſerved before, was at that time afflicted with the Gout.

The Letter to *Chivers* is a great Part of it out of Cypher, and with the Decyphering is in the following Words:

S I R, 20th of *April*, 1722.

'I Ought to acknowledge in Form the ſeveral Papers I have ſucceſſively 'received from you, if I were capable at preſent of doing any thing 'regularly; but indeed I am not, as *Hatfield* well knows, and why I am 'not. Some time muſt paſs before I am any way capable of Buſineſs; in 'the mean time you are in the Right to preſs the Gentlemen concerned 'by all Manner of Ways you can think of, to furniſh, what by being 'hitherto not ſupplied, has rendered the Thing impracticable. They 'were deſirous of having that Matter entirely in their own Management, 'and I not unwilling that they ſhould have it, being always diffident of Suc-'ceſs on my Part upon Interpoſitions of that Kind; and therefore it gave 'me no Concern to be ſo freely excuſed from any Share (as I was for a 'great while) in that trouble. At laſt, indeed, when the Point was found 'upon Trial to be more difficult than they expected, I was preſſed to un-'dertake the Matter; but ſo late that I did not think it reaſonable for me 'then to interpoſe, nor can I yet undertake any thing of that Kind, it 'being what (ſince ſome former Miſmanagement wherein I was deeply 'concerned) I have conſtantly declined, hoping that I might not be al-'together unuſeful to the Service, if I went on to promote it in my own, 'that is, in another Way. I ſtill hope ſo, and that a little time (which 'muſt be employed in doing nothing but ſoliciting Supplies) will give 'me Room for entering into Meaſures that may be ſomewhat more 'ſignificant than thoſe formerly taken; this I ſhall endeavour, being at 'preſent perfectly tired by the diſtracting Meaſures which have been taken 'from ſeveral Quarters, by Perſons noways equal to the Work, and at 'the ſame time not agreeing among themſelves. This is all I can ſay 'at preſent, but that I am with the ſame entire Reſpect and Fidelity I 'ever was,

S I R, your moſt, &c.

T. Jones.

'I have communicated the Copies of Mr. *Mansfield*'s and *Jacob*'s Let-'ters, which beſides the (*b*) G . . . . . , (whereof they had a 'Copy) were the only ones of thoſe tranſmitted, that I was directed, or 'indeed thought proper ſo to do. Tho' I have for ſome time thought, that 'nothing of Importance ſhould be truſted to the Poſt, and am reſolved 'myſelf not to ſend that Way; yet the Death of Lord *Sunderland* makes 'ſuch a Caution more indeſpenſibly neceſſary; for you may depend upon 'it, that thoſe in Power here will now enter into Meaſures of more Seve-'rity and Strictneſs, and employ all their Diligence, as well as Power, 'on ſuch Occaſions.'

That *Chivers*, to whom this Letter was directed, means General *Dillon*, is evident from the following Circumſtances.

On the 13th of *May*, *Cane* (*c*) writing to *Kelly*, owns the Receipt of theſe Letters from the Biſhop; but over againſt the Name of *Cane* in *Plunkett*'s (*d*) Cypher, is writ *Dillon* and *Kelly* (*e*) anſwering this very Letter of *Cane*'s, directed to *Chivers*. Beſides which, it appears from innumerable Paſſages, that *Cane* and *Chivers* mean the ſame with *Digby* and *Dixwell*, which have been ſhewn at large to denote General *Dillon*.

The Biſhop's Letter to *Muſgrave* (who will be proved to be the late Lord *Marr*), is as follows.

To Mr. Muſgrave.

S I R, *April* the 20th, 1722.

'I Received from Mr. *Hatfield* (after a long Intermiſſion of ſuch Fa-'vours) a Letter which was very welcome to me, I have alſo conſider-'ed carefully what he had to offer to me in particular, and entirely agree 'with what is propoſed; but my preſent ſad Circumſtances (of which he 'has already informed you) will not ſuffer me to be active ſoon, or even 'ſet forward the Affairs entruſted with me in ſo ſpeedy a Manner as I 'could wiſh. The beſt is, that as I cannot act openly, ſo neither is there, 'I think, any immediate Need of it, ſome time being requiſite towards 'ripening Matters, in order to fix the (*f*) C . . . . . 'd, 'which, if haſtily begun, may be attended with Suſpicions and other In-'conveniencies; but you may depend upon it, that the (*f*) . . . . . : '. . . . . s committed to my Care, ſhall be forwarded in due Time to the 'Perſons concerned, as alſo all ſuch other (*f*) : . . . . . s as I judge, and 'at the Time I judge, they will beſt promote the Service. What is to be 'wiſhed for, is, that the Perſon whom I am to act with would come to 'Town, and his doing ſo may be facilitated better from your Side, than 'by any Thing that can be done here; by that Time he comes, I hope I 'ſhall be able to take my Part with him. I add no more now, being very 'unfit to ſay even thus much, but that I am with entire Reſpect and 'Confidence,

S I R, &c.

T. Illington.

That *Muſgrave* (to whom this Letter was directed) means *Marr*, is thus proved.

Dillon's Secretary (*g*) writes to *Kelly*, that Mr. *Lane* (over againſt which Name in (*b*) *Plunkett*'s Cypher is writ Lord *Marr*) was much pleaſed with his firſt Letter, which, as has been obſerved before, was writ on the 16th of *April*.

Soon after a Perſon (*i*) writes to *Kelly*, acknowledging the Receipt of this Letter of the 16th of *April*, and expreſſing his Satisfaction at *Illington*'s Willingneſs to be reconciled with *Hacket*; his Letter is ſigned 918, which Number is found by the Decypherers to denote the proper Name of a Perſon beginning with the Letter *M*, and *Kelly* (*k*) anſwering this Letter, directs to *Muſgrave*.

Beſides which, *Muſgrave* is found to be a Perſon, whoſe Penſion is ſaid to be ſtopt in *England*, at the very Time that a (*l*) Penſion granted to the late Lord *Marr* was ſtopt, and is ſpoken of in other (*m*) Letters as one ſuſpected of betraying them, with ſuch Circumſtances as fix the Perſon meant to be the late Lord *Marr*.

The Biſhop's Letter to *Jackſon* (who will be proved to mean the Pretender), is as follows:

To Mr. Jackſon, *under the Cover of*
M. Gordon le fils, Banquier à
Boulogne ſur Mer.

S I R, *April* the 20th, 1722.

'I AM ſorry to find by yours, which *Hatfield* brought, that you know 'our Circumſtances on this Side ſo well, becauſe that Knowledge 'does not, I apprehend, give you any advantageous Opinion of us; 'however let that be as it will, 'tis not fit you ſhould be deceived, 'and rely on more than will be made good to you: If you gueſs at my 'right Mind, I dare ſay it was agreeable to your own, and that you could 'not but ſee through the Forwardneſs of all thoſe unſupported, pretend-'ing People. Notwithſtanding this Opportunity is elapſed, I agree with 'you another may offer before the End of the Year, though not per-'haps every way ſo favourable: However it became me to ſpeak ſtrongly 'on that Head, eſpecially at the Time when the (*n*) : . . . . . was 'drawn, which was long before it was tranſmitted, for it was kept back 'a great while, in Hopes that Deeds might have accompanied Words, 'and ſent at laſt rather to juſtify the Writer in reſpect to that Part he 'had undertaken, than to puſh on any Deſign in ſo unprovided a Condi-'tion. I find I was not miſtaken, and am glad it was not ſo, though 'every Word of that (*n*) : . . . . . paſſed the View and Approbation of 'the Perſons concerned, but they were to be, and ſhall always be by 'me treated tenderly; though nothing ſhall engage me to enter deep with 'them for the future. I had taken this Reſolution before *Hatfield*'s Return, 'and am pleaſed to find that you concur with me in Opinion. As ſoon as 'God reſtores me to my Health, and ſome other melancholy Circum-'ſtances are blown over, which will be as ſoon as there is any Occaſion 'for me, I will not be idle: In the mean time give me Leave to with-'draw myſelf *ſeemingly* from any Engagement of this Kind; I ſhall return 'to it, I doubt not, with more Ability to promote the Work: Not that I 'will decline any proper Occaſions that may offer themſelves to converſe 'freely with the Men, and in the Manner I have been uſed to do, for it is 'fit upon all Accounts I ſhould do ſo; but by little and little that Con-'fidence will cool, and make Room, I hope, for ſomewhat of a more ſo-'lid and important Nature. I dictate this in great Pain, and for that 'Reaſon, and becauſe I am not at preſent in any Readineſs to go fur-'ther, ſhall add only my faithful Aſſurances of an entire and unalterable 'Reſpect for you.

R.'

That *Jackſon* (to whom this Letter is directed) means the Pretender, appears from (*o*) *Plunkett*'s Cypher, in which, over againſt the Name of *Jackſon*, is writ *the King*; though two Names had gone before in that Cypher, over-againſt which is writ, King *George*.

Beſides which (*p*), *Plunkett*'s Letter mentioning his and *Layer*'s Journey to *Rome*, is directed to Mr. *Jackſon*; and *Jackſon* appears from other Letters to be the ſame with *Malcolm*, to whom Application is made in a (*q*) Letter from *Edinburgh*, for a Patent for Knight Baronet, and for Orders to raiſe one or two Battalions.

The Cypher made uſe of in theſe three Letters, is the very ſame that is made uſe of in two Letters intercepted from the late Duke of *Ormond*'s Agents in *Spain*, of which Notice has been already taken. And the ſame Cypher is alſo uſed in Letters from *George Kelly*, and to *Dennis Kelly*. And among the Papers of the latter was found a (*r*) Piece of a Cypher in *George Kelly*'s Hand-writing, which your Committee are informed is a Supplement to the Cypher made uſe of in *Jones* and *Illington*'s Letters.

The Clerks of the Poſt-Office, who opened and copied theſe Letters, having been ſhewn ſeveral Papers ſworn to be *George Kelly*'s Hand-writing, have (*s*) depoſed upon Oath, That the Letter to *Gordon, junior*, ſigned *James Johnſon*, as well as the three Letters incloſed in it, directed to *Chivers*, *Muſgrave* and *Jackſon*, were all, to the beſt of their Knowledge and Belief, writ in the ſame hand with thoſe Papers; which joined to (*t*) *Neynoe*'s Information, that *Kelly* had told him, he was employed in writing Letters for the Biſhop to the Pretender's Agents abroad; that the Biſhop never let him carry a Bit of his Hand-writing out of the Room; and that *Kelly* made uſe both of a numerical Cypher, and a Cypher of fictitious Names, for managing this treaſonable Correſpondence, appears to be a ſtrong Confirmation that theſe three Letters were dictated to *Kelly* by the Biſhop, and that the Biſhop is the Perſon denoted by the Names of *Jones* and *Illington*, and by the Cypher 1378.

In what Manner theſe Letters were conveyed to *Paris*, will be obſerved in that Part of the Report which relates to *Kelly*. The Correſpondents at *Paris* (*u*) own the Receipt of the Packet from their Couſin *Jones*; and on the 7th of *May*, *Kelly* (*x*) writes *Dillon* Word, that *Illington* is glad to hear his Letters came ſafe, and wiſhes his next to be more to *Dillon*'s Satisfaction.

Your Committee having thus laid before you the Grounds they have to be convinced, that theſe three Letters were ſent from the Biſhop of *Rocheſter* to General *Dillon*, the late Lord *Marr*, and the Pretender; they think it their Duty to make ſome Obſervations on the Contents of them.

They obſerve from his Letter to *Dillon*, that he has contracted a great Intimacy and Familiarity with a profeſſed *Roman* Catholic, who appeared openly in Arms againſt the late King *William* in *Ireland*, and being obliged to leave that Country ſo long ago as the Capitulation of *Limerick*, has ever ſince adhered to the ſame Cauſe in foreign Parts, and is at preſent more active and induſtrious than any other of the Pretender's Agents in exciting a Rebellion in theſe Kingdoms. He is at this Time a Lieutenant-General, and has the Command of one of the *Iriſh* Regiments in the *French* Service.

(*a*) D. 47. 48. (*b*) Not decyphered. (*c*) E. 38. (*d*) C. 51. (*e*) E. 41. 42. (*f*) Not decyphered. (*g*) E. 30. (*h*) C. 51. (*i*) E. 32. (*k*) E. 42. (*l*) E. 71. (*m*) E. 37. 41. (*n*) Not decyphered. (*o*) C. 51. (*p*) C. 41. (*q*) L. 9. (*r*) F. 11. a. (*s*) E. 19. (*t*) E. 10. (*u*) E. 37. 38. (*x*) E. 41. a.

Your Committee observe, That as the different Professions of these two Persons could lay no sort of Foundation for any Intimacy or Intercourse between them, so the long Absence of General *Dillon* makes it highly probable, that their Acquaintance could not be commenced before his leaving these Kingdoms; and that it can only have proceeded from their being long united and confederated in the common Support of the same wicked Cause.

Yet their Intimacy is such, that the Bishop acknowledges the Receipt of several Papers from *Dillon*, together with Directions of communicating them, which the Bishop owns he obey'd as far as he judg'd it proper for the Service. Some of these Papers appear to have been from the late Duke of *Ormond*, who is attainted; and others probably from the Pretender, whom he has so often abjured.

He advises *Dillon* to press the soliciting Supplies; and owns he has been desired to undertake that Province himself, but that he had hitherto declin'd it; not from such Restraints as should naturally have arisen in the mind of one of his Character and Function, but merely on account of some former ill Success and Mismanagement, in which he owns he had been deeply concern'd.

He afterwards advises *Dillon* to use the same Caution which he himself intended, of not trusting any thing of Importance to the Post, endeavouring to act within the Shelter and Safeguard of the Laws for subverting our happy Constitution.

This great Caution, which (as *Neynoe* said *Kelly* told him) the Bishop used, made him so extremely careful, as not to let even the Man he trusted most, have one Line of his own Hand-writing; and shews that he was wonderfully sollicitous, not to avoid the Guilt of Treason, but only to escape the Punishment due to it, by saving himself from the Danger of legal Conviction.

Another of his Letters is to the late Lord *Marr*, who so lately appear'd in Arms against his Majesty, and has since had a Post of the greatest Confidence and Trust near the Pretender.

In this Letter he owns the Receipt of one from *Marr* by *Kelly*, together with verbal Instructions; which, to cut off all Excuse of Surprize or Inadvertency, he says he carefully consider'd, and yet entirely agreed to.

He then mentions his present sad Circumstances; but comforts himself, that as they will not permit him soon to act openly, so neither is there, he thinks, any immediate Occasion for it, some Time being necessary towards ripening Matters. So that when a proper Opportunity should have offer'd, the Mask was to have been thrown off, and then he was openly to have avowed the Cause, which he has hitherto supported only in Disguise.

The other Letter of the Bishop's is to the Pretender himself, in defiance of that Law which makes the holding any Correspondence with him, or his Agents, High-Treason. In this Letter he owns the Receipt of one from the Pretender; and to shew how well he deserved that Confidence, he himself, who best knows the Thoughts of his own Heart, declares, That if the Pretender guessed at his right Mind, he dares say it is agreeable to the Pretender's own.

He then encourages the Pretender to hope for a second Opportunity, tho' not every Way so favourable as the first, which was elapsed.

This favourable Opportunity appears to have been that of the Elections; and your Committee cannot but observe, that the two most riotous Elections of any throughout the Kingdom, were that of *Westminster*, a Place under the immediate Influence of the Bishop of *Rochester*; and that of *Coventry*, which appears by this Report to have been animated by *Carte*, an Agent of the Bishop's, and one employ'd by him in managing his treasonable Correspondence.

He afterwards takes to himself the Merit of some Writing, which he had drawn up and transmitted to the Pretender, after it had first passed the View and Approbation of the Persons concern'd: Tho' he says it had been kept back a great while, in hopes that *Deeds* might have accompanied *Words*. Which again shews his treasonable Intentions to have been the Result of mature Deliberation; and that tho' he had hitherto dealt in Words, yet other Acts of Treason were what he hoped for, and was aiming at.

As soon as God should restore him to his Health, he promises to abuse it towards the Prosecution of his Treasons, and in the mean time desires leave to withdraw himself seemingly from any Engagements of that Kind, that he might return with greater Zeal and Activity to destroy this Church and State, by placing a Popish Pretender on the Throne, in Violation of the most sacred Oaths so frequently taken by him.

Your Committee will now proceed to shew what farther Part the Bishop appears to have had in the treasonable Correspondence and Negociations carried on with the Pretender's Agents in *France*.

On the 11th of *May*, *Motfield* answers *Illington*'s *(a)* Letter sent to *Musgrave (Marr)* the 20th of *April*. This was inclos'd in a Letter to *Kelly*. The substance of the Answer is to condole with *Illington* on his Loss, and to express great Satisfaction on finding him in the same Sentiments with *Marr*, in Relation to their old Friend and Acquaintance *(Hacket)*; and in another *(b)* Letter to *Kelly*, he lets *Illington* know how agreeable this Reconciliation would be to *Farmer*, and how much to *Farmer*'s Interest.

Your Committee see Reason to believe, from Passages in several of the Letters, that *Farmer* means the *Pretender*.

It has been observed above, one of the Periods of Time fixed by the Conspirators for putting their Design in execution, was the Beginning of *May*, 1722.

On the 1st of *May*, *Dillon*'s Secretary *(c)* writes to *Kelly*, 'that Mr. '*Jones* cannot take a better Time to have himself fitted with an easy '*Saddle*, there being a Number of Saddlers idle in *France* at present, who 'in case of Wars would be so very busy there would be no coming at 'them.' This is explain'd by what *(d) Neynoe* said, that in *Kelly*'s Cypher *Saddlers* stood for *Irish Soldiers*, tho' he did not know any Letters had been intercepted where that Term was made use of; and in *Plunkett*'s *(e)* Cypher *Saddles* stands for Regiments, and *Girt* for one hundred Men.

On the 2d of *May*, *Dillon* himself *(f)* acknowledges the Receipt of his Cousin *Jones*'s Letters of the 20th of *April*, and 'expresses much Con-'cern for that *Lady*'s ill State of Health, being much afraid his own small 'Concerns can hardly be settled to Satisfaction, till she is able to sollicit 'in his Favour.'

On the 7th of *May*, *Kelly (g)* writes to *Musgrave (Marr)*, 'that he 'had communicated his Letter to Mr. *Jones*; and that Mr. *Jones* desir'd a 'Letter from *Musgrave* or *Farmer* (the Pretender) to *Hacket*, to bring 'him to Town, without which it would be impracticable for them to do 'Business together. That *Jones* finds *Armstrong and Company* very loth 'to be any way concerned, having no Opinion of the present Hands; 'however that it is still necessary to make the most of them.'

Who is meant by *Armstrong and Company* does not appear to the Committee.

On the 9th of *May*, *Dillon*'s Secretary *(h)* writes to *Kelly*, 'That if 'this Post had not brought an Addition of three to the six formerly 'come from *Repney*, it is easy for Mrs. *Jones* to see what is still wanting 'for the Purchase she intends to make.' Who is meant by *Repney* is not certain; but in the following Part of this Report there will appear Grounds of a probable Conjecture.

This Passage relates to a Bill of Exchange (of six thousand Pounds probably) sent over to *Calais*, and thence to *Waters* the Pretender's Banker at *Paris*, on the 16th of *April*; the Receipt of which is acknowledged in several Letters both to *(i) George Kelly* and *(k) Dennis Kelly*. This Paragraph, which says, 'That if three more are not come, besides the six 'from *Repney*, it is easy for Mrs. *Jones* to see what is still wanting for 'the *Purchase she intends to make*;' shews plainly, that *Jones* was at least privy to that Remittance: which agrees with what *Pancier (l)* has deposed upon Oath, that he was told by *Skeene*, among other Particulars relating to the Conspiracy, that a large Contribution had been raised and put under the Management of the Bishop of *Rochester*, which was called their military Chest.

On the 10th of *May*, (three Days after the Encampment) *(m) Kelly* 'writes to *Dillon*'s Secretary, 'That it was reported the King had abso-'lutely refused to put off his Journey, and intended to set out early next 'Month; and that if they could then compass *Barrels* enough, the sooner 'the Wine comes, he believes, the better. He adds, that *Jones* promises 'to be a good Customer, and that he hopes *Hacket* and *Jones* will give 'them the finishing Stroke.' The time of Year in which this Letter was writ, and the absurd Supposition of its being more difficult to find *Barrels* than *Wine*, shew sufficiently that these Words are not to be taken in their literal Sense.

Your Committee are inform'd, that Wine was explain'd by *Neynoe* to mean *Invasion*, tho' he had never been told that any such Word had been made use of in these Letters, nor had been asked any Question about it; and in *(n) Plunkett*'s Cypher, *Barrels* is explain'd *Army*, and *Vines*, *one thousand Men*.

On the 19th of *May Dillon*'s Secretary *(o)* writes to *Kelly*; 'That he is assured by good Hands, *Hacket* and *Jones* are the best able to adjust 'his particular Concerns; that he does not question their good Dis-'positions, and that doing it timely will be a double Merit.'

On the 19th of *May*, *Kelly* was taken into Custody, about the 7th of *June* he was admitted to Bail; and on the 11th he *(p)* writes an Account of his Examination to one *Gerrard*, whom your Committee believe to be Sir *John D'Obryan*, whom *Kelly (q)* owned to be employ'd by *Dillon* in writing for him. In this Letter *Kelly* says, 'He was chiefly questioned 'about a little Dog he got from *France*, and about five or six cant Names, 'which were *Illington*, *Jones*, *Cane*, *Howell*, *Quitwell* and *Hacket*, and 'that whoever *Illington* is, he was the Person chiefly struck at.'

On the 18th of *June (r)* he writes to *Dillon*, 'That it is absolutely 'necessary to make no more use of their present *Account-Book*, since those 'that have got Part, may by the same Method have got the whole; and 'that it will be highly improper for him to meddle with Business, at 'least for some Time.'

From this Time forward your Committee observe, that the Names of *Jones* and *Illington* are no more heard of in the intercepted Correspondence; neither does *Kelly* so frequently write Letters of great Business, but in his stead *Thomas Carte*, Clerk, takes up the Management of the Bishop's Correspondence.

The Letters from *Carte* are signed, and those to him directed by the Name of *George Williams*; and Mrs. *Harbin*, to whose House they were directed, having been examined before some Lords of the Council, *(s)* has deposed on Oath, that *Carte* desired her to take in Letters so directed, and that she delivered one so directed into his own Hands.

And in the *(t)* Cypher taken among *Dennis Kelly*'s Papers in *George Kelly*'s Hand-writing, Mr. *Carte* is designed by the fictitious Names of *Thomas* and *Trotter*, who appear, by comparing several Passages in the Letters, to mean the same Person with *George Williams*.

From the Time of *George Kelly*'s being first taken up, the Bishop of *Rochester* is denoted by the Names of *Rig* and *Weston*, as will appear from the following Circumstances.

On the 30th of *August*, *Kelly (u)* writes to *Dillon* a long Letter, which contains the Particulars of the Bishop's being taken into Custody, examined and committed. On the 14th of *September Dillon*'s Secretary *(x)* writes to *Kelly*, 'That his Letter on the 30th of *August* came safe, and that the 'Particulars he gave of Mr. *Rig*'s Case were very acceptable to *Dillon*, 'whose Concern for a true and worthy Friend and Relation cannot be 'doubted, and a longing Desire to know her entirely clear of *her* Distemper.' In the same Letter he desires to know what is become of *Carte*.

That *Rig* denotes the Bishop, is farther confirmed by these Particulars: *Kelly* in his first *(y)* Letter after his Enlargement, writes word to *Gerrard*; 'All I can do now, will be only to deliver to your Cousin *Rig* any *Goods* 'that you can send by private Hands: He is determined not to receive 'them any other Way, and indeed I cannot say he is in the wrong. 'How far this late Affair may affect him, I cannot tell.'

(a) D. 24. *(b)* D. 13. *(c)* D. 17. *(d)* E. 10. *(e)* C. 51. *(f)* E. 38. *(g)* E. 42. *(h)* E. 43. *(i)* E. 31. *(k)* F. 19. 21. *(l)* D. 1. *(m)* E. 44. *(n)* C. 51. *(o)* E. 46. *(p)* E. 47. *(q)* E. 81. *(r)* E. 49. *(s)* D. 4. *(t)* F. 11. a. *(u)* D. 45. *(x)* D. 46. *(y)* E. 47.

Now, ſince it appears that *Kelly* was formerly employed in conveying Letters to and from the Biſhop (which are often called *Goods* in the intercepted Correſpondence) ſince the Biſhop himſelf had deſired in his Letter to *Dillon*, that no more Letters of Conſequence might be truſted to the Poſt; and ſince *Kelly*'s Examination about the Dog could affect no one but the Biſhop, it may juſtly be concluded that *Rig* and the Biſhop are the ſame.

That *Weſton* is the Biſhop will appear from the following Circumſtances:

On the 7th of *June*, *Dillon*'s Secretary (*a*) writes to *Carte*, and acknowledges the Receipt of a Letter from him of the 28th of *May* (which was ſoon after *Kelly*'s being taken up), and after expreſſing great Satisfaction, 'That the late Rumours of a Plot had not occaſioned a total 'Interruption of *Commerce*, nor obliged any of their Correſpondents to 'go aſide;' he adds, 'That *Dillon* deſires to be moſt kindly remembered 'to his good Friend Mr. *Weſton*, for whom he was in the greateſt Con'cern, on account of a Story that his *Clerk* had been laid up for *Debt*; 'but that he hopes *Carte*'s next Letter will put him at full Eaſe in this 'Matter.'

This plainly has Reference to *Kelly*'s being taken up; and his relation of *Clerkſhip* to the Biſhop has been fully explain'd by what goes before.

On the 14th of *June*, *Carte* (*b*) writes to *Dillon*'s Secretary, and endeavours to put him at full Eaſe, in relation to Mr. *Weſton*, by telling him, 'That Mr. *Weſton* is in the Country, that he ſaw him two Days 'ago: that he is perfectly well, and as eaſy in all his Affairs as any Man 'alive, and very much *Dillon*'s humble Servant.' It appears by Depoſitions (*c*) annexed to this Report, that the Biſhop was in the Country at that Time.

On the 14th of *July*, *Dillon* (*d*) writes to *Weſton* under Cover to *Carte*; and deſires he will admit one *Skinner* (ſent over from *France* expreſs) to receive his Commands.

On the 26th of *July*, *Kelly* (*e*) writes Word that *Rig* and *Skin* had been lately together; and that before they met, *Rig* ſent to him to know how *Skin* ſtood with *Dillon* and his Partners.

On the ſame Day, *Stanley* (who appears by the Matter of his Letter to be the ſame with *Skinner*) writes (*f*) to *Dillon*, 'That he had been with 'the Correſpondent, to whom the Letter of Credit was ſent, and had part'ly engaged him in his Arrack Affair.' On the 30th of *July*, *Carte* writes (*g*) word, he had the Honour of introducing *Stanley* to Mr. *Weſton*, and mentions the Arrack Affair, of which notice will be taken in its Place.

From theſe Paſſages it appears, that *Weſton* (the Name made uſe of by *Carte*) means the ſame with *Rig* (made uſe of by *Kelly*) which laſt was ſhewn before to mean the Biſhop of *Rocheſter*.

Rig therefore, and *Weſton*, being made uſe of to denote the Biſhop; it remains to be conſidered what Part *Rig* or *Weſton* appear to bear in the Sequel of the intercepted Correſpondence.

It appears by the (*h*) Letter from *Dillon*'s Secretary of the 7th of *June*, that they apprehended in general, on *Kelly*'s being taken up, that ſome of their Correſpondents would be obliged to go aſide; but that their greateſt Pain was for Mr. *Weſton*, whoſe Intimacy with *Kelly* was ſuch, that *Kelly* is ſtyled his *Clerk*, which is no improper Name for one that kept the Cyphers, which are ſtyled throughout the intercepted Letters, *Books of Accompts*; and in *Layer*'s Cypher are call'd *Rentals*. If *Kelly* had had no Secrets to reveal, the Pain for Mr. *Weſton*, and the Fear of other Correſpondents going aſide, would not have been ſo conſiderable.

On the 14th of *June*, (*i*) *Carte* ſets them at eaſe in relation to *Weſton*, who was, he ſays, as eaſy in his Affairs as any Man alive: Which might be the Caſe, *Kelly* having burnt his Papers, being bailed out, and at Liberty to aſſure his Friends that the Lords could get nothing out of him at his Examination, where he ſtrenuouſly denied his having ever heard of the Names of *Jones* or *Illington*.

On the 11th of *June*, *Kelly* (*k*) ſends his Friends at *Paris* an Account of his late Misfortune; and after complaining of their Neglect, in not bailing him out ſooner, and intimating that ſuch Uſage might have provoked a paſſionate Man to betray their Secrets; he ſays, your old Friend *Rig*, indeed, offered all that could be expected from the poor Man. This Paſſage proves pretty plainly, that *Rig* was one of thoſe whoſe Secrets it was in *Kelly*'s power to have betrayed; and who therefore thought himſelf principally concerned to keep *Kelly* in good Temper, by all poſſible Offers of Aſſiſtance,

Kelly in his next (*l*) Letter of the 18th of *June*, ſays, 'The Occaſion 'of my Misfortune I will lay at No-body's Door in particular; tho' *your 'old Friend* Rig ſeems to believe, it has rather poceeded from ſome pre'tended Friend than any real Enemy: And as his Conjecture lies on this 'ſide, you may eaſily gueſs the Point it tends to.' This Paſſage ſhews that the Diſcoveries made, were known by *Rig* to be well founded; ſince no one could be led to ſuſpect, that an Information entirely falſe ſhould proceed from ſome Friend entirely in the Secret: Beſides, it ſhews *Rig* had Friends, in whoſe Power it was to betray him; and that thoſe Friends were known to the Correſpondents in *France*, ſince *Kelly* ſays, they are able to gueſs who it is that *Rig* ſuſpects *on this ſide*. This is a farther Intimation, that *Rig* had Friends on the other Side of the Water, in whoſe Power it was equally to have betrayed the Secret.

Kelly then tells *Dillon*, 'That it is abſolutely neceſſary to make no more 'uſe of their preſent Accompt-Book; ſince they that *have got part*, may 'by the ſame Method have got the whole.' This is a direct Confeſſion, that the Names of *Jones* and *Illington*, and others on which *Kelly* was queſtioned, where really a Part of the Cypher in uſe between him and his Correſpondents in *France*: And as *Kelly* writ Word that *Illington* was the Perſon principally ſtruck at, and knew very well by Mrs. *Barnes*'s Confeſſion about the Dog, who *Illington* was underſtood to be; it amounts to a Confeſſion, that that Expoſition of the Name of *Illington* was true.

He then adds, 'All that lies in my Power now, will be to deliver to 'your Couſin *Rig* any Goods you can ſend by private Hands; he being 'determined not to receive them any other way.' So that by private Hands *Rig* was ſtill willing to receive them.

However *Kelly* ſays, 'If your Buſineſs can be conveyed any other way 'to him, you cannot do me a greater Favour: For to tell you the Truth, 'it is againſt my Opinion and Inclination to have *any farther* Dealing 'that way.' This ſhews what Dealing *Kelly* had hitherto had; and at the ſame time explains how *Carte* comes to be employed in managing the Biſhop's Correſpondence for the future.

Kelly adds, 'That he does not know how far this late Affair may affect 'Rig.' This ſhews that he knew *Rig* was engaged in ſome criminal Correſpondence; ſince the receiving a Dog from *France*, or being called by a fictitious Name, could not otherwiſe have affected him.

On the 16th of *July*, *Carte* writes a long (*m*) Letter about ſome MSS. and *Weſton*'s Opinion of them, as alſo that of *Finch*. What is meant by *Manuſcripts*, does not appear; neither is it certain who *Finch* is, but he is (*n*) ſpoke of as being in high Repute with *Weſton*.

On the 1ſt of *Auguſt*, *Dillon* (*o*) writes to *Carte*, 'That he cannot ap'ply to a more ſufficient Judge than *Weſton* about his Concern with Mr. 'Finch:' And he often repeats, 'That he makes a moſt particular Caſe 'of Mr. *Weſton*'s Judgment; and that he relies entirely on *Weſton*'s 'Friendſhip and Advice;' and other Expreſſions of the like nature.

On the 14th of *July*, *Dillon* writes a (*p*) Letter to *Weſton* (the Biſhop) encloſed to *Carte*, in the following Words:

To Mrs. Weſton, *incloſed to Mr.* George Williams, *at Mrs.* Harbin's *over againſt* Somerſet-Houſe.

Dear Madam, *Saturday* 25 *July*, 1722.

'I Cannot on any reaſonable Grounds complain of your Silence, tho' 'long it appears, becauſe I am informed of the Situation of your 'Health, and the Concerns your Family are in, by Bankrupts and Law-'Suits. Permit me, however, to fulfil a part of my Duty in preſenting 'you my beſt Reſpects, and unalterable Attachment to you and yours. 'I wiſh this may find you ſo far recovered from paſt Miſchances, as that 'you may be once more in a Humour of affording me a comfortable Line. 'I have all the Stock I bought lying by, and I intend it ſhall remain ſo, 'until you adviſe me of the proper Time to diſpoſe of it: Being fully con'vinced, that in the ſlippery Age we live in, I cannot confide to any 'better than you. I hear many ſay, that our Stocks will infallibly riſe 'again to a good height, by Mr. *Walpole*'s wiſe and able Management; 'from whence I ſhould hope not to be ſo much a Loſer in reſerving mine. 'Still my Lights at this diſtance can be but very imperfect: Therefore, 'Dear Madam, I will earneſtly pray your Direction, when you find lei'ſure to grant me this Favour, as alſo of forgiving this Trouble, for 'which I offer amends in any manner I can be of Service to you. The 'few Acquaintances of yours I converſe with in theſe Parts, are well; 'and rely, as I do, on your friendly Advice in a moſt particular man'ner, about their Concerns in the Funds. They deſire you will be pleaſed 'to admit Mr. *Skinner* to receive your Commands, who is directed to call 'upon you, and explain ſome Particulars too tedious for a Letter. He 'ſeems to be very ready at Buſineſs, and will obey your Orders punctual'ly. I am, with the greateſt Eſteem and Sincerity,

'*Dear Madam*,

'*Your moſt humble, and moſt*

'*Obedient Servant*,

'Digby.

On the 16th of *July*, *Dennis Kelly* (*q*) writes word to *France*, that *Skinner* arrived in Town the Night before; that he had been to wait on him, longing much to know how the Fall of Stocks affected his Friends.

On the 26th of *July*, *Kelly* (*r*) writes to *Dillon*'s Secretary, 'That *Rig* 'and *Skin* had been lately together; and that before they met, *Rig* had 'ſent to him, to know if *Skin* ſtood well with *Dillon* and Partners.' He adds, 'That *Rig* ſtill ſeems to promiſe his Aſſiſtance, if he can get the 'better of his Suſpicions: and that *Rig* went into the Country, the Day 'after *Skin* and he had been together.' It appears by (*s*) a Depoſition annexed to this Report, that the Biſhop came to Town on the 19th, and returned to *Bromley* on the 21ſt of *July*.

On the ſame Day that *Kelly* writ, *Stanley* (who is the ſame with *Skinner*) writes (*t*) to *Dillon*, 'I have been with *your Correſpondent* to whom the 'Letter of Credit was ſent, who has partly anſwered my Demands, and '*promiſes to comply in all Points with your Directions*.' He then adds, 'I muſt 'now give you an Account of what Product may be hoped for from the 'Publick Funds.'

Then follows a Paragraph, ſome few Letters of which are in Cypher, but as your Committee is informed, in ſuch an eaſy and obvious one, that any one that reads it, may with the leaſt Attention decypher it. In this Paragraph, inſtead of ſaying a Word about the Funds, he acquaints *Dillon*, 'That they are certainly betrayed by ſome one entirely in the Secret, 'who has given ſuch Light into all their Affairs, that the moſt minute 'Circumſtances are perfectly found out; that therefore he muſt caution 'him, as he is requeſted, to be very careful who he converſes with, even 'at *Paris*, without excepting any one.'

This Paragraph explains ſufficiently what is meant by *Stocks* and *Funds*; and it is remarkable, that in *Plunkett*'s Cypher, *Brokers* is explained *Agents*. The owning themſelves diſcovered by ſome one *entirely in the Secret*, proves there was a *Secret*, and that the Diſcoveries of the Government were well founded.

He then adds, 'I have partly prevailed with the Correſpondent (*Weſ'ton*) to undertake what he had firmly reſolved againſt, which is the pro'curing *Arrack*, which *cannot fail ſucceeding by that Channel*.' And on the '30th of *July*, *Carte* writes to *Dillon* in the following Words:

'I had the Honour of introducing Mr *Stanley* to Mr. *Weſt*, who re'ceived him in the beſt manner, and aſſured him of his Readineſs to ſerve 'him in what he could. Mr. *St.* was much pleaſed with him; but did 'not engage him to ſollicit in his *Arrack Affair*, which yet is of the great'eſt conſequence to him, and Mr. *W.* is moſt capable of ſerving him 'in, becauſe in the Eſteem of all the Commiſſioners in whoſe Power it is

(*a*) D. 27. (*b*) D. 29. (*c*) D. 47, 48. (*d*) D. 35. (*e*) D. 41. (*f*) D. 40. (*g*) D. 42. (*h*) D. 27. (*i*) D. 29. (*k*) E. 47. (*l*) E. 49. (*m*) D. 36. (*n*) D. 40. (*o*) D. 43. (*p*) D. 35. (*q*) D. 37. (*r*) D. 41. (*s*) D. 48. (*t*) D. 40.

'to relieve him in the Case. And as Mr. *W.* would do it effectually, if 'engaged in it, so Mr. *Stanley* desires me to beg the Favour of you, to re-'quest the Favour of Mr. *W.* in a Letter from you to Mr. *Stanley*, which 'he is sure would fortify the good Inclinations Mr. *W.* has already to 'serve him, and effectually engage him in the Thing.'

The Original of this (*a*) Letter being stopped, is, as your Committee are informed, in *Carte*'s own Hand-writing.

What is meant by these mysterious Passages about *Arrack*, must be left to the Conjecture of the House.

If this be compared with the Bishop's (*b*) Letter to *Dillon*, and with (*c*) *Pancier*'s Deposition, it is not improbable that by *Arrack* may be meant Contributions of Money.

But whatever is meant by it, the Committee observe, that it was a Point of the greatest Importance to the Conspirators, since it was thought necessary to be laboured by a Person sent from *France* on purpose; and the Bishop's Reluctancy to come into it argues it to have been something very dangerous, and beyond the ordinary Lengths of his Compliance.

And they observe that the principal Direction of the Conspiracy, under all the Disguises of *Stocks*, *Manuscripts* and *Arrack*, is submitted to the Bishop's Judgment, on which, it is often said, they do entirely rely.

Your Committee having thus laid before you the principal Matters in the intercepted Correspondence, that relate to the Bishop of *Rochester* more immediately, will now proceed to state to you what they find in the same Correspondence, relating to *George Kelly*; who, as has been shewn before, acted so much under the Direction and Influence of the Bishop, that it cannot be supposed he would take any Step of Consequence in an Affair of this Nature, without the Bishop's being at least made privy to it.

The Committee forbear repeating what was mentioned before, about the Heads of Memorials to the Regent, brought by *Kelly* to *Neynoe*; but they find some farther Particulars (*d*) in *Neynoe*'s Papers, relating to *Kelly* alone.

'That *Kelly* had owned to him his having been formerly at *Avignon* 'while the Pretender was there; that at his Return from *France* last Win-'ter he brought over several Papers and Letters, and among the rest one 'in *French*, in the Hand-writing of *Dillon*'s Secretary, intituled, *Reasons 'humbly offered to Cardinal* Du Bois, *proving that the establishing the House of* 'Stuart *on the Throne of* England, *preferably to that of* Hanover, *is the real 'Interest of the Crown of* France, or to that Effect. That this Piece was 'brought to *Neynoe* to be translated, which being written by a Papist, and 'turning much on the Advantage that would accrue to Popery, *Neynoe* 'advised against publishing it.

'That *Kelly* told him at other Times, that one Hundred Thousand 'Pounds, nay, fifty Thousand Pounds would be sufficient for bringing 'in the Pretender; and that he would warrant that Sum would be found.

'That whenever there happen'd to be a Stand made for the Pretender, 'great Numbers of Volunteers from *France* would appear for him:' Which agrees with the Accounts sent from thence, and with the (*e*) Letter from *Dillon*'s Secretary about securing *Sadlers*, which *Kelly* explained to *Neynoe* to mean *Irish* Soldiers.

Neynoe farther said, 'That *Kelly* proposed to him to go over to *France*, 'and to settle in Lord *Landsdown*'s Family, where he said he might be 'of Service, and promised to make his Reception easy.' And your Committee observe, that the very Time when *Neynoe* was taken going to *France*, *Kelly* (*f*) writ to *Dillon*'s Secretary, 'That he would soon see a 'young Fellow, whom he had mentioned to him some Time before, and 'that he might rely on his Honesty.'

Neynoe farther declared, 'That *Bingley* his Fellow-Traveller (now in 'Custody), lodging in the same House with *Kelly*, when *Kelly* was first tak-'en up, burnt a Bundle of Writings he had that Day received from *Kelly*.'

John Malone (formerly Servant to Mrs. *Barnes*), who waited on *Kelly* at his Lodgings, (*g*) has deposed, that this *Neynoe*, *John Plunkett* (now in Custody), *Carte* and *Dennis Kelly*, often visited *George Kelly*.

As *George Kelly* is frequently designed by a great Variety of fictitious Names in the intercepted Correspondence, the Committee think it proper first to apprize the House, what Reason there is to assert that those Names do really belong to *Kelly*, and then to shew the Nature and Import of the Correspondence carried on under those Names.

It appears to your Committee, that since the Beginning of *April* 1722. (the Time of *Kelly*'s last Return from *France*) a great Number of Letters going to *France* were by Order of the Government opened, and Copies of them taken; and that several of those Letters, tho' sign'd by different Names, were (*h*) observed by the Clerks who copied them, to be all in the same Hand-writing; and (*i*) one of the Originals having been stopped for a Specimen of the Hand, and having been shewn to *John Malone*, he has (*k*) deposed upon Oath, that he had often seen *George Kelly* write, and that he believes it to be his Hand. (*l*) Three other Papers, seized at Mrs. *Barnes*'s, having been shewn to *Malone*, he has sworn them severally to be *Kelly*'s Writing; and the same three Papers having been shewn to the Clerks of the Post-Office, they have sworn, That to the best of their Knowledge and Belief, as well the original Letters stopped, as the others sent forwards, which were signed, some of them *Johnson*, others *Hatfield*, *J. J. G. H.* and *Wilkins*, were all in the same Hand with those three Papers so attested.

This general Proof fixes several of the Names to belong to *Kelly*; and it is remarkable, that if any one of the Names above-mentioned be allowed to belong to *Kelly*, all the rest by which he signs, or is directed to, may, by the Series of his Correspondence, be shewn to belong to the same Person.

But your Committee farther observe, that almost every individual Name he makes use of is attended with some particular Proof, which determines it to belong to him; of which Notice will be taken as the Names are mentioned.

It has been observ'd already, that he came from *France* about the Nineteenth of *December*, *N. S.* 1721. and that a (*m*) Letter was found among the Bishop's Papers, dated the 16th of *December*, in which Mention is made of a Letter received by *Johnson*, and an Answer returned some Time before in *Johnson*'s Hand.

Neynoe (*n*) declared, that the last Memorial to the Regent, which *Kelly* employed him to draw up, was in *December* 1721, and that it contained a Demand of five Thousand Men for the Assistance of the Conspirators. In *February* following (*o*) *Kelly* went again to *France*, and towards the End of *April*, the Government received unquestionable (*p*) Accounts, that repeated Application had been made to the Regent for such a Body of Forces.

The Bishop in his (*q*) Letters (writ soon after *Kelly*'s Return from *France*) acknowledges the Receipt of a Letter, and verbal Instructions from *Marr*, by *Hatfield*, and of a Letter from the Pretender by the same Hand, and mentions *Hatfield* as knowing his present Unfitness for Business.

But the Letters signed *Hatfield*, which were copied at the Post-Office, are (*r*) sworn to have been in the same Hand with other Papers which are sworn to be *Kelly*'s Hand-writing. And it appears by a (*s*) Letter from *Marr* to *Hatfield*, that he was the Person to whom the Dog was sent for *Illington*; which shews *Hatfield* to be *Kelly*, and confirms *Neynoe*'s Information, that *Kelly* received Letters directed by the Name of *Hatfield*: And it appears, that he not only brought over Letters from *France*, agreeably to what was told (*t*) Mrs *Levett* by Mrs. *Barnes*, and confirmed by *Neynoe*; but that he was trusted with a Letter to the Bishop from *Jackson*, the Name made use of for the Pretender in (*u*) *Plunkett*'s Cypher; which Cypher it is evident *Kelly* was no Stranger to, since he makes use of several other (*x*) Names found in that Cypher, to denote the very same Persons that are there expressed and defined by those Names.

On the twenty-first of *April*, *Dillon*'s (*y*) Secretary writes to *Joshua Vernon* (which will be shewn to be another of *Kelly*'s Names), congratulating his safe Return and tells him, 'That his first Letter was very 'pleasing to Mr. *Lane* (which is explained Lord *Marr* in *Plunkett*'s Cy-'pher), who waited with much Impatience for those of *Monday*, hoping to 'receive a more particular Account of his Bills, which he daily becomes 'more pressed for; the Prospect of a good Vintage increasing by late 'Showers which had dropped there, and raised the Spirit of the Labour-'ers. He adds, that it seems more plain, that on Advances of ready Mo-'ney, good Bargains may be proposed.'

He afterwards tells him, 'That *Dillon* advises the Money which *Kelly* 'mentioned in *Clynton*'s Hands, should be equally divided between *Med-'ley* and the Pretender.' Who *Clynton* is, does not appear to the Committee; but they see Reason to believe, from Passages in other Letters, that *Medley* means the late Duke of *Ormond*.

He then tells *Kelly*, 'That *Farmer* and Family are well; and that Mrs. '*Hughes* became so very uneasy she was dismissed, and is on return.'

This Passage shews that *Farmer* means the Pretender, it being well known that Mrs. *Hughes* was Nurse to the Pretender's Child, and was on her Return to *England* about this Time.

From this Letter your Committee observe, that *Kelly* was employed by *Marr* and *Dillon*, in soliciting Supplies for the Service of the Conspirators; and that he had acquainted them of a Sum of Money lodged in the Hands of one, whom they call *Clynton*, which they advised should be equally divided between the Pretender and *Ormond*. Whether *Kelly* was considerable enough to have this Advice sent him for his own Government and Direction, or was only to be the Channel for conveying it to some other Person of greater Distinction, is left to the Consideration of the House.

On the twenty-third of *April* (as has been observed above) *Kelly*, sent the Bishop's Pacquet of Letters under Cover to *Gordon* at *Boulogne*, with (*z*) Orders to him to deliver it to a *tall black Man*, who would soon call on him for it.

This Person is in other Letters called *Crow*; and appears to your Committee by several concurrent Proofs, to be *James Talbot*, an *Irish* Papist, concerned in the *Preston* Rebellion, and now in the *Spanish* Service.

Kelly, in his (*aa*) Examination before the Committee, owned his being intimately acquainted with this *Talbot*, and his having seen him the Morning he left *England*; and a (*bb*) Letter signed *J. Talbot*, was seized among Mrs. *Barnes*'s Papers, in the same Hand with a (*cc*) Letter sent from *France* to *Kelly*, signed *J. T.* which is an Answer to (*dd*) one writ by *Kelly* to *Crow*.

On the twenty-ninth of *April* (*ee*) *Gordon* acknowledges the Receipt of a Pacquet (already proved to be the Bishop's), and says, he delivered it to the Gentleman as he was directed, who set out for *Paris* on the thirtieth of *April*. On the first of *May*, *Dillon*'s Secretary (*ff*) writes to *Kelly*, 'Your Friend *Crow* is arrived safe, and delivered the *three Books you gave 'him*, as directed.'

On the second of *May*, *Dillon* himself (*gg*) writes to *James Baker* (which will be shewn to be another of *Kelly*'s Names) and says, 'I saw your Ac-'quaintance *Crow* two Days ago, who deliver'd me a Present from my 'Cousin *Jones*.'

And on the same Day *James Talbot* (*hh*) writes to *Kelly*, That Mr. *Gor-'don* gave him the Pacquet at *Boulogne*, which he delivered safe on *Mon-'day* last, as directed. He adds, the Person received me very obligingly, 'and was much more open to me than I expected. Then, and since, he 'let me know *he does not despair of doing his Business*.'

On the seventh of *May*, *Kelly* (*ii*) writes to *Dillon*, 'That *Illington* was 'glad to hear he had received his Letters by *Crow*, and wished his next 'might be more to *Dillon*'s Satisfaction.'

From these Passages it appears at one View, that the Bishop's Letters were sent by *Kelly* to *Boulogne*, by the Post; and thence conveyed to *Dillon* at *Paris*, by *Talbot*, *Kelly*'s intimate Friend.

On the twenty-fourth of *April*, *Dillon*'s Secretary (*kk*) writes to *Kelly* a long Account of one *Xoland* (*Nicholas Wogan*) who was to command one of the Ships that was to be hired of some *Swedish* Merchants at *Cadiz*.

(*a*) D. 42. (*b*) D. 10. (*c*) D. 1. (*d*) E. 7. 8. 9. (*e*) E. 37. (*f*) E. 73. (*g*) E. 14. (*h*) E. 19. (*i*) E. 21. (*k*) E. 20.
(*l*) E. 9. (*m*) D. 6. (*n*) E. 10. (*o*) E. 17. (*p*) A. 2. (*q*) D. 11. 12. (*r*) E. 13. (*s*) E. 32. (*t*) E. 6. (*u*) C. 51.
(*x*) *Lane, Hezvel, Xoland, Cane.* (*y*) E. 30. (*z*) E. 26. (*aa*) E. 81. (*bb*) E. 3. (*cc*) E. 62. (*dd*) E. 55. (*ee*) E. 34. (*ff*) E. 37.
(*gg*) E. 38 (*hh*) E. 40. (*ii*) E. 41. *a.* (*kk*) E. 31.

This

This agrees with Mr. *Craufurd*'s *(a)* Letter of the twenty-fifth of *July*, *N. S.* 1722. in which he ſays, that *Nicholas Wogan* was to have the Command of one of the Ships under *Morgan*, one of which having been lately taken at *Genoa*, the Commander (as your Committee are informed) has writ *(b)* over hither, that ſhe was hired of ſome *Swediſh* Merchants at *Cadiz*, with ſeveral other Circumſtances, which agree entirely with this Letter to *Kelly*, and ſhew for what Uſe thoſe *Swediſh* Ships were hired.

In the ſame Letter *Dillon*'s Secretary takes notice 'How kindly *Freeman* '(the Pretender) had ſpoken of *Kelly* in his laſt.'

On the 30th of *April*, *Kelly (c)* anſwers this Letter, but calls *Nicholas Wogan* by the Name of *Moore*, and ſays, '*I wiſh his Chief may ſucceed in* '*his Journey*.' Which being compared with the Accounts *(d)* ſent about that Time from Mr. *Davenant* at *Rome*, that the Pretender was preparing to embark, makes it more than probable that he is *the Chief* to whom *Kelly* wiſhes Succeſs.

Kelly then gives an Account of a very important Converſation he had with one *Hore*: Who is meant by *Hore*, your Committee will not take upon them poſitively to determine; but by comparing ſeveral Paſſages of the Letters together, it appears to them highly probable, that it is Sir *Harry Gering*; in which Opinion they are the more confirmed by *Hore*'s being mentioned as ill of the Gout in *France*, on the 14th of *September*: And *Kelly* takes Notice in his *(e)* Pocket-Book, that Sir *H. G.* went to *F.* the 23d of *Auguſt*, which was the Day before the Biſhop was taken up.

In this Letter *Kelly* ſays, '*Hore* is moſt impatient to have a more ſatis-'factory Account from your Side; and hopes there may be room now to 'expect it, ſince there was nine remitted by *Repney*: he will ſoon, as he 'tells me, ſend you two more, which with the Twelve Thouſand Arms 'provided by *Mansfield*'s (*Ormond*'s) Relations, and which are now ready 'to be ſent wherever deſign'd, and paid for too, will, he hopes, bring 'Matters to ſome Proſpect of bearing.'

Your Committee obſerve, that this Impatience of *Hore* falls in, in point of Time, with the Account *(f)* Lord *Orrery* gave *Layer*, that Lord *North* and *Grey*, Sir *Harry Gering*, Lord *Strafford* and others, were going to do a raſh Thing in favour of the Pretender. That it likewiſe agrees with the *(g)* Letter to *Dodſworth*, mention'd in the former Part of the Report; where it is ſaid, 'That the Hopes given by *G.* to expect a great 'Sum, and by *N.* that he had raiſed Twenty thouſand Pounds, induced '*Ormond* to ſupply *Morgan*, and to make other neceſſary Proviſions;' Part of which Proviſions appear to have been the Twelve thouſand Arms mentioned in *(h) Ormond*'s Letter of the 27th of *April*, in *(i)* Mr. *Stanhope*'s the 8th of *June*, and again in this Letter of *Kelly*'s.

Kelly adds, 'That he hears *Ormond* continues ſtill upon the old String, 'that he can get no Officers, and ſays, I wiſh the ſending over *Hore*'s '*&c.* Commiſſions may not do more hurt than good; for that Affair is 'already become no Secret, and may pique ſome Friends, as well as put 'Ill-wiſhers on their guard.'

This Paſſage ſhews that the Scheme for an Inſurrection was at that Time in ſuch Forwardneſs, that Commiſſions were actually ſent over; and confirms the Account of the late Duke of *Ormond*'s being expected with Officers and Arms to ſupport it.

On the 1ſt of *May*, *O. S. Dillon*'s Secretary writes *(k)* to *Kelly*, 'That 'he believes they have a ſufficient Quantity of *Barrels* beſpoke for the '*Wine* they intend to buy; and that he hopes *Clynton* and Company have 'ſent *Malcolm* half Money, which *Hore* ſaid he had, to pay for the *Bar-'rels* which *Jacobs* has at his Diſpoſal.'

It has already been ſhewn that *Malcolm* means the Pretender, and as *Clynton*'s Money, which was before to be divided between *Ormond* and *Jackſon*, is now to be ſent Half of it to *Malcolm*: This is a farther Confirmation that *Jackſon* means the Pretender; and agrees with the *(l)* Intelligence from *France*, of Sums ſent about this Time to *Ormond* and the Pretender.

In a Letter to *Kelly* of the 2d of *May*, was incloſed one *(m)* from *Dillon* to *Jemiſon*, who appears to be ſome intimate Friend of *John Plunkett*'s, and *(n)* was preſent in *France*, when the Cyphers were ſettled between *Dillon* and *Kelly*; but his real Name is undiſcover'd.

In this Letter *Dillon* acquaints *Jemiſon*, 'That Mrs. *Freeman* intends 'to bring her Cauſe to a Trial as ſoon as poſſible; and that he believes 'Mr. *Abel*'s Departure will be no Detriment to her Pretenſions.' This Paſſage, compared with other Letters, ſhews that by *Freeman* is meant the Pretender, and *Abel* his Majeſty; and confirms the Deſign of an Inſurrection at the Beginning of *May*.

Dillon then deſires *Jemiſon*, 'To aſſure his Couſin *Rogers* (*John Plun-'kett*) of his beſt Reſpects, and how much he depends on her friendly and 'kind Offices in his Family-Concerns, which have great need of ſo good 'Aſſiſtance.'.

Plunkett being *(o)* examined by the Committee in relation to this Letter, denied his knowing any ſuch Perſon.

On the 7th of *May*, *Kelly (p)* writes to *Dillon*, acknowledging the Receipt of the Letter for *Jemiſon*, mentions a long Diſcourſe he had with one whom he calls Mr. *Fox*, who reſented his being put out of the Pretender's Service by *Dillon*; but *Kelly* endeavour'd to convince him that *Dillon* had no Hand in it, and laboured to regain him. Who *Fox* is, does not appear to your Committee.

Kelly then takes Notice, 'That the Pretender's Favours to *Hore*, *&c.* 'had given great Offence; and that *Rogers* (*Plunkett*) hearing of the Free-'dom which *Hore* and ſome of his Partners took with him, is much diſ-'obliged at it, and order'd *Jemiſon* to tell *Dillon* ſo.'

Your Committee obſerve from this Paſſage, that *Plunkett* is treated as one whom it was thought of Conſequence not to diſoblige; and that *Kelly* was appriſed of his Intimacy with *Dillon*.

Kelly then gives an Account of his having called on Mrs. *Medley*'s (the Dutcheſs of *Ormond*'s) Chaplain. The Letter which deſired him ſo to do, was directed to *James Baker*; and this, in which he ſays he has called upon the Chaplain, is ſigned *J. J.* which ſhews that *James Baker* is the ſame with *J. J.* which are the initial Letters of *James Johnſon*.

On the 10th of *May*, *Kelly (q)* writes to *Dillon*'s Secretary an Account of the Diſcoveries made by the Government, and the Encampment of the King's Forces; but your Committee obſerve his Aſſurances of Succeſs were ſo ſtrong, that in the ſame Letter he ſays, 'The King will go abroad 'next Month, and if you can then compaſs *Barrels* enough, the ſooner the '*Wine* comes, I believe the better.'

On the 19th of *May* he was taken into Cuſtody; and it appears to your Committee by the Depoſition *(r)* of one of the Meſſengers who ſeized him, that when he was ſeized he offered to draw his Sword, but was prevented. That the other Meſſenger being called out of the Room to reſcue one of their Companions, who was in danger of being murdered in the Street, *Kelly* called to the People of the Houſe to lock the Door; and ſeizing his Sword, which had been laid by in the Window, drew it, and made a Paſs at the Meſſenger, who verily believes he did it with an Intention to murder him: That he afterwards made a ſecond Paſs, and ſwore if he came in again he would ſtab him; and ſaid, that if the Secretary of State who ſigned the Warrant had been there, he would have done the ſame. That the Meſſenger going out to call for help, and returning within a Minute, was told, that *Kelly* had in the mean Time burnt one of the Papers ſeized upon him.

Another of the Meſſengers *(s)* has depoſed, That before *Kelly* offered this Violence, he had been ſhewn by the Meſſengers the Scutcheons or Badges of their Office, and likewiſe had been ſhewn their Warrant ſigned by one of the Secretaries of State: That the Warrant was alſo ſhewn to a Perſon preſent in the Room, who peruſed it, and declared to *Kelly*, that it was a ſufficient Authority for apprehending him.

Your Committee think it unneceſſary to make any Obſervation on a Behaviour, which implies his having ſo ſtrong a Senſe of his own Guilt, that he rather choſe to ſtand all the Conſequences of reſiſting and aſſaulting his Majeſty's Meſſenger in the Execution of his Office, than to let his Papers fall into the Hands of the Government; fearing (as may juſtly be concluded) that ſuch a Diſcovery might prove fatal to himſelf as well as others.

But your Committee find, that however careful he was to deſtroy all his Papers, yet one was ſeized upon him and preſerved, which is of itſelf ſufficient to prove him concerned in the treaſonable Correſpondence above ſet forth.

It was a Liſt of Directions, in the following Words:

> *To* Anthony Saunders *Eſq. or Mr.* Joſhua Vernon, *at* Will's *Coffee-houſe* Covent-Garden, London.
> *To Mr.* James Baker, *or* Arthur Stephens *Eſq. at* Burton's *Coffee-houſe in* King's-Street, *near* St. James's, London.

By the three firſt of theſe Names, moſt of the Letters to him above mentioned came directed; and your Committee find, that a Perſon having been employed to watch at *Burton*'s Coffee-houſe, who ſhould take up Letters directed to Mr *James Baker* at that Houſe, has *(t)* depoſed upon Oath, That on the 14th of *May*, a Letter ſo directed being left there by the Poſt-man, *George Kelly* came in and took the ſame, opened and read it, and went out of the Houſe with a Letter in his Pocket to Mrs. *Barnes*'s.

It appears to your Committee, that when he was *(u)* examined before the Lords, the 21ſt of *May*, 1722. he endeavoured to account for his receiving Letters by various Names, by ſaying, That one Mr. *Talbot*, who was under a Cloud, and who went for *France* or *Spain about a Week before*, had deſired him to call at Coffee-houſes for Letters directed to the ſaid *Talbot* by ſeveral Names; and particularly that the Letter directed to *Baker*, which he own'd he took up, was for the ſaid *Talbot*. Yet your Committee obſerve, that the ſaid *Talbot (w)* arrived at *Boulogne* on the 25th of *April*, and did himſelf ſend a *(x)* Letter from *Paris* to *Kelly* on the 2d of *May*, ſigned *J. T.* directed *To Mr.* James Baker *at* Burton's *Coffee-houſe* aforeſaid; and Letters *(y)* continued to be ſent by that Direction from *Paris*, till the time that *Kelly* was taken into Cuſtody, tho' *Talbot* was all that Time in *France*.

Kelly being *(z)* examined by your Committee in relation to theſe Letters, perſiſted in the ſame Account, that they were for *Talbot*, and that the Occaſion of *Talbot*'s going abroad was, that *Talbot* had received an Account of General *Crofton*'s being dead, and of his having left him what he had. Which Particular, your Committee obſerve, agrees in part with *Neynoe*'s *(aa)* Account, that *Kelly* had ſhewn him a Letter at *Burton*'s Coffee-houſe from *Dillon*'s Agent or Secretary, in which it was ſaid, that the Death of General *Crofton* would be a great Loſs to *Mansfield*, which Name *Kelly* explained to him to mean the late Duke of *Ormond*.

Kelly farther *(bb)* owned to your Committee, 'That he went to *France* 'the Beginning of the Winter 1721. and again the Spring following, on 'Account of Tranſactions he had in the Stocks there. That he was de-'ſired by a Brother of the Lord *Dillon*'s to carry over to General *Dillon* an 'Act of Parliament relating to the Eſtate of that Family, but that this 'was the only Paper he carried. That he ſaw *Chriſtopher Glaſcock*, who 'is a Captain in *Dillon*'s Regiment, and knew Sir *John D'Obryan*, who 'is *Dillon*'s Secretary, and had likewiſe ſeen *Colin Campbell* of *Glenderoule* 'at Coffee-houſes, but had never ſpoke to the latter.'

Yet your Committee obſerve, that as in his Letters he often ſends Services to Sir *John* and *Chriſty*, he does alſo to *Glin* and *Collins*, which laſt Name is explain'd *Genderoule* in his own Cypher (*cc*) taken among *Dennis Kelly*'s Papers. And when he was examined before the (*dd*) Lords, he own'd his having receiv'd Letters from one *Gloſgow* at *Paris*, which Name in *Plunkett*'s Cyper is expreſſed by the fictitious Name of *Howell*, and has been ſhewn above to mean the ſame with *Quit-well*, *Querry*, *Bonnaville*, and other Names which belong to *Dillon*'s Secretary, and are ſubſcribed to ſeveral treaſonable Letters from *France*.

Kelly denied to your Committee his being at all known to the late Lord *Marr*, or *Alexander Gordon* of *Boulogne*; tho' he own'd his going by the Name of *Johnſon*, by which Name the (*ee*) Letter to *Gordon* was ſigned, and the (*ff*) Anſwer from *Gordon* directed: And the (*gg*) Letter from *Marr* was directed to *Hatfield*, which Name has been ſhewn to mean the ſame Perſon as *James Johnſon*, and has been proved by other Circumſtances to belong to *Kelly*.

He own'd his writing to a broken Banker at *Paris* by a fictitious Name in relation to Stocks, but ſaid he had forgot the Name, and that

(*a*) A. 32. (*b*) A. 45. (*c*) E. 35. (*d*) A. 3. (*e*) E. 17. (*f*) B. 10. (*g*) AA. 6. (*h*) AA. 5. (*i*) A. 15. (*k*) E. 37. (*l*) A. 6. (*m*) E. 39. (*n*) E. 57. (*o*) C. 73. (*p*) E. 41. *a*. (*q*) E. 44. (*r*) E. 5. *a*. (*s*) E. 5. *b*. (*t*) E. 36. (*u*) E. 1. (*w*) E. 34. (*x*) E. 40. (*y*) E. 46. (*z*) E. 81. (*aa*) E. 10. (*bb*) E. 81. (*cc*) F. 11. *a*. (*dd*) E. 1. (*ee*) E 26. (*ff*) E. 34. (*gg*) E. 32.

he

he never received a Letter in his Life signed by a fictitious Name.

But your Committee had Reason to believe from the whole Tenour of his Behaviour at his (*a*) Examination, that he grosly prevaricated with them; for at his first coming in, before he would make any Answer, he very formally insisted that nothing he should then say should be made use of against his own Life, nor as Evidence against any other Person: And upon these Conditions he promised to answer directly to all Questions that should be asked him.

Your Committee seeing some Reason from the Manner of his insisting upon these Conditions, to believe that he was disposed to act ingenuously with them, ordered him to withdraw, that they might consider amongst themselves, how far it was in their Power, or proper for them to agree to Conditions, which would have made his Examination of no Effect; and upon his being called in again, and receiving such Answer as the Committee thought it in their Power to give, he denied his knowing any Thing at all of the Conspiracy. This your Committee apprehend to be altogether inconsistent with the Conditions he insisted on, which manifestly implied that a Confession of all he knew might endanger his own Life, as well as effect other Persons. But in the Course of his Examination he owned to them, that the Promise they had given him was not satisfactory, though, as he pretended, he could not have answered their Questions in any other Manner, if their Promise had come up to the Conditions he insisted on.

Your Committee observe, that *Kelly* was admitted to Bail from his first Confinement about the seventh of *June* last, and they conceive it to be a great Aggravation of his Guilt, that he immediately took Advantage of this Enlargement to resume the same treasonable Correspondences, and to send triumphant Accounts to *France*, of his having baffled the Government by the hardened Obstinacy of his Behaviour; thereby improving, as far as in him lay, the Liberty granted him by the Favour and Indulgence of the Laws, to the Subversion of our happy Constitution. For on the 11th of *June*, but a very few Days after his being out on Bail, he sent a long (*b*) Letter to *Gerrard*, (whom your Committee believe to be Sir *John D'Obryan*, as has been already observed) in which, the better to disguise the Matter, he gives an Account of his Cousin's late Misfortune, as from a third Person; but in a (*c*) subsequent Letter to *Dillon* the 18th of *June*, he owns the writing this Letter himself.

In this Letter to *Gerrard* he says, 'That he was bailed the *Thursday* 'before, and that the Judges were never known so severe in any Case of 'the like Kind: that most of the Questions asked him at his Examination 'were about a little Dog which he got from a Surgeon when he was last 'in *France*; that they mentioned no Persons to him but General *Dillon*, 'and one Mr. *Morgan*: that to the first he owns he is a little known, 'having carried over an Act of Parliament to him that concerned his Fa'mily, but that the latter he never saw: That Lord *Carteret* had a List of 'five or six Cant Names, as he called them, which were, *Illington*, *Jones*, '*Howell*, *Quitwell* and *Hacket*, and what he never heard of before; that 'however they would persuade him he knew some Persons that were 'meant by those Names, which he vows he never did; and whosoever *Il*'*lington* is, he was the Person principally struck at. That he is not at 'all satisfied with the Behaviour of his Friends: That *Gerrard*'s old 'Friend *Rig* indeed offered all that could be expected of the poor Man; 'but others in whose Power it was to do more shewed no Concern at 'all for his Misfortune. That he lay ten Days in the closest Confine'ment, without so much as a Message from any of *those* he depended most 'upon; that it is well he had no Secrets to reveal, since such Usage might 'provoke a passionate Man, and that the World is pretty well convinced 'that he had not, since no Persons seemed to be the least apprehensive that 'he could do them any Mischief.

'That this shews what the Friendship of some People is; but whilst 'there is *one righteous Person*, we must, for his sake, overlook greater Mis'fortunes.

'That he is very well, and under no great Concern for any Thing as 'to himself but the Expence, having more than his own to answer.

'He concludes, with desiring *Gerrard* to direct under Cover to Mr. '*Andrews*, at the *Dog and Duck* in St. *James*'s-*street*.'

Your Committee find, that after this Time several Letters did come from *France*, directed to Mr. *Andrews* at the *Dog and Duck*, and that the Master of that House having been examined, has deposed on Oath, 'That 'one *Andrews* ordered him to take in Letters that should come by the 'foreign Post so directed, and that three of those Letters were directed to 'the *Dog and Duck* in *King-street*, by Mistake; but were afterward 'brought to his House in St. *James*'s-*street*, and taken up by *Andrews*, who 'happened to be there when they came in.'

It appears farther to your Committee, that the said *Andrews* having been examined, has deposed on Oath, 'That Mr. *Johnson* alias *Kelly* desired 'him to take in some Letters directed to him, *Andrews*, at the *Dog and* '*Duck* Ale-house in St. *James*'s-*street*; that he received in the whole four 'or five, in the Months of *July*, *August*, and *September* last, to the best 'of his Remembrance; that they appeared by the Charge of Postage to 'be foreign Letters, and that he delivered them un-opened to the said '*Johnson* alias *Kelly*, who paid him the Postage; that he, *Andrews*, knew 'nothing of the Contents, nor ever returned any Answer to them.'

On the 18th of *June*, (*f*) *Kelly* writes to *Crow* (*James Talbot*) giving him an Account of his late Misfortune, and the Reasons of his Silence, and mentioning his Design of going over into *France*, as soon as his Appearance in *Westminster-Hall* should be over.

'He then sends his Service to all Friends, particularly to Sir *John* and '*Christy* (Sir *John D'Obryan* and *Christopher Glascock*), and desires *Talbot* 'to tell the latter he must find out some other Address for him to write by, 'since he has good Reasons for not using the former, which have pre'vented him from writing to him these ten Days past, and that if it were 'to a *French* Person, it would be so much the better.'

Your Committee observe, that soon after a *French* Direction to Monsieur *Maisonneuve* (*g*) was sent over to *Kelly* by *Christopher Glascock*, which *Kelly* made use of for some Time, and the (*h*) original Letter in *Kelly*'s Hand stopt at the Post-Office is so directed. They likewise observe the Reasons which *Kelly* says he had, not to make use of the old Directions appear evidently to have been, that he was questioned before the Lords on the Names of *Howell* and *Quitwell*, which were the Names made use of for *Glascock*.

He concludes his Letter to *Crow*, with desiring him to direct to him by the Name of *Wilkins* at *Will*'s Coffee-house; and your Committee observe, that not long after, (*i*) a Letter came signed *J. T.* and so directed; which was stopt, and is in the same Hand with the (*k*) Letter signed *J. Talbot*, seized at Mrs. *Barnes*'s; which confirms *Talbot* to be *Crow*.

In this Letter to *Crow* was enclosed one from *Kelly* to *Dillon* by the Name of *Dixwell*; the Substance of which has been partly set forth in that Part of the Report which relates to the Bishop of *Rochester*. In this Letter (*l*) 'he desires to be excused from meddling in Business for 'some Time; but says it does not proceed from any Change of Opinion, 'or Resentment of the little Concern that has been shewn him; but from 'a Conviction, that without changing both their Method and their 'People it will be impossible to make any Thing of it.'

Kelly adds in this Letter: 'Your Correspondents at *Will*'s and *Burton*'s 'are gone, and desire you may write no more that Way; and when you 'do me that Favour, please to address under Cover to Mr. *David Wilkins* 'at *Will*'s Coffee-house, *Covent-Garden*, and not to *Andrews*, as I de'sired.'

This Passage confirms the List of Directions to *Will*'s and *Burton*'s found in *Kelly*'s Pocket; and shews that the Letters to *Wilkins*, as well as *Andrews*, were for *Kelly*, though, as is before observed, 'he denied the 'having ever received any Letter under a fictitious Name.'

On the twenty-eighth of *June*, *James Talbot* (*m*) writes to *Kelly*, 'con'gratulating him on his Enlargement and Behaviour, and expressing his 'Surprize, that he should at such a Juncture have Reason to complain 'of Want of Friends.'

On the same Day *Glascock* (*n*) writes to *Ireton* under Cover to *Andrews*; and as *Andrews* delivered these Letters un-opened to *Kelly*, this shews that *Ireton* is another Name for *Kelly*, of which the Matter of the Letters furnishes abundant Proof.

In this Letter *Glascock* takes notice, that *Kelly*'s Letter to *Chitwood* came safe. This refers to *Kelly*'s Letter of the eighteenth to *Dixwell*, and shews *Chitwood* to be another Name for *Dillon*.

'That what he had recommended in relation to the New Book of Ac'counts would be observed, and that *Forrester* had the same Advice given 'to him and *Ormond*.' Who *Forrester* is does not appear to the Committee, but as he is mentioned here with the late Duke of *Ormond*, he is probably the Person who wrote the Letters to *Dumville* and *Dodsworth* above-mentioned.

Glascock then tells him, 'That *Ormond* had expressed much Concern for 'what had befallen *Kelly*. He afterwards desires the Particulars of 'his Case, and to know what is wanting for paying off the Doctor's and 'Apothecary's Bills, acknowledges the Receipt of a Letter from *Rogers*, 'and inquires after *Jemison*.'

On the twenty-eighth of *June*, *Kelly* (*o*) writes to *Talbot* 'of the Ne'glect that had been shewn him, and the Reasons that he had to decline 'any *farther Traffick* with the Merchants here; he says, if *Talbot* per'ceives no likelihood of a *sudden Change for the better*, he must retire to 'some cheap Part of the Country, if *Dillon* allows of it; expresses his 'great Obligations to *Dillon*, and his Readiness to execute any *private* 'Commands of his;' and adds, (what appears to your Committee very remarkable) 'If I were in a Condition to bear the *Weight of public Busi*'*ness*, *Dillon* should never be at the Trouble to employ another, but that 'he is heartily sorry *Dillon* himself has done it so long for ungrateful 'People on this Side; says, he never intended to trouble his Friends on 'this Side on his own *private* Account, *but publick ones of this Nature* are 'what he thinks *they* ought to take care of, since they are best able to do 'it, and expect the *best Returns for it*.'

Your Committee observe from Passages, that though *Kelly* would have it believed he only corresponded with Persons in *France* on private Affairs, relating to the Stocks, yet he here owns in Effect, that he had been trusted with Affairs of a *publick* Nature, and that those Transactions having brought on him the Displeasure of the Government, it was reasonable for him to hope for Support from those in *England*, who expected the best Returns from his and *Dillon*'s joint Labours.

Your Committee farther observe, that this Letter was directed to *Crow*, and yet in it was inclosed one from *Ireland*, relating to Family Affairs, directed to *James Talbot*, Esq.

On the fourth of *July*, *Glascock* (*p*) writes to *Kelly*, 'That *Dillon* in'tended to have sent him a Letter of Credit by the Post, drawn on Mr. '*Harrold*, but kept it back till he heard from him, for fear, by Removal 'into the Country, or by any other Accident, it should be lost.'

On the 11th of *July*, *Glascock* (*q*) repeats the same, and his Suspicion that the Letters to *Andrews* had miscarried. Then acquaints *Kelly* with kind Expressions that he had seen from Dr. *Freeman* and Mrs. *Malcom* (the Pretender and his Spouse) in relation to *Hawksby*'s first Operation in his late violent Distemper.

Your Committee observe from what follows in this Letter, that, though in *Plunkett*'s Cypher *Hawksby* stands for King *George*, yet in the Pretender's Cypher it stands for *George* without any Addition, and appears for that Reason to be made use of to denote *George Kelly* in this Place. Be that as it will, it is evident from what follows, that *Kelly* is the Person here meant.

The Pretender's Words mentioned in this Letter are as follows:

'*Hawksby*'s steddy and resolute Behaviour in the first Operation, an'swers the good Opinion I have long had of him; I am fully persuaded, 'that all the Surgeons will do hereafter shall not be able to alter his 'Temper, and I hope he will come off with Patience and a short Confine'ment, by which his Health will become more perfect and satisfactory to 'his Friends.'

(*a*) E. 81. (*b*) E. 47. (*c*) E. 49. (*d*) E. 50. (*e*) E. 51. (*f*) E. 48. (*g*) E. 54. (*h*) E. 21. (*i*) E. 62. (*k*) E. 3. (*l*) 53. (*m*) E. 54. (*n*) E. 55. (*o*) E. 56. (*p*) E. 57.

Glaſcock then adds, 'Mrs. *Malcolm* (the Pretender's Spouſe) in her ſhort way of Expreſſion ſays, 'I am truly glad that honeſt *Hawksby* is re-'cover'd, for I take him to be a very valuable Man.'

Then he ſays, 'I know theſe Compliments will be comfortable to a 'ſick Perſon from his Friends, for which reaſon I trouble you with them, 'as a Proof of my Attention towards one I wiſh ſo well.'

Theſe laſt words ſhew, that this Comfort was intended for *Kelly*, to ſupport him under his Trouble, which is diſguis'd under the Notion of Sickneſs; and your Committee think it unneceſſary for them to make any Obſervation on a Paſſage, which ſhews ſo plainly *for whoſe ſake* it was underſtood he had brought this Trouble on himſelf.

Glaſcock next tells him, 'That as he is upon regulating his new Book of 'Accounts, he ſhould be glad to know whether *Kelly* and *Jemiſon* had thoſe 'by them they and *Glaſcock* rectify'd together.'

This ſhews that *Kelly*'s Journeys into *France* were not wholly on private Affairs, and confirms (*a*) *Neynoe*'s Account of his having ſeen Cyphers in *Kelly*'s Hands, and is again confirm'd by the (*b*) Cypher found among *Dennis Kelly*'s Papers, which is in *George Kelly*'s Hand-writing.

Glaſcock then ſends him the *French* Direction he had deſired.

On the ſeventeenth of *July*, *Glaſcock* (*c*) writes again to *Kelly*, to let him know why the Bill was not ſent, and to deſire a ſure Addreſs. He likewiſe cautions *Kelly* not to draw any more on *Digby*, but on Meſſieurs *Chitwood* and *Dupleſſis*, at Mr. *Hues*, *Banker*, *Rue de la Monnoye*. Your Committee obſerve, that this was about the time that Mr. *Craufurd* (*d*) made the Diſcovery above related about the Name of *Digby*; and that for ſome time after, *Kelly* directs his Letters for *Dillon* to *Dupleſſis*, till a new Cypher, which he, *Kelly*, ſent over afterwards came to be made uſe of.

On the 10th of *July*, *Kelly* (*e*) writes to *Glaſcock*, that Mr. *Andrews* received the ſeveral Letters from *Glaſcock* all together; which was occaſioned by a Miſtake in directing them to *King-Street*, inſtead of St. *James*'s; which agrees with *Andrews*'s (*f*) Depoſition above-mentioned

He then 'returns Thanks for the Letter of Credit intended him, and 'ſays it will come ſafe either to Mr. *Wilkins* at *Will*'s Coffee-houſe, or to 'Mr. *Andrews* at the *Dog* and *Duck*.' This, compared with *Andrews*'s Depoſition, ſhews that the Bill was for *Kelly* himſelf: which Obſervation the Committee think it proper to make, becauſe, when he was examined before them in relation to the Letters directed to *Andrews*, tho' nothing was ſaid to him about the ſaid Bill, he immediately endeavour'd to explain away that Matter by the following (*g*) Prevarication.

He ſaid, 'He had been deſir'd by one Mrs. *Oxburgh* in the City, Daugh-'ter to him who was executed, to receive ſome Letters for her from abroad; 'and that he did not know but he might employ one *Andrews*, or ſome 'other Friend to take up ſuch Letters. That he had likewiſe received 'ſome Money on a Bill for the ſaid Mrs. *Oxburgh*, of a little Man, a 'Banker in *Lothbury*, or ſomewhere behind the *Exchange*, and that he had 'endorſed the Bill with his own Hand.'

Your Committee obſerve, that this laſt Circumſtance makes it probable the Bill was for himſelf, ſince his Endorſement on a Foreign Bill (which is not uſually made payable to the Bearer) would not have entitled him to have received the Money, nor have been a ſufficient Diſcharge, except the Bill had been made payable to him.

They likewiſe obſerve, that Mr. *Martin Harold*, on whom the Bill was drawn, whom *Kelly* avoided to name, does live behind the *Exchange*, tho' not in *Lothbury*; and in *Glaſcock*'s (*h*) Letter of the Twenty-fourth of *July*, *Kelly* is particularly directed to indorſe the Bill on *Harold* with his own Name. Your Committee ſubmit it to the Conſideration of the Houſe, whether it is not evident from theſe Circumſtances, that *Kelly* received the ſaid Money for his own uſe, as a Reward for his Sufferings, and an Encouragement to perſiſt in his Obſtinacy.

On the 23d of *July Kelly* (*i*) writes to *Talbot*, 'That this Bill and the 'hopes of Succeſs in another Particular, when the Term is over, makes 'him a little eaſy.

'That as to what they had ſo often talk'd about, he did not know what 'to ſay to it, and that *Nich las Wogan*'s Return gave him the leſs hopes of 'it; but that he heard the *Beautiful Squire* was certainly determin'd on 'ſomething; but when, and in what manner, is what he knows nothing 'of.' Who is meant by the *Beautiful Squire*, the Committee cannot take upon them to determine; but they obſerve, this Letter was writ the Day after *Layer*'s Return by *Epping* from *Norfolk*, at which time he told (*k*) *Plunkett*, 'That the Pretender's Friends would run down the Miniſtry and 'King *George* in a little time, and bring the Law-Suit to bear on their 'own Bottom, independent of the Regent, or any body elſe;' as is related in *Plunkett*'s Letter of the ſame Date with this of *Kelly*'s.

On the 2d of *Auguſt*, *Kelly* (*l*) writes to *Glaſcock*, 'That he had re-'ceived the Bill. That his Letter of Licence is not out till the End of 'October, and that his Creditors threaten then to ſhew him no Mercy: In 'the mean time he muſt hope the beſt, and wiſh that ſome good Turn of 'Fortune may enable him to do them juſtice.'

He adds, 'That he expected to have ſent the State of their Accounts 'before now, but that the Gentleman who was to carry them, met with 'an Accident the other Night, which prevented him; therefore he cannot 'do it till he recovers, or ſome other Opportunity offers:' Then ſends a long Account of *Dennis Kelly*'s being taken up.

On the 6th of *Auguſt* (*m*) he ſends the ſame Account to *Dillon*, and mentions the great Terror the Guards are under from Informers; which Intelligence your Committee obſerve, was thought conſiderable enough to make an Article in the Pretender's late Declaration.

On the ſame day he ſends (*n*) *Glaſcock* an account of *Sample*'s, *Cotton*'s, and one *Campbell*'s being taken up; 'That there were Reports of one Sir '*Harry Goring*'s being taken, and of Forces being ſent for the Lord *North* 'and *Grey*, Lord *Strafford*, and other Perſons of Quality; but that he 'finds there is no Truth in them, and is told that the two laſt are come to 'Town. He then deſires to know *Dillon*'s private Thoughts from whence 'the ill Report of his Couſin's Circumſtances comes, which has occa-'ſioned this Severity from his Creditors, and ſays, he hopes ſoon to ſend 'the State of their Accounts, which has hitherto been delayed for want of 'a proper Hand.'

On the 9th of *Auguſt*, *Kelly* (*o*) writes to *Glaſcock*, 'That *Den* is 'come to Town, and behaves like a Friend; but that *Rep* is ſtill in the 'Country, and ſo is *Ho*; and that the latter had earneſtly deſired *Kelly* 'to go to him for a few Days, which he had hopes of doing; but intend-'ed to make but a ſhort Stay.'

Your Committee ſee reaſon to believe, that by *Ho* is meant *Hore*; and they find an Entry in *Kelly*'s Pocket-Book of his having been at Mrs. *H.*'s; and another Entry in theſe Words; *To enquire for Mr.* *at* Mr. William Bayſing's *at* Horn-Dean, which is a Houſe much frequented by Sir *Harry Goring*, as appears by a (*p*) Depoſition annexed to this Report.

Who are meant by *Den* and *Rep* your Committee will not take upon them to determine, tho' they think this Letter, compared with that writ three Days before, may lead to a Diſcovery of the Perſons meant.

On the 13th of *Auguſt*, *Kelly* (*q*) writes again to *Glaſcock*, 'That he 'intends to viſit *H.* who being at a pretty good Diſtance in the Country, 'he cannot return under four or five Days.' Which agrees with the Circumſtance of his going down as far as *Horn-Dean* near *Petersfield*.

He afterwards adds a very remarkable Paragraph in theſe Words: 'What would you adviſe poor *Trotter* to do, he is ready to take a Voyage 'any where, and is, you know, an honeſt and fit Perſon for that Buſineſs; 'he has wrote very earneſtly to me for my Advice, which I told him I 'could not give till I heard from you.'

Your Committee think it their Duty to obſerve to the Houſe, that in the (*r*) Cypher found among *Dennis Kelly*'s Papers, in *George Kelly*'s own Hand-writing, *Trotter* is one of the fictitious Names ſet over againſt the Name of *Carte*, and that on the Day this Letter was writ, His Majeſty had iſſued his Royal Proclamation for apprehending the ſaid *Carte*, againſt whom it is there ſet forth a Warrant had been iſſued by one of the Secretaries of State for Treaſonable Practices, and that he had abſconded and fled from Juſtice.

Yet it appears from this Letter, that *George Kelly*, far from diſcovering where the ſaid *Carte* was concealed, was deſirous to promote his Eſcape, by getting him invited to undertake a Voyage into foreign Parts; and that notwithſtanding the treaſonable Practices alledged againſt him, he here gives him the Teſtimonial of an honeſt Man, owns his having had Communication with him by Letter after the Time of his Eſcape, ſollicited *Glaſcock* in his Favour, and undertakes to aid and aſſiſt the ſaid *Carte* with his Advice, as ſoon as he ſhould have an Anſwer from *Glaſcock*.

On the 13th of *Auguſt*, (*s*) *Glaſcock* writes again to *Kelly*, in relation to the Bill on *Harold*, and mentions his expecting the Gentleman ſoon that was to clear Accounts.

He afterwards tells *Kelly*, 'That Mrs. *Muſgrave* had received Advice 'from her Father, that ſhe is not to expect a Farthing of the Allowance 'due to her for the Time paſt, or to come, which *Allen* had procured a 'Seizure of, on account of her Husband's Debts and Miſmanagement.'

Your Committee, from comparing this Letter with others, where *Muſgrave* is mentioned, and from obſerving the Date, ſee reaſon to believe, that this Paſſage relates to the ſtopping a Penſion, which the Committee are informed, by his Majeſty's ſingular Bounty and Indulgence, and upon Application from the late Lord *Marr*, and Promiſe of Services, was allowed to him; and they cannot reflect, without Indignation and Aſtoniſhment, on the black Ingratitude of Perſons, who, while they were in a great meaſure ſubſiſted by his Majeſty's unexampled Liberality, were labouring, by the moſt wicked and unjuſtifiable Practices, to diſpoſſeſs him of his Crown, and to deſtroy his ſacred Life.

On the 17th of *Auguſt*, *Glaſcock* (*t*) writes again to *Kelly*, and among other things ſays, 'He is contriving to get at *Barker* for a Relief in favour 'of *Farmer*'s (the Pretender's) Children, in caſe their Step-Father ſhould 'pretend to deprive them of their Due.' It appears by another (*u*) Letter, *Barker* means ſome conſiderable Perſon in *France*; but what this Paſſage particularly relates to, your Committee cannot with certainty determine. However they have thought it their Duty to lay this and other obſcure Paſſages before the Houſe, that it may be ſeen how much it is in the power of Perſons now in cuſtody to diſcover; and of what Importance it is to the Safety of his Majeſty's Government, that ſuch Diſcovery ſhould be required at their Hands.

On the 20th of *Auguſt*, three Days before the Biſhop of *Rocheſter* was taken into cuſtody, *Kelly* (*x*) writes to *Glaſcock* (the Original of which Letter is ſtopp'd, and ſworn to be his Hand-writing;) and ſays, 'Your 'Couſins *Ireton* and *Wilkins* are both gone into the Country, and carneſtly 'beg the Favour of you not to write to them any more, *for which you will* '*ſoon know the Reaſons*.'

On the 30th of *Auguſt* he (*y*) writes to *Dillon*; and after giving a very long and particular Account of all the Circumſtances of the Biſhop's being taken up, examined, and committed to the Tower, he ſays, 'You are 'by this ſatisfy'd of *the Reaſons of my late Silence*.' Your Committee obſerve, That theſe Paſſages ſhew the Connection which *Kelly* thought there was between the Biſhop and himſelf.

In the ſame Letter of the 20th of *Auguſt* your Committee obſerve another very remarkable Circumſtance; *Kelly* ſays, that he is going to the Country that Day, and he had ſaid (*z*) before, that he was going to Mr. *Hore*'s.

In his (*aa*) Pocket-Book notice is taken, that Sir *H. G.* went to *F.* on the 23d.

On the 14th of *September*, *Glaſcock* (*bb*) writes him word, 'That Mrs. '*Hore* was under a Fit of her old Sickneſs at *Rouen*; but that it was not 'ſafe, for many good Reaſons, to have her tranſported to *Paris*, there be-'ing Abundance of Quacks going about, which cauſe much Miſchief.'

(*a*) E. 10. (*b*) F. 11. a. (*c*) E. 58. (*d*) A. 31. (*e*) E. 59. (*f*) E. 51. (*g*) E. 81. (*h*) E. 61. (*i*) E. 60. (*k*) C. 63. (*l*) E. 66.
(*m*) E. 67. (*n*) E. 68. (*o*) E. 69. (*p*) E. 80. (*q*) E. 70. (*r*) F. 11. a. (*s*) E. 71. (*t*) E. 72. (*u*) E. 71. (*x*) E. 21. (*y*) D. 45.
(*z*) E. 69. (*aa*) E. 17. (*bb*) E. 74.

From this Time forwards *Kelly* makes use of a new *Cypher* of Names, and new Directions to his Letters.

On the 27th *Kelly* (*a*) writes again, and says, 'That since Mr. *G. Sampson* went, he has not heard a Syllable from his Correspondents in *France*, which has been a great Detriment to several of their Friends.'

On the 9th of *October* (*b*), *Glascock* sends him Word, 'That all the Letters he wrote *by the Post* came safe; but that he had not yet seen the Person who was to deliver him the particular Instructions and Address he was to make use of, that Person being still detained in the Country; but that he had taken Measures to get from him the Memorandum *Kelly* had given him.'

On the 17th of *October*, *Glascock* (*c*) sends *Kelly* Word, 'That the Book of Accounts sent by *G. Saunders* is at last come to Hand, though the Person that brought it is still in the Country, so that they are now in a Condition to settle Accounts with *Kelly*.' And from this Time forward the Correspondents in *France* make use of a new Cypher of Names, and new Directions to their Letters.

From all these Circumstances, your Committee see Reason to believe, that *Kelly* sent over a new Cypher, and a new List of Directions to *France* by Sir *Harry Goring*; in which they are the more confirmed, by observing, that this new Cypher appears framed in such a Manner, that the initial Letters of the real Names are always prefixed to the fictitious ones, which last are frequently varied, but the initial Letter never. This will be more clearly understood by instancing in one of the Names.

The Person who carried over the Cypher and List of Directions from *Kelly*, is in some Letters called *G. Sampson*; in others *G. Stephenson*, *G. Saunders*, and *G. Sandford*; and appears to be the same with Mrs. *Hore*, who was observed before to be probably Sir *Harry Goring*.

Your Committee farther observe, that all the Names made use of in the new *Directions* were entered by *Kelly* in the (*d*) Pocket-Book that was taken upon him when he was last seized, with such Marks and Observations before them, as need no great Explanation. Over-against the Names of *Bonnaville* and *Disode* is writ the Abbreviation *Glas.* and a (*e*) Letter signed *Disode*, having been stopped at the Post-Office, appears to be in the same Hand as those signed *Howell*, *Quitwell*, *Querry*, &c. which were shewn above to have been writ by *Glascock*. Over-against *Brisac* and *Du Puy*, is writ *Stur*; and your Committee find that Letters came for *Kelly*, directed by these Names, to *Sturgis*'s Coffee-House. Over-against *Contade* and *Lunelle*, is writ *Slau*; and your Committee find, that Letters thus directed, were left for him at *Slaughter*'s Coffee-House.

The Committee are sensible, that their entering into so minute a Detail, must be tedious to the House; but as the Conspirators have been no less industrious than they are obstinate in concealing their Treason, your Committee have thought it their Duty to trace it through every Disguise as near as they could, and to lay before the House every Circumstance which may any way tend to a Discovery so necessary for the Safety and Quiet of these Kingdoms, and yet so little to be hoped for from the present Temper and Disposition of the Conspirators themselves.

The first (*f*) of *Kelly*'s Letters, writ in this new Cypher, is of the 10th of *September*, directed to *Bonnaville* (*Glascock*), under Cover to *Hues*, Banker at *Paris*.

In this he says, 'I hope you have seen *G. Stephenson* before now,' and mentions a Trunk that he is soon to send to him; which Circumstance shews he is the same Person meant by *G. Sandford* in other Letters.

He then takes Notice of a young Fellow that he had recommended, (which was observed before to be probably *Neynoe*) 'and earnestly begs 'the Goods he carries with him may be disposed of at any Rate; and, if 'possible, without Mr. *L. Craufurd*'s or his Partners being concerned in 'the Bargain.' Your Committee observe from *Neynoe*'s Informations, that he was to be recommended by *Kelly* to Lord *Landsdown*'s Family. They likewise observe from several other Letters, that *Dillon*, upon the Caution given him by *Skinner* from the Bishop of *Rochester*, was grown very jealous of his former Friends at *Paris*; from which Circumstances, they think it probable, that by *L. Craufurd* is meant Lord *Landsdown*.

He then adds, 'Your Cousin *C. Saunders* is well, and with a Friend in 'the Country, who will take particular Care of her, till a better Service 'can be got for her.'

This, compared with what he says in his Letter of the 13th of *August*, of *Trotter*'s having writ to him for Advice, and wanting to be employed in a Voyage or other Business, makes it probable, that by *C. Saunders* is meant *Carte*.

He then adds, 'Your Relations, *N. Crone* and *S. Farrel*, have made 'several Bargains for ready Money in the third Subscription; and as the 'Time allowed by Parliament for Non-prosecution will be out as soon as 'it sits, their Creditors will then fall upon them and all their Friends, 'and put them in Jail, except you can send them some Relief: And tho' 'your Actions are at a very low Price, however, I believe, they would 'be extremely pleased to have them sold at any rate, to enable them to 'pacify their Creditors on this Side, and to put them in a State of 'Safety.'

It has been observed, that the Conspiracy is often treated of under the Cant of *Stocks*; and whether this third Subscription may not mean the third Period of Time fixed by the Conspirators, and the Relief desired be not some Assistance from abroad, is submitted to the Consideration of the House.

That this Passage cannot be understood in the literal Sense, is evident from its being said, that the Time of Non-prosecution expires at the Sitting of the Parliament; but your Committee apprehend, that the Meaning of this Paragraph is fully explained by another in the same Letter, in which *Kelly* says, 'There is no Prospect of the State Prisoners getting 'out till next Term, and if the *Habeas Corpus* Act be suspended at the 'Meeting of the Parliament, they will remain during the Government's 'Pleasure, and perhaps *have Company enough*.' Who are meant by *N. Crone* and *S. Farrel*, is submitted to the Conjecture of the House.

His next (*g*) Letter to *Glascock*, is of the 27th *Sept.* in which he complains, 'That he has not heard a Syllable from *D. Gainer* (*Dillon* probably), 'or *G. Roberts* (*Glascock* probably), since Mr. *G. Sampson* (*Goring*) went; 'which has been no small Detriment to some of their Friends.' He adds, 'The Term being soon at Hand, we shall be much at a Loss how to 'manage without their Advice; which *G. Sampson* positively promised to 'send a speedy Account of.

'The Situation of your Friends stands much as it did, and nothing has 'happened of late in your Family to ease their Losses, or mend their Con-'dition.'

He then gives a long Account of the Lord *North* and *Grey*'s being seized at *Portsmouth*, and of his being to be brought to Town that Night; and concludes thus:

'I must now plainly tell you, that I am afraid your Cousin *N. Clifton* 'is in a very bad Way, and a Person (whom he lately employed to 'manage some Things for him, particularly to compound some *S. Sea* 'Bargains) has not been true to him: For his Creditors have actually 'put him in Jail, and except you can contrive to send him some Relief 'from what *Effects he put into your* Mississippi (for I don't find he has any 'other Prospect), his Confinement will prove fatal to him. You know 'his Worth, and for Heaven's Sake don't forsake him.'

This Letter being mentioned to be writ on the Day Lord *North* and *Grey* was brought up in Custody, your Committee cannot but be led to conjecture, that by *N. Clifton* is meant the said Lord; and that the Person said to be employed by him, and suspected of being false to him, is either *Lynch* or *Layer*; And if this Conjecture be admitted, it is not improbable that by *N. Crone*, in the former Letter, may be meant the said Lord *North*.

On the 20th *October*, *Glascock* (*h*) writes to *Kelly*, 'That *D. Gainer* '(who in another Part of the Letter is called *D. Gregory*, and is probably '*Dillon*) thinks very seriously of the Commissions with which *Kelly* had 'charged him for his Friends, and does not refuse to employ his whole 'Credit in that Affair; but that one single Article had consumed the Bill 'of Exchange which *N. Cleaton* sent, and that there is not any other 'come that *Dillon* knows of.'

Here *N. Cleaton* means evidently the same as *N. Clifton* in *Kelly*'s Letter; and it appears he had sent a Bill of Exchange to *France*, which was all consumed in one single Article of Expence. In former Letters Notice was taken of a Bill of Exchange sent over by *Repney*, and of 20,000*l.* raised by *N.*

In the same Letter, *Glascock* takes Notice of some *Goods* sent by *Contade* and *Lunelle* for *Kelly*'s Use, which he desires *Kelly* to send for, and to acknowledge the Receipt of them carefully.

It appears to your Committee, that these *Goods* were the Pretender's Declarations, which (*i*) came inclosed that Post, or the next, under blank Covers to *Contade* and *Lunelle*, at *Slaughter*'s Coffee-House, agreeable to the *Memorandum* in *Kelly*'s Pocket-Book.

In another Part of the foregoing Letter, it is said, that Mr. *G. Sampson* has sent over his *Project of Accommodation*, and waits the Event of it, which it is probable relates to the same Declaration.

Kelly, being examined by the Committee in Relation to the Names in his (*k*) Pocket-Book, said, 'They were Names of Persons with whom 'he had transacted Stock-Affairs in *France* several Years ago. He owned 'he had seen Letters at *Slaughter*'s and *Sturgis*'s Coffee-House, directed 'by some of those Names, but that it might easily happen, that there 'might be Persons in *England* of the same Names with others in *France*; 'and that it was his Misfortune Letters should come directed by those 'Names. He insisted, that his Pocket-Book, though taken upon him, 'was an old one that had lain by neglected these three Years:' Yet your Committee observe, the *Memorandums* in it were of a late Date, and contained a particular Account of the Time of his Journeys to and from *France*, and of the Days on which he and *Dennis Kelly*, and the Bishop of *Rochester*, were taken into Custody.

The House will observe, That this long and particular Account of *George Kelly* is extracted out of such Papers and Informations, as were in the Hands of the Government, relating to him, supported by such Explications as seem to the Committee naturally to arise from comparing the several Parts of them together; but that he himself upon his Examination refused to make the least Discovery that might give Light to any Part of this treasonable Correspondence, though he plainly intimated he had it in his Power to do it. And if, in some Particulars, the Committee should have fallen short of the true and genuine Explanation of the Names, or other Facts, which may easily have happened in unfolding such Variety of Matter, so industriously wrapt up in the utmost Obscurity; yet they conceive it will not lessen the Credit of those Facts in general relating to him, which are supported by unquestionable Evidence, notwithstanding his denying of them, and his prevaricating so grosly with the Committee.

Your Committee will now proceed to lay before you such Particulars as they have collected from the Papers referred to them, relating to *Dennis Kelly*, Esq. who appears to them, from several Passages in the intercepted Letters, to have acted in Concert with the other *Kelly*, and behaved himself with the same Obstinacy on his (*l*) Examination before them.

Your Committee see Reason to believe, that the several fictitious Names of *Kirkton*, *Killegrew*, *Sandford*, *St. George*, and *Hubberts*, are made use of in the intercepted Letters to express one and the same Person: And as this Person is frequently spoken of as living at the *Cockpit*, as being himself ill of a Fever and Ague Part of last Summer, as having a Daughter who was troubled with Returns of spitting Blood at particular Times there mentioned, and as being to set out with his Family for *France* by *Dieppe*, the latter End of *July*; these several Circumstances being confirmed to your Committee by the written (*m*) Examinations of Mr. *Dennis Kelly*'s Servants to have been true of him, and being in the Opinion of the Committee applicable to no one else, they see Reason to conclude, that what is

(*a*) E. 75. (*b*) E. 76. (*c*) E. 78. (*d*) E. 17. (*e*) E. 78. (*f*) E. 73. (*g*) E. 75. (*h*) E. 75. (*i*) E. 23, 24. (*k*) E. 17. (*l*) F. 33 (*m*) F. 2——8.

affirmed

affirmed in the intercepted Correſpondence, of the Perſon deſigned by the Names above-mentioned, is affimed of him.

Your Committee have likewiſe been (*a*) informed, that Enquiry having been made at the *Britiſh* Coffee-Houſe, who took up Letters directed thither by the Name of *Sandford*, it was found that one Mr. *Kelly*, who frequented that Houſe, took them up. And a Letter from *France* ſo directed, having been copied at the Poſt-Office, and then delivered out, the (*b*) Original of the ſaid Letter, ſigned *M. Digby* was found in *Dennis Kelly*'s Pocket, when he was taken up, as appears by the (*c*) Affidavit of the Meſſenger who ſeiz'd him.

In this Letter *Digby* ſends his Service to his Couſin *Ireton*, which has been ſhewn above to be one of the Names belonging to *George Kelly*; and alſo mentions *Hore*, who has been already explained to be probably Sir *Harry Goring*.

Your Committee obſerve, that the ſaid Letter was writ in the ſame Hand with another (*d*) ſigned *J. Gerrard*, which was likewiſe found among *Dennis Kelly*'s Papers, and has been obſerv'd above to be probably the Name made uſe of by Sir *John D'Obryan*, whom *George Kelly* declared to be Secretary to *Dillon*.

They farther obſerve, that both theſe Letters, ſigned *Gerrard* and *Digly*, were in the ſame Hand with (*e*) others found in his Cuſtody relating to *Dillon*'s private Affairs; which confirms *Digby* to be *Dillon*, and *Gerrard* to be one whoſe Hand *Dillon* makes uſe for his Diſpatches.

Another (*f*) Fragment of a Letter was found among his Papers mentioning the Names of *Ireton* and *Hore*; which is in the ſame Hand with the Letters to *Plunkett*, ſigned *Dixwell and Howell*, and is therefore probably the writing of *Chriſtopher Glaſcock*, *George Kelly*'s Correſpondent.

Some other (*g*) Papers were alſo found in his Cuſtody, mentioning others of the fictitious Names uſed in *George Kelly*'s Letters, as alſo a long (*h*) Liſt of Names, with fictitious Names over-againſt them, and a (*i*) Cypher of Figures, which appear to be *George Kelly*'s Hand-writing, and are ſworn, by the Clerks of the Poſt-Office, to be the ſame Hand in which the Letters ſigned *Johnſon*, *Hatfield*, &c. were writ. It has already been obſerved, that this Cypher of Figures is found to be a Supplement to the Cypher in which the Letters of the late Duke of *Ormond*, and the Biſhop of *Rocheſter* were writ; and that the ſaid Cypher laſt mentioned is made uſe of in (*k*) one of the intercepted Letters from *Dillon* to *Dennis Kelly*.

There was alſo found among his Papers, an exact (*l*) Liſt of the quartering of his Majeſty's Forces a little before the time of the Elections, and a (*m*) Scheme for erecting By-Boats between *London* and *Boulogne*, which ſeems referred to in the (*n*) Letters between *George Kelly* and *Gordon* of *Boulogne*.

There was alſo taken among his Papers a (*o*) Fragment of a very treaſonable Letter, ſigned *F. M.* which your Committee conjecture was from one *Francis Macnamarra*, a perſon concerned in the former Rebellion, there being (*p*) another Letter among his Papers, with the Name at length, in the ſame Hand.

Your Committee have laid together theſe ſeveral Circumſtances, that it may appear *Dennis Kelly* was concerned in the treaſonable Correſpondence, which is confirmed by (*q*) Mr. *Craufurd*'s Letter from *Paris*, $\frac{1}{18}$ of *May*, in which he ſays, 'There is one Captain *Kelly*, who frequents 'the *Cocoa-Tree* and *Will*'s Coffee-houſe, who is much in the confidence 'of *Dillon* and Lord *Lanſdown*; he was here ſome Months ago, and is at 'preſent very active in *England*.'

Your Committee find, that he was abroad for ſeveral Months the latter End of the Year 1721, and that ſome of the Letters ſent to him by fictitious Names from *France*, were directed to *Will*'s Coffee-houſe and the *Cocoa-Tree*.

The Matters which they find him principally concerned in by the intercepted Letters, are the (*r*) Remittance of the Bill of Exchange ſent over from the Perſon called *Repney*, the Receipt of which is acknowledged in ſeveral Letters to him, his being preſent at a (*s*) Conſultation with the Perſons called *Rep. Ho.* and *Den.* and his being to carry over to *France* their final Anſwer, together with a new (*t*) Cypher, Liſt of Directions, and other verbal Inſtructions, from *George Kelly*, for *Dillon*, *Glaſcock* and *Talbot*.

As *George Kelly*'s Correſpondence was cloſely connected with that of the Biſhop of *Rocheſter*, *Thomas Carte*, and *Dennis Kelly*, and as he appears to have been privy to *Plunkett*'s; ſo your Committee ſee reaſon to believe, that he was not a Stranger to that of *Sample*, who appears to be mentioned in a (*u*) Letter from *Gerrard* to *Kelly*.

Your Committee find, that *John Sample*, being examined before the Secretaries of State, and two of your Committee (*w*), owned, that *Francis* Son of the Lord *Sempill*, commonly ſo called, had been in *England* that Summer, and returned to *France* about three Weeks before his Examination, which was taken on the 4th of *Auguſt* laſt.

That during his Stay in *England*, he (*John Sample*) was twice in company with him, and that two Letters found in his Trunk were received by him from the ſaid *Francis Sempill* before his coming to *England*.

In the (*x*) firſt of theſe Letters, dated *June* $\frac{2}{13}$ 1722. *Fr. Sempill* tells him, 'That they are daily confirmed Mrs. *Hews*'s Diſtemper is but 'imaginary or counterfeit.' By Mrs. *Hews*, he ſaid, was meant the King, and by his *Diſtemper* the late Diſturbances.

Fr. Sempill then tells him, 'That this has put a ſtop to Mr. *Standwell*'s 'Proceedings (*Standwell* he owned to mean the Pretender); but that this 'cannot diſconcert *Standwell*'s Meaſures, nor even delay any thing *above* 'a few Weeks.'

'That perhaps he may ſoon produce himſelf to their Coſt, but it is not yet full time to give him (*Sample*) Hopes of that kind.' He adds, 'That 'they have not yet heard from Mr. *Houlder*,' whom *Sample* explained to be the late Duke of *Ormond*.

Your Committee obſerve, That this agrees with the Accounts given in the former Parts of their Report, of the Attempts that were to have been made in *England* about the Beginning of *May*, which were prevented, tho' not entirely diſcontinued, by the Diſcoveries made here, and by the Encampment.

Sample being ſhewn the Copies of ſeveral Letters, taken at the Poſt-Office, directed to Mr. *Sempill* at *Paris*, and encloſing others, owned, as appears by his Examination, the writing of them all, and gave Explications of the Names made uſe of in them. (*y*) One of theſe Letters is to *Standwell*, whom he owned to mean the Pretender, and (*z*) another is mentioned to be for *Glaſcow*'s Maſter which is probably General *Dillon*. He likewiſe owned his having writ to the late Duke of *Ormond*, and to *Kennedy* his Secretary; and while he was in Cuſtody of the Meſſenger, he begun to put down in writing a Confeſſion of his Crimes, (*aa*) which was found in his Room after his Eſcape. But tho' ſome of his Letters appeared dictated by him to other Perſons, your Committee do not find he would diſcover who thoſe Perſons were.

Your Committee will next proceed to lay before you the Subſtance of the ſeveral Papers and Examinations referr'd to them, relating to Mrs. *Spelman*, alias *Yallop*; in doing which, they find themſelves indiſpenſably obliged to mention a Perſon of high Rank and Diſtinction, *Thomas* Duke of *Norfolk*, among others concern'd in the treaſonable Correſpondence convey'd thro' the Hands of the ſaid Mrs. *Spelman*.

It appears to your Committee, that Mrs. *Spelman* being examined on the 19th of *October*, concerning ſeveral Letters from abroad, directed to her by the Name of Mr. or Mrs. *Burton*, has (*bb*) declared upon Oath, 'That 'Mr. *George Jernegan*, (who as your Committee are inform'd, is a Roman 'Catholick, and appears to have been long employ'd by the Pretender) 'being in *England* about ſix Months before her Examination, did, upon his 'going for *France*, leave Orders with the ſaid Mrs. *Spelman* to ſend to the 'Duke of *Norfolk* ſuch Letters as ſhe ſhould receive from him, *Jernegan*, '*directed* to Mrs. *Jones*; and to Mr. *Harvey* of *Combe*, ſuch as ſhe ſhould 'receive from him, directed to Mrs. *Williams*, in *Newgate-Street*, *Norwich*; 'and to Mr. *William Moor* (who lives, or did live in *Brownlow-ſtreet*) ſuch 'as ſhe ſhould receive from him, directed to Mr. *Frampton*: And that it 'was agreed between her and *Jernegan*, that he ſhould direct to her by 'the Name of *Burton*, when he did not do it by her own Name.

'That ſhe did accordingly ſend (as had been agreed between them) the 'Letters that came to her with the Directions above-mention'd, having 'firſt encloſed them under new Covers, which ſhe herſelf directed; that 'ſhe ſent them by common Porters, who always brought her back an 'Account of their having delivered them, or of the Perſon's not being at 'home; that particularly one to the Duke of *Norfolk* was brought back 'again by the Porter, his Grace not being in Town, which Letter ſhe 'kept till he came to Town, and then ſent it to him. That ſhe once 'received a Meſſage from the Duke of *Norfolk* by Mr. *Edward Jernegan*; 'that his Grace could not anſwer a Letter ſhe had convey'd to him from '*George Jernegan*, becauſe he, the Duke of *Norfolk*, had not the Key of 'the Cypher, it being in his Brother's hands; ſhe likewiſe own'd her re'ceiving ſeveral Cyphers and Keys of Cyphers from *George Jernegan*; 'which ſhe burnt between the Time of her firſt and ſecond Examination.'

Copies of theſe Cyphers having been taken at the Poſt-office, it appears that (*cc*) one of them was mark'd, *A Key and Cypher, with Mr.* Farmer *and* Jerry; and (*dd*) another, *D*, *O*, and *J*; the firſt of which is probably a Cypher between the Pretender and *Jernegan*, and the latter between him and the late Duke of *Ormond*.

It farther appears to your Committee, that *Edward Jernegan* being examin'd in relation to the Meſſage from the Duke of *Norfolk* above-mention'd, has (*ee*) depoſed upon Oath, 'That about a Fortnight before the 'Duke went to the *Bath*, being inform'd that his Grace had enquired for 'ſome of their Family, he, *Jernegan*, went to wait on him, and his Grace 'told him, that he had received a Letter from *George Jernegan*, who was 'then abroad, but that he could not anſwer it, becauſe his Grace's 'Brother had the Key of the Cypher, in which it was written; and that 'he, *Jernegan*, delivered this Meſſage to Mrs. *Spelman*.

The firſt Letter directed to Mrs. *Jones*, (the Duke of *Norfolk*) of which a Copy was taken, is dated, *Cambray*, 12th *July*, 1722. and is partly in Cypher, but has been decypher'd in the manner following:

SIR,

'VArious Conſiderations, which obliged me to ſubmit, deprived me 'ſtill now the Honour of Writing to you; therefore I flatter myſelf, 'you incline to favour me with opinion, that my Zeal and Attention are 'above falling into any Negligence, where your Sollicitude or private 'Satisfaction is concern'd. You have been in ſome manner a Witneſs of 'the late turn in Affairs, and undoubtedly know ſo much of them, that 'I fear it will prove ſuperfluous to trouble you with the Particulars which 'I have: After ſeveral meetings with ſome of our Friends at *Paris*, '..... was of opinion, that the whole ſhould be communicated 'to the Regent; which being agreed to, that *Lord* was deputed to wait 'on him: they met, and parted in appearance the beſt Friends in the 'World, notwithſtanding immediately, by the Regent's Orders, the Secret 'was diſcovered to King *George*. How is it poſſible to arm one's ſelf with 'ſufficient Prudence againſt ſuch a Conduct? Theſe being our private 'Concerns, I leave 'em, to divert you with the publick News: the Over'ture of the Congreſs ſeems now in the way to be deferred to the K. of '*Fr.* Majority, who, ſince his Removal to *Verſailles*, is in a manner 'ſolely in the Hands of the Regent. His Coronation remains ſtill fix'd 'to the 15th of *October*; ſo, in all appearance, this Year produces 'no Diſturbance to the preſent Peace of *Europe*. The Emperor grows 'daily more powerful in *Italy*, by the Pope's falling into that Intereſt; 'he has lately ſeiz'd the Fortreſs of *Maſſa* in *Florence*, and promiſes the 'Inveſtiture thereof, with that of *Parma*, to the Prince of *Baviere*, 'upon his Marriage with the Princeſs *Joſephina*. *Spain* will be under 'great Difficulties to find means to ſupport their claim to theſe Provinces, 'eſpecially at a time that *France* ſeems negligent of every thing that con'cerns them. There is no Appearance likewiſe that the Affairs in the 'North produce any thing material this Seaſon: the pacifick Temper of 'the K. of *Pruſſia* ſecures every thing on that ſide, and has probably

(*a*) F. 30. (*b*) F. 29. (*c*) F. 29. (*d*) F. 14. (*e*) F. 15. (*f*) F. 18. (*g*) F. 13. (*h*) F. 11. *a*. (*i*) F. 19. (*k*) F. 9. (*l*) F. 10.
(*m*) E. 26, 34. (*n*) F. 16. (*o*) F. 17. (*p*) A. 10. (*q*) F. 19, 21. (*r*) E. 59. (*s*) E. 59. (*t*) E. 33. (*u*) G. 1. (*w*) G. 2. *a*.
(*x*) G. 1. (*y*) G. 6. (*z*) G. 9. (*aa*) G. 3. (*bb*) H. 3. 4. (*cc*) H. 37. (*dd*) H. 35. (*ee*) H. 7.

prevented

'prevented the Disturbance threaten'd in those Parts. Thus at present 'are the Affairs of *Europe*.

'I did not fail to repeat my usual Sollicitations in favour of your Bro- 'ther, and to add what in Justice I thought you merited: This I did 'upon the first Occasion, after my coming over; to which, from the 'King, I have this Answer:

June the 15th.

"Nobody has a better Opinion than I have of the great Person you "mention, nor does his Character more Justice; I shall be always de- "sirous to do what is in my Power to convince him of my Regard for his "Brother, who now is in the Country with me; but I fear it will not "be time to move in the Particular you mention of some Years yet, which "will be the Case of all others who pretend to the same Right as I do.

'Thus far was his. There is a Pleasure to see with what generous 'Virtue he repays all who consider his Misfortunes.

'I presume to mention one Thing more, being moved to it out of a 'pure consideration to the Credit it will give to your Name. Dr. *Witham* 'finds himself under the Necessity of building the old House, being ready 'to fall; and next Spring they begin, but upon so small a Fund as will 'never finish the Work, as it ought to be; the Consequence of which 'must necessarily oblige them to beg the assistance of their Friends. I 'should be sorry upon this Occasion, that any other Person should distin- 'guish himself so, by a Donation, as to merit his Arms to be placed in 'the Front, where I could wish to see your own. I have not spoke one 'word of this to any Person in the House, thinking it would look more 'generous in you, if disposed to take the Credit of laying the first Stone, 'to move and offer it yourself. As to other Matters, if I can be service- 'able in these Parts, either in your Particular, or to the Interest of the 'Party, you know me faithfully devoted to both. I have obtain'd leave 'to return by the end of the Summer, finding it inconvenient to my private 'Situation to remain longer Abroad: I hope then to present you with 'fresh Proofs with what Zeal and Respect I've the Honour to be,

'Sir, you most Obedient and

'most humble Servant.

'Be pleased to address to me,

'à Monsieur *Hooker*, under Cover à Monsieur *Pigault*, Banquier à *Calais*.

Your Committee observe from this Letter, that *Jernegan* supposes the Duke of *Norfolk* already acquainted with a Design, on which Application had been made to the Regent, and with the Causes of its Miscarriage; that, however, in order to shew his Zeal and Attention in any Thing, where he thought the Duke's Sollicitude concern'd, he sends him an Account of what had happen'd to their common Friends at *Paris*, and of the Secrets being communicated to King *George* by the Regent's Order; and then laments the Impossibility of arming themselves with sufficient Prudence against such a Conduct, which, supposing it to have been such as they represent, yet could not possibly have appeared blameable to any but the Enemies of our present happy Establishment.

He then shews from the Situation of Affairs in *Europe*, there is but little Prospect of any Rupture, which may be favourable or advantageous to their Designs.

He afterwards acquaints the Duke, that he had *repeated* his Sollicitations *to the Pretender* in favour of his Grace's *Brother*, and had also added what *in Justice* he thought *His Grace himself merited*; to which he received an Answer from the Pretender (whom he styles *the King*), acknowledging his *great opinion of the Duke*, and the *Justice he does his Character*, and his Readiness to convince his Grace of *his Regard*, by any Kindness he can shew his Brother.

And the Inference, which *Jernegan* makes from the Regard express'd towards the Duke in this Letter of the Pretender's, is, That there is a Pleasure to see with what generous Virtue he (the Pretender) *repays* all those *who consider his Misfortunes*.

He concludes with telling the Duke, that if he can be serviceable in those Parts, either in his Grace's own Particular, or to the *Interest of the Party*, his Grace knows him faithfully devoted to *both*.

On the $\frac{13}{23}$ of *August*, *Jernegan* writes a second Letter to the Duke, as follows.

'SIR,

'THE Vicissitude in our Affairs being a perpetual ebbing and flowing, 'tis extremely difficult to assure any thing with Certainty: In my 'last of the 12th I mention'd how Things had happened; and altho' the 'Fact was true, yet the Consequence did not answer what we appre- 'hended: It was a politick Necessity which urged and demanded that 'Conduct, and it appears now to have succeeded so well, that every 'Hand is at work, as before, to draw Things to a right Conclusion; 'brief's, we are flatter'd that the Regent is cordially in our Interest, and 'disposes every thing to undertake the Work, which, according to some 'Accounts, will be put in execution within two Months; those who 'are serious and make due Reflection on these Matters, know how far 'they may be useful to the Cause, and with timely and prudent Precau- 'tions may dispose their Friends to act a lively Part; whilst they them- 'selves keep retired, till the Success one way or the other determines 'what is necessary to be done.

'I have Opportunity, by being in these Parts, of picking up several 'good Officers, and with a little Trouble as many as would compleat an 'entire Regiment, into which any Gentleman might enter himself, and 'do his duty with Honour. This is what I thought fit to propose on this 'Occasion, and should be glad to know, if solely upon your own Bottom 'this may be thought on. I shall take all necessary Precaution, and shall 'first know certainly what there is to depend upon. Your Opinion on 'these Matters, with the Assistance of your Advice, will lay a most 'sensible Obligation on him, who entirely devotes himself,

'Sir, your most Obedient and

'most Humble Servant.

'Let the Conveyor of these furnish you with my immediate Address.'

Your Committee observe, that in this letter, *Jernegan* does, with an Air of great Satisfaction, try to lessen the Apprehensions and Discouragements, which he supposed his former Account of the Regent's having betray'd the Secret might have rais'd in his Grace, and says that every Hand is now *at work*, *as before*, to draw Things to a *right Conclusion*, without explaining what that *former Work*, or the *right Conclusion* hoped for is; which Particulars, it appears, he thought so well known to the Duke as not to need the least Explanation.

Then after telling his Grace, *We* are flatter'd the Regent is cordially in *our* Interest, and is disposing every Thing to undertake *the Work* within two Months Time, he intimates, that from this Hint, one of his Grace's Seriousness and Reflection might be useful to the Cause, by disposing *his Friends* (who may justly be understood to be the Roman Catholicks) to *act a lively Part*, while he himself lies retired, waiting till the Event should determine what Part it was proper for him to take.

He then makes the Offer to his Grace of raising an entire Regiment of Officers in *Flanders*, into which *any Gentleman* might enter himself, and do his Duty with Honour: and desires to know, whether on his Grace's own Bottom such a Thing might be thought of.

This treasonable Offer, from an humble Servant of his Grace's, shews that *Jernegan* was at least persuaded it would not be ill received: which could only proceed from a thorow Assurance of the Duke's Inclinations to the Pretender's Cause, and of his Intentions to support it with Men and Money, whenever a Probability of Success should make it safe and proper for him to espouse it openly.

Your Committee farther observe, that this letter was writ about the same Time that *Plunkett* was so busy in pressing *Dillon* to sollicit the Regent's Assistance; and that the Term for putting the Design in execution, which is mention'd in *Jernegan*'s Letter to be within two Months from the Beginning of *August*, has an evident relation to the third Period pitch'd upon by the Conspirators, which, as has been observed before, was the breaking up of the Camp. And it appears to your Committee, by several concurrent (*a*) Advices from *France*, *Spain*, and *Italy*, during the Months of *July* and *August*, that the Design, which had been suspended upon the first Discovery of the Plot, was again resumed, and Preparations made for the Pretender's leaving *Italy* about the Beginning of *September*; for which Purpose the Ship *Revolution* (since taken) set sail for *Italy* the latter End of *August*, having on board near two hundred Men and a great Number of Officers.

Mention is made, in *Jernegan*'s letters to Mrs. *Spelman*, of a great Number of Letters written to, and received from Mr. *Harvey* of *Combe*, by the Name of Mrs. *Williams*; and in (*b*) one of his Letters to Mr. *Harvey* he says, 'The Regent plays a Game apart, and confides in none but '*Britain*, and has sacrificed *Us* to make a firm Friend of King *George*. 'The late Disappointment in *our* Affairs has given a surprizing Power 'to the Court of *France*: They silence all other Princes in regard to *Us*; 'none now dare look that way, or undertake the least trifling Service in '*our* favour.'

On the 20th of *July*, Mr. *Harvey* sent an Answer to this Letter, the Original of which is stopp'd, and is (*c*) sworn by Mrs. *Spelman* to be his Hand-writing; but it contains such an odd Heap of low and virulent Scandal, that the Committee do not think proper to trouble the House with any Extract of it, but have (*d*) annexed it entire to their Report.

Your Committee have already taken Notice, that the treasonable Correspondence above set forth was not confined to *England* only, but was carried on in *Scotland*, under the same Cant Expressions of *Wine*, *Trade*, *Goods*, &c. And it appears that the Pretender's Agents were equally busy in disposing Matters for an Insurrection in that Part of the Kingdom, at the same Periods of Time as were fix'd on in *England*.

They find that the Government has receiv'd (*e*) Information upon Oath from one *Lodovick Anderson*, 'That on the 28th of *January* 1721, 'Brigadier *Mackintosh* was seen by him (*Anderson*) at the House of Sir '*John Mackenzie* of *Coul*, and told *Anderson* that the Pretender design'd to 'have on the Crown of *Scotland* before Midsummer, and that he was to 'be assisted from *France*, *Spain*, and *Muscovy*; that General *Gordon* and 'Captain *Tullock* were to land at the *Loach Etch* with Arms for this Pur- 'pose.'

That *Mackintosh* was then in *Britain*, agrees with (*f*) *Panciet*'s Deposition.

Anderson farther deposed, 'That on the 15th of *February* he met the Lord '*George Murray* at a Place not far from the Earl of *Kintore*'s, who con- 'firm'd to him what *Mackintosh* had said, with several other Particulars; 'That two Days after, he met Mr. *James Keith*, Brother to the Earl 'of *Marishall*, who after having told him that there would be a Descent in 'favour of the Pretender, named to him several Persons (specified in his 'Deposition) that were come over to get Matters in a readiness.'

This, your Committee observes, answers to the first Period of Time for beginning an Insurrection, with the help of foreign Forces, during the Time of the Elections.

About the Beginning of *May* a (*g*) Letter was intercepted, directed to Mr. *Peter Smyth* at *Boulogne*, and inclosing another to *De Martin*: Which Letters, as your Committee are informed, are in the Hand-writing of Mr. *Cochran*. Who is meant by *De Martin*, does not appear.

In this letter *Cochran* says, '*Our Customers*, on this Side the Water, 'are as fond of taking *our Goods* as you are of sending them; but I am 'afraid if they are not sent soon the Market will be forestall'd, for our 'Enemies begin to be upon their Guard. He adds, that their Friends in '*England* are willing to send Money to pay for them *per* Advance, and 'that they in *Scotland* are not backward, but hope, in a few Days to 'remit as much Money as will be sufficient for their Country. He then 'desires to know how soon they may expect their Wines on this Side the 'Water, that they may put themselves *in a sufficient Posture* for receiving 'them.'

Your Committee likewise find that *Christopher Glascock*, *Dillon*'s Agent, carried on (*i*) Correspondences to the same Effect, with one who went by

(*a*) A. 24. 25. 29. 31. 33. 41. 42. 43. (*b*) X. 19. (*c*) II. 4. (*d*) II. 16. (*e*) I. 2. (*f*) D. 1. (*g*) I. 3. (*h*) I. 3. (*i*) I. 16.

the Name of *James Johnſton*, at *Edinburgh*; and that (*a*) *George Kelly* correſponded with the ſame *James Johnſton*, and owned to the Lords at his (*b*) Examination, his having ſent the ſaid *Johnſton* a Paper from *Glaſcock*, which he pretended related only to the *Miſſiſſippi*.

Letters were likewiſe intercepted going from *Edinburgh*, directed to *Collins* at Mr. *Waters*'s, Banker at *Paris*; which *Collins* appears, by *Kelly*'s (*c*) Cypher, to be *Golin Campbell* of *Glenderoule*.

In (*d*) one of theſe Letters to *Collins*, Mention is made of a Perſon of great Conſequence and Diſtinction, lately regained to the Pretender's Party, who inſiſted on a Sight of the *Contract of Copartnery*, which *Collins* is deſired to ſend over by the firſt ſure Hand; and *Collins*, in his (*e*) Anſwer ſigned *R. Broun*, promiſes it ſhall be ſent over.

Your Committee obſerve, that this Particular agrees with (*f*) *Fairfax*'s Depoſition upon Oath, That *Layer* told him the People of *England* were backward, but that thoſe of *Scotland* had already entered into an Aſſociation.

In the ſame (*g*) Letter to *Collins* it is ſaid, That the Perſon of Conſequence who had inſiſted on a Sight of the *Contract of Copartnery*, deſired an Order from Mr. *Malcolm* for raiſing one or two Battalions; but was told thoſe Orders might come time enough by the Hands of thoſe who happened to come firſt to open *the Commerce*; which ſhews of what nature *that Commerce* was.

In the ſame Letter Application is made to Mr. *Malcolm* for a Patent for Knight Baronet; both which Circumſtances confirm *Malcolm* to be the Pretender.

Your Committee obſerve, that theſe Letters, and (*h*) ſome others, which appear to have been intercepted about the Month of *May*, and are annexed to this Report, fall in with the ſecond Period of Time fixed by the Conſpirators in *England*.

And on the 18th of *Auguſt*, O. S. Mr. *Stanhope* (*i*), writes word from *Madrid*, that he had received Intelligence, that the *Scotch* had engaged to bring 22000 Men into the Field in ten Days time, in caſe the late Duke of *Ormond* would come over with Arms to head them, and that they daily ſent moſt preſſing Meſſages to *Ormond* on that Subject; which ſhews that the Deſign was reaſſumed a third time in *Scotland*, as it was in *England*.

Your Committee farther obſerve, that agreeably to what was promiſed in Mr. *Cochran*'s Letter of the 28th of *April*, (*k*) Mr. *William Erſkine* did on the 3d of *May*, remit Two Thouſand Pounds Sterling to Mr. *Gerrard*, *Dillon*'s Secretary at *Paris*, and owned his ſo doing on his (*l*) Examination before the Lord Juſtice Clerk; but refuſed to diſcover who *Gerrard* was, or from whom and for whoſe Uſe the ſaid Sum was remitted.

When he was taken into Cuſtody, a Letter was ſeized in his Pocket, which, as your Committee is (*m*) informed, is all in the late Lord *Marr*'s own Hand-Writing, dated *Paris*, *February* the 9th, 1722, in the following Words:

Paris, *February* 9, 1722.

'I Have, *William*, yours of the 7th, for which I am obliged to you, and take all you ſay, as I ought, from the good Heart from whence 'I know it comes, tho' at the ſame time you put a greater Value on your 'Friend than he deſerves: But be that as it will, I am fully perſuaded, 'as you may be, that he will never fail an Occaſion for what you mean, 'nor neglect endeavouring to bring it about, where he ſees it can be of 'Advantage to his Country; and his Friends and Countrymen may depend on it, when they ſee him engaged again, that the retrieving of it 'from the low Condition it is now in, and otherways ever like to be, is 'the chief Motive that induces him; and he hopes, in that way he will not 'be without the Aſſiſtance of all who wiſh the ſame thing; and the more, 'that he will take all the care he can not to expoſe them for ſerving that 'of others, if at the ſame time he be not pretty ſure of its doing effectual Service to their own, and putting it on a better foot than it has been 'theſe hundred Years paſt. If he looked but to his own private Intereſt, 'he could perhaps find a way, which could conduce more to it: But he 'hopes by his former Actions, it appears that he never put that in competition with what he thought was the Intereſt of his Country; tho' 'in which he owns he was once miſtaken, as many others may have been; 'but as he never ſcrupled owning his Fault, ſince he found it by Experience to be one, ſo he has ever ſince endeavoured to make amends, and 'will as long as he lives.

'Things are in ſuch a Situation at preſent over all *Europe*, that there 'appears little, if any Opportunity, of doing what is to be wiſh'd upon 'that Account; but things of this kind are very uncertain, and an Opportunity may come, or be brought about, when leaſt expected; and 'you may believe it will not be neglected when it does; nor will any Endeavours be wanting to bring it to that Paſs. Huſh, tho', muſt be the 'word, and Friends muſt not take amiſs their not being acquainted previouſly to the Execution, in which it is to be hoped they will not fail.

'You ſee I make no Scruple in writing freely to you, but you know the 'Conſequence of this coming into wrong Hands, and thoſe it is fit and of 'uſe to be told to, you know too: So I leave it to your own Diſcretion, 'of which you have given me many Proofs. I have been much out of uſe 'of writing to *H. S.* for ſome Years paſt, and I have not yet got a return of one I wrote him laſt Summer; but I ſhall write to him of what 'you mention in yours.

'As to *M——y*, I care not to ſay more about him; and were it not 'that I think it for the good of a certain Perſon and Cauſe, I ſhould not 'even wiſh to have all the Truth told of him ſince his being abroad. 'I cannot anſwer for what handles may be given him for his Juſtification; 'but let honeſt Men, who with right, tell the Truth, where they know 'it, and that it is neceſſary, and ſhame the Devil.

'I wiſh you a good Journey and good Luck with all my heart, and 'that we may ſoon have an Opportunity to meet merrily, and be of uſe 'to our Country. My Compliments to my Friends, and I hope we ſhall 'never have cauſe to be aſhamed of other.

'I ſhall long impatiently to hear from you after your getting to *London* 'and *Edinburgh*; and pray do not fail writing after your coming to both 'Places, and have ſeen People.

'Send me your Addreſs, and you may be ſure of hearing from me 'when it can be of any uſe. Pleaſure it would be always to me, but that 'muſt yield ſometimes to Circumſtances.

'My Family ſalute you, and wiſh you all Happineſs; as I do, who am 'ſincerely and affectionately yours, *&c.* *Adieu.*

'I wiſh you may have ſomething agreeable to tell me of your Brother 'and Uncle when you have ſeen them, and remember me kindly to your 'Father-in-law. Sure we muſt all wiſh the ſame way to our Country.

'What is become of our Couſin *Will*, who I hear is ſtill where you 'have been for ſome time?'

Your Committee likewiſe find evident Footſteps of this treaſonable Correſpondence (*k*) from *Ireland*; but having already ſhewn ſufficiently the Extenſiveneſs of the Conſpiracy, they forbear to tire the Houſe with any further Particulars.

Your Committee have now gone thro' the ſeveral Matters, that appear'd to them from the Examinations of the Perſons or Papers referr'd to them; and they are in hopes, that in reporting every Circumſtance, that ſeem'd material, they have ſtrictly comply'd with the Intentions of the Houſe in appointing them.

If the frequent Repetitions of the ſame Matter have ſwell'd the Report into too great a Length, they are perſuaded the Houſe will excuſe it, ſince it was in all the Places where they have done it, neceſſary to explain the Paſſages related, or elſe to ſhew the Connection of the Treaſons, as well as the Co-operation of the Conſpirators, in their wicked Deſign of dethroning his moſt ſacred Majeſty, and overturning our preſent happy Eſtabliſhment in Church and State.

ON *March* 8. The Houſe proceeded to take the ſaid Report into Conſideration. Whereupon the Houſe came to the following Reſolutions, *viz.*

'That upon Conſideration of the Report, and the ſeveral Papers and 'Examinations relating to the Conſpiracy, it appears to this Houſe, That 'a deteſtable and horrid Conſpiracy has been formed and carried on by Perſons of Figure and Diſtinction, and their Agents and Inſtruments, in 'conjunction with Traitors abroad, for invading theſe Kingdoms with 'foreign Forces, for raiſing Inſurrections and a Rebellion at Home, for 'ſeizing the *Tower* and City of *London*, for laying violent Hands upon 'the Perſon of his moſt ſacred Majeſty and the Prince of *Wales*, in order 'to ſubvert our preſent happy Eſtabliſhment in Church and State, by 'placing a *Popiſh* Pretender upon the Throne.

'That it appears to this Houſe, that *John Plunkett* has been a principal 'Agent and Inſtrument in the ſaid horrid and deteſtable Conſpiracy, and 'has carried on ſeveral treaſonable Correſpondences, to procure a foreign 'Force to invade theſe Kingdoms, and to raiſe inſurrections and a Rebellion 'at Home, and was engaged with others in the villainous and execrable 'Deſign of laying violent Hands upon His Majeſty's moſt ſacred Perſon.

'That it appears to this Houſe, that *George Kelly* alias *Johnſon*, has been 'a principal Agent and Inſtrument in the ſaid horrid and deteſtable Conſpiracy, and has carried on ſeveral Treaſonable Correſpondences, to 'raiſe Inſurrections and a Rebellion at Home, and to procure a foreign 'Force to invade theſe Kingdoms from Abroad.

'That it appears to this Houſe that *Francis* Lord Biſhop of *Rocheſter* 'was principally concern'd in forming, directing and carrying on the ſaid 'wicked and deteſtable Conſpiracy, for invading theſe Kingdoms with a 'Foreign Force, and for raiſing Inſurrections and a Rebellion at Home, 'in order to ſubvert our preſent happy Eſtabliſhment in Church and State, 'by placing a *Popiſh* Pretender upon the Throne.'

In purſuance of theſe Reſolutions, it was order'd by the Houſe, that Bills of Pains and Penalties ſhould be ſeverally brought in againſt the ſaid *John Plunkett*, *George Kelly*, and *Francis* Lord Biſhop of *Rocheſter*.

March 14. The Houſe came to a Reſolution to communicate their Report to the Lords at a Conference, and alſo *(having obtained the King's leave)* the Letters and Papers relating to the Conſpiracy.

March 16. The Houſe of Lords choſe the following Peers to be a Committee to enquire into the ſaid Conſpiracy.

His Grace the Duke of *Dorſet*.	The Lord *Lonſdale*.
His Grace the Duke of *Montroſe*.	The Lord *Torrington*.
The Earl of *Scarborough*.	The Biſhop of *Lincoln*.
The Earl of *Lincoln*.	The Biſhop of *Saliſbury*.
The Earl of *Ilay*.	

This Committee made their Report on *April* 23d, which was as follows:

THE Committee to whom the Report and Original Papers relating to the Conſpiracy, delivered by the Houſe of Commons at ſeveral Conferences were referred, and who were empowered by your Lordſhips to examine *Chriſtopher Layer*, and ſuch other Perſons as they from time to time ſhould think proper; having carefully compared the ſaid Report with the Original Papers referred to them, and having examined ſeveral Perſons in relation to the treaſonable Practices and Correſpondences therein ſet forth, are fully ſatisfied and convinced, that a deteſtable and wicked Conſpiracy has been formed and carried on for ſoliciting a Foreign Force to invade theſe Kingdoms, for raiſing a Rebellion, and inciting Inſurrections in *London*, and divers other Parts of *Great-Britain*, and even for laying violent Hands on the ſacred Perſon of his Majeſty, and on his Royal Highneſs the Prince of *Wales*, in order to deſtroy our Religion and Conſtitution, by placing a Popiſh Pretender on the Throne.

And the Lords Committees think themſelves obliged in Juſtice to obſerve, that the extraordinary Vigilance and Application which has been ſhewn by the Houſe of Commons in detecting this Scene of Iniquity, and laying its moſt hidden Springs in ſo full and clear a Light, as it has greatly contributed to the Publick Safety, by opening the Eyes, and awakening the juſt Reſentment of an injur'd

(*a*) I. 1. (*b*) E. 1. (*c*) F. 11. *a*. (*d*) I. 9. (*e*) I. 17. (*f*) B. 36. (*g*) I. 9. (*h*) I. (*i*) A. 42. (*k*) I. 7, 8. (*l*) I 10. (*m*) I 10. (*n*) K 1—3.

Nation;

Nation; ſo it cannot fail to excite a proportionable Zeal and Emulation in your Lordſhips, for concurring with that Houſe in the no leſs neceſſary Work of bringing the Authors of theſe wicked Deſigns to ſuch exemplary Puniſhment, as may be a laſting Admonition to Poſterity, that Artifice and Diſguiſe can no more leſſen the Danger, than mitigate the Guilt of Treaſon; and that they act under a fatal Deluſion, who hope to abuſe the Lenity of our Laws to the Ruin of our Conſtitution.

The Lords Committees think it a ſtrong Confirmation of the Truth and Exactneſs of the ſaid Report, that ſeveral material Obſervations which are there advanced as grounded on probable Conjectures only, have ſince been amply verified and ſupported by freſh Diſcoveries, ariſing from the Papers lately referr'd to them by your Lordſhips; which Papers are contain'd in an (*a*) Appendix annex'd to this Report.

The Intelligence ſent by Colonel *Stanhope*, and Sir *Anthony Weſtcombe*, in relation to the Pretender's Ships under *Morgan*, as well as the Explication given by the Committee of the Houſe of Commons to ſeveral of the fictitious Names in the intercepted Correſpondence, is very much illuſtrated and confirmed by Papers ſeized on board the *Revolution*, and by the Examinations of ſome of the Priſoners belonging to that Ship.

It appears by (*b*) thoſe Papers and Examinations, that *Morgan*, who went by the Name of *Walton*, and *Gallwey* (an *Iriſh* Roman Catholick), who went by the Name of *Gardiner*, with others acting under their Direction, have for ſeveral Years paſt been employ'd in fitting out Ships under *Engliſh* Colours, which were ready on all Occaſions to attend the Motions of the Pretender, who in (*c*) ſeveral of the Letters is ſtyled *their King*, and *their Royal Maſter*. That the Money for theſe Ships was ſupply'd (*d*) partly by Perſons in *England*, (*e*) partly by *Waters* the Banker at *Paris*, and (*f*) partly by the late Duke of *Ormond*: That one of theſe Ships, in the Year 1719, (*g*) was ſent by *Morgan* to the *Groyne*, with an Expreſs to fetch the late Duke of *Ormond* to *England*; at which time it appears, (*h*) that *Morgan* and *Gallwey* were promis'd a Supply of fifty thouſand Pounds from Friends in *England*; that others of theſe Ships lay hovering about the Coaſt of *Britanny* from the Year 1718 to 1721 (*i*), expecting to be employed either by *Cane* and *Chivers* (General *Dillon*) or (*k*) by *Hore* (Sir *Harry Goring*), in what they call their *Home Trade*. That in the Year 1721, deſpairing of any Employment of this kind, on account, as is expreſs'd in (*l*) one of their letters, of *Hore* and his Partners being Cowards in *Trade*, they engaged themſelves in the Service (*m*) of the *Swediſh Madagaſcar* Company, and in *December* 1721, rendezvouz'd in the Bay of *Cadiz* for this purpoſe; but this Project likewiſe failing, on account of ſome Deficiency on the Part of the *Swedes*, *Morgan* waited on the late Duke of *Ormond* at *Madrid*, and was by him ſupplied with twelve thouſand Pieces of Eight, for fitting out the Ships *Lady Mary* and *Revolution* (*n*) for the Pretender's Service; (*o*) ſoon after *Morgan*'s Return to *Cadiz*, the Arms and Ammunition which had been prepared for the *Madagaſcar* Voyage, conſiſting of two thouſand Muſkets, two thouſand Bayonets, one thouſand Carbines, four hundred Barrels of Powder, and a proportionable Quantity of Match, Flints, *&c.* were conſigned to *Morgan*, and by him put on board the Pretender's Ship called the *Lady Mary*; and *Morgan* having embarked on board the ſaid Ship with ſeveral *Iriſh* Officers, ſet Sail from the Bay of *Cadiz* the latter End of *April* 1722, and went firſt (*p*) to *Sanctlo Antonio*, and then to *Sanctlo Andero* in the Bay of *Biſcay*.

The Committee having ſent for Mr. *Guſtavus Bâhr*, formerly a Captain in the *Swediſh* Service, who being at *Cadiz* on account of the *Madagaſcar* Expedition, had occaſion to tranſact ſeveral Affairs with *Morgan*, and the other Officers of the Pretender's Ships, they were informed by him, that the Arms above-mentioned were brought, Part of them from *Gottenburg*, and Part from *Hamburg*, by one of the Pretender's Ships, named the *Fortune*, commanded by one *Butler*. That two thouſand of the ſaid Arms belonged to the *Swediſh Madagaſcar* Company, and were delivered by him, *Bâhr*, to *Morgan*.

That the Remainder, which belonged to Count *Rhenſtierna*, a *Swede*, were alſo purchaſed by *Morgan*, but not till ſome Weeks after the firſt two thouſand. That *Morgan* went to *Madrid*, and returned with twelve thouſand Pieces of Eight in Bills and Money, which Sum he, *Bâhr*, ſaw in *Morgan*'s Hands. That Baron *Seebach*, and one *Oſthoff* (who are frequently mention'd in *Morgan*'s Letters), as alſo Count *Rhenſtierna*'s Agent, who delivered the Arms to *Morgan*, declar'd to him, *Bâhr*, ſince his Return to *Gottenburg*, That *Morgan* was ſupplied with theſe twelve thouſand Pieces of Eight from the late Duke of *Ormond*, and that the Arms were paid for out of the ſaid Money. And *Morgan*'s Son being examined by the Committee, owned that his Father went at that time to *Madrid*; that the late Duke of *Ormond* was then there, and that his Father did there receive Bills for fitting out the Ships, but from whom he cannot tell.

Bâhr farther declared, That all the *Swediſh* Officers at *Cadiz* looked on *Morgan*'s Ships as belonging to the Pretender, and ſpoke of them in all Converſations as ſuch, which was confirmed to him expreſly by Baron *Seebach* and *Oſthoff*. And one of the Sailors of the ſaid Ships owned to the Committee, That they went from Port to Port without taking in any Cargo; That they had ſometimes but ſixty, and ſometimes one hundred and thirty Men on board the *Revolution*, and often received Orders for ſailing with all poſſible Expedition; which Orders were afterwards countermanded, without any apparent Reaſon for one or the other; and that this unaccountable Proceeding ſatisfied him the ſaid Ships were engaged in ſome unwarrantable Deſign. *Bâhr* farther declared, That *Oſthoff* told him, the Ship *Revolution* was at firſt purchaſed in *England*, for tranſporting the late King of *Sweden* in Perſon, in his projected Deſcent on *Scotland*; and that he, *Bâhr*, ſaw the Name *Carolus* ſtill ſtanding in the Cabin of the ſaid Ship, when he was laſt on board her. And *Morgan*'s Son owned, That he had obſerved the Arms of the Crown of *Sweden* in the ſaid Cabin, which he ſuppoſed were placed there as a Token that the ſaid Ship was engaged in the Service of the *Swediſh Madagaſcar* Company; though he owned that the other Ships engaged in the ſame Service had no ſuch Token.

Some of the Particulars above related, do very much explain and confirm (*q*) *O*———'s Letter to *L*—— of the 27th of *April*, as alſo (*r*) thoſe to *Dumville* and *Dodſworth*, in which it is ſaid, That the Hopes of Remittances from Perſons in *England* had induced *O*—— to ſupply *M*— (which appears to be *Morgan*). That *O*—— could depend on two thouſand Arms from *M*—— (which appear to be the two thouſand Arms delivered to *Morgan* by *Bâhr* (*s*) before the Date of *O*——'s Letter). That *M*——— had writ from *C*—— (which appears to be *Cadiz*) that he could get more Arms if he had more Money; and accordingly the Committee find that a ſecond Supply of Arms was purchaſed by *Morgan* from Count *Rhenſtierna*'s Agent. *O*—— in his (*t*) Letter to *L*——, dated the 27th of *April*, ſays, 'I have order'd *M*——'s Ship to come to *A*——;' and it (*u*) appears that *Morgan* did at that very time embark on board the *Lady Mary*, with the Arms above-mentioned, and (*x*) went firſt to *Sanctlo Antonio*, and ſoon after to *Sanctlo Andero*.

The Sailors on their Examination having mentioned one *Hilton*, as commanding a Ship under *Morgan*, and the Committee finding a (*y*) Letter from *Morgan*, directed to *Don Nicholas*, which in a ſubſequent (*z*) Letter is mentioned to have been writ to the ſaid *Hilton*, they thought it probable *Hilton* might be a fictitious Name for *Nicholas Wogan*, in the ſame manner as *Walton* was for *Morgan*, and *Gardiner* for *Gallwey*. Having accordingly examined the Sailors as to this Particular, one of them ſaid, He believed *Hilton* was a fictitious Name; and *Morgan*'s Son owned that *Hilton*'s true Name was *Nicholas Wogan*, and that he had been confined in *England* on account of the *Preſton* Rebellion, as he was told by *Nicholas Wogan* Jun. who went by the Name of *Paterſon*: and one of the Sailors declared, That the ſaid *Wogan* Sen. obtained the Command of one of the Ships under *Morgan*, after their Arrival in the Bay of *Cadiz*.

Theſe Particulars agree with *Glaſcock*'s (*aa*) Letter to *George Kelly* of the 24th of *April*, *O. S.* in which he mentions *Nicholas Wogan* by the Name of *Xeland*, as being to have the Command of a Veſſel at *Cadiz* to cruiſe againſt the *Turks*, or *for other Views*, on which he will not pretend to decide; and *Kelly* (*bb*) anſwering this Letter, wiſhes *Wogan*'s *Chief* may ſucceed in his Journey. The ſame Particulars confirm Mr. *Crawford*'s (*cc*) Letters of the 18th and 25th of *July*, by which it appears, that the two *Nicholas Wogans* were at that time come to *Morlaix*, expecting *Morgan*'s Ships to follow them to that Port, in order to their ſetting ſail for *England*; that the eldeſt of them was to have been Captain, and the other Lieutenant of one of thoſe Ships, and that they owned the Project in *Spain*, by what they had learnt of it, was for the late Duke of *Ormond* to have landed in the *Weſt* with *Iriſh* Officers and Arms.

On the 8th of *June*, *N. S.* Colonel *Stanhope* (*dd*) writ Word, that the late Duke of *Ormond* was preparing to embark with Arms and Officers for *England*. And your Committee find, that (*ee*) about that time the Ship *Revolution* ſet Sail from the Bay of *Cadiz*: That the Sailors knowing the *Madagaſcar* Voyage to be dropped, refuſed to do their Duty till they were ſatisfied as to the Place they were deſigned for: That hereupon *Gallwey* aſſured them it was to *Gibraltar*, in order to clean the Ship; but having got them under ſail, and ſatisfied them about their Wages, they proceeded to the Bay of *Biſcay*: That they put in at *Sanctlo Antonio* to take *Morgan* on board, and then joined the *Lady Mary* at *Sanctlo Andero*. That upon their Arrival at this Place, the common Report on Shore was, That the late Duke of *Ormond*, and four Companies of Soldiers, were to be taken on board the *Revolution*: That Corn and Cattle were provided for the ſaid Soldiers; and that the late Duke of *Ormond* was within a ſhort Day's Journey of *Sanctlo Andero*: That hereupon the firſt and ſecond Mate of the ſaid Ship, ſuſpecting *Gallwey* to be engaged in ſome unwarrantable Deſign, agreed not to ſerve any longer, unleſs *Gallwey* would give them a Note under his Hand that they were forced into the Service, and would alſo declare whither they were bound, and give them Security that they ſhould not be employed in any other Voyage than ſuch as he ſhould declare to them; whereupon one of them was confined, and the other diſcountenanced by *Gallwey*.

But that *Gallwey*'s real Expectations were to have come over with the late Duke of *Ormond*, appears to the Committee moſt evident from the (*ff*) Copy of a Letter of his, dated the 16th of *June*, the Day before he ſet ſail from *Cadiz*, in which are theſe Words, 'I hope the —— will ſet 'ſail to-morrow; your not repeating Orders and Advice concerning the 'Buſineſs in hand gives me a thouſand Apprehenſions; God ſend our 'Bankers and the reſt of our Friends are ſafe, and ſtand their Ground. I 'intend to embark myſelf on board the —— for fear *my dear Aunt* ſhould 'have any Occaſion for Aſſiſtance, of whom I am ſo tender that I would 'not if poſſible have the Care of her put into any other hands.'

The Committee obſerve, that the ſame Expreſſion of *My Aunt*, is uſed in the Letter to *Dodſworth*, with ſuch Circumſtances as make it highly probable, that in that (*gg*) Letter, as well as this of *Gallwey*'s, it denotes the late Duke of *Ormond*. They likewiſe obſerve, that the Names of *Mansfield* and *Medley* are uſed in *Morgan*'s and *Gallwey*'s Letters, in ſuch a manner as confirms thoſe Names to mean the late Duke of *Ormond*, agreeably to the Explication given them in the Report of the Committee of the Houſe of Commons.

Gallwey in his (*hh*) Letter of the 3d of *November* 1722, ſays, He has a couple of fine Grey-hounds, a Dog and a Bitch, for Mr. *Freeman*; the ſame Dogs are mentioned in (*ii*) another Letter, and in the (*kk*) Depoſitions of two of the Sailors, to have been a Preſent from the late Duke of *Ormond to the Pretender*: which confirms the Explication of the Name of *Freeman*, mentioned in the ſaid Report, to be true.

There was likewiſe ſeized on board the *Revolution*, a (*ll*) Letter to *Gallwey*, ſigned *John Obrien*; which appears to be in the ſame Hand-writing with the (*mm*) Letters ſigned *Gerrard* and *M. Digby*, taken among Mr. *Dennis Kelly*'s Papers, and confirms *Gerrard* to mean Sir *John Obrien*, one of *D.I-*

(*a*) *Number'd from* 1 *to* 48 *inclusive.* (*b*) 17—48. (*c*) 19, 20, 21, 25. (*d*) 23, 29, 31. (*e*) 17, 21, 22. (*f*) 17. (*g*) 36. (*h*) 23. (*i*) 22, 24, 27, 31, 32, 34. (*k*) 27, 31, 32. (*l*) 32. (*m*) 17. (*n*) 47, 48. (*o*) 17. (*p*) 47, 48. (*q*) AA. 5. (*r*) AA. 4, 6. (*s*) 17. (*t*) AA. (*u*) 17. (*x*) 47. 48. (*y*) 27. (*z*) 28. (*aa*) E. 31. (*bb*) E. 35. (*cc*) A. 30, 31. (*dd*) A. 15. (*ee*) 47, 48. (*ff*) 39. (*gg*) AA. 6. (*hh*) 42. (*ii*) 19. (*kk*) 47, 48. (*ll*) 26. (*mm*) F. 14, 28.

Gallwey, in a (*a*) Letter dated from *Alicant Bay*, the 13th of *September* laſt, expreſſes his Concern for *Kelly*'s Confinement, but hopes that is the worſt that can befal him; and a (*b*) Letter in *Kelly*'s Hand-writing ſigned *Ja. Johnſon*, directed for *Gardiner*, but encloſing a Note for twenty Guineas payable to *Gallwey*, was found on board the *Revolution*; as alſo a Direction entered with *Kelly*'s own Hand in a (*c*) Pocket-Book, ſuppoſed to belong to *Morgan*. *Kelly* in his Letters, acknowledges the Receipt of one from Sir *John* (which is probably their common Correſpondent, Sir *John Obrian*) and ſays their Friends in *Spain* are well, as one of the Family writes him word: which ſhews how extenſive *Kelly*'s Correſpondences were.

Gallwey in a (*d*) Letter from *Genoa* of the third of *November*, 1722, (which appears to have been writ to one of the Pretender's Family) ſays, he has acted for many Months paſt under the Direction of *Medley* (*Ormond*) who, he makes no doubt, has mentioned him to Mr. *Freeman* (the Pretendender;) yet in his (*e*) Letter to Lord *Carteret*, after his ſhip was taken, he has the Aſſurance to affirm, that he never ſaw the late Duke of *Ormond* ſince he left *England*, nor ever correſponded directly or indirectly with him or the Pretender, or any of their Adherents at home or abroad, but was always zealouſly well affected to his preſent Majeſty and our happy Eſtabliſhment.

Guſtavus Bâhr above-mentioned (*f*), depoſes among other Particulars, That he has been informed the Pretender's Agents had Arms for three thouſand Men, lodged at a Houſe belonging to the late Duke of *Ormond*, near *Morlaix* in *Britanny*; which Port the Committee obſerve was one of the uſual Stations of the Pretender's Ships under *Morgan*. And it appears probable, that theſe three thouſand Arms made Part of the ten Thouſand mentioned in *O*———'s (*g*) Letter to *L*—— as provided by *D*———, who is ſuppoſed to be *Dillon*.

Robert Franklyn, ſecond Mate of the Ship *Revolution*, (*h*) depoſes, That Letters directed to *John* or *James Jacobs* at *Genoa*, were taken up at the Poſt-houſe by *Gallwey*. The Committee obſerve, that *Jones* in his (*i*) Letter to *Chivers*, mentions his having communicated the Copies of *Manſfield*'s and *Jacobs*'s Letters; and *Glaſcock* in his (*k*) Letter to *George Kelly* of the firſt of *May*, ſays, 'He hopes Money is ſent to pay for the *Barrels* 'which *Jacobs* has at his Diſpoſal.' In both which Places it is probable, that *Jacobs* means *Gallwey*; and that *Barrels* means Stands of Arms, is confirmed by a (*l*) Letter of *Morgan*'s, in which ſpeaking of that very Ship that brought the Arms above-mentioned from *Gottenburg* and *Hamburg* to *Cadiz*, he ſays, 'She had received Orders for taking in nineteen *Barrels*, 'with every Thing neceſſary to make uſe of them:' Which laſt Words ſeem to refer to the Bayonets, Flints, and Powder. (*m*) The Intelligence ſent by Mr. *Craufurd*, on the 27th of *May*, That *Gordon* of *Boulogne* was to have a Ship ready to tranſport ſome of the Chiefs of the Conſpiracy to *England*, is confirmed by the Depoſition of *Roger Garth* (already publiſhed), who declares, 'That the ſaid *Gordon* (whom he had good Reaſon 'to believe to be an Agent of the Pretender's) did ſome Time laſt Sum-'mer endeavour to engage him to ply off of that Station with his Sloop, in 'order to carry over ſuch Perſons as he, the ſaid *Gordon*, ſhould recom-'mend to him, promiſing him that he ſhould have Employment 'enough.'

The Lords Committees conceive, that the ſeveral Particulars above related, will appear to the Houſe very much to corroborate the Accounts received from abroad, of Ships provided for tranſporting the late Duke of *Ormond* to *England*, with Arms and Officers, the Beginning of laſt Summer; and that they alſo confirm the Decyphering of the Letters, and Explication of the Names contained in the Report of the Committee of the Houſe of Commons.

The Lords Committees obſerving that ſome Paragraphs of the Letters referred to them were writ originally in Cypher, thought it proper to call the Decypherers before them, in order to their being ſatisfied of the Truth of the Decyphering. The Account they received from thoſe Perſons, was, that they have long been verſed in this Science, and are ready to produce Witneſſes of undoubted Reputation, who have framed Letters in Cypher, on Purpoſe to put them to a Trial, and have conſtantly found their Decyphering to agree with the Original Keys which had been concealed from them. It was likewiſe confirmed to the Committee, that Letters decyphered by one or other of them in *England*, had exactly agreed with the Decyphering of the ſame Letters performed by Perſons in foreign Parts, with whom they could have no Communication; and that in ſome Inſtances, after they had decyphered Letters for the Government, the Keys of thoſe Cyphers had been ſeized, and upon comparing them, had agreed exactly with their Decyphering.

With reſpect to the intercepted Letters in Queſtion, they alledged that in the Cypher uſed by *George Kelly*, they find the Words ranged in an alphabetical Order, anſwering the progreſſive Order of the Figures by which they are expreſſed, ſo that the farther the initial Letter of any Word is removed from the Letter A, the higher the Number is, by which ſuch Word is denoted: that the ſame Word will be found to be conſtantly denoted by one and the ſame Figure, except in the Caſe of Particles, or Words of very frequent Uſe, which have two or three Figures aſſigned to them, but thoſe always following one the other in a progreſſive Order. They likewiſe ſet forth, that in the Cypher above-mentioned, a certain Order is conſtantly obſerved as to the placing of the Words made uſe of, that under each Letter of the Alphabet the firſt Cyhers are allotted to the proper Names of Places, the next to the proper Names or Titles of Perſons, the next to whole Words in common Uſe, and the laſt to denote ſingle Letters.

As to the Truth of the Decyphering, they alledged that ſeveral Letters written in this Cypher had been decyphered by them ſeparately, one being many Miles diſtant in the Country, and the other in Town, and yet their Decyphering agreed; that Facts unknown to them and the Government at the Time of their Decyphering, had been verified in every Circumſtance by ſubſequent Diſcoveries, as particularly that of *H*-------'s Ship coming in Ballaſt to fetch *O*------ to *England*, which had been ſo decyphered by them two Months before the Government had the leaſt Notice of *Halſtead*'s having left *England*: That a Supplement to this Cypher having been found among *Dennis Kelly*'s Papers the latter End of *July*, agreed with the Key they had formed of that Cypher the *April* before: That the Decyphering of the Letters ſigned *Jones*, *Illington*, and 1378, being afterwards applied by them to others written in the ſame Cypher, did immediately make pertinent Senſe, and ſuch as had an evident Connexion and Coherence with the Parts of thoſe Letters that were out of Cypher, tho' the Words in Cypher were repeated in different Paragraphs, and differently combined. And they inſiſt that theſe ſeveral Particulars duly weighed, amount to a Demonſtration of the Truth of their Decyphering.

As to the other Cyphers made Uſe of by *Jernegan*, *Stanley*, and *Walter Grahame*, they conſiſt only of Twenty-four Figures, for the Twenty-four Letters of the Alphabet, and ſome other Figures for proper Names or whole Words, in the placing of which Names a certain Order is alſo obſerved.

Theſe ſeveral Particulars they declared themſelves ready to atteſt upon Oath, and to produce ſufficient Witneſſes to their Character and Integrity, as well as their Skill.

The Committee being empowered by your Lordſhips to examine *Chriſtopher Layer*, did accordingly ſpend ſome Time in the ſaid Examination, which produced a tedious Repetition of the Particulars contained in his Examination before the Committee of the Houſe of Commons, and ſome few Circumſtances which they found he had recollected by reading the printed Report and Appendix.

All that he confeſſed to them which is new, was, that he did, before his ſetting out for *Rome*, acquaint *Plunkett* with his Intentions of carrying over a Note of the Names of the Tory Gentlemen of *Norfolk*, if *Plunkett* thought it would be acceptable; that during his Stay at *Rome*, Sir *William Ellis* told him, That he had formerly correſponded with *Plunkett* at the Requeſt of the Lady *Middleton*, but that he had not, for ſome Time paſt, correſponded with *Plunkett*, or any one elſe, in relation to the Pretender's Affairs: for that from the Time of the Action at *Dumblain* ſo many *Scottiſh* Noblemen and Gentlemen had come over to the Pretender, that he and all the reſt of the old Servants had been forbid all Correſpondence in *England*, or elſewhere. Upon *Layer*'s deſiring leave to correſpond with him if it were practicable, he told *Layer*, that on Condition he would promiſe to write nothing but what might be ſhewn to the Pretender himſelf, he would ſettle a Correſpondence with him; for that tho' he had followed the Fortunes of the late King *James* and his Family, ever ſince the Revolution; and had always been faithful to the Pretender, and for many Years his Caſhier, yet if any of the *Scottiſh* Gentlemen that were about the Pretender, ſhould know he received a Letter without communicating it to him, it would coſt him his Place, and he ſhould be in utter Diſgrace: That *Layer*, promiſing to write nothing but what might be ſhewn, *Ellis* give him a Cypher of his own Hand-writing, as alſo another Cypher of cut Paper for carrying on the Correſpondence; that he, *Layer*, likewiſe ſettled a Cypher of fictitious Names with Mrs. *Hughes*, Nurſe to the Pretender's Child, and received a Letter from her in relation to the Chriſtening of his Daughter. He would not own that he knew of any other Cypher, and perſiſted that Mrs. *Kinder* meant the ſaid Mrs. *Hughes*, tho' in *Ellis*'s Cypher it ſtands for Mrs. *Fox*. He ſaid, that the Paper which he deſired a Copy of from Sir *William Ellis*, and which is referred to in (*n*) *Ellis*'s Letter of the 30th of *January*, was a ſhort Scheme relating to the *Preſton* Affair, ſhewn him by *Ellis* while he was at *Rome*, of which he remembers no other Particulars, but that Inſurrections were to be begun in ſeveral Counties in a dark Night. That when he made Application to *Plunkett* for the fictitious Names of *Burford*, *Steele*, &c. he was forced to acquaint *Plunkett* with his having ſettled a Correſpondence with *Ellis*, which *Plunkett* reſented, and ſaid he thought *Ellis* had been forbid all Correſpondence with Perſons here. That the Reaſon of his aſking *Plunkett* for a fictitious Name for Lord *Orrery*, was, that he had Occaſion to mention to *Ellis* a Club which *Plunkett* had often told him of; that *Plunkett* once ſhewed him a Liſt of this Club, of his own Hand-writing, which he read over two or three Times, but that *Plunkett* talked ſo inconſiſtently of them, that he, *Layer*, verily believes it was a mere Fiction of his own, and that there never was any ſuch Club. That he, *Layer*, thinks Lord *Orrery* mentioned to him Lord *Strafford*, as one of thoſe, who, with Lord *North*, Sir *Harry Goring*, and others, were (as Lord *Orrery* was informed) going to do a raſh Thing in favour of the Pretender; but that he cannot be poſitive as to Lord *Strafford*. That he, *Layer*, wrote himſelf to the Pretender concerning the Difference of Opinion which he obſerved in Lord *North* and Lord *Orrery* about the Means of reſtoring him, and the Neceſſity there was that the Regent ſhould permit General *Dillon* to come over here with ſome foreign Forces. That he alſo drew up a Scheme of a Lottery to have been opened here in favour of the Pretender, and encloſed the ſaid Scheme in a Parcel with ſome ſilk Stockings, which he ſent as a Preſent to the Pretender and his Spouſe by *Andrew Haye*, who travelled to *Italy* with Alderman *Barber*. That he delivered this Parcel to *Haye* with his own Hands, who promiſed to convey it to *Ellis*, and ſaid he could do it with Safety. That *Haye*, as he believes, underſtood the Stockings to be for the Pretender and his Spouſe: That he likewiſe had ſome Diſcourſe with *Haye* about getting Copper-plates engraved at *Rome* in *Engliſh* and *Italian* for the Tickets of the ſaid Lottery, and deſired him to receive Sir *William Ellis*'s Directions about it; which *Haye* promiſed to do. That while he, *Layer*, was at *Rome*, *Haye* aſked him whether he would not ſee the King, meaning the Pretender; and that the ſaid *Haye* went frequently to the Pretender's Family in the Way of his Buſineſs, and was, as he believes, preſent while the Pretender's and his Spouſe's Pictures were drawn.

Haye being examined by the Committee, owned the Receipt of the Stockings, but denied their being delivered to him by *Layer*, or that he knew who they were for. He likewiſe owned the carrying a Packet to *Belloni*, the Banker at *Rome*, which was brought to him by a Porter from *Layer*, as he ſuppoſed.

(*a*) 40. (*b*) 46. (*c*) 45. (*d*) 42. (*e*) A. 45. (*f*) 17. (*g*) A A. 5. (*h*) 48. (*i*) D. 10. (*k*) E. 37. (*l*) 27. (*m*) A. 9. (*n*) B Y 38.

Layer owns, that *Haye* told him *Belloni* was the Pretender's Banker; but denies his ſending any ſuch Packet by *Haye:* And in ſeveral other Particulars of their Examinations they contradicted each other.

(*a*) A Scheme of the Lottery above-mentioned (for raiſing 225,000 Pounds Sterling) having been found among the Papers of *Walter Jeffereys*, now in Cuſtody, the Lords Committees thought proper to examine him how he came by it. He owned his being acquainted with *Layer* and *Plunkett*; that he ſaw *Layer* about the Time of his going abroad, and helped him to a Bill on a Banker at *Antwerp:* But he denied his knowing from whom he received the ſaid Scheme, or his having had any Converſation with any one about it; and ſaid it might be put into his Hands by *Plunkett*, for aught he knew, but that he was not ſure he had ever read it; and if he had known ſuch a Paper had been in his Cuſtody, he ſhould have deſtroyed it.

The Lords Committees being informed that *Layer*, between the Time of his delivering the larger and leſſer Bundle of Papers to Mrs. *Maſon*, had deliver'd to her a large Parcel covered with blue paper and ſealed in ſeveral Places, and that he did within a few Days after take it back again, telling her he wanted to carry it to Lord *North* and *Grey*'s: They examined *Layer* particularly on this head; but he denied that he ever delivered her any ſuch Bundle.

The Lords Committees next proceeded to the Examination of *John Plunkett*, who began with large Proteſtations of his Innocence, and offered of himſelf to account for three Facts charged upon him in the Report, and to ſhew they were great Miſtakes. The firſt was, his receiving a Letter from *George Kelly*; the ſecond, his receiving the Letter at *Antwerp*, ſigned *Dixwell*; and the third, his receiving the Letter from the Pretender, taken at Mrs. *Creagh*'s. And as in his Examination before the Committee of the Houſe of Commons he had fallen on the Expedient of ſubſtituting *Hugh Thomas* to perſonate *Rogers*, ſo now they found he had furniſhed himſelf with three different Perſons, at different Places, all of the Name of *Plunkett*, to whom he would have it believed theſe Letters were written, without offering any the leaſt Proof or Circumſtance of Probability to ſhew that ſuch Perſons were at all concerned in thoſe Letters, or that there ever were any ſuch Perſons in being.

The Letter from *George Kelly*, he ſaid, was not writ to him, but to one *Harry Plunkett*, who delivered it to him at *Will*'s Coffee-Houſe, *Covent-Garden*, and that it related to ſome Money that was to be raiſed on a Security of Mrs. *Barnes*'s.

As to the Letter ſigned *Dixwell*, he ſaid, there were two Clergymen of the Church of *Rome*, one or both of which travelled with him and *Layer* from *Dover* to *Antwerp*; that one of them went by the Name of *Lloyd*, but his real Name was *Plunkett*. That this Man dropped the letter ſigned *Dixwell* at a Coffee-Houſe; and he, *John Plunkett*, taking it up with a Deſign of reſtoring it to him in *Lorrain*, (to which place ſometimes one, and ſometimes both of theſe Clergymen were gone) ſhewed it to *Layer*, who took it into his Head that this letter had been writ to him, *John Plunkett*.

The Letter from the Pretender, he ſaid, fell into his Hands much in the ſame manner: That there is one Father *Plunkett* at *Rome*, to whom the Pretender always writes when any Body is to be introduced to him. Being aſked whether Father *Plunkett* travelled with *Layer* to *Rome*, (becauſe Mention is made in the Pretender's Letter of a Companion of *Plunkett*'s) he ſaid the Pretender always called the Perſon that was to be introduced by Father *Plunkett*, his Companion. That this Father *Plunkett* happening to ſhew him this Letter, and commending the Hand, he, *John Plunkett*, ſaid he had a Friend at *Rome* that would be glad to ſee the Pretender's Hand-writing. And Father *Plunkett* having accordingly left the Letter with him, he ſhewed it to *Layer*, and forgot to return it to Father *Plunkett*, who never called for it, having fifty more Letters of the ſame kind by him.

Upon the Lords Committees aſking him, whether he went by the Name of *Rogers?* He ſaid he went by ſeveral Names in his Travels, that he might not be impoſed upon in his Reckonings as the *Engliſh* generally are. Being aſked, whether he took the Name of *Rogers* to prevent his being thought an *Engliſhman?* He ſaid that in *Italy* he was called *Rogieri*.

They farther aſked him, whether he had dictated any fictitious Names to *Layer*, or had mentioned any Thing to him of a *Club?* To which he anſwered, That he had given *Layer* the fictitious Name of *Bedford*, or *Burford*, for Lord *Orrery*, which Name he had from *Neynoe*. That one Night being in company with *Layer*, and ſome Clergymen whoſe Names he has forgot, the Diſcourſe turning on the Proteſts of the Lords, and the Names that were ſubſcribed to them, one of the Company ſaid, Theſe are a Loyal Club; another ſaid, They are Jacobites; and that he, *Plunkett*, ſaid, There was a Loyal Club of eighty or ninety Lords who would ſtand in Defence of their Country.

He farther obſerved to the Committee, That in the Bill now depending before your Lordſhips, he is not mentioned by the Name by which he was baptized and confirmed: He ſaid, his Surname was *Plucknett*, but his Chriſtian Name he declined telling; and ſeemed to place ſome Hopes and Confidence in this Subterfuge.

The Committee finding him trifle with them in this egregious Manner, aſked him in general, whether he had ever been in Conference with the Pretender, or had correſponded with him, or any of his Agents? To which he anſwered in the Negative.

The Committee next ſent for *George Kelly*, who told them that the Affair being ſoon to be brought before your Lordſhips, he deſired to be excuſed from anſwering any Queſtions; ſo that they had no Opportunity of examining him as to the new Matters alledged againſt him in the Depoſitions of Mr. *Philip Caryll* and others.

However, they thought it proper to ſend for the ſaid Mr. *Caryll*, and to aſk him, whether he had any thing to add to, or to retract from his former Accounts? His Depoſitions being read over to him, he expreſſed himſelf very angry and uneaſy at their being made Publick; and told the Committee he was not diſpoſed to anſwer any farther Queſtions, being ſorry for what he had ſaid already; he likewiſe inſinuated, that what he had ſaid had not been taken down exactly as he dictated it, and ſeemed apprehenſive that he was called upon to accuſe himſelf of Matters that might be prejudicial to him. But upon the Committee's telling him that the moſt effectual Way he could take to do himſelf Service, was to make a candid and ingenuous Diſcovery of the whole Truth, he ſaid he had already given a candid Account, and hoped he ſhould not have been a Sufferer for his Candour. Being aſked, whether his Depoſitions had not been read over to him before he ſigned them? He ſaid they were; but that he was in a great Confuſion at the Time they were taken. Being then required by the Committee to read them over himſelf, and to ſhew in what Particulars they vary from his Senſe and Meaning, he grew more compoſed; and having read over the firſt, dated the 27th of *March*, ſaid, he believed it was right enough. In reading over the ſecond (dated the 29th of *March*) he ſaid it was not ſtrictly true that Sir *Harry Goring* had *told him* what is there related concerning an Invaſion, Commiſſion, *&c.* but that it was true, he had heard Sir *Harry Goring* ſay ſo; that as to Lord *Landſdown*'s being to land in the *Weſt*, he could not be poſitive, but he thinks Sir *Harry Goring* ſaid ſo. He ſaid, it was but a Suppoſition of his own, that the Diſcourſe which occaſioned the Biſhop of *Rocheſter*'s taking Sir *Harry Goring* by the Collar, related to the Pretender's Affairs: But that he remembers very well, Sir *Harry Goring* did affirm, that on his ſaying the Words there recited, (*this is Rocking the Cradle indeed*) the Biſhop did take him by the Collar, and that he, *Caryll*, did *apprehend* the ſaid Diſcourſe to have Relation to the Pretender's Affairs. He ſaid it was about two Years ago that being at Sir *Harry Goring*'s he ſaw a Letter lie on his Scrutore, directed to Mr. *Hore*, and upon his aſking Sir *Harry* who the ſaid letter was for? Sir *Harry* told him it was writ to himſelf. He ſaid that the Words in his Depoſition which import, that he, *Caryll*, *had Reaſon to believe Kelly* and Sir *Harry Goring* were ſettling together a Key at his Houſe at *North*, by which they might correſpond, are too ſtrong; for that he, *Caryll*, did not ſee any ſuch Key, only it was his Suſpicion and Thought at that Time that they were framing ſuch a Key.

He likewiſe ſaid, that what relates to *Boyce* in the ſaid Depoſition is rather ſtronger than he meant it; for that *Boyce* only told him he was afraid the Servant, he, *Caryll*, had ſent to him to help off, was *Sample*; alledging this Reaſon, that he had obſerved he was diſguiſed, and that he was afraid he was ſomewhat like the Deſcription given of *Sample* in the Proclamation. All the other Particulars of his Depoſitions he averred to be true, but ſaid, he had nothing farther to add, and that he would rather a thouſand Times die in *Newgate* than be an Evidence.

Boyce, being examined by the Committee, owned that Sir *Harry Goring* went to *France* in his Yacht, and that a Servant went over with him in a Black Wig, whom he had never ſeen with Sir *Harry Goring* before; but he utterly denied his having conveyed over any Perſon ſent to him by Mr. *Caryll*, or his having had any Diſcourſe with *Caryll* about any Perſon's anſwering the Deſcription of *Sample*.

The Committee having ſummoned before them *William Beaſing* of *Horn Dean*, and having read to him his former Depoſitions, find that he retracts what he had there depoſed on Oath, of *Caryll* and Sir *Harry Goring*'s being in Company at his Houſe with the Perſon who had but one Hand: He ſays, ſuch a Perſon was at his Houſe with two other Gentlemen, but that he now recollects *Caryll* and Sir *Harry Goring* were not there at that Time. Being aſked whether he had received any Letter or Meſſage, ſince his being in Cuſtody, which had helped to ſet him right in this Particular? He anſwered in the Negative.

The Committee obſerve from the Parts of Mr. *Caryll*'s Depoſitions which he affirmed, that the Explication given to the Name of *Hore*, in the Report of the Committee of the Houſe of Commons, as alſo the Decyphering of that Part of *Kelly*'s (*b*) Letter which mentions *Hore*'s Commiſſion, and the Conjecture of *Goring*'s having carried over a new Cypher from *Kelly* to *France*, are very much confirmed. They likewiſe obſerve, that what is ſaid in *Glaſcock*'s (*c*) letter to *Kelly* of the $\frac{5}{17}$ of *October*, concerning the Arrival of the little *French* Merchant, mentioned by *Kelly*, and the Precaution they intend to uſe in relation to him till ſome other appears with whom they may talk of Buſineſs more to the Purpoſe, has probably relation to *Sample*'s being got ſafe to *France*. And the letters ſigned *Fra. Phillips*, which *Caryll* owns he received from *Kelly*, not only confirms *Kelly*'s writing by fictitious Names, but is a ſtrong Argument of his being the Perſon that writ the (*d*) Letter to *Bonnaville* of the 27th of *September*, and conſequently the other Letters charged upon him in the Report. For as in his Letter to *Caryll*, he ſays, '*I have never heard a Syllable* from your other Lawyer, (Sir *Harry Goring*) ſince you and I were with him, which you'll ſay is *pretty ſurprizing*, and am afraid very *detrimental*.'----So in that to *Bonnaville* (writ within five Days of the other) he ſays, '*I have not heard a Syllable* from *D. Gainer*, or *G. Roberts*, ſince Mr. *G. Sampſon* went, which has been a great *Surprize*, and I may ſay no ſmall *Detriment*, to ſome of their Friends.'

This Identity of Expreſſion, in two Letters writ ſo near the ſame Time, appears to be a farther Confirmation that the ſame Perſon writ them both, and confirms *G. Sampſon* to be the ſame with the *other Lawyer*, which *Caryll* has explained to mean Sir *Harry Goring*.

The Lords Committees alſo find in the Papers referred to them new Evidence of *Kelly*'s viſiting, writing to, and receiving Letters from the Biſhop of *Rocheſter*, as appears by (*e*) Affidavits from the Perſons who carry'd *Kelly* to the Biſhop's Houſe, and who alſo delivered Letters from him to the Biſhop, and brought back the Biſhop's Anſwers; and Mrs. *Levett* (*f*) depoſes on Oath, that Mrs. *Barnes* has told her, *Kelly* received in one Day as many Letters from abroad as came to fourteen or fifteen Shillings, the Directions of which ſhe, *Barnes*, ſaw, but they were in ſuch odd fictitious Names, as no one could find out but *Kelly*, who had the Key; that among theſe Letters there was one for the Biſhop of *Rocheſter*, (as *Kelly* told her) which he was at that Time gone to deliver to the Biſhop. And *John Malone* (*g*) depoſes, That among the Letters which he carried from *Kelly* to the Poſt, there were ſome

(*a*) 1. (*b*) E. 35. (*c*) E. 79. (*d*) E. 75. (*e*) 13, 14. (*f*) 11. (*g*) 12.

directed to *Waters*, the Banker at *Paris*, under whoſe Cover it appears that moſt of the treaſonable Letters were ſent; and the original (*a*) Letter in *Kelly's* own Hand ſtopt at the Poſt-Office was encloſed in a Cover ſo directed. Mrs. *Levett* farther (*b*) depoſes, That Mrs. *Barnes* told her, under Secrecy, that the Dog ſent from *France* was a Preſent *from the late Lord Marr* to the Biſhop of *Rocheſter*'s Lady; which is in ſome meaſure confirmed by the Draught of the Affidavit prepared for *Birmingham* at *Paris*, in which he is deſired to ſwear that Lord *Marr* knew nothing of any ſuch Dog. And tho' this Affidavit does not appear to have been ſent over by *Kelly* directly, yet expreſs Mention is made in the Letter to *Gordon*, that the ſaid Affidavit is the Copy of a Note from the Perſon concerned with the Subſtance of what *he thinks requiſite*. This Circumſtance of the Dog's having been ſent by the late Lord *Marr*, which is not expreſly alledged in any Part of the Report of the Committee of the Houſe of Commons, is a new Confirmation that the (*c*) Letter ſigned 918, which mentions the ſending the Dog, is from *Marr*; and that *Muſgrave*, to whom the Receipt of the Dog is acknowledg'd in (*d*) two ſeveral Letters, is likewiſe a Name denoting *Marr*, agreeably to what is aſſerted in the ſaid Report.

The Committee find by (*e*) two Affidavits referred to them, that *George Kelly*, the laſt time he was taken into Cuſtody, offered the Woman of the Houſe a Gold Watch, forty Guineas in Money, and a Note for forty Pounds more, to let him eſcape.

The Committee have laid the Subſtance of theſe ſeveral Examinations together, as having ſome Reference to *George Kelly*.

They likewiſe examined Mr. *Dennis Kelly*, who utterly denied his being adviſed with, or knowing any thing relating to any Conſpiracy. Several Papers found in his Cuſtody being ſhewn to him, he denied his having ever ſeen them before, except when ſome of them were ſhewn to him, at former Examinations.

They next ſent for Captain *Pancier*, and having ordered his (*f*) former Depoſitions to be read to him, aſk'd him whether he had any thing to add or retract? He affirmed every Part thereof to be true, and ſaid he had only this farther Particular to add, That having lately ſeen *George Kelly*, as he was brought down to the Houſe of Commons; he recollects that he has often ſeen him at the Gaming-Tables with *Skeene*, and that *Skeene* and the ſaid *Kelly* were intimately acquainted, as he is able to prove by ſeveral Witneſſes of Credit. *Skeene* being call'd in, and having heard *Pancier*'s Depoſitions read over to him, own'd that he was acquainted with *Pancier*, and had been in Company with him at ſeveral of the Times and Places mention'd in the ſaid Depoſitions; That he was taken Priſoner in the *Preſton* Rebellion, but is not related to *Marr*, nor has ever ſeen *Mackintoſh* ſince he parted from him at *High-gate*. He own'd he had had general Diſcourſe with *Pancier* relating to a Plot, and that *Pancier* had aſk'd him ſeveral Queſtions about it, to ſome of which he (*Skeene*) aſſented, and to others not; but he denied his having told *Pancier* any farther Particulars than were in the News-Papers, or in the current Report of the Town. As for Inſtance, when *Pancier* aſked him, where the late Duke of *Ormond* was? He told him the News-Papers ſaid he was at *Corunna*; but he *poſitively* denied his having ever mentioned to *Pancier* any *Particular Perſons* as concerned in the Conſpiracy, or any of the *Particular Facts* ſpecified in his Depoſitions.

He farther ſaid, He had reaſon to believe that *Pancier* had ſent to him, ſince his being in Cuſtody, to adviſe him to make his Eſcape; for that one *Gerrard Fitzgerald* having been walking with *Pancier* in the *Park*, came directly from thence to him, *Skeene*, at the Meſſenger's Houſe, and adviſed him to make his Eſcape; tho' he own'd that *Fitzgerald* made no Mention of *Pancier*'s having ſent him any ſuch Advice.

Fitzgerald being ſent for by the Committee, owned he had been to ſee *Skeene*, and finding No-body at that Time in the Houſe but a Woman, told *Skeene*, it would be an eaſy Matter for him to eſcape; but he cleared *Pancier* from having ſent any ſuch Intimation or Advice. He farther ſaid, that *Skeene* told him he did not know but he might have talk'd fooliſhly to *Pancier*, but that if he had, *Pancier* was but a ſingle Evidence, or to that Effect.

The Committee find, among the Papers referred to them, a (*g*) Copy of the Orders which *Arnold* received from the Owners of the Ship *Phineas*, requiring him to follow the Directions of *Roger Nowell* (*Halſtead*) during the Voyage; as alſo an (*h*) Affidavit, by which it appears, that the ſaid *Halſtead* was to viſit the Biſhop of *Rocheſter*, and ſtaid an Hour at his Houſe, a few Days before his ſetting out for *Bilboa*.

They alſo find a very remarkable (*i*) Letter ſent to one of the Secretaries of State, by an unknown Hand, dated the 12th of *February*, 1721-22, and incloſed in (*k*) one, dated the 31ſt of *March*; which firſt appears to be the Letter referred to in (*l*) one of *Neynoe*'s Examinations, as drawn up by *Kelly* and himſelf, and brought back to him corrected, as he believ'd, by the Biſhop of *Rocheſter*.

They likewiſe find a (*m*) Paper taken in Lord *North* and *Grey*'s Study at *Catlige*, which contains ſeveral very extraordinary Reaſonings on the Nature of Oaths; tending to prove, That the Oaths to the preſent Government are not obligatory; and that tho' the taking ſuch Oaths is in itſelf unlawful, and a grievous Sin, as being inconſiſtent with prior Oaths or Obligations; yet neither the taking nor breaking them can in ſtrictneſs fall under the Denomination of Perjury.

This is the Subſtance of what the Committee have been able to collect from a careful Peruſal of the Papers referred to them, and a long Examination of ſeveral of the Perſons concerned; in ſome of whoſe Power they have Reaſon to believe it was to have made ample Diſcoveries, if they had been diſpoſed to ſpeak the Truth.

And tho' the Lords Committees cannot reflect, without Pity and Compaſſion, on the miſguided Zeal, and wretched Infatuation of thoſe Men, who rather chuſe to expoſe themſelves to the greateſt Dangers, than to diſcover the Authors or Accomplices of their Treaſons; thereby declaring to the World, that the Leagues and Confederacies of private Villainy are dearer and more ſacred to them than the ſtrongeſt Ties and Obligations of Society; yet the Committee make no doubt but the Matters contained in the Report referred to them, and corroborated by the Reſult of their preſent Enquiry, will appear to your Lordſhips ſo clearly made out, that the Conſpirators, ſooner or later, will have leiſure to repent of the raſh and impious Choice they have made, of being rather true to one another, than to God, their Conſciences, and their Country.

ON *April* 24, the Houſe (according to Order) took into Conſideration the Report from the Lords Committees, to whom the Report and Original Papers delivered by the Houſe of Commons at ſeveral Conferences were referred; and who were empowered by this Houſe to examine *Chriſtopher Layer*, and ſuch other Perſons as they from time to time ſhould think proper: And the ſaid Report being read, It is reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That this Houſe is fully ſatisfied and convinced, That a deteſtable and wicked Conſpiracy has been formed and carried on, for ſolliciting a Foreign Force to invade theſe Kingdoms, for raiſing a Rebellion, and inciting Inſurrections in *London*, and divers other Parts of *Great-Britain*, and even for laying violent Hands on the ſacred Perſon of His Majeſty, and on His Royal Highneſs the Prince of *Wales*, in order to deſtroy our Religion and happy Conſtitution, by placing a Popiſh Pretender on the Throne.

Ordered, By the Lords Spiritual and Temporal in Parliament Aſſembled, That the Thanks of this Houſe be given, by the Lord Chancellor, to the ſaid Lords Committees, for their having diſcharged the Truſt in them repoſed with great Exactneſs, Care, Fidelity, and Candour. Thereupon,

The Lord Chancellor addreſſing himſelf to the Lords of the ſaid Committee, (*viz.* Duke of *Montroſe*, Duke of *Dorſet*, Earl of *Scarborough*, Earl of *Iſlay*, Lord Viſcount *Lonſdale*, Lord Viſcount *Torrington*, Lord Biſhop of *Sarum*, Lord Biſhop of *Lincoln*) gave them the Thanks of the Houſe in the following Words;

My Lords who were of the Committee,

I Am commanded by the Houſe to give your Lordſhips the Thanks of this Houſe, for your having diſcharged the Truſt repoſed in you with great Exactneſs, Care, Fidelity and Candour.

My Lords,

The Truſt was as great as ever was repoſed by this Houſe in any of its Members. The Subject Matter of your Enquiry, a Conſpiracy the moſt dangerous as well as deteſtable, big with Miſchiefs of all Kinds, and deſtructive of every thing that is valuable amongſt us; carried on and managed in a new deviſed Method with the utmoſt Cunning as well as Wickedneſs, and covered with all the Diſguiſes the moſt artful Dexterity could contrive: And which therefore required the greateſt Penetration and Skill to lay open. And the Papers, ſome of them of ſuch a Nature, that it was thought fit to refer them to your Lordſhips, lock'd up as they were, without reading them in the Houſe.

My Lords,

Your Lordſhips have fully anſwer'd the Expectations the Houſe entertained, when they pitched upon you for this Truſt.

Your Application in going thro' ſo many Papers of affected and ſtudied Obſcurity; your Candour and Exactneſs in Examining the Perſons concern'd, or any way capable of giving any Satisfaction, and in repreſenting what they ſaid; the Accuracy and Judgment of your Remarks, the Light you have ſo happily given to ſeveral Paſſages in the Report of the Committee of the Commons, which, tho' in themſelves juſt, were yet liable to Cavils, by ſuch as were loth to have the Truth found out, give, I dare ſay, a ſenſible Pleaſure to every Lord here that has heard your Report read, and finds himſelf thereby enabled to form a Judgment with ſo entire Satisfaction to himſelf, concerning this abominable Work of Darkneſs, which the Actors have endeavoured to ſurround with impenetrable Obſcurity.

This noble Pleaſure of ſeeing the Truth, notwithſtanding ſo many Contrivances to hide it, and of being thereby enabled to come to right Reſolutions in a Matter of ſuch Importance, has very naturally and agreeably broke out into ſo unanimous a Reſolution of returning the Thanks of this Houſe to your Lordſhips, to whom they ſo much owe it. And in Obedience to their Commands, I do, with particular Pleaſure, give your Lordſhips the Thanks of this Houſe, for your having diſcharged the Truſt in your Lordſhips repoſed with great Exactneſs, Care, Fidelity, and Candour.

March 19. The Bill to inflict Pains and Penalties on *John Plunkett* was brought into the Houſe of Commons, to which *Plunkett* making no Defence, it paſs'd that Houſe on *April* 5. and was ſent up to the Lords, who after hearing Counſel for the Bill, and *Plunkett* himſelf againſt it, paſs'd the Bill; which afterwards obtained the Royal Aſſent, and was as follows.

An Act to inflict Pains and Penalties on John Plunkett.

'WHEREAS in the Years One thouſand ſeven hundred and twenty-one, and One thouſand ſeven hundred and twenty-two, a deteſtable and horrid Conſpiracy was formed and carried on by divers Traitors for invading your Majeſty's Kingdoms with Foreign Forces, for raiſing an Inſurrection and Rebellion againſt your Majeſty, for ſeizing the *Tower* and City of *London*, and for laying violent Hands upon your Majeſty's moſt ſacred Perſon, and upon his Royal Highneſs the Prince of *Wales*, in order to ſubvert our preſent happy Eſtabliſhment in Church and State, and to place a Popiſh Pretender on your Throne: And whereas for the better concealing and effecting the ſaid Conſpiracy, divers treaſonable Correſpondences were, within the time aforeſaid, carried on by Letters written in Cyphers, cant Words and fictitious Names; which Conſpiracy, had not Almighty God in his great Mercy diſappointed the ſame, would have deprived your Majeſty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and ſubjected your People to the Bondage and Oppreſſion of *Romiſh* Superſtition and Arbitrary Power; for which execrable Treaſon *Chriſtopher Layer* hath been indicted, tried, convicted and attainted. And whereas *John Plunkett* hath been a principal Actor in the ſaid horrid and deteſtable Conſpiracy, by traitorouſly conſulting and correſponding with divers Perſons, to raiſe an Inſurrection and Rebellion againſt your Majeſty within this Kingdom, and

(*a*) E. 21. (*b*) 11. (*c*) E. 32. (*d*) E. 35. 42. (*e*) 15, 16. (*f*) D. 1, 2. (*g*) 7. (*h*) 8. (*i*) 6. (*k*) 5. (*l*) E. 9. (*m*) 2.

to

'to procure a foreign Force to invade the same, with a Design to depose 'your Majesty, and to place the Pretender on your Throne, by traitor-'ously corresponding with the said Pretender, and by engaging in a most 'execrable and villainous Design of laying violent Hands upon the Sacred 'Person of your Majesty (whom God long preserve). Therefore, to ma-'nifest our just Abhorrence of so wicked a Conspiracy, and our Zeal and 'tender Regard for the Preservation of your Majesty's Person and Govern-'ment, and for the Protestant Succession in your Majesty's Royal Fami-'ly, the solid Foundation of our present Happiness and future Hopes; 'and to the End that no Conspirator may, by any Contrivance or Practice 'whatsoever, escape Punishment; and that all Persons may be by the Jus-'tice of Parliament for ever hereafter deterred from engaging in any trai-'torous Conspiracies or Attempts, We your Majesty's most dutiful and 'loyal Subjects, the Lords Spiritual and Temporal and Commons in 'Parliament assembled, do humbly beseech your Majesty, that it may be 'enacted; and be it enacted by the King's most excellent Majesty, by and 'with the Advice and Consent of the Lords Spiritual and Temporal, and 'Commons in Parliament assembled, and by the Authority of the same, 'That the said *John Plunkett* shall be detained and kept in close and safe 'Custody, without Bail or Mainprize, during the Pleasure of his Majes-'ty, his Heirs and Successors, in any Gaol or Prison within the King-'dom of *Great Britain*, to the Custody of the Gaoler or Keeper whereof 'the said *John Plunkett* shall from time to time be committed, in pursu-'ance of this Act, by Warrant under the Hand and Seal of any Secretary 'of State of his Majesty, his Heirs or Successors: Which Warrant or 'Warrants any Secretary of State for the Time being is hereby authoriz-'ed and impowered to make; and that the said *John Plunkett* shall forfeit 'to his Majesty all his Lands, Tenements, Hereditaments, Goods and 'Chattels whatsoever.

'And for more sure detaining the said *John Plunkett* in safe Custody, be 'it further enacted by the Authority aforesaid, That if the said *John* '*Plunkett* shall break such Gaol or Prison to which he shall be so commit-'ted, or shall escape out of the Custody of the Person in whose Custody 'he shall be, by virtue of such Commitment, That then the said *John* '*Plunkett*, and all and every Person and Persons whatsoever, who shall be 'aiding or assisting the said *John Plunkett* in breaking such Gaol or Pri-'son, or in making such Escape, as aforesaid; or who shall by Force take 'or rescue the said *John Plunkett* out of such Custody, Gaol, or Prison, 'during the Continuance of his Imprisonment by virtue of this Act, be-'ing thereof lawfully convicted, shall be adjudged Guilty of Felony, and 'shall suffer Death as in Case of Felony, without Benefit of Clergy.'

In pursuance of this Act, *John Plunkett* was continued Prisoner in the *Tower* of *London*.

The same Day the Bill to inflict Pains and Penalties on *George Kelly* alias *Johnson* was brought into the House of Commons, who after hearing Counsel for the Bill, and *Kelly* and his Counsel against it, pass'd it on *April* 6. and sent it up to the Lords, who heard Counsel for and against the Bill, when *Kelly* made the following Speech:

My LORDS,

'SINCE my Counsel have so fully answered every Article alledged 'against me, it may seem unnecessary to take up your Lordships Time 'by saying any thing for myself. And, indeed, it would be so, if my 'Charge were Ordinary or Particular. But, my Lords, I have been re-'presented as a Person doubly guilty: First, In transacting Treason for 'myself: And, Secondly, In doing it for other People. These are 'Crimes of the most heinous Nature; and if they were as clearly prov-'ed, as they have been strongly asserted, I should justly merit your Lord-'ships highest Displeasure, and all the Pains and Penalties you could 'possibly inflict upon me.

'And since my Charge is so very extraordinary; since these Proceed-'ings seem to be without any Precedent; and, that the Innocence of 'other Persons calls upon me for publick Justice; I believe your Lord-'ships will easily allow, That to be silent in such a Case would be truly 'criminal, and too justly censured.

'To enter into all the Particulars of my Accusation, would take up 'more Time than is reasonable for me to ask, or for your Lordships to 'allow: And tho' the many Inconsistencies, Contradictions, and false 'Conclusions which appear in almost every Page of the printed Reports, 'plainly shew the Weakness, Absurdity and Sophistry of them; however, 'I shall only beg Leave to touch upon those material Parts which relate 'to myself, and my Defence to them.

'The first Article which I find myself charged with, is, The employ-'ing of one *Neynoe* to draw up three Memorials to the Regent of *France*, 'to solicit Foreign Forces to invade this Kingdom. And for Proof of 'this, the Examinations of the same Person, which are neither upon 'Oath, nor so much as signed by him, (and whom the Committee of the 'Honourable House of Commons have represented as a very infamous Fel-'low) are the only Evidence assigned against me.

'*This*, my Lords, is the Crime! and *This* the Proof!

'And tho' the bare Mentioning of it might be sufficient to convince your 'Lordships of its Weakness, however, since so great a Weight has been 'laid upon *this Kind* of Evidence in *another Place*, it will be necessary to 'be a little more particular about it.

'The two first of these Memorials, (*viz.* those before and after the *South-*'*Sea Scheme*) are but slightly mentioned: But the One pretended to be 'drawn up in *December* 1721, (and containing a Demand of 5000 Men) 'and a Letter said to be written the *March* after (to amuse the Govern-'ment into a false Security), are the chief Things upon which any Stress 'is laid. And how false both these Allegations are, has evidently ap-'peared to your Lordships. For, had my Accuser been really employed 'to draw up any such Memorials, it is reasonable to believe, that he would 'have Copies of some, and especially of the last of them; since a Person 'who turned Informer so suddenly after, may very well be presumed to 'have had Thoughts of it for some Time before; and such Papers would, 'no doubt, give great Weight to his Information. But the Ministry 'have produced no such Copies; neither do they pretend to have them: 'Which is a very great Indication, that there never were any such Memo-'rials at all.

'Besides, There are no two of his Examinations of a piece. Nay! he 'contradicts himself in almost every one of them. For in his second Ex-'amination he says, That these Memorials were all drawn up by the Or-'der of one *Henry Watson* (whom he really did not know, but took to be 'the late Earl *Marishall*) without making the least Mention of me. In 'his third Examination he says, They were delivered to me and *Watson*; 'and in his fourth he says again, They were all drawn up by the Order 'of *Henry Watson* only. And in a few Lines after contradicts himself, 'and says, that the Heads of them were given to him by *me* and *Watson*: 'Which are such Inconsistencies, as (your Lordships will easily grant) 'are not to be reconciled: And if his Memorials were no better drawn 'than his Examinations, I believe they were not likely to meet with any 'great Success.

'As to the Earl *Marishal*, how reasonable it is to believe, that a person 'in his Circumstances should venture to come into *England*, and live so 'openly here, as to intrust himself, and a Secret of this Nature, to a Fel-'low, who (by his own Confession) did not know him, is humbly sub-'mitted to your Lordships. And as for my Part, it is very plain that I 'could have no Hand in them, since the *Minutes* in my Pocket-book (in 'which I could have used no Disguise), agreeing with the concurrent Tes-'timony of *several Witnesses*, plainly shew, That I was not in the King-'dom at the Times in which my Accuser pretends to have been so em-'ployed. For, by those Minutes, and *their* Testimony, it appears, That 'I went to *France* the 23d of *November*, 1721, and did not return till the 'latter End of the next Month: And my Accuser himself owns in his first 'Examination, That he did not see me after my Return, till the *January* 'following; which makes it impossible that he could have been so employ-'ed by me in *December*, since I was most Part of that Month out of the 'Kingdom; and the few Days of it that I was here, he owns he did not 'see me.

'Nor has the other Part of his Information, relating to the Letter '(which he pretends to have drawn up in *March*) better Grounds—For, 'by the same Minutes, and by the same Evidence, it likewise appears, 'That I went to *France* the 22d of *February* after, and did not return 'till the Middle of *April*; which makes it as impossible that he could have 'been employed by me in *March*, since I was then likewise out of the 'Kingdom. Had this Examination been at any Distance of Time, it is 'possible he might be mistaken in it: But his first Information must have 'been about the Middle of *April*, soon after my Return from *France*; for 'he confessed to the person taken up with him at *Deal*, That he was the 'first who set the Ministry upon intercepting Letters. And the first Let-'ters so intercepted are owned, in the 42d Page of the Report made to 'the Lower house, to have been the 22d of *April*, 1722.—And, surely, 'he cannot be supposed to have forgot so soon what happened the very 'Month before; especially since he has been so particular, as to name the 'very Day (*Saturday*) upon which he says this Letter was so drawn up. 'By all which it plainly appears, That this Article is not only ground-'less, but evidently false; and likewise, that he had no such Intimacy 'with me (as the Report pretends), since he has declared, That I never 'spoke to him of the Conspiracy; and that I could be a Month *at one* '*Time*, and two Months at another, out of the Town, without his 'knowing any Thing of it. As to what is said of his coming sometimes 'to my Lodgings, I believe it may be true; but it has been fully prov-'ed, That his Visits were never to me, but always to another Person who 'lodged in the same House. And I do solemnly affirm to your Lord-'ships, that I never was acquainted with the late Earl *Marishal*, or with 'any such Person who went by the Name of *Watson:* That I knew very 'little of my Accuser; so little, that I am confident I never spoke to 'him ten Times in my Life, nor ever employed him in this or any other 'Affair whatsoever.

'*The second Article charged upon me, is, the carrying on a Treasonable Cor-*'*respondence for the Bishop of* Rochester. And for Proof of this, the Exa-'mination of the same Person is the only Evidence produced against me; 'wherein he says, That I frequently told him, the Bishop was concern-'ed in such a Correspondence; and that I managed it for him; with other 'Particulars not worth mentioning. How reasonable it is, that I should 'tell such a strange Untruth to a Person that I knew so very little of, and 'what Credit ought to be given to his bare Assertion, who has affirmed 'such gross and notorious Falsehoods in the former Article, must be sub-'mitted to your Lordships. And, in my present unhappy Situation, I 'cannot but think it a very great and singular Happiness, to have so pub-'lick and honourable an Occasion of purging myself from so vile a Ca-'lumny, and of doing Justice to that most worthy and learned Prelate.

'And I do solemnly declare to your Lordships upon the Faith of a 'Christian, That I never wrote or received a Letter of any Kind for the 'Bishop of *Rochester*, or was privy to any Correspondence of his at Home 'or Abroad: That I never shewed him any Letter that ever I wrote to '*France*, or ever sent one there by his Privity or Direction: That I am 'very little known to his Lordship, went very rarely to wait upon him; 'so rarely, that I am confident few of his Servants know either my Name 'or Face; and I have not seen him above three or four Times these two 'Years past, and not above eight or ten Times in my whole Life.

'I do farther declare, That my Visits to his Lordship were always pub-'lic; that I never went privately in a Chair to his House; always 'found other Company with him, who were generally Strangers to me; 'and never once mentioned his Name, upon this or any other Account, 'to the Person who thus accused me; which, with the Evidence that 'has been produced of his own Confessions to that Purpose, is, I hope, 'sufficient to convince your Lordships of the Truth of it.

'And as for the Dog, which has been brought as a Circumstance to 'prove this Matter, I do in the same solemn Manner declare, That he 'was given to me by a Surgeon at *Paris*, *whose Affidavit has been offer-*

'*ed to be produced)* and who, at that Time, I do verily believe, never heard 'of his Lordſhip's Name; and that he never was deſigned for any Body 'but the Perſon I gave him to And I appeal to the very Miniſters 'themſelves, if the *Britiſh* Reſident at *Paris* (who is conſtantly attended 'by that very Surgeon, and examined him about it) has not confirmed 'the Truth of this Account to them. I do farther affirm, That the 'Biſhop of *Rocheſter* never ſaw him; never received any Letter or Meſ-'ſage by me, nor (do I believe) by any other Perſon about him: Nei-'ther did I ever know or hear, That his Lordſhip had any Intercourſe or 'Correſpondence with the late Earl of *Marr*, or any other diſaffected 'Perſon abroad.

'*My LORDS*,

'It cannot be imagined, that I have any particular Intereſt or Con-'cern in this Matter; for I never received any Favours from his Lordſhip; 'neither do I owe him any Obligations but thoſe of common Juſtice; 'and thoſe I ſhould perform, where I have ſo much Truth of my Side, 'to the greateſt Enemy I have upon Earth. As for the other Circum-'ſtances, which are brought to ſtrengthen my Accuſer's Examinations, 'and are ſet forth in one *Pancier*'s Depoſition, They will appear, I don't 'doubt, as groundleſs and inconſiſtent as the Examinations themſelves. 'For this Perſon ſwears, That another told him of this Conſpiracy; 'that ſix or eight Battalions of *Iriſh* Forces were to come from *Spain* to 'aſſiſt the Conſpirators; that 200,000*l.* were raiſed, and 800 Men regularly 'ſubſiſted for this Purpoſe in *London*. Theſe, my *Lords*, are called, in 'the 38th Page of the Report of the Lower Houſe, *The concurrent* and '*corroborating Proofs* of my Accuſer's Examinations: And I humbly ap-'peal to your Lorſhips, if any one of them carries the leaſt Colour of 'Reaſon or Probability with it. For can it be imagined, That ſuch a 'Force ſhould come from *Spain*, when there appears to be ſo ſtrict a 'Friendſhip between the two Kingdoms? Or that 200,000*l.* could poſſi-'bly be raiſed among all the diſaffected in *England*, in caſe there was a 'Licence for it? Or 800 Men regularly ſubſiſted in this City, without a 'Diſcovery? Theſe are ſuch idle, inconſiſtent Tales, as (I am purſuaded) 'can never have any Weight with your Lordſhips. Beſides, my Lords, 'this is only bare Hear-ſay; and if the Hear-ſay of ſuch infamous Perſons '(or, indeed, of any Perſons) be look'd upon as ſufficient Evidence, I believe 'no Man in *England* can be ſure of his Life or Liberty an Hour, ſince 'any two People may talk him into High-Treaſon whenever they pleaſe; 'and the greater the Perſon is, the greater his Danger always will be.

'The *Third Crime* which I ſtand charged with, is, the Writing of 'three treaſonable Letters for the Biſhop of *Rocheſter*, ſuppoſed to be to 'the Pretender, the late Earl of *Marr*, and General *Dillon*; which Let-'ters are ſaid to have been ſent by me to Mr. *Gordon* at *Boulogne*, with 'Directions to be delivered to one Mr. *Talbot*: And for Proof of this, 'the Clerks of the Poſt-Office are produced, who ſwear, That thoſe 'Letters were (to the beſt of their Knowledge) written in the ſame Hand 'with an Original which was ſtopt as a Specimen of it: Which Original 'has been ſworn by two Perſons to be my Writing, and conſequently 'thoſe Letters muſt be ſo too.

'*My LORDS*,

'Theſe Letters are dated the 20th of *April*, and the Specimen ſo ſtopt 'the 20th of *Auguſt*, juſt four Months after. And how it is poſſible for 'People (who receive ſuch a Number of Letters) to ſwear to a Likeneſs of 'Hands, at ſuch a Diſtance of Time; and what Weight ought to be laid 'upon this kind of Evidence; or upon that modern and myſterious one 'given by the Decypherers, in which they don't pretend to a Certainty 'themſelves, muſt be ſubmitted to your Lordſhips. And as to the Perſons 'who have ſworn to my Hand, I hope it will be conſidered, That one of 'them is a Meſſenger, who never ſaw any of my Writing, but the Super-'ſcriptions of a few Letters, which (your Lordſhips may eaſily ſee) do 'not bear the leaſt Likeneſs with what he has ſworn to. Beſides, this 'very Perſon was turned out of his Employment upon my Account; and 'a few Days after he gave this Evidence in the Houſe of Commons, I 'ſaw a Paragraph in the News-Papers that he was reſtored to it again. 'And as to the other, it is to be hoped, That it will be likewiſe conſi-'dered, that he is a Servant who attended me only about three Weeks, and 'was turned off for an infamous Action, which he has acknowledged 'himſelf to have been guilty of: Beſides he has confeſſed, That he never 'ſaw me write, but as he went backwards and forwards in the Room; 'and at ſuch a Diſtance as not to be able to diſtinguiſh one Character 'from another: And it has been proved by two Witneſſes, (one of which 'was a particular Friend of his own) That he declared he never knew any 'Thing of my Hand; but was threatened by the Secretary, into the 'Affidavit which has been printed in the *Appendix*. And if that Paper 'had been my Writing, it is impoſſible they could be reduced to a Ne-'ceſſity of making Uſe of ſuch improper Evidence, ſince no Pains have 'been ſpared to procure better; ſince Numbers of People have been taken 'up, confined and examined to this very Point, and *Newgate* ſent to, 'more than once, for Witneſſes to it. And tho' it might be proved by 'the very Report of the Lower Houſe, that thoſe Letters could not have 'come from the Biſhop of *Rocheſter*; however, my Buſineſs is only to 'convince your Lordſhips, That I was not the Writer of them; and 'of this, I believe it is impoſſible to give clearer Proofs than I have done: 'For if thoſe Letters had been dictated to me the twentieth of *April* (as the 'Report pretends) it muſt have been at his Lordſhip's Houſe in the Coun-'try; ſince it appears by the Depoſition of his Coachman, that he went 'there the 12th of that Month, and did not leave it till the 5th of *May*.

'But it has been proved, that I was in *London* all that Time; and if it 'had been permitted, there is not a Perſon in the Biſhop's Family but 'would teſtify, That I was not then at his Houſe in the Country; and 'conſequently could not have written any ſuch Letters for him. Beſides, 'I have brought ſeveral Perſons of Credit and undoubted Characters, 'who have all teſtified, that the Hand in which thoſe Letters are ſaid to 'be written, is not mine, nor any Thing like it.

'An Affidavit has been produced from Mr. *Gordon*, That he never re-'ceived any ſuch Letters from me, nor ever had any Correſpondence, 'or even an Acquaintance with me.

'And it has been likewiſe proved, That Mr. *Talbot*, to whom thoſe 'Letters are ſaid to be delivered by Mr. *Gordon*, was in this Town the 'very Day upon which they are ſaid to have been delivered to him at '*Boulogne*! And if I had any ſuch Letters to tranſmit, can it be imagined 'that I would truſt them to the common Poſt, when I had ſo good an 'Opportunity to ſend them by, or direct them to *Boulogne*, when the 'ſame Poſt might as well have carried them to *Paris*? Theſe are ſuch full, 'ſuch evident Proofs, as, I hope, cannot fail of giving your Lordſhips 'the utmoſt Conviction in this Matter; and, conſequently, that this 'Article is, like the reſt, both groundleſs and manifeſtly falſe.

'But if any Credit is to be given to the Confeſſions which my Accuſer 'made to the Perſon taken up with him, it is very plain that thoſe Let-'ters muſt have come from *another Quarter*; and, to ſay no worſe, were 'at leaſt calculated to carry on his own *baſe* and *villainous Deſigns*.

'For it has been proved to your Lordſhips, that he confeſſed to have 'been employed by one of the Miniſters; received 300*l.* from him, and 'was to have 2000*l.* more. That this Miniſter declared a perſonal Pre-'judice, upon ſome private Account, *to the Biſhop of* Rocheſter; *was re-'ſolved to pull down the Pride of that Haughty Prelate, and to ſqueeze me* (as 'I think the Expreſſions were) *to that Purpoſe*.

'*My LORDS*,

'I ſay, if any Credit is to be given to this Confeſſion, there can be 'no great Difficulty in tracing out the Source of *this Part* of the Con-'ſpiracy; and I am heartily ſorry to ſay, That there are ſome Circum-'ſtances which ſeem to give but too great a Countenance to the Truth of 'it. For, my Lords, He made this Confeſſion at a Juncture, when he 'may very well be ſuppoſed to have ſpoken in the Sincerity of his Heart; 'when he ſaw his Villainy detected; believed himſelf to be in the greateſt 'Danger, and depended upon the Perſon's Aſſiſtance (to whom he made 'it) to help him out of his Misfortunes.——And how particular this 'Proſecution is, and how ſufficiently I have been *ſqueezed*, are Things 'but too viſible, and too well known to the World.

'Beſides, the very Cypher by which thoſe Letters were written, (and 'which he owned to have received from that Miniſter) was actually caught 'upon the Perſon to whom he gave it; and he confeſſed, That he put a 'Paper of Directions into one of my Drawers, by which (the Report 'ſays) moſt of the treaſonable Letters were addreſſed. And it has been 'proved to your Lordſhips, that thoſe Drawers were conſtantly open, 'and that he made ſome Pretext for being alone in my Lodgings, the very 'Night before I was firſt taken up. And ſince he was the firſt that ſet the 'Miniſtry upon intercepting Letters, which he ſaid were mine; it is very 'extraordinary, that ſuch a material Part of his Evidence ſhould be omit-'ted in his Examination; or that the very firſt Letters ſo intercepted, 'ſhould be thoſe alledged againſt the Biſhop of *Rocheſter*: And if the 'Originals of thoſe three Letters were ſtopt, I don't at all doubt, but 'they might be proved to be my *Accuſer's own Hand-writing*. And how 'ſtrong a Senſe he had of his Guilt, by attempting an Eſcape which 'proved fatal to him; and how viſibly the Hand of God has interpoſed 'in that eminent Prelate's Favour, by taking one of the Perſons (de-'ſigned for his Deſtruction) out of the World, and giving the other '*Grace* and *Virtue* enough to withſtand all Temptations to his Prejudice, 'are Things highly worthy of your Lordſhips juſt and moſt ſerious Con-'ſideration, and no ſmall Indication of his Innocence. And as to the 'Money which my Accuſer owned to have received, That there was a 'very ſudden and extraordinary Change in his Condition; that from the 'loweſt State of Poverty and Want, he ſoon arrived to that of a vicious 'and moſt profligate Affluence, is a Truth ſufficiently known to all thoſe 'who were acquainted with him. But from whence this Change pro-'ceeded, or what real Grounds he had for aſperſing that Honourable Per-'ſon, I will not pretend to ſay: But if thoſe Aſperſions be falſe (as I 'wiſh they may) it may be juſtly inferred, That a Fellow who was capa-'ble of vilifying one Perſon, may very well be judged as capable of do-'ing ſo to another: And if his Veracity is not to hold good in one Caſe, 'there can be no Reaſon for allowing it in the other.

'The *fourth Crime* alledged againſt me, is a Number of intercepted Let-'ters, ſuppoſed to be written to, and received from the late Earl of *Marr*, 'General *Dillon*, and other diſaffected Perſons abroad. And for Proof 'of this a *Frenchman* has been produced, who ſwears, That he once ſaw 'me take up a Letter at *Burton*'s Coffee-houſe, by the Name of *Baker*, 'which Name (it is ſaid) ſome of the treaſonable Letters were addreſſed 'by; and was, in a Paper of Directions, found in my Lodgings.——How 'that Paper came there, has been already proved; and as to the Perſon 'who has ſworn to this Particular, I muſt obſerve, that when he gave this 'Evidence to the Houſe of Commons, he did not know me, tho' he ſpoke 'to me, and looked ſeveral Times earneſtly at me: and for the Truth of 'this, I can appeal to moſt of the Members of that honourable Houſe, 'who were Witneſſes of it: And he would ſtill have probably continued 'in his Ignorance, if ſome private Hints (as I have been told) were not 'given him, or the ſame Method taken which has been done with a 'Number of other ſtrange Fellows, who were frequently ſent to the '*Tower*, and had no other Buſineſs but to take a View of me. Beſides, 'the People of the Coffee-houſe have teſtify'd the contrary, and that no 'ſuch Letter ever came to their Houſe. And tho' it be ſet down in my 'Examination before the Council, That I confeſſed to have taken up ſuch 'a Letter, I humbly appeal to my Lord Chancellor (if it can be 'worth his Lordſhip's while to recollect it) if he did not aſk me that 'very Queſtion two or three Times? and if I did not as often deny 'it? Neither is this the only Particular that is falſely ſet down in 'that Examination. And I do ſolemnly affirm to your Lordſhips, 'That I never did receive any ſuch Letter, nor ever ſaw that Paper of 'Directions, till it was printed in the Report. And there is one Cir-

'cumſtance

'cumstance pretty remarkable in this Correspondence, That as it began 'with my Accuser's Information, so it ended with his being taken up. 'For immediately after a new Correspondence is pretended to be disco-'vered, and to fix this likewise upon me, it has been suggested, that I 'sent Cyphers by Sir *Harry Goring* to *France*, and had Letters directed 'by them to *Sturges*'s and *Slaughter*'s Coffee-House.

'But, my Lords, no such Cyphers were found in my Custody, nor 'any Papers relating to such a Correspondence! And the People of those 'Coffee-Houses have all sworn, That I never ordered any Letters *of that* '*Kind* to be taken in, or received one, either by my own or any other 'Name from them. Nay! one of them has sworn, That no such Letters 'ever came to his House at all; and the other says, That a Messenger 'from the Secretary's Office, was the only Person that ever called at his 'House for those directed to it.

'As to the printed Examination of one Mr. *Carryl* to this Purpose, it 'were to be wished, That this Gentleman's Reasons had been published, 'as well as his Accusation. For I am confident he will not pretend to 'say, that ever he saw me write a Line in his Life, or give a Piece of 'Paper of any Kind to Sir *Harry Goring*; and what Reason he could 'have for believing that we settled a Key for such a Correspondence, is 'very extraordinary: Nor have the other Particulars which he has affirm-'ed the least Foundation of Truth; for I do solemnly aver, That I never 'saw *Sample* in my Life, or gave Captain *Bonin* any such Letter of Re-'commendation; neither had I ever the Honour of speaking to my Lord '*North* and *Grey*, or of being any ways known to his Lordship: And 'that I should mention him so familiarly by the fictitious Name of *John-'son*, (and which of all Names I should never make use of in that Man-'ner) will, I hope, appear very incredible to your Lordships; especially 'since Mr. *Carryl* himself has furnished so good a Reason for the Dis-'belief of it.

'For he has likewise affirmed, That my Examination before the Coun-'cil was read at Doctor *Yalden*'s House! The Doctor has, indeed, al-'ready done me Justice in that Point; and Mr. *Tucker*, who was all the 'while in Company, will, I am very sure, do the same. And since Mr. '*Carryl* appears to be so plainly mistaken in this Particular, surely he 'may very well be supposed to be so in all the rest; especially since he has 'not assigned the least Reason for any of them.

'As to the rest of the intercepted Letters, the People of the several 'Coffee-Houses have likewise cleared me from them; and all testify, 'That they never delivered me any such Letters, or received any Direc-'tions from me about them; which I hope will be sufficient to convince 'your Lordships, that I was not concerned in any such Correspondence; 'especially since no Letters of this Kind were found in my Possession, 'nor any other Papers relating to the Conspiracy.

'There are two other Crimes, in which I most humbly crave your 'Lordships Patience to be heard, because they are the blackest that can 'be imagined, and seem to be personal. The first is a Letter directed to 'Mr. *Gordon* at *Boulogne*, with two Affidavits, which have been printed, 'and are suggested to be sent by my Directions, in order to have him and 'one *Birmingham* perjure themselves upon my Account: For in this Letter 'it is said, *That the inclosed is a Copy of a Note from the Person concerned,* '*with what he thinks requisite.*

'*My* LORDS,

'This Letter is dated the 20th of *March*, at which Time, and for 'five Months before, I never was allowed the Use of Pen, Ink, or Paper, 'or the Liberty of seeing any Person that could possibly have conveyed 'such a Note for me; for I have been guarded in a different Manner 'from other People in the *Tower:* My Warders were put into the very 'Room with me, and ordered never to stir a Moment, Night or Day, 'out of it; which Orders they punctually obeyed, and were constant 'Witnesses to all my Actions.

'And those Warders will depose, That they believe it was impossible 'for me to have written or sent out any such Directions; the Officers, I 'don't doubt, will do me the same Justice. And when my Sollicitor was 'admitted, finding that Mr. *Gordon*'s Affidavit might be of Use, if allow-'ed as Evidence, a Person was immediately dispatched, and who brought 'it in a different Form from those which have been printed. And my 'Sollicitor can testify, That no Draughts were sent by him; which, with 'the gross Management of the Persons concerned in this Affair, is, I 'hope, sufficient to give your Lordships the clearest Conviction of my 'Innocence in it. And I do solemnly affirm, That I never knew any 'Thing of them; never heard of the Name of *Aikenhead* before; nor can 'I find out any Person (besides the Master of that Vessel) that ever did.

'The other Crime is set forth in one *Levett*'s Deposition, in the Re-'port made to this most Honourable House: Wherein (among a great 'many other most notorious Falshoods) he swears, That one Mrs. '*Barnes* told her, that I was instrumental in, or privy to, the shutting 'up of a Person in a Dungeon, for fear of his turning Informer; and 'not only of him, but of 200 more upon the same Account: Which, I 'believe, is the most surprizing Crime that ever yet was alledged against 'any Christian. Mrs. *Barnes* denies every Syllable of this Conversation; 'and if the Person that swears this against her had been produced, she 'would be proved to your Lordships to have been a vile infamous Crea-'ture all her Life. And if she is to be believed, or that your Lordships 'can think it possible there can be the least Truth in her Deposition, it 'will be a Sin to let me live, and impossible to find out a Punishment too 'cruel for me.

'These, my Lords, are the chief Crimes which I am charged with; 'and very great ones they are, had they been in any Degree made out 'against me. I am a Stranger to the Methods of legal Proof, but have 'been told by Counsel, That the greater a Person's Crime is, the clearer 'the Evidence ought to be against him; and how weak and insufficient 'the Proofs produced for this Purpose are, and how clear and convincing 'those which have been offered in my Justification, has, I hope, evi-'dently appeared to your Lordships, and given you entire Conviction of 'my Innocence; and that all the Crimes alledged against me, are with-'out the least Colour or Foundation of Truth. But how much I have 'suffered for these supposed Crimes; and what extraordinary Means 'have been made use of against me, are Things much worthier of your 'Lordships judicial Consideration. To be taken up, and held to exor-'bitant Bail, without ever assigning any particular Crime against me: To 'suffer a long and close Confinement, where the Expence bears no Pro-'portion to my Circumstances: To have Numbers of People, and some 'of them Creatures of the Meanest Rank and Condition, taken up, exa-'mined, and tampered with, upon my Account; and *Newgate* sent to 'for Witnesses: To have a Servant (who was turned off for his ill Be-'haviour) brought as an Evidence, and my most intimate Friends im-'prisoned for not swearing against me; are Hardships and Proceedings, I 'believe, hitherto unheard of in *England*; and such as I hope your Lord-'ships will, in your great Wisdom and Justice, think fit to redress. All 'which is of a Piece with an infamous Offer made to myself by one of the 'Under-Secretaries of State, who, the Morning after I was first exa-'mined, came to me with a Message (as he said) from one of his Supe-'riors, to let me know, *That I had now a very good Opportunity of serving* '*myself; and that he was sent to offer me my own Conditions.* And when I 'declared myself an entire Stranger to the Conspiracy, and was sorry to 'find that Noble Lord have so base an Opinion of me, he seemed to won-'der that I would neglect so good an Occasion of serving myself, *espe-'cially when I might have any thing I pleased to ask for.* What Authority that 'Person had for this Message, or the rest of his After-proceedings, I will 'not pretend to say: But as I have been ruined and utterly undone by 'them, I hope your Lordships will take my Sufferings, as well as Cir-'cumstances, into your Consideration; and instead of inflicting any far-'ther Pains and Penalties, look upon me (as I really am) a Person highly 'injured, and not a Criminal concerned in any Transactions against the 'Government.

'As for my Circumstances, they are but too well known in the World.

'And here I cannot omit my Gratitude to the late and present Con-'stables of the *Tower:* For the late Constable (though I never had the 'Honour to see his Lordship) was, upon a Representation of my Cir-'cumstances, so very good, as to procure me the Promise of an Allow-'ance from the Government: And his Lordship, the present, has been 'so kind as to get it paid. But the Officers of the Place can testify, That 'this Allowance has not been converted to any private Use of mine, but 'constantly given to the Persons appointed to attend me. And I must 'take Leave to assure your Lordships, That it has cost me more since I 'was sent there, than the Government has now left me really worth in 'the World; and I must suddenly become a Sacrifice to my Necessities, 'if not set at Liberty by your Lordships great Clemency and Compassion.

'If I have dropped any Expression which may not be so agreeable to some 'particular Persons in Power, I could wish that my Defence had not laid 'me under that Necessity: And I do solemnly protest, that they have not 'proceeded from any Resentment for my Sufferings; but from a sincere 'Endeavour to give your Lordships the clearest Conviction of my Inno-'cence. And since I could not merit their Favour, I shall always en-'deavour to preserve their good Opinion.

'As to the Legality of *these* Proceedings, and the Danger of making 'Precedents of this Kind, those are Things which have been already fully 'set forth by my Counsel, and must be submitted to the great Wisdom 'and Jurisdiction of this most illustrious Assembly: An Assembly! 'which is not only the highest and most honourable, but the uprightest 'and most impartial I believe upon Earth; and whose Justice has ever 'appeared as extensive as their Power. The great, and the *only* Argu-'ment which I have heard offered for the passing of this Bill, is, that 'the Occasion is extraordinary; that your Lordships are in your legisla-'tive Capacity; and though the Proofs may not be so legal, however, *in* '*Terrorem*, it is necessary to pass it. But I humbly beseech your Lord-'ships to consider where the Extraordinariness of this Occasion lies:—— 'Has there been the least Commotion in any Part of the three Kingdoms? 'Or any Person injured in his Liberty or Fortune, besides those who 'have been so unhappy as to fall under this Suspicion? Or is this Occa-'sion more extraordinary than when there was a public Insurrection in 'the Kingdom? And when the Persons concerned in it, were tried by 'the common and ordinary Courts of Justice? And because your Lord-'ships are vested with a supreme Authority, and not tied up to the com-'mon Forms of Law, can that be a Reason for your acting directly con-'trary to it? And to suppose your Lordships capable of doing so, was 'not, I must say, so becoming an Argument to have been offered upon 'this Occasion. And to have a Session, which opened with so mild, so 'gracious a Speech from the Throne, end in such an extraordinary Man-'ner, must surely be very contrary to the Design and Intention of the 'Throne at that Time; and is, I hope, so still; especially since no in-'tervening Accidents have happened to ruffle the Quiet and Tranquil-'lity of the Kingdom.

'*My* LORDS,

'The first extraordinary Bill that I believe ever passed in *England*, was 'that of the Earl of *Strafford*; and how much personal Prejudice was in his 'Prosecution, and how fatal that Bill proved in its Consequences, I need 'not mention, since the Royal Martyr himself has, in his dying Words, 'called it, An unjust Sentence, and imputed all his Misfortunes to it. 'And pray, my Lords, why was that Sentence unjust, but because it 'was not supported by Law?—And, to the eternal Honour of this House 'be it said, That when the Proofs upon his Trial were not found legal, 'they refused to find him guilty. But when this extraordinary Method 'was taken, and the Torrent of the Times bore down their usual Justice, 'then the Flood-gates of all those Miseries were opened, which over-'whelmed and sunk the Constitution: And of which some of your Noble 'Predecessors had so strong and lively a Sense, as to declare in this very 'House, that they would be sooner torn in Pieces, than come into such 'illegal Proceedings; and so fell a Sacrifice to the Love and Laws of 'their Country.

'To which I ſhall only beg leave to add one Obſervation, that I am 'ſure, is but too well known to that Right Reverend Bench:—*That of all 'the Prelates who adviſed his Majeſty to the Paſſing of that fatal Bill, not one 'of them eſcaped the Violence of thoſe very Perſons whom they endeavour'd to 'oblige by that Advice.* Theſe, my Lords, were the unhappy Effects and 'fatal Conſequences of one extraordinary Bill: And what thoſe of another 'may prove, the great Director of all Things only can foreſee!

'Many are the Arguments which might be brought to ſhew the great 'Injuſtice, as well as Inconveniencies, of theſe Laws in particular: But 'as *my* Liberty can be of no great Moment to the World, I ſhall only 'beſeech your Lordſhips, not thro' me to give a Wound to the Conſtitu-'tion, which, perhaps, may not ſo eaſily be cured. The great Charac-'teriſtick which diſtinguiſhes *England* from the reſt of the neighbouring 'Nations, is, the Excellency of our Laws, of which your Lordſhips 'are the great Guardians: And if you ſuffer thoſe Laws to be broke in 'upon, and render *Life* or *Liberty* ſo precarious, as to be affected or 'taken away by every idle Hearſay, *that* Excellency muſt ſoon diſappear, 'and the beſt Form of Government now upon Earth, conſequently ſink 'into Anarchy and Confuſion.

"*My LORDS,*

'The Words of my Bill are very ſevere, and do not bear the leaſt Pro-'portion to the Proofs which have been produced againſt me: and I hum-'bly hope, that my paſt Sufferings will be looked upon as a ſufficient Pu-'niſhment; eſpecially ſince it is not pretended, that I have tranſgreſſed 'any Law yet in being. I propoſe no great Happineſs in this Life, and 'would willingly avoid as much Miſery as I could: And muſt therefore 'humbly beſeech your Lordſhips, to look upon me as a Stranger in your 'Kingdom, and a Perſon (as I really am) inconſiderable in myſelf; and, 'conſequently, incapable of doing the leaſt Prejudice to any Govern-'ment. For my Behaviour, I am willing to give the beſt Sureties that 'I am able: But if that be not approved of, I hope your Lordſhips will 'give me Leave to retire to ſome other Part of the World, where I may 'enjoy my Poverty with Freedom. But, let my Fate be what it will, 'I ſhall ever pray for your Lordſhips particular Welfare, as well as the 'general Proſperity of the Kingdom.

'And ſo reſign myſelf with the utmoſt Humility, to your Lordſhips 'great Clemency, Juſtice, and Compaſſion.'

After which the Houſe paſs'd the Bill, which obtain'd the Royal Aſ-ſent, and was as follows:

An Act to inflict Pains and Penalties on *George Kelly* alias *Johnſon.*

'WHereas in the Years One thouſand ſeven hundred and twenty-one, 'and One thouſand ſeven hundred and twenty-two, a deteſtable and 'horrid Conſpiracy was formed and carried on by divers Traitors 'for invading your Majeſty's Kingdoms with foreign Forces, for 'raiſing an Inſurrection and Rebellion againſt your Majeſty, for ſeiz-'ing the *Tower* and City of *London*, and for laying violent Hands 'upon your Majeſty's moſt ſacred Perſon, and upon his Royal High-'neſs the Prince of *Wales*, in order to ſubvert our preſent happy 'Eſtabliſhment in Church and State, and to place a Popiſh Preten-'der on your Throne: And whereas for the better concealing and effect-'ing the ſaid Conſpiracy, divers treaſonable Correſpondences were, with-'in the time aforeſaid, carried on by Letters written in Cyphers, Cant-'Words, and fictitious Names; which Conſpiracy, had not Almighty 'God in his great Mercy diſappointed the ſame, would have deprived 'your Majeſty's Kingdoms of the Enjoyment of their Religion, Laws 'and Liberties, involved them in Blood and Ruin, and ſubjected your Peo-'ple to the Bondage and Oppreſſion of *Romiſh* Superſtition and Arbitrary 'Power: For which execrable Treaſon *Chriſtopher Layer* hath been in-'dicted, tried, convicted, and attainted. And whereas *George Kelly* alias 'Johnſon, hath been a principal Actor in the ſaid horrid and deteſtable 'Conſpiracy, by traitorouſly conſulting and correſponding with divers 'Perſons to procure a foreign Force to invade this Kingdom, and to raiſe 'an Inſurrection and Rebellion againſt your Majeſty within the ſame, 'with Deſign to depoſe your Majeſty, and place the Pretender on your 'Throne; for treaſonable Practices in which Conſpiracy the ſaid *George 'Kelly* alias *Johnſon*, being arreſted, and divers Papers then found about 'him ſeized, in purſuance of a Warrant under the Hand and Seal of one 'of your Majeſty's principal Secretaries of State, for ſeizing and apprehend-'ing him the ſaid *George Kelly* alias *Johnſon*, together with his Papers, and 'the ſaid *George Kelly* alias *Johnſon*, being in Cuſtody of a Meſſenger by 'virtue of the ſaid Warrant, did, by Force and Violence, with a drawn 'Sword, make an Aſſault upon, and reſiſt the ſaid Meſſenger, with intent 'to deſtroy the ſaid Papers, and did burn the ſame: Therefore to mani-'feſt our juſt Abhorrence of ſo wicked and abominable Conſpiracy, and 'our Zeal and tender Regard for the Preſervation of your Majeſty's Per-'ſon and Government, and of the Proteſtant Succeſſion in your Majeſty's 'Royal Family, the ſolid Foundation of our preſent Happineſs and future 'Hopes; and to the End that no Conſpirator may, by any Contrivance 'or Practice whatſoever, eſcape Puniſhment, and that all Perſons may by 'the Juſtice of Parliament be for ever hereafter deterred from engaging 'in any traitorous Conſpiracies or Attempts; We your Majeſty's moſt 'dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Com-'mons in Parliament aſſembled, do humbly beſeech your Majeſty, that 'it may be enacted; and be it enacted by the King's moſt excellent Ma-'jeſty, by and with the Advice and Conſent of the Lords Spiritual and 'Temporal, and Commons in Parliament aſſembled, and by the Autho-'rity of the ſame, That the ſaid *George Kelly* alias *Johnſon* ſhall be detain-'ed and kept in cloſe and ſafe Cuſtody, without Bail or Main-prize, and 'during the Pleaſure of his Majeſty, his Heirs and Succeſſors, in any Gaol 'or Priſon within the Kingdom of *Great Britain*; to the Cuſtody of the 'Gaoler or Keeper whereof the ſaid *George Kelly* alias *Johnſon* ſhall from 'time to time be committed, in purſuance of this Act, by Warrant under

'the Hand and Seal of any Secretary of State of his Majeſty, his Heirs 'or Succeſſors: Which Warrant or Warrants any Secretary of State for the 'time being, is hereby authorized and impowered to make; and that the 'ſaid *George Kelly* alias *Johnſon* ſhall forfeit to his Majeſty, all his Lands, 'Tenements, Hereditaments, Goods and Chattels whatſoever.

'And for the more ſure detaining the ſaid *George Kelly* alias *Johnſon* in 'ſafe Cuſtody, be it further enacted by the Authority aforeſaid, That if 'the ſaid *George Kelly* alias *Johnſon* ſhall break the Gaol or Priſon to 'which he ſhall be ſo committed, or ſhall eſcape out of the Cuſtody of 'the Perſon in whoſe Cuſtody he ſhall be by virtue of ſuch Commitment, 'that then the ſaid *George Kelly* alias *Johnſon*, and all and every Perſon and 'Perſons whatſoever, who ſhall be aiding or aſſiſting the ſaid *George Kelly* 'alias *Johnſon* in breaking ſuch Goal or Priſon, or in making ſuch Eſ-'cape, as aforeſaid, or who ſhall by Force take or reſcue the ſaid *George Kelly* 'alias *Johnſon* out of ſuch Cuſtody, Gaol, or Priſon, during the Conti-'nuance of his Impriſonment by virtue of this Act, being thereof law-'fully convicted, ſhall be judged guilty of Felony, and ſhall ſuffer Death 'as in Caſe of Felony, without Benefit of Clergy.'

In purſuance of this Act, *George Kelly* was continued Priſoner in the *Tower* of *London.*

March 22. The Bill to inflict Pains and Penalties on *Francis* Lord Biſhop of *Rocheſter* was brought into the Houſe of Commons, to which the Biſhop making no Defence, it paſs'd that Houſe *April* the 9th, and was ſent up to the Lords, where the Biſhop made his Defence by Counſel, who were Sir *Conſtantine Phipps* and Mr. *Wynne.* Sir *Conſtantine Phipps* ſpake as follows:

My Lords,

BY the Appointment of this Honourable Houſe I have the Honour to attend your Lordſhips, as Counſel for the Reverend Prelate, the unfortunate Priſoner at the Bar: and perſuade myſelf it will not be difficult to defend his Lordſhip from the heavy *Pains* and *Penalties* of this Bill; ſince the Counſel for it confeſs that it is ſupported *only* by *circumſtantial* Evidence.

Bills paſſing into Laws for taking away Men's Liberties and Eſtates by *Circumſtances* only, are new. Convictions by Circumſtances were never heard of in Ages paſt; and I hope will never be known in this, or any which is to come: And tho' one of the Gentlemen ſaid, that Circumſtantial Evidence is ſufficient at *this Time of Day*, I hope, the Law is the ſame at *this Time of Day*, as ever; and that the Lives and Fortunes of *Engliſh* Subjects will be as well protected and defended by *your Lordſhips*, as they were by *your Predeceſſors.*

The Securities which the Laws have provided for our Liberties and Eſtates, and the Happineſs that we cannot be depriv'd of them but by full and legal Proof, are Advantages which were obtain'd at great Expence of Blood and Treaſure, by your Lordſhips Noble Anceſtors: And we doubt not but You will tranſmit them to Poſterity, as entire as they have been continued down to your Lordſhips.

The Law is the Rule of Men's Actions; and Perſons accuſed as Criminals for Facts committed by them, ought to be tried by the Laws that were in Force *at the Time* of the Facts committed, *ſecundum Allegata & Probata.* But Laws made *ex poſt Facto*, to puniſh Men for Facts which were not Offences when they were committed, render all things that are dear to *Engliſhmen* precarious; and for that Reaſon have been as often *condemn'd*, as they have been *made.*

The Charge againſt the Biſhop and Mr. *Kelly* are ſo interwoven, that I beg you will excuſe me, if in my Vindication of him, I urge any thing, which I offer'd in behalf of Mr. *Kelly*, when I had the Honour to attend your Lordſhips as his Counſel: But I ſhall take care to repeat no more than is neceſſary.

My Lords,

I am very far from denying, or conteſting, the *Power* of Parliaments as to Bills of *Attainder*; but I hope I may have Leave to obſerve, that ſuch a Power hath been very *rarely exerted*, unleſs upon *extraordinary* Occaſions, and in Caſes of *Neceſſity.* I hope too I may be permitted to ſhew, that the Caſe of my Lord Biſhop is not within either of thoſe Reaſons.

He never withdrew himſelf out of the Kingdom; never fled from Juſtice, but was always amenable and forth-coming, ready to be try'd according to the uſual and ordinary Methods of Juſtice. And the Attainders of *Mortimer*, and the Earl of *Arundel*, in *Edward* III's Time, of Sir *Thomas Haxey* in *Richard* II's Time, and others afterwards, were revers'd, becauſe the Perſons accuſed were forth-coming, and might have been brought to a Trial according to the uſual Courſe of Juſtice. Wherefore I hope the ſame Reaſons which prevail'd with thoſe Parliaments to reverſe thoſe Attainders, will have Weight enough with your Lordſhips to prevent this Bill's paſſing into a Law.

The Parliament, at the Reſtoration, did not think fit to interpoſe their legiſlative Authority even in the Caſe of the *Regicides*; but left ſuch of them as were alive, and forth-coming, to the *ordinary* Methods of Juſtice, and gave them a *fair Trial* for their Lives and Eſtates. The only remarkable Bill of Attainder, which hath been in ſome Ages (except of ſuch as were in *actual Rebellion*, or *fled* from Juſtice) was that of Sir *John Fenwick.* I own I mention'd this Caſe on behalf of Mr. *Kelly*; and it being a Caſe ſo material for my Lord Biſhop's Defence, I cannot in Juſtice to his Lordſhip omit making ſome Obſervations upon it: From which it will appear, that the *Reaſons* given for *paſſing* that Bill are the ſtrongeſt Arguments in the World *againſt* this.

The Preamble of Sir *John Fenwick*'s Attainder ſhew'd the Neceſſity of it: For the Preamble ſets forth,—That Sir *John Fenwick* was, upon the Oaths of *George Porter*, and *Cardel Goodman*, indicted of High-Treaſon: That he obtain'd his Majeſty's Favour to have his Trial delay'd from time to time, upon his repeated promiſes of making an ingenuous and full Confeſſion: That ſeveral Times were appointed for his Trial; at

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one of which he had been actually tried, had it not been for the Expectation of the Discoveries so often promised: That since the Times appointed for his Trial, *Cardel Goodman*, one of the Witnesses, was withdrawn, so that he could not be had to give Evidence. And it appeared upon the Trial, that *Porter* had been tampered with, and had 300*l.* paid him, and 200*l.* more promised him, to go beyond Sea. This made the Presumption very strong, that *Goodman* was sent away by some of Sir *John*'s Friends. So that there was an *Indictment* against him; *two Witnesses* were *sworn* upon it, *and proved the Treason*; and *he promised* from time to time *to make Discoveries*.

Hath my *Lord Bishop* been *indicted?* Hath there been any *Oath* made against him? Did he ever *impose* upon his Majesty or the Ministry, by *promising* to make any *Discovery?* Hath he *sent away* any one that was *Witness* against him? Since these *Circumstances* were *thought necessary* by the Parliament at that Time to *induce* them to pass *that* Act; and the present Case is not attended with *any one* of these Circumstances; this, we humbly conceive, is a Reason why your Lordships *should not* pass *this* Bill.

The *greater* the *Offence* is of which any Person is accused, the *plainer* and *clearer* the *Proof* ought to be: and my Lord *Coke* in his 4th Institute, *page* 37. (which I mentioned the other Day), speaking of the Attainder of *Cromwell* Earl of *Essex* by Parliament, says; 'The more *high* and *absolute* 'the *Jurisdiction* of the Court is, the more *just* and *honourable* it ought to 'be in its *Proceedings*, to *give Example* of Justice to *inferior* Courts.'

The *Offence* charged on my Lord Bishop is of the *highest* Nature; and this *Jurisdiction* the *most high* and *absolute:* therefore the *Proceedings*, without Doubt, ought to be the most *just* and *honourable*.

The *Punishment* inflicted by this Bill is the *greatest* that can be, next to *Death* itself: for what can be worse, than for a *Reverend Prelate* of such *advanced Years*, and of so *infirm a Body*, to be *banished* into another Country, and be forced to *seek his Bread in desolate Places?*

The Punishment is still much severer to his *Lordship*, who hath saved nothing to support himself: for his eminent *Hospitality*, and his extensive *Charity*, though they have fitted and prepared him to live in another *World*, yet have disabled him from subsisting in another *Country:* there he will himself want that *Charity*, which he so liberally bestowed upon others, and must beg upon his Crutches, or starve.

As to the *Evidence* offered against his Lordship, I humbly apprehend the *Proof* would not be sufficient *at Law* to support an *Indictment* for the *lowest* Misdemeanor. And will your Lordships, in your great *Wisdom* and *Justice*, convict a *Lord of Parliament*, a *Member of your own Body*, and subject him to such *severe Punishment*, upon *Evidence* that at Law would not be sufficient to convict the *meanest Subject* of the most *minute Trespass?*

This, I humbly apprehend, will appear to be the Case, when the *Charge* against my Lord Bishop, and the *Evidence* to support it, have been considered.

The Bill recites, 'That there was a detestable and horrid Conspiracy 'for invading his Majesty's Kingdoms with foreign Forces; for raising 'a Rebellion; for seizing the *Tower* and City of *London:* and for laying 'violent Hands upon his Majesty's most sacred Person, and upon his 'Royal Highness.'

As to the *seizing the Tower and the City*, and *laying violent Hands on the King and Prince*; neither of *these* Crimes is charged upon my Lord Bishop. But the Charge against his Lordship is, that 'he hath been deeply 'concerned in forming, directing, and carrying on, the wicked and detes-'table Conspiracy, by traitorously consulting and corresponding with di-'vers Persons to raise an Insurrection within this Realm, and to procure 'foreign Forces to invade this Kingdom; and intending to raise a Re-'bellion, at the Time of the Elections; and when the King went to '*Hanover*;' and at the breaking up of the Camp.'

As to the first, *viz.* The *sending for foreign Forces*; the Bishop is not charged with being *privy* to any one of the three *Memorials:* for *Neynoe* says, *he* wrote them, and they were dictated to him by *Kelly* and *Watson*, whom he supposed to be the Earl *Marishal*.

As to the Charge of *raising a Rebellion* at the Time of the *Elections*, 'tis founded on a Letter, signed 1378, and directed to Mr. *Jackson*; which, the *Report* says, the Committee have *good Reason to believe* was from the Bishop of *Rochester* to the *Pretender*.

The Letter says, 'Notwithstanding this Opportunity is elapsed, I 'agree with you, another may offer before the End of the Year.' And the Observation made upon it, is, that it was wrote the 20th of *April*, when most of the *Elections* were *over:* So consequently the *Opportunity* was *elapsed*.

The Letter of the 20th of *April* is supposed to be wrote to the Pretender at *Rome*. It supposeth a Letter to the Pretender had been wrote, taking notice that an Opportunity was elapsed at the Elections; and that an Answer had been made to that Letter by the Pretender, that another may offer before the End of the Year; which must be at least *two Months* before the Date of the Letter; and that was before the *Elections* were *begun*.

As for raising a Rebellion, when the *King went to* Hanover; it is inferred from *dark Passages* in Letters of the 20th of *May* 1722, *N. S.* 9th of *May*, *O. S.* and 10th of *May*, *O. S.* which are said to have passed between *Dillon*, or his Secretary, and *Kelly*. And by comparing those Passages, you will observe what Foundation there is for such a Charge.

In the Letter of the 9th of *May*, *O. S.* 20th *N. S. Quitwell*, supposed to be *Dillon*'s Secretary, writes to *Baker*, supposed to be *Kelly*, 'That if 'this Post hath not brought an Addition of three to the six, formerly 'come from *Repney*, it is easy for Mrs. *Jones* to see, what is still wanting 'for the Purchase she intends to make.'

In the Letter of the 10th of *May*, *O. S. Hatfield*, who is supposed to be *Kelly*, writes to *Howell*, who is supposed to be *Dillon*'s Secretary, 'That the 'King intends to set out early next Month, if they could then compass 'Barrels enough; the sooner the Wine comes, the better; *Jones* promises 'to be a good Customer.'

From hence, and from what *Pancier* said, *Skeen* told him, 'twas insinuated, that great foreign Forces were to be brought in for the Pretender; that great Sums of Money were contributed for that Purpose; and that those Sums were under the Management of the Bishop of *Rochester*; and all this, because *Quitwell* tells *Baker*, if the last Post did not bring an Addition of three to six, Mrs. *Jones* may see what is still wanting for the Purchase she intends to make.

Now suppose, by *Quitwell* and *Howell* are meant *Dillon*'s Secretary; and by *Baker* and *Hatfield*, *Kelly* is intended; and suppose, that by the *Addition of* three to six is meant a *Remittance of Money*; by *Wine* are meant *Soldiers*; and by Mrs. *Jones* is meant my Lord Bishop of *Rochester:* Yet can what *Dillon*'s Secretary writes to *Kelly*, or what *Kelly* writes to *Dillon*'s Secretary, affect the Bishop of *Rochester?* If it can, it is in the Power of *any two Men*, one residing *here*, and the other *beyond Sea*, to take away the Life of *any Man* breathing. But suppose we can make it appear, as most certainly we shall, that by Mrs. *Jones cannot* be meant the Bishop; then what becomes of this Part of the Charge?

The next Thing to support this Charge is, a Passage in an Extract of a Letter dated the first of *May*, written from *Quitwell* to *James Baker*; in which 'tis said, 'that Mrs. *Jones* cannot take a better Time to have '*himself* fitted with an easy Saddle, *&c.*' If an Extract of a Letter can be of any Weight, and the Construction put upon it is to be allowed; then the *Bishop* is turned *General*, or at least a *Colonel*. For by *Neynoe*'s Information and *Plunkett*'s Cypher, *Saddlers* and *Saddles* are *Irish Soldiers* and *Regiments:* So the Bishop is represented as undertaking to raise a Regiment of *Irish* Soldiers, and to mount on Horseback himself to command them.

As to the third Thing charged, which was to raise a Rebellion *at the Breaking up of the Camp*; there is no *Pretence* of *Evidence*. So that, upon the whole, there does not appear to be any Pretence for that Part of the *Preamble* to the Bill, which chargeth the Bishop with having been 'deep-'ly concerned in forming, directing, and carrying on the Conspiracy.'

The next Thing charged against his Lordship is, that he was 'con-'cerned in a Correspondence abroad, and some Transactions at home for 'bringing in the Pretender.'

Now as to this, I would observe, that there is not *one Witness* against his Lordship of any criminal Act; that though *all his Papers have been seized*, yet there appears not any *Letter* or *Paper*, under *his Hand*, of a criminal Nature; nor any Letter *proved* to be *written* or *received* by him, which is criminal: Neither is there any Charge of any *Meeting* or *Consultation* with any Persons for carrying on this Conspiracy. Indeed he is mentioned as a Member of a Club, called the *Burford-Club*, of which the Earl of *Orrery* was said to be Chairman; which Club (as I apprehend) was never heard of 'till *Layer*'s Trial. This Accusation *I know* to be *false*; and never met with *any one* that *believed* it: therefore shall not trouble your Lordships with any farther Observations upon it, than just to take notice, that though he who made the List hath joined me with Persons of great Quality and Honour; yet I presume to say, that my Profession in the Law, as well as my Religion, has given me such a Sense of my Duty, that no Persons whatsoever are great enough to draw me into a Plot against his Majesty and the Government.

I beg Leave to observe that this Charge is founded partly upon the *Hearsay* of *Pancier* and *Neynoe*, and partly upon the three Letters dated the 20th of *April* 1722.

As to the *Hearsay-Evidence*; *Pancier* deposeth, That *Skeen* told him, that the Bishop of *Rochester* and Lord *North* and *Grey* had the principal Direction of the Conspiracy; that 200,000*l.* had been raised by Contribution, and was put into the Management of the Bishop; and that it was called the *Military Chest*. Now can this be *Evidence* in an *Indictment* or *Action*, for the most *minute Trespass*, or in *any Case?* Can it be imagined, that *so much Money could be* raised among the *Jacobites?* or that such a Sum could be *raised*, and not *one Contributor discovered?* Can it be imagined that such a Sum should be *entrusted* with *one Man?* Or that *my Lord Bishop* would *be that Man*, who would have the *Care* and *Trouble*, and run the *Hazard*, of such a Sum? To which it may be added, that *Skeen*, the *only* Person *living*, who by *any Person living* is *said to have said* this, is now in Custody, ready to be examined upon *Oath*, and *denies every Word of it*.

As to *Neynoe*'s Examinations, he speaks only what *Kelly* told him; and can what *Kelly* told him affect the *Bishop?* Besides, none of his Examinations are *upon Oath*, or so much as signed by him; (whereas the Examination of *Goodman*, that was given in Evidence against Sir *John Fenwick*, was *upon Oath:*) all of them appear to be taken *after he was in Custody*, under great *Apprehensions* and *Terrors*; nay, it appears that one of them was taken *the Day before he drowned himself:* and moreover, that only *one of them* was read, which was extracted out of *three* Examinations, marked *A*, *B*, *C*, and said to contain the Substance. We desire *all* the *three* Examinations may be produced and read; and then it will appear, whether that one contains the whole Substance; or whether there be not *some Things* very material *omitted:* and it will likewise appear, that there are such *Inconsistencies* in them, as will take off their Credit. For in one Place he says, he saw *Kelly* make use of the Cyphers; and that *Kelly* owned *with great Freedom* they were for carrying on a Correspondence with the Pretender and his Agents: and yet in another Place he says, That *Kelly* never *opened himself* as to the Plot now on Foot; that indeed he had seen several Letters from *Paris* and other Places, but they contained *nothing material*. So that it must be supposed, either that there was no treasonable Correspondence carried on by *Kelly*; or that *Neynoe* was not so great a Confidant of *Kelly*'s as he pretended.

Neynoe says, He drew *three* Memorials; and the last was in *December* 1721, to the *Regent* for five thousand Men; that all the Memorials were drawn by the Order of, and dictated by, one *Henry Watson*, whom he did not know, but took to be the late *Earl Marishal*; that *Henry Watson*, whom he took to be *Earl Marishal*, was in *England* all last Spring, and that he lay with him several Nights.

'Tis very extraordinary, that the *Earl Marishal* should trust a mere *Stranger* to draw three *Memorials*, and one of them *for five thousand Men to invade the Kingdom*; and that afterwards he should *lie with him* several Nights, and *not know who he was*.

In one of his Examinations he says, the *Heads* of the Memorials were given *him* by *Kelly* and *Watson*; in another he says, they were *all drawn* by

by *Watſon:* And 'tis obſervable, that the *rough Draught*, or a *Copy* of any one of them, is not produced, which certainly, he that intended to turn Evidence, and ſo ſoon after became an Informer, would have done, if there had been any ſuch.

The Committee are pleaſed in their Report, *Pag.* 38. to take Notice, that *Neynoe ſaid*, Kelly *told him*, that a *Lord of the Council* gave the Biſhop *Notice* of his being to be taken up, ſome Days before it happened; and are pleaſed likewiſe to ſay, that he afterwards confeſſed, (as they were informed) that in that, and other his Examinations, he endeavoured all he could to *create Diffidence and Suſpicions among his Majeſty's Servants*. And what *Credit* can be given, after this, to one, who had ſo *little Regard to Truth*, as to ſay *any Thing*, tho' never ſo *falſe*; to ſo *wicked a Purpoſe*, as to create a Miſunderſtanding among his Majeſty's Servants? eſpecially if one conſiders how probable it is, that the *Remorſe he had upon his Conſcience*, occaſion'd by the Evidence he had given, and his Dread of the *Shame* of being *forc'd*, when he came *upon his Oath*, to *deny* what he had *ſaid* when he was *not upon his Oath*, were the Reaſons of his making away with himſelf. And we ſhall call ſome Witneſſes, who will give a full Account of him.

We ſhall call one, who but lately depos'd before your Lordſhips, that *Neynoe* told him, he had *ſaid* ſeveral Things to *a great Man*, which he neither would nor could *ſwear* without being perjur'd.

I moſt humbly beg your Lordſhips Pardon, for being ſo particular in a Matter which I had ſo lately an Occaſion to mention: But this is the Hinge upon which the Weight of the whole Charge againſt the Biſhop turns, and therefore I doubt not but your Lordſhips will excuſe me.

The next Charge againſt my Lord Biſhop ariſeth from *three Letters*, dated the 20th of *April*, 1722. One ſigned *J. Jones*, *innuendo* the Biſhop; to *Chivers*, *innuendo Dillon:* The ſecond ſigned *Illington*, *innuendo* the Biſhop; to *Muſgrave*, *innuendo* Lord *Marr:* The third to *Jackſon*, *innuendo* the Pretender; and ſigned 1378, *innuendo* the Biſhop. Theſe Letters are ſaid to be wrote by *Kelly*, and dictated by the Biſhop.

Now as to theſe Letters, I beg leave to obſerve there is *nothing Criminal* appears to be in any one of them. But then 'tis objected, that two of the Perſons are attainted of *Treaſon*, and are Agents of the *Pretender*; and 'tis High-Treaſon to write to them: And the third is the *Pretender himſelf*.

Suppoſing *Chivers* were *Dillon*, and *Muſgrave* were *Marr*; yet writing to them in *private* Matters, not *criminal* in themſelves, nor relating to the Pretender, is not Treaſon.

But how comes the Lord *Marr* to be an Agent for the Pretender? He quitted the Pretender's *Service* many Years before; and from the Time of quitting his Service, till after the Date of thoſe Letters, had a Penſion from his preſent Majeſty. I believe the Counſel for the Bill, and all Mankind, will be at a Loſs to tell by what Law writing to one, who hath quitted the Pretender's Service ſo many Years, and who hath ſubſiſted ever ſince by a Penſion from his Majeſty, can be an Offence.

Indeed, if it be proved that *Jackſon* is the Pretender, I admit writing to him is Treaſon: But if it be proved (as it will beyond all Diſpute) that by *Jackſon* neither *is* nor *can be* meant the Pretender; and that my Lord Biſhop neither *did* nor *could* write or dictate any one of theſe Letters; then the whole Charge againſt my Lord Biſhop, founded upon thoſe Letters, falls to the Ground.

The next Thing I would obſerve, as to thoſe Letters, is from the Report, *Page* 42. where the Committee are pleaſed to obſerve, that the Letter to *Chivers* is, great Part of it, out of Cypher; which ſeems to allow that the other Part was *in* Cypher. Therefore it was very neceſſary, I think, to have *printed* the Letters in the *Cyphers* and *Characters*, in which they were *written*; and alſo *as they are decypher'd:* Then the Perſons accus'd would have had an Opportunity of employing Men skill'd that way, to ſee if they were *rightly* decypher'd. This was done in *Colman*'s Caſe.

The *French* Papers, in the *Appendix*, are printed firſt in that Language, and then as they are tranſlated; which was not ſo neceſſary as Printing the Letters in *Cypher* in this Caſe: Becauſe almoſt every one underſtands *French* enough to tell, at firſt Sight, whether a *French* Letter be rightly tranſlated; but 'tis impoſſible for a Man of the greateſt Skill in the Art of decyphering, to tell, upon a ſudden at the Bar, whether a Letter be rightly decypher'd: So that all a Man hath in the World, is to depend upon the Skill and Integrity of the Decypherers. Nor are they infallible; for the Witneſſes who decypher'd the Letters, admit, that there are ſome Words in them which they could not decypher; and thoſe Words may give a Turn to the whole Senſe of the Letters. Nay, Mr. *Willes* ſaid, that one of the Numbers he could not decypher ſtood for *two Words:* He was likewiſe pleaſed to ſay, it was *impoſſible* that the Number he could not decypher could make an Alteration in the Senſe; which is very extraordinary for a Man to *ſwear:* But if *one* Word could not make an Alteration in the Senſe, ſurely *two might*.

The writing theſe Letters is charged upon *Kelly*; which cannot affect my Lord Biſhop, unleſs they were dictated by him, or written by his Direction, or Privity; of which there is no *Pretence* of Proof. And therefore I ſhall next offer to your Lordſhips ſome Obſervations upon the Arguments and Circumſtances alledged to ſupport this Charge.

It is obſerved in the *Report*, that the Perſon who wrote theſe Letters, ſpeaks of himſelf as being in *ill Health*, in *great Pain*, under ſome ſad and *melancholy Circumſtances*, which he expects will ſoon blow over; and from thence 'tis inferr'd it muſt be the Biſhop, becauſe his *Wife* was then ill, and died in ſix Days after; and that he himſelf was at that Time afflicted with the *Gout*. One of the Gentlemen, who was Counſel for the Bill, ſaid, Theſe were Circumſtances, that did not happen to *any two Men* in the World at that Time: And give me leave to inſtance one other Circumſtance, which, I believe, did not happen to any one Man in the World; which is, *writing a Letter of Politicks*, when *his Wife lay a-dying*.

Why theſe Circumſtances muſt neceſſarily intend the *Biſhop*, more than *any other* Perſon that was *ſick*, and under *Misfortunes*, I cannot apprehend. That *ill Health* muſt neceſſarily imply the *Gout*; and that it muſt be intended, that *no Man* had the Gout *the 20th of April*, but the *Biſhop*; that *melancholy Circumſtances* neceſſarily imply a Man's *Wife being ſick* or *dying*; and that *no Man* had a Wife ſick or dying, but the *Biſhop*; is, in my humble Apprehenſion, a new way of arguing.

Another Way of proving theſe Letters to be wrote by the Biſhop, is by the Names and Figures ſubſcribed. For one Letter is ſubſcribed, *T. Jones*, and another Letter is ſubſcribed, *T. Illington:* And the Report obſerves, that wherever *Jones* and *Illington* are named, the Biſhop is to be underſtood. But *why* the Biſhop is to be underſtood by thoſe Names, *non conſtat*; nor is there any *Pretence* of *Evidence*. And if we ſhew (as we infallibly ſhall) that by thoſe Names the Biſhop *could not be meant*, and that he *could not write*, or *dictate thoſe Letters*; then the *Inferences* againſt the Biſhop *from theſe Letters*, and from the *ſubſequent Correſpondence* under *thoſe Names*, become of no Force or Weight.

A Third Letter is ſubſcrib'd, 1378; which the *Decypherers* ſay denotes a Perſon whoſe proper Name begins with an *R*. And the Report is pleaſed to infer, that *it muſt be* the Biſhop of *Rocheſter*. Now why 1378 denotes a Perſon whoſe Name begins with an *R*, the *Decypherers* only know: And we are as much at a Loſs to know, why by a Name beginning with *R*, muſt be intended the Biſhop of *Rocheſter*. If that Number appeared to denote a Name beginning with *R*, and if no Name began with that Letter but the Biſhop of *Rocheſter*'s; there would then, I confeſs, be ſome Weight in the Obſervation.

That *Jones* and *Illington* are not the *ſame Perſon*, appears from the Letter of the 10th of *May*, from *Hatfield* to *Howel*; where, within the Compaſs of *two Lines*, they are *diſtinguiſhed*. For in one Line he ſaith, *Jones* promiſeth to be a good Cuſtomer; and in the next Line but one he ſaith, *Illington* is gone in the Country; which plainly ſhews them to be diſtinct Perſons. Beſides, in the Papers mentioned concerning the Duke of *Norfolk*, his Grace is ſeveral Times denoted by the Name of *Jones*: In *Layer*'s Liſt, Sir *William Ellis* is deſcribed by that Name; and in *Plunkett*'s Liſt *Jones* ſtands for the *Germans*.

The Evidence to prove *Jones* and *Illington* to denote the Biſhop, and the Intimacy between the Biſhop and *Kelly*, is the *Preſent* of a *Dog* called *Harlequin*.

The Evidence ſtands thus.——*Rep.* 40. *E.* 35. *Hatfield*, who is ſuppoſed to be *Kelly*, in his Letter of the 30th of *April* to *Howel*, who is ſuppoſed to be *Dillon*'s Secretary, writes thus. Mrs. *Jones* died laſt Week; pray preſent my Reſpects to Mr. *Muſgrave* (meaning *Marr*) and let him know, I received the Preſent ſent by the young Lady; that he had a Leg broken in the Journey: However, I will take all the Care imaginable of him; and inform Mr. *Jones* of it, to whom I know any thing from that Quarter will be very acceptable.'

Hatfield, in his Letter to *Muſgrave* of the 7th of *May* 1722, ſays; 'Mrs. *Illington* is in great Tribulation for poor *Harlequin:* However, his Obligations to the Lady are as great, as if he had come ſafe.'

From theſe Letters 'tis inferr'd, that by *Jones* and *Illington* the Biſhop is meant; and that a young Lady ſent the Dog to *Kelly* as a Preſent for the Biſhop: And 'tis urged, that Mrs. *Barnes* in her Examination of the 23d of *May*, ſays, The Dog was not deſign'd for her, but for the Biſhop of *Rocheſter:* That *Kelly* told her, the Dog was for the Biſhop; and that *Kelly* promiſed to get the Dog for her from the Biſhop, in caſe it did not recover its Lameneſs.

It is admitted, that Mr. *Kelly* brought ſuch a Dog from *France*; that Mrs. *Barnes* had it; and that its Leg was broken: But that it was deſign'd for the Biſhop, or that the Biſhop ever had, or ſaw it, there is no *Pretence* of *Proof*; and my Lord Biſhop utterly denies it; and Mr. *Kelly* hath ſolemnly deny'd it to your Lordſhips: And inſtead of its being a Preſent from a young Lady to the Biſhop, Mr. *Kelly* ſays he bought it of a Surgeon at *Paris*, to give it to Mrs. *Barnes*.

There is one Expreſſion in the Letter of the 7th of *May*, which is remarkable; and, in my humble Opinion, enervates and deſtroys the Force of all thoſe Letters relating to the *Dog:* For it was written four or five Days *after the Biſhop's Lady was bury'd*; and it ſays, 'Mrs. *Illington* is in great Tribulation for poor *Harlequin*.' Mr. *Kelly* was ſuppoſed to write that Letter, and was ſuppoſed to be a Friend of the Biſhop's; and could a *Friend*, could any Man of *Common Senſe*, be guilty of ſuch a *fooliſh* and *ridiculous* Expreſſion? Could any Man ſay of one of my Lord *Biſhop*'s *Character*, who was in the *utmoſt Affliction for his Lady*, that he was in *great Tribulation* for the *breaking of a Dog's Leg?* 'Tis evident, he who wrote that Letter, *did not know* the Biſhop's *melancholy Circumſtances:* 'Tis likewiſe well known, that the Biſhop *never lov'd a Dog*, nor ever *had one*.

The next Method of *proving Letters* upon the Biſhop, is by *Similitude and Compariſon of Hands:* not by *comparing* any Paper *written by him* with *any other Writing*; but by *producing* a Letter *ſuppos'd to be written* by Mr. *Kelly* in *Auguſt*, and by proving that the *three Letters* written in *April*, were *open'd* and *copy'd*, and *ſent forward*; and that *thoſe Letters* were of the ſame Hand with *that produced*.

It was to be hoped, that, ſince Mr. *Sidney*'s Caſe, the *Evidence by Similitude of Hands* in *criminal* Proſecutions would never have been offer'd: He was convicted upon *ſuch* Evidence, and for *that Reaſon* his *Attainder* was *revers'd* in Parliament. And therefore I humbly hope your Lordſhips will not in your *Legiſlative Capacity* admit that to be Evidence in *this* Caſe, which in *the ſame Capacity* you were pleas'd to condemn in Mr. *Sidney*'s.

In 1695, *Crosby* was indicted for writing treaſonable Letters; and the Evidence was Similitude of Hands: Which Evidence was *diſallowed* by the Chief Juſtice *Holt*, and *Crosby* was *acquitted*.

In *Francia*'s Caſe, my Lord Chief Baron *Bury* declared Similitude of Hands to be *no Evidence:* And if it was not admitted in *theſe* Caſes, where *Papers* were *produced*, and *proved to be of their own Hand-writing*, and the Papers with *which they were charged* were produced, and *compared* with thoſe other Papers; we preſume, your Lordſhips will not allow it in *this* Caſe, where it is *carry'd farther* than ever it was attempted before.

The Proof, as to this Point, ſtands thus.—Three *Clerks of the Poſt-Office* ſwear, that the 20th of *April*, 1720. *theſe three* Letters were open'd; that they took Copies of them, and ſeal'd them up again, and

and sent them forward; that *four Months* after, *another Letter* came to the Office, which was stopp'd: *That* is produc'd; and they all swear, they *believe* the *three Letters* were the *same Hand-writing* with the *Letter produc'd*. Now that Men, who *never saw* a Hand *but once*, and thro' whose Hands *so many* letters pass in a Month, should be able to *swear*, that three letters, which were sent in *April*, 1720, were of the same Hand-writing with a letter which was stopp'd *four Months* after, is strange and incredible.

I beg leave farther to observe, that the Clerks of the Post-Office own they *did not compare* the *Copies* of the three letters with the *Originals*. And was ever a Copy allowed to be read unless the Person who produc'd it swore that he compared it with the Original, and that 'twas a true Copy?

It is remarkable, that *Clark*, one of the Post-Office, said, It was *impossible* to write a Hand that had *any Resemblance* to those letters; but yet, he said, the *Figures* bore a Similitude to the *Hand-writing*: So that *one* Hand cannot be like *another*; but *Figures* may be like a *Hand-writing*.

It is also observable, that the letter produc'd is proved to be *Kelly*'s Hand-writing only by *Hutchins* the Messenger; who says he had him in his Custody a Week, and saw him write several letters; and by *Malone*, who proves Mr. *Kelly*'s Hand by a Superscription in *French*, and yet owns he *cannot read* French: Whereas, *we* shall *prove* by *three positive Witnesses*, that this *is not* his Hand. Besides, they might have produced the letter which he wrote to my Lord *Townshend*, which is *admitted* to be his Hand.

We shall likewise prove by several Witnesses, That *at the Time* when the three letters are *said to be written*, the *Bishop* was at *Bromley*, and *so lame* with the Gout, that he could not *stir Hand or Foot*; that his *Lady* was *dying*; that *no Person* was *admitted* to him, but two or three Servants; and that Mr. *Kelly* was *not* at *Bromley* at *that time*, nor for *three or four Months before, or after*. And therefore 'tis impossible those letters should be written, or dictated, by the Bishop.

The Evidence of *Wood* the Coachman, confirms this. For he swore, that he never saw Mr. *Kelly*, till he was carry'd to see him in the *Tower*; and that *Kelly* was not at *Bromley*; that no *Stranger* was at *Bromley* from the 12th of *April* till the 26th, when the Bishop's Lady died; and that he *must* have *known it* if there had; that the Bishop *never sent the Coach* for *Kelly*, or any other Person in *Berry-street*, or any Place near *Pall-Mall*. So that by this, the Examinations of *Elizabeth Levet* and *Neynoe* are quite destroyed.

But 'tis objected, that a Man might put his Horse at an *Inn*, and come to see the Bishop, and *Wood* not know it. Can it be imagined that *Kelly*, who is supposed to be so particular a Friend of the Bishop's, would leave his Horse at an *Inn?* But we shall examine other Witnesses to this.

It was objected, that on the 10th of *June* the *Bells rang*, and the Servants had *Roses*. But it appears, most of them were *red* Roses: And if it should be *criminal* to ring the Bells on the 10th of *June*, we shall shew that the *Bishop knew nothing* of the Ringing of the Bells, or of the Roses.

In the Report, *Page* 50. the Committee of the Commons are pleased to take Notice; "That on the 11th of *June*, *Kelly* sends his Friends at "*Paris* an Account of his late Misfortunes; and after complaining of "the Neglect in not bailing him out sooner, says, Your Old Friend *Rig*, "indeed, offer'd all that could be expected from the poor Man;" and infer, "That by *Rig* is meant the Bishop of *Rochester*."

Can it be imagined, that *Kelly* would call the Bishop *Gerrard*'s old *Friend*; who, 'tis not *pretended*, ever *knew* him, or *saw* him? And if *poor Man* be taken by way of *Contempt*; can it be imagin'd that Mr. *Kelly*, a Gentleman of that *good Sense* and *Breeding*, would use *such an Expression* of my Lord Bishop? If these Words are taken in the *literal* Sense, 'tis as improbable; for the Bishop was not taken for a *poor Man*: Besides, how could he, who had 200,000 *l.* Contribution-Money, and had the *Command of the Military Chest*, be said to be *poor?* And I dare say, there is Nobody but believes, that if my Lord Bishop would have intermeddled on Mr. *Kelly*'s behalf, he had Interest enough to procure whatever Bail *Kelly* wanted: And therefore I apprehend, that *Rig* cannot be intended to be the Bishop.

Indeed, *no Credit* can be given to *Cant-Names*; for the *same Names* are us'd for *several Persons*: As *Laws* in *Plunkett*'s Cypher stands for *Marr*; and in the Cypher found on *Dennis Kelly*, it signifies Mr. *Cæsar*. *Hawksby* in *Plunkett*'s Cypher, stands for King *George*: And in the Report 62, there are Compliments from the *Pretender* and his *Spouse* to *Hawksby*; which, I presume, they did not mean for his Majesty. *Jones* is used many times for the Duke of *Norfolk*; it is used for Sir *William Ellis*; and it is also used for the *Germans*; as I before observ'd.

That *Jackson* cannot mean the Pretender, is plain. *App. E.* 30. A Postscript in the letter from *Quitwell* to *Vernon*, says, "Mr. *Chivers* ad-"vises, that the Money you mention, in *Clinton*'s Hands, should be "equally divided between *Medley* (meaning the late Duke of *Ormond*), and "*Jackson*, meaning the Pretender." Now, would any one devoted to the Pretender's Interest put *Ormond* before the Pretender? *Jackson* is put for the Pretender only in *Plunkett*'s List; and yet 'tis observable, that *Plunkett* in all his Correspondence never calls him *Jackson*, but *Joseph*, or *Jephson*: And in the voluminous Correspondence charged on *Kelly* he is not once called *Jackson*; but the usual Names are *Jephson* and *Joseph*.

As for the letter to *Dubois*, it seemed at first to be a letter written from *France* TO the Bishop by the Name of *Dubois*; and after a Month's time they find it to be a letter written BY the Bishop. If so; *Writing* a letter, and *not sending*, can be no Offence. But how comes the Bishop to keep that letter *seal'd*, which he had written *seven Months before?* The Writer of that letter owns, he had receiv'd one from *Dubois* two Months before, by Mr. *Johnson*; which was the Name *Kelly* went by: And 'tis very strange, that the Bishop should be so weak, as to mention the *Name* of the very Person, who, 'tis said, used to write his letters, and by whom he was suppos'd to carry on his Correspondence. If it be presum'd that *He* wrote this letter; it must also be presum'd, *he was out of his Senses* when he did it.

That letter was not signed, and was dated the 16th *Dec.* but no Year; tho' they have put the Year 1721 to it. For a Month together they never thought the letter to *Dubois* to be the Bishop's Hand; tho' they had several of his letters. As to the Observation made by one of the Gentlemen, that the letter to *Dubois* was sealed by a *particular Seal*, and not the Seal with which he seal'd such letters, as He *intended all the World should see*; that Gentleman would do well to let us know, *what* letters were written by the Bishop, which he intended all the World should see.

That *so many* letters were written before 1712, and so *few since*, was occasioned by his Lordship's great Correspondence about Matters of *Learning at* that Time, and his being *from* that Time often afflicted with the *Gout*, so that he could not write many letters, and consequently receiv'd but few. Besides, He was made Bishop in 1713, and Dean of *Westminster*; so had not Time to write much himself, but kept a *Secretary*.

As the Matters before mention'd to be charg'd against my Lord Bishop, arose from letters supposed to be written *by* him; I shall next consider the Charge against him, which arises from letters supposed to be written *to* him.

There are *Two Letters* mention'd in the Report as written to him; one of the 11th by *Motfield*, interpreted to be Lord *Marr*, wrote to *Illington*; the other of the 25th of *July* from *Digby*, interpreted *Dillon*, to Mrs. *Weston*.

Now I would observe, That it is not pretended, that either of those letters was ever *receiv'd* by the Bishop; so consequently must be *intercepted*: Therefore it would have been proper, to have *produced the Letters*, and to have *prov'd the Hands*.

As to the letter from *Motfield*, 'tis only a *Compliment of Condolence!* And 'tis inferr'd that it *must be the Bishop*, because his *Lady died* a little before. The letter says, "We must submit with Resignation to what the just "and great God thinks fit to order; but you know such Things so much "better than I do, that I will not trouble you with saying any more "upon it." From these last Words it is inferr'd, That this letter was written to a *Clergyman*, and *consequently* the *Bishop*.

What Weight this way of Reasoning will have with your Lordships in *criminal* Prosecutions, is humbly submitted: But it must be observ'd, That this letter is said to be an *Answer* to the letter said to be written the 20th of *April* to *Musgrave*. And as we have shew'd, that it was impossible the Bishop should write or dictate either of the letters of the 20th of *April*, the *Answer* must fall with the letter. But from hence the Observation is natural, and undeniably true; that if *Jones*, who wrote the letter to *Musgrave* of the 20th of *April*, could not be the *Bishop*; and *Illington*, to whom *Motfield* wrote, be the same as *Jones*; then neither *Jones* nor *Illington* can denote the Bishop.

As to the letter from *Digby* to Mrs. *Weston*, who is interpreted the Bishop; it was written the 25th of *July*, *N. S.* wherein *Digby* says, "I "cannot on any reasonable Grounds complain of your Silence, because "I am inform'd of the Situation of your Health, and the Concern your "Family are in, by Bankrupts and Law-Suits."

It must be observ'd, that on the 7th of *July*, *O. S.* *G. W.* in his letter to *Digby* says, "I saw Mrs. *Weston* yesterday; she never was better in "her Life than now." It is strange, that *Digby* the Week following should take Notice of the ill Situation of Mrs. *Weston*'s Health. 'Tis plain both these letters can't be genuine, and therefore no Credit can be given to such a Correspondence.

One Way of fixing the intercepted Correspondence, and the Cant-Names mentioned therein, upon the Bishop, is, by the *Coincidence* of *Times*, and other *Circumstances*; as of his Lordship being *in Town*, and *out of Town*: And there are several Mistakes in them. For in *Hatfield*'s letter to *Musgrave* of the 7th of *May*, he says, Mr. *Jones* is come to Town *only for a Day*: If that be to be understood of the Bishop, it is not true; for he came to Town the 5th of *May*, and did not go out of Town till the 10th.

In the letter from *I. H.* to *Dixwell*, of the 18th of *June*, 'tis said, 'Mr. *H. Rig* and *Rep.* are I hear in the Country.' And 'tis said, by *Rig* is meant the Bishop: Which cannot be, for the Bishop was then in Town. So in a letter to *Maisonneuve*, of the 19th of *July*, 'tis said, '*Rig* is in the Country.' Whereas the Bishop was then in Town. This is the more observable; because the *Report*, taking Notice of the Bishop's being ill of the *Gout*, says, *Page* 41. 'This Particularity, as also several 'others, which will be taken notice of as to the Bishop's being in Town, 'or in the Country, at the respective Times mention'd in the intercepted 'letters, have been carefully inquir'd into.' And in the next Paragraph, the *Report*, taking notice of the letter to *Musgrave* of the 7th of *May*, which says Mrs. *Jones* is come to Town, says, 'This agrees with the 'Inquiry.' And yet it will plainly appear, that there are such Mistakes, as to those Times, as I have before mention'd.

I hope I may have leave to observe, that these Mistakes escaped the Observation of the Honourable Committee of the House of Commons; and that tho' the letter of the 7th of *May*, in the *Appendix*, says, 'Mrs. '*Jones* is come to Town only for a Day;' yet in the *Report*, the Words, *only for a Day*, are left out.

All the Circumstances before mention'd are made use of to fix the Names of *Jones* and *Illington* upon my Lord Bishop; and therefore the next Paragraph but one in the Report is very observable: Which is this.

'These several Circumstances, joined to *Neynoe*'s Declaration, that '*Kelly* had told him, the Bishop went sometimes by the Name of *Jones*, 'and that *Carte* had told him, the Bishop went by the Name of *Illington*, 'shew, that wherever *Jones* and *Illington* are named in *Kelly*'s Correspon-'dence, the Bishop of *Rochester* is to be understood by those Names.'

So that the whole Proof of the Correspondence, charged to be carry'd on by my Lord Bishop under the Names of *Jones* and *Illington*, is resolv'd into this; that *Neynoe* DECLARED that *Kelly* and *Carte* TOLD HIM the Bishop went by those Names.

I beseech your Lordships, Is this *Proof?* Is this Evidence sufficient to deprive a Reverend Prelate of all his Ecclesiastical Preferments?

and to ſend him into perpetual Baniſhment? Do the Lives and Liberties of *Engliſhmen* ſtand upon ſo weak a Foundation? If they do, I preſume to ſay they are very *precarious*, and the moſt *innocent* Man alive cannot ſay he is *ſafe*.

I beg your Lordſhips Indulgence to obſerve farther, that this heavy Charge againſt my Lord Biſhop is ſupported only by *Innuendos:* And with what an Eye *Innuendos* have been always look'd upon in *criminal* Caſes, many Inſtances may be given.

I ſhall trouble your Lordſhips but with *one*; which is full to this Purpoſe, and of the greateſt Authority: I mean the Reſolution of your Lordſhips in the Caſe of Sir *Samuel Barnardiſton* in 1683. He was proſecuted for writing Letters, alledged to be ſeditious, and highly reflecting on the Government, and the publick Juſtice of the Nation; and was found guilty, and fined 10,000 *l.* He brought a Writ of Error in this moſt Honourable Houſe, and your Lordſhips were pleas'd to reverſe that Judgment; for that the Information being grounded on *Letters*, which in *themſelves* were *not criminal*, but made ſo by *Innuendos*, your Lordſhips were pleaſed to declare, that *Innuendos* and *forced Conſtructions* ought not to be allow'd; for all *Accuſations* ſhould be *plain*, and the *Crimes aſcertain'd*.

Now if it can be ſuppos'd, without any *Evidence*, that my Lord Biſhop *wrote* the Letters charged to be written by him; even then this Caſe is the ſame with Sir *Samuel Barnardiſton*'s. For the Letters are not *criminal* in *themſelves*; nor can be made ſo but by *Innuendos*, and *ſtrain'd*, *forc'd Conſtructions*. Nay, I preſume to ſay, there is not *one Part* of the Charge but ſubſiſts *purely* by *Innuendos*, and *ſtrain'd Conſtructions*.

I will trouble your Lordſhips with inſtancing only *one* Letter; which is that of the 20th of *April*, written to Mr. *Jackſon*, and ſubſcribed 1378. With the *Innuendos* it is thus. 1378, *Innuendo*, a perſon whoſe proper Name begins with an *R*, *Innuendo* the Biſhop of *Rocheſter*, did write to Mr. *Jackſon*, *Innuendo* the *Pretender*; that, notwithſtanding *this* Opportunity, *Innuendo* an Opportunity of *raiſing a Rebellion in* England *at the Time of Elections of Members of Parliament*, had elapſed; I, *Innuendo the Biſhop*, agree with you, *Innuendo* the *Pretender*, that another, *Innuendo* another *Opportunity of raiſing a Rebellion in* England, may offer before the End of the Year, *Innuendo* at the *breaking up of the Camp*. Your Lordſhips will pleaſe to obſerve what a *Superfetation* of *Innuendos* (if I may ſo ſay) there muſt be to ſupport this Charge; and without *Innuendos* no Part of the Charge againſt the Biſhop can be maintain'd: And therefore I humbly hope that the ſame Reaſons which induced your Lordſhips to reverſe the Judgment againſt Sir *Samuel Barnardiſton*, will prevail upon you to reject this Bill.

To what I have objected, I imagine it will be anſwered, That your Lordſhips are now acting in your *Legiſlative* Capacity; and that in your Legiſlative Capacity you are not bound by the *Forms of Law:* But I humbly ſubmit it, whether you will not think fit to proceed according to the *Rules* of Law, tho' not according to the *Forms* of it.

Men's *Lives*, and *Properties*, are to be try'd and determin'd *ſecundum Allegata & Probata*; and the Proof in ſuch Caſes muſt be *legal* Proof. And I apprehend with great Deference, that when your Lordſhips proceed in your *Legiſlative* Capacity in *other* Inſtances, you proceed according to the *Rules* of Law: As in Bills for enabling Perſons to *ſell*, or *ſettle Eſtates*; or for *making Rivers navigable*. If the Title or Property of any Perſon come in queſtion, your Lordſhips are pleaſed to hold the Parties to *ſtrict*, *legal Proof:* And why not in Bills of *Attainder?* Are Bills of Attainder (whereby Men's *Lives* are forfeited, their *Eſtates* confiſcated, their *Blood* corrupted, and their *Families* undone) of leſs moment than Bills to enable Perſons to ſettle their Eſtates for the Benefit of their Families? I humbly apprehend that your *Legiſlative* and *Judicial* Capacities are here ſo *united*, that they *cannot be ſeparated*. For a *Bill* of Attainder is a *Condemnation* by Parliament; and your Lordſhips always hear and judge whether a Party be *Guilty*, before you *condemn* him. Will you then be pleaſed to judge, and determine upon *leſs Proof* in *one* Caſe than in *another?* Can it be conceived that your Lordſhips will not act by the *ſame Rule* in *both* your *Capacities?* or that you will not have an equal *Tenderneſs* and *Regard* for the *Lives*, *Liberties*, and *Eſtates* of the Subject in *one* Capacity, as in the *other?*

When a Man *flies from Juſtice*, he gives *Judgment againſt himſelf*; and when a Perſon accuſed doth by corrupt or indirect Means *conceal* or *convey away* the *Witneſſes* againſt him, then *he* is the Cauſe, why *ſtrict* and *legal* Proof *cannot be had:* And that may be a Reaſon why leſs Proof *ſhould be admitted*. But in Caſes not attended with *either* of *theſe Circumſtances*, to ſay that *leſs* than *legal* Proof is *ſufficient* for a *Bill of Attainder*, is to affirm that PRIVATE OPINION *alone, without Proof,* is a *ſufficient Foundation* to paſs a Bill of *Attainder*. And how harſhly that would ſound in the Ears of *Engliſhmen*, is humbly ſubmitted to your Lordſhips.

My Lords, By our Law a *Judge* cannot go according to his own *private Opinion*; but muſt be govern'd by the *Evidence* given before him *in Court*. For the Rule is, *Nil refert, quod notum ſit Judici; ſi non notum ſit in Forma Judicii*. And if Men's Rights and Liberties were to be determin'd by *private Opinion*; how *precarious* would the *Lives* and *Eſtates* of *Engliſhmen* be? The moſt *innocent* Man could not be ſafe; the wiſeſt Man could not *foreſee*, where it would *end*; and *England* muſt no longer boaſt of the Excellency of her Conſtitution.

It is a Rule, both in Law and Reaſon, that *Nemo bis puniri debet pro eodem Delicto:* And yet that may happen to be the Biſhop's Caſe. For the *Charge* in the Bill is *general*; intending to *raiſe a Rebellion*, and holding *treaſonable Correſpondence* in order to bring in foreign Forces: But there is *no particular Fact* charged upon him. Now if he ſhould be *indicted* for either of thoſe Species of Treaſon; and *particular Overt-Acts* of ſuch Treaſon ſhould be alledg'd, as *buying Arms*, and *liſting Men* for the *Pretender*, and the Overt-Acts ſhould be *proved* by *two Witneſſes*; he might be *condemn'd* and *executed* for it. For he could not *plead this Bill* in *Bar* to ſuch *Indictment*; becauſe the Indictment would not be for the *ſame Facts*, there being *no particular ones* charged in the Bill. And yet it may happen (as I ſaid) that my Lord Biſhop may be *indicted* and *try'd* for the Treaſon mention'd in this Bill: As in the Caſe of *Hampden* and *Fitz-Harris*, which I lately mentſon'd. For Mr. *Hampden* was try'd for meeting and conſulting to raiſe a Rebellion, was fined 40,000*l.* and was afterwards tried for High-Treaſon for the ſame Fact: And tho' he inſiſted on his having been try'd for the ſame Fact, and deſired to plead it; yet the Court would not allow it. And in *Fitz-Harris*'s Caſe, he was indicted for High-Treaſon, and pleaded an Impeachment; and averr'd, it was for the ſame Fact. But the Plea was over-ruled: For there being no particular Article, the Averment could not be ſupported; becauſe he could not aver any Thing that was out of Record.

I humbly hope your Lordſhips will excuſe me for taking up ſo much of your Time. But the *Multifariouſneſs* of the Matters of which the Accuſation conſiſts, and the *Weight* of the Subject, drew me into it. I humbly thank your Lordſhips for your great Indulgence and Patience in hearing me: And if, as a *Lawyer*, thro' my Zeal for my Client's Service; or, as an *Engliſhman*, aſſerting thoſe *Laws* which I apprehend are the *Security of Britiſh Liberties*, I have let drop any Expreſſion which may be thought improper, I moſt humbly beg your Lordſhips Pardon. And if there be a Difference between your *Legiſlative* and *Judicial* Capacity; I ſubmit it, whether your Lordſhips will be pleaſed to give that Judgment in your Legiſlative Capacity, which the Counſel for the Bill do, in my Apprehenſion, admit you could not give in your Judicial. And therefore, I hope your Lordſhips will be pleaſed to reject this Bill.

Mr. *Wynne* (his Lordſhip's other Counſel) ſpake next.

May it pleaſe your Lordſhips,

I AM of Counſel for this Reverend Prelate: and however unneceſſary I know Apologies to be before your Lordſhips, who are always ready to hear what the youngeſt and moſt unexperienc'd Perſon has to offer; yet it becomes me to ſay ſomething for my firſt Appearance at your Lordſhips Bar, in a Matter of the laſt Conſequence; and it was the Deſire of this Reverend Prelate, rather to make his Defence by ſuch weak Hands as mine, as if he was perſuaded, that his Cauſe needed not the Aſſiſtance of Art or Experience, in order to move the Paſſions, or to impoſe upon the Reaſon of his Hearers; which he knows to be but an impotent Help to Perſuaſion, in compariſon of Truth and Innocency. He appears before thoſe, who (he hopes) will regard plain Facts and poſitive Law; and Truth, notwithſtanding all the Diſadvantages of an unſkilful Pleader, will, he hopes, at laſt prevail.

For my own Part, ſince your Lordſhips have aſſign'd me for his Counſel, I ſhall be under no Apprehenſions of Danger or Diſpleaſure in performing my Duty to him, in humbly offering every Thing I think neceſſary for his juſt Defence; and I will not doubt, but I ſhall be fully and favourably heard. And though it is his Lordſhip's Misfortune to be already pre-judg'd in another Place, and to be condemn'd without Doors, by ſome few vulgar, miſled Apprehenſions; yet he hopes better Things of you, my Lords: He does not doubt, but that your Lordſhips, who in Matters of leſs Importance proceed with Calmneſs, Juſtice and Prudence, will be careful not to deviate from thoſe Meaſures in a Matter which demands the greateſt Caution and Deliberation: For it is the Caſe, the Reputation, the Liberty, the Fortune, and (I was going to ſay) the Life of a moſt learned Prelate; becauſe ſome Circumſtances of this Bill are ſo cruel and extreme, that it is little better than if it had affected Life itſelf.

Every one that is a Friend to this Bill, muſt avow, that it is not to be offer'd without an evident and cogent Neceſſity. But, I hope, my Lords, though the Grounds and Suggeſtions of it were true, and duly proved, yet that there is no ſuch Neceſſity.

In order to diſcover whether there be any ſuch Neceſſity or not, I ſhall conſider the End propoſed by this Bill, and then weigh the Means whereby 'tis hoped to attain that End; and whether this Bill be a Means neceſſary or convenient to attain it.

The End, I hope, is the Security of the Government, and the Execution of Juſtice, and it ought to be purſued by all regular and lawful Means; and therefore, before I ſpeak particularly to the Crimes ſuppoſed in this Bill, or the Proofs which have been offer'd to make them out, I ſhall beg leave to ſay ſomething as to the Manner and Method of this Proceeding. Not that I ſhall preſume to queſtion your Lordſhips Power in ſuch Caſes: But, as on the one hand we muſt admit your Lordſhips may, and have in ſome Caſes exerted your legiſlative Capacity, in declaring That a Crime which was not ſo before, or by inflicting particular or extraordinary Puniſhment on common and ordinary Crimes; yet, on the other hand, till that is done, I hope I am at Liberty freely to repreſent the Inconveniency, the Injuſtice, and the Imprudence of making ſuch a Declaration, or of paſſing ſuch a Law, in the Caſe now before you. If it ſhould become a Law, his Lordſhip muſt diſpute it no longer, but ſubmit to it as juſt, whatever Hardſhips he may, in the Retirement of his own Heart, conceive introduced upon him by it. But thanks be to God, this is yet no Law, and that I am at full Liberty to repreſent the Injuſtice and the Unreaſonableneſs of this Bill; and to ſay, this is not a proper Occaſion that needs or calls upon your Lordſhips to exert your legiſlative Power.

I might here enlarge upon the Injuſtice of all Laws made *ex poſt facto*, and for one particular Caſe or Perſon, and no other; that they are againſt the Common Law, and the Common Right which every one is entitled to, in the Place or Community where he lives; becauſe Laws, in their Nature, ought to be Rules for the general Order, and Good of Society; and Natural Juſtice would ſurely in all ſuch Caſes ſtop the Precipitancy of your Lordſhips Reſolution, by this Queſtion; Againſt what Law hath he tranſgreſs'd? If he hath tranſgreſs'd any publick known Law, he is undoubtedly ſubject to undergo the Pains or Penalties enacted by it, when the Proof is duly and fully made which that Law requires. But if there is no ſuch Law yet in being, or if there is no ſuch Proof as that Law requires to ſuppoſe him guilty, will your Lordſhips introduce a new Law, or a new Sort of Proof to make him ſo? If theſe Methods are to be taken, the moſt innocent Man is not ſafe, and the wiſeſt Man cannot judge what is an Offence, or in what Degree; what Proof is neceſſary for his Defence, or how he is to be try'd. And in vain does the Legiſlature every Seſſion provide Laws, if a particular

Law

Law or a particular Proof is still to be made for every particular Purpose; not only contrary to the Tenor of all the former, but such as is not to be a Rule or Law in any other future Case whatsoever:

Thus much I am sure may be justly urged in any Place of Judicature in the World, against all such Laws in general; but much more as we are *Englishmen*, as we have Laws, which my Lord *Bacon* calls wise and just, that give to *God*, that give to *Cæsar*, that give to the Subject, that which belongeth to them. Not like those of other Countries, imposed upon the Subject at the Will of the Prince, before Probation or Trial, whether they are fit and convenient for the Genius of the People; nor the Production of one Man, or of one Parliament in any one Age, but the Wisdom and Experience of many Generations.

And I am sure one of the greatest Excellencies of this Law, beyond that of other Nations, has been always esteemed the common and ordinary Method of Trial. It has been always accounted the Birth-right of an *English* Subject to be try'd *per Pares*, according to the known Course of the Law.

And, therefore, the better to shew the Difference, and to evince the Hardship of this extraordinary Proceeding, I shall a little consider the Nature of the ordinary Trial; and tho' I might do this in the Language of *Magna Charta*, and of many eminent, antient Writers of the Law, I rather chuse my Lord Chief Justice *Hales*, that great and good Man, whose happy Moderation between the Prerogatives of the Crown, and the just Liberties of the Subject, can never be remember'd by Posterity without the deepest Honour. He says, (*a*) it is the best Trial in the World, and one of the first Principles upon which our Constitution is erected. Here a Man has a legal Exception to any one of his Triers, if they have any Dependance upon either of the Parties, are prepossessed or prejudiced before they hear the Evidence. All the Evidence is given openly, in the Presence of the Judge, Jury, Counsel, and Parties; not in private, before a Commissioner or a Clerk, (as in Chancery, or by the Civil Law) where oftentimes a Witness delivers that, which he will be ashamed to testify *ore tenus*, and wherein a crafty Clerk will oftentimes make a Witness speak what he really never meant, by dressing up his Evidence in his own Terms, Phrases, and Expressions. Or a Man may depose in Writing, what the Fear of being falsified, or perhaps a better Recollection would not let him adhere to in open Court, where he has an Opportunity to correct, amend, or explain his Testimony.

Besides this, (says that learned Judge) a Jury must all agree in their Verdict, and are not to be concluded by a Majority; and, therefore, tho' in some Cases, the Law don't positively require two, nor one Witness, *viva voce*; yet the Credit of a Verdict is great, where twelve Men on their Oaths unanimously agree.

The Counsel on the other Side may be apt to reply upon me, with the frequent Abuses and Corruptions of Juries. My Lords, I do agree, that may happen to be the Case; or it may happen that one more knowing or over-bearing Man among them, may sometimes govern all the rest. But if the same may happen, and often does in every Society or Number of Men, and the best regulated Bodies in the World, surely that can never be a Reason to deprive a Man of his common Right, and to lay aside a most valuable Institution.

I am afraid, my Lords, this little has been too much upon a Point that so little needs it: but the Love of one's Country, and its antient legal Constitution, is an honest Prejudice, which every one is apt to indulge; and the Advantage of this Privilege, every one that hears me, (I doubt not) is in the Heart sufficiently convinced of, and would boldly insist on it as his Birth-right in any Case of his own, where his own Property, his Reputation, his Life, or his own Liberty was in the least concerned.

It is urged by the Counsel for the Bill, and indeed by the Bill itself, that this is an extraordinary Case, and requires an extraordinary Remedy, where the Offender has taken Care, by subtle Contrivances, to keep out of the Verge of the Law, and the Reach of all ordinary Proceedings. But if such a cruel, artificial Suggestion be allowed to be a good Reason to deprive a Man of the Benefit of the Law, no Man's Life or Liberty is safe. The same may be suggested of every Offender, and in every Offence: That a Man endeavours to evade the Punishment of the Law. The same may be said with more Justice of every one that pleads Not Guilty, and insists on his Trial, that he endeavours to evade the Law, because such an Accusation or such an Indictment is found against him. And yet the most rigid Casuist never yet maintained, but that any Man (tho' he knew himself to be a most guilty Criminal) might plead Not Guilty, and insist on his Trial.

But if this cruel Artifice is to prevail, and this should be a Reason to exert such an extraordinary Proceeding; wo be to all Men of Sense and Ingenuity! Nay, my Lords, if such a Notion is to take Place, the Bishop is in a much worse Condition, than if *Noyce* were alive, or any other Witness would have deposed, *viva voce* against him, all they would have had them. For even then, his Accusation or Indictment must have been found upon the Oaths of Twelve Men at least, he would have had his legal Trial, and his Challenges. This I say upon a Supposition that the Gentlemen of the other Side may not allow his Lordship to be a Peer of the Realm; but if they do allow his Right of Peerage before your Lordships Bar, and consequently that he is intitled to a Trial by his Peers, yet still he would have had his legal Exceptions to the Testimony of the Witnesses; there must have been two positive Witnesses to the same Overt-Act; and his Accusation must have been found by twelve Men at least upon their Oaths; and, after all, if his Lordship should have been found Guilty, he might move in Arrest of Judgment. All which Benefits he is now utterly deprived of, by this Method of Proceeding.

We shall be told (I doubt not) by the Counsel for the Bill, that your Lordships sit now in a Judicial Capacity; that you are Judges of the Fact, as well as of the Law. No Man will doubt, but your Lordships have a Judicial Capacity, and have at all Times most worthily exercised it; but yet I must beg Leave to doubt, whether your Lordships are now properly acting in that Capacity or not? You have a Power, 'tis true, in this Method of Proceeding to condemn this Reverend Prelate, if Guilty; but not to save and acquit, if you are ever so well satisfy'd of his Innocency: and whether it be your Lordships Pleasure to pass or reject this Bill, I desire to know of the learned Counsel, whether it may be pleaded in Bar of a Prosecution in the Courts below, that he was *auterfoits acquit*, or *auterfoits convict* before your Lordships? or whether this Proceeding by Bill might be pleaded in Bar, even of an Impeachment for the very same Treasons? or whether your Lordships Resolution on this Bill (whatever it be) would be any legal *Estopel* to any other Bill in a future Session? No, my Lords, I humbly apprehend, it would not be a good Bar or a legal Plea, either at Common Law, or according to any Rule or Usage of Parliaments; and therefore we hope your Lordships will not do that which after all cannot be a complete or a final Judgment, and by that Means draw this Reverend Prelate into the Danger of a double Trial; which, I am sure, is not only contrary to the Rules of Law, but also of Natural Justice. I have the more Countenance in saying this, not only from *Hampden*'s Case, but from the known Case of *Fitz-Harris*, who pleaded this very Matter to the Jurisdiction of the Court of *King's-Bench*, that he was impeached for the same Crime by the Commons of *England*; but it was the Opinion of that Court, with the Advice of all the Judges, that he might, notwithstanding, be try'd there; and, in fact, was try'd and condemn'd by the Court of *King's-Bench*, though the Impeachment was still depending before your Lordships House.

But if your Lordships are resolved to proceed in your *Legislative* Capacity, and my Lord Bishop must, after all, be in Danger of the ordinary Method of Trial; yet suffer me to say what has been done, in former Times, by former Parliaments, on the like Bills; and how light soever other Authorities may seem, we hope your Lordships will have some Regard to your own Usage and Resolutions.

There have been too many Instances, I confess, my Lords; but those, that can be in any Degree justify'd, may be reduced to these few. They are such as pass'd against Persons dead, or who fled from Justice, and did not render themselves by the Time appointed; or they have passed against such as were in actual Rebellion, in direct Opposition to all Methods of Trial, and in Defiance to all Courts of Justice; or against such whose Treasons were flagrant and undeniable, but their Persons above the Reach of inferior Courts and Commissions. Those few Sacrifices to the Heat and Necessity of the Times have been most of them revers'd with Infamy and Detestation, when Men were cool, and at Liberty to hearken to the Voice of Law and Reason, and began to consider they had only prepared Shackles for themselves. Those few melancholy Instances, procured without due Trial by an Excess of Prerogative, of Persons that have been forth-coming, principally because it was the Will of a Prince, are not to be mentioned without Horror and Detestation. Such as those, says my Lord *Coke* (*a*), *auferat oblivio si potest, si non, utcunque tegat silentium.* Let such gross Breaches and Violations of the sacred and unalterable Rules of Justice be forgot, if it be possible; or at least draw a Veil over them, and let them be buried in perpetual Silence.

But in all sober, regular Times, a free Trial in the ordinary Course of Law has seldom been denied, even where the Facts have been so notorious as (one would think) almost to need no Trial, and so evident as to need no Proof; as the Regicides, except such as fled from Justice, were admitted to Trial, no less than Twenty-Nine before one Commission of *Oyer*, and every one heard with Patience in the ordinary Course. Even *Felton*, that stabbed a Prime Minister in the Execution of a High Commission, tho' he confessed the Fact, both before the Council and Court of *King's-Bench*, and justify'd it as a publick Service to the Nation, in the most daring and impious Manner, was brought to Trial, without superseding any of the ordinary Methods and Circumstances of Justice. Indeed, where some flagrant Crimes have been legally prov'd and determin'd in the Courts below, Parliaments have sometimes thought fit to add to, or heighten the Degrees of Punishments. It was so resolved in the Case of the Gunpowder Plotters 5 *November*, that they were at first to be try'd at Law, and then the Parliament (if need be) to add a Confirmation to it. Nay, that Resolution went farther; it says, they were not competent Judges of it, before it was found in the Courts below.

I might mention the Opinion of Judge *Dodderidge*, the Mirror of Justice, Lord Chief Baron *Atkins*, &c. who say the Parliament is a supreme Court of *Oyer*, and that the proper Subject of their *Oyer* is such Offences for which Right cannot otherwise be had, and to deal with Delinquents too high for the ordinary Courts. And, as I am before your Lordships Bar, I am very proper to mention the Resolution of your Lordships Predecessors, in the Case of *Fitz-Harris*, who (as I before mentioned) was impeach'd by the Commons of High-Treason; they refused to take him out of the Hands of ordinary Justice, and directed him to be proceeded against according to the Course of the Common Law.

And what Opinion subsequent Parliaments have had of my Lord *Strafford*'s Bill of Attainder, best appears from the Words of the Act of Reversal, by ordering all the Records and Proceedings relating to it to be cancell'd and destroy'd, that no Remains of so evil and unjust a Precedent might be visible in after Ages, or brought into Example to any one's Prejudice. But even in that detestable Instance, such Informations and Evidence were not admitted, the Witnesses were all examined, *viva voce*, upon Oath, and he was first adjudged Guilty, by way of Impeachment at the Bar of the Lords, before there was any Order for a Bill. The very same Method was observ'd in the Cause of Archbishop *Laud*, and Articles fully proved against him, as they thought. If it had not been so, even that House of Commons, as bad as they were, and as thirsty as they were after the Blood of those Noble Persons, probably would not have ordered those Bills. But yet this latter Instance of Archbishop *Laud* never had the Royal Assent: and 'tis well known in History, what desperate Measures were made use of to induce the Lords to pass it; and at last I think there were but seven of your Lordships whole House that were present when it was passed. But if this Bill should pass, we must no longer blame and condemn those Instances; for this will, in effect, re-enact them, and many others, which the Wis-

(*a*) *Hist. of the Law*, cap. 12.

(*a*) 4 Institut. 37.

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dom of former Parliaments have revers'd with Marks of Infamy and Deteſtation.

How much more is there to be ſaid of Sir *John Fenwick*'s Caſe? He had been indicted upon the Evidence of two poſitive Witneſſes: There had been ſeveral preceding Trials at Law, by which it manifeſtly appeared that he was equally concerned with thoſe that were found Guilty. Sir *John Fenwick* had likewiſe withdrawn himſelf from Juſtice, and was retaken (a Circumſtance always urged as a ſtrong Preſumption of Guilt). He had protracted his Trial by Offers of Diſcovery, the Reaſon of which afterwards appeared to be, that one of the King's Witneſſes might withdraw himſelf beyond Sea; and altho' that Witneſs was gone, yet his Evidence not only remained in Writing ſign'd, and upon Oath, but was atteſted and confirmed by ſome of the Grand-Jury themſelves that found the Bill, and by others of the Petty-Jury, before whom that Witneſs had given the very ſame Evidence. There was a Proof likewiſe that he had attempted to corrupt the remaining Witneſs, as well as ſome of the Jury. Theſe were Circumſtances upon which that Caſe was founded. No Man can ſay, but there was a reaſonable Evidence, tho' not ſtrictly legal; one full and poſitive Witneſs, and many ſtrong undeniable Circumſtances; and yet the Oppoſition which that had in both Houſes, was very great. Whether the Reaſons that prevail'd for the paſſing of it were ſufficient, becomes me not to enquire: Since it is ſtill a Law, I muſt preſume them juſt.

But is there any thing, my Lords, like that, in the Caſe now before your Lordſhips? Has there been any Attempt to withdraw from Juſtice? and yet that Honourable Committee have been pleaſed to obſerve, his Lordſhip had Notice that he was to be apprehended ſome conſiderable Time before. Has there been any preceding Trial, in which my Lord Biſhop's name was mentioned as an Agent, much leſs (as this Bill ſuggeſts) a principal Manager and Director in the Conſpiracy? Or, in that one Trial which hath been, has any thing appeared to derive the leaſt Suſpicion of Guilt upon him? Can any one ſay he has uſed any Methods or Artifices to avoid or protract his Trial in the ordinary Courſe of Law? Has he not, on the contrary, (and as one of the ſtrongeſt Proofs and Convictions of Innocency) ſought and petitioned to be tried? Yes, my Lords, he has applied in all Courts, and in all Places, in the moſt earneſt and legal manner, to be brought to Trial. Has this Reverend Prelate uſed any indirect Meaſures to corrupt or withdraw a Witneſs? And yet Mr. *Kelly*, (who is the only Perſon ſuppoſed capable of teſtifying againſt him) 'tis well known, had his full Liberty, even after his Lordſhip's Apprehenſion, but would not hazard his Recognizance by one Day's Non-appearance. No, my Lords, nothing of that kind has been attempted to be prov'd, nor ſo much as inſinuated in this Caſe; nor is there here before your Lordſhips any one poſitive Witneſs of any kind: Nor is there the Sanction of any one Oath here, or any where elſe, in any one material Point againſt his Lordſhip. What need therefore, or what Reaſon can there be for this Bill? Surely your Lordſhips will never pronounce a Judgment that ſhall affect any Man's Life, Liberty, or Fortune, without ſome Oath, and on Circumſtances ſo widely different in every reſpect from thoſe of Sir *John Fenwick*.

And if this Caſe bears no Proportion nor Similitude with that of Sir *John Fenwick*; I am ſure it has much leſs, or rather none at all, with any of thoſe before-mentioned. For we hope, after ſo long and full a Diſcovery of the Conſpiracy, and thoſe many juſt Methods of Preparation againſt it, the Danger cannot now be ſo great or cogent, as to require ſo precipitate a Reſolution. His Perſon, your Lordſhips ſee, is ſafe and forth-coming, and the Courts of Law in their uſual and open Courſe; and at this Time filled with ſuch learned and reſolute Judges and Miniſters of Juſtice, that they are equal and able to deal with the moſt bold and daring Offender.

There can be leſs Reaſon therefore, none at all we hope, for your Lordſhips at this Time to exert ſuch an extraordinary Method of Proceeding.

But there is this further Objection againſt proceeding by Bill, that it makes not only your Lordſhips pronounce Judgment againſt one of your own Members, and a very terrible one too; but it makes the King himſelf, without hearing one Word of the Defence, in Perſon, pronounce a Judgment upon his Subject, which his own gracious Temper muſt be averſe to; which the Common Law therefore has wiſely left to be pronounced by his Juſtices, even in thoſe Courts where he is always ſuppoſed to be preſent. But in this Inſtance, there is ſomething which muſt be ſtill more ungrateful to him; in that it is to exclude a Branch of Prerogative which his Majeſty moſt delights in, and it muſt be ſome Surprize to every good Subject to find his Royal Judgment ſo highly miſtruſted.

There is another Thing, which, I perſuade myſelf, your Lordſhips will fully conſider; that if this Method of Proceeding by Bill be encourag'd and grow familiar, it will put an End to one conſiderable Branch of Judicature, which your Lordſhips were heretofore ſo juſtly jealous of, as not to admit at any time the leaſt Competition. The Lower Houſe will hardly care to appear any more before your Lordſhips as Accuſers or Proſecutors, when they can ſo eaſily partake in your Judicial Capacity. And every ſuch Bill (eſpecially againſt a Member of this Houſe) is a direct Infringement and Diminution of that high and valuable Privilege, and will open a Door to ſome other Miſchiefs to the Peerage, which I had much rather your Lordſhips would ſuggeſt to yourſelves, than I expreſs. It has been always doubted without Doors, whether your Lordſhips could begin ſuch a Bill againſt a Commoner; but I think it may be more juſtly doubted, whether the Lower Houſe can begin ſuch a Bill againſt any one of your Lordſhips: and if this Bill ſhould have no other Conſequence, it will eſtabliſh this ſo far, as to bear no Queſtion hereafter. My Lords, I need not ſay, how much more proper it would have been for the Lower Houſe to have left this Matter intire to your Lordſhips; becauſe it has been ſo often reſolv'd by your Lordſhips Predeceſſors, that the *Houſe of Commons* have no Power of Judicature or Coercion againſt any one, but in Matters concerning that Houſe. Whereas this is a Caſe of Peerage, the Puniſhment, and the Excluſion of a Member of this Houſe. There is an Inſtance on your Lordſhips Journals, where the Lord *Purbeck* voluntarily ſurrendered his Title and Dignity of Viſcount to the King by Fine, and yet your Lordſhips unanimouſly revers'd that Judgment, and declared, that no Place could judge of, or intermeddle with Dignities or Rights of Peerage, but your Lordſhips own Houſe.

And thoſe, my Lords of that Reverend Bench, will ſurely conſider what a fatal Blow this Bill will give to the Diſcipline and Polity of the Church of *England*. They have more than ordinary Reaſon to be jealous of increaſing ſuch Precedents, and of introducing Methods of depriving Biſhops and Deans, hardly known to former Ages. The antient Canons have already preſcribed methods of judging, cenſuring, and depoſing Biſhops, and the Caſes when and where thoſe Methods are fit to be exercis'd. I don't ſay the Parliament cannot do this, or any thing elſe which they think proper; but the Metropolitan, their Lordſhips know, is intruſted with this Power over his Suffragans, or a Provincial Synod. And 'tis plain, the Law of *England* takes Notice of no other Power that can regularly deprive. For to mention but this Inſtance, if an Iſſue ſhould be joined, whether a Biſhop be deprived or not; the Court where ſuch Iſſue ſhould ariſe, could only write to the Archbiſhop to certify. And to prove this Aſſertion, I will not name Biſhop *Stillingfleet*, or any of thoſe great Eccleſiaſtical Authorities, (ſince poſſibly they may be excepted againſt, as Perſons who have too much Intereſt in the Caſe to be impartial) but it is ſo laid down by my *(a)* Lord Chief Baron *Atkins*, in his great Argument of Eccleſiaſtical Commiſſions; and by my Lord Chief Juſtice *Holt*, and the Court of *King's-Bench*, in the Caſe of Dr. *Watſon*, Biſhop of St. *David*'s.

All Precedents, my Lords, will increaſe; and the Scorn and Contempt of Libertines againſt your Lordſhips ſacred Order is too great, to drop or to forget a Precedent ſo grateful and pleaſing to them as this will be. Every one knows the Deſtruction of the ſmaller Religious Houſes, only made way for that of the greater. A Time has been when their Lordſhips Predeceſſors were all excluded and ſequeſtered; and it has been attempted, even ſ[illegible]e the Reſtoration, to take away Deans and Chapters. I am far from apprehending any ſuch thing at preſent, and I hope it will never enter into the Heart of any Man. But, my Lords, I confeſs I thought as little at this Time of ſuch a Bill as is now before you, to deprive a Biſhop and Dean at once, not only of all his Dignities and Benefices, but from the Exerciſe of any Part of his holy Office and Function: And I will ſay, that if this Bill ſhould paſs, and by any of their Lordſhips Aſſent, ſuch a Deſign will be rendered more eaſy and familiar, and much more unpitied, by all Mankind.

Give me leave, my Lords, next to obſerve, with what Caution and Moderation other Parliaments have proceeded, even in thoſe Caſes where they have thought proper to exerciſe their legiſlative Capacity. I paſs over the Statute 7 *W.* c. 19. for Impriſonment of Sir *Thomas Cooke*, &c. and many other ſuch Caſes, which were too great and intricate for the ordinary Courſe of Law, but yet too low and inconſiderable to enter into this Compariſon. But the Statute 8 *W.* c. 5. may be named, I am ſure, with that now before you, for the Impriſonment of *Counter*, &c. concern'd in the Aſſaſſination Plot; againſt all whom there was ſome poſitive Evidence upon Oath. Tho' the Zeal of that Parliament can never be queſtion'd from an Act ſo full of Gratitude, and in ſuch ſtrong Terms and Accents of Loyalty to the King, yet they did not at once, and at one ſingle Stroke, cut them off from the Land of the Living, and utterly deprive them of all the Neceſſaries of Life. The firſt Step that Parliament took was to paſs an Act for the Detainment of them for the Space of one Year only, not to the Forfeiture and Deprivation of all they were worth, or to the Excluſion of his Majeſty's Mercy, but even to leave a diſcretionary Power of Bailing within that Time, to any ſix of the Privy-Council, if they judged proper. Their further Obſtinacy and Impenitency occaſioning another Act, 9 *W.* c. 4. to detain them a Year longer, it was ſtill under the ſame Exception. At the End of that Term another Act was made, impowering the King to detain them during his Pleaſure, 10 *W.* c. 11. After theſe, two other Acts paſſed, impowering the late Queen and his preſent Majeſty to detain them. What the particular Reaſon of theſe Alterations were, I cannot take upon me to determine, becauſe the Acts themſelves are wholly ſilent; but, my Lords, ſuch were the prudent and moderate Steps taken by former Parliaments, even in that bold and wicked Conſpiracy.

I may alſo juſtly take Notice of, the Prudence and Clemency of the laſt Parliament, when there was ſo loud and ſo general a Cry for Juſtice, and when the Neceſſity of the Time ſeemed to require a more ſpeedy and extraordinary Degree of Puniſhment than the Common Law was acquainted with: but with what Difficulty, with what ſlow Paces, and with how many tender Circumſtances did that Bill paſs? Your Lordſhips will eaſily imagine, that the Perſons I here ſpeak of are the late Directors of the *South-Sea* Company.

It would ill become me, my Lords, if I had Inclination, to inſult the Diſtreſſes, or to aggravate any of thoſe Gentlemen's Misfortunes; but the Service of the Reverend Prelate now under Conſideration, requires me juſt to mention what a State of Confuſion they had reduced the Kingdom to. How many Thouſands have felt, and ſtill feel the pernicious Effects of that Scheme? Tho' their Crimes had no particular Appellation, or determinate Puniſhment in our Law, yet the *(b)* Civil, and the Laws of other Countries could have told us, that *Crimen Peculatus*, the Robbery of the Publick Money, was ſuch an infamous Tranſgreſſion, that the Puniſhment of it was Death, both in the Principal and Acceſſaries. How different and how mild was the Puniſhment inflicted by the late Parliament, in compariſon of that, I need not mention; and every one knows, how tenderly and ſparingly that Law has ſince been executed upon them, and how much they ſtill enjoy of the Spoils and Plunders of the Nation.

Let us not then follow every Precedent that has been, but the juſt and prudent Precedents of moderate Times, and of good and peaceable Reigns. Let us not be ambitious to ſurpaſs the Proceedings of violent and arbitrary Men, which we or our Poſterity may have Cauſe to repent of hereafter: but let us imitate ſuch only as are agreeable to the Law and

(a) Sal. Rep. 135.

(b) Dig. 48. 1. 6. &c.

Constitution, such as are grounded upon true Reason, and the Principles of exact Justice.

Having thus spoken as to the Method of these Proceedings in general, and shewn (in some Measure, I hope) that they are contrary to the public Wisdom, contrary to the known Rules of Law, and the common Right of the Subject, I shall, with your Lordships Favour, next examine the Foundations and Suggestions of this particular Bill. As for those general Matters and Allegations with which it is introduced, and upon which the Counsel for the Bill have spent so much Time, there is no Necessity, as we conceive, to answer to. We are here before your Lordships only as Counsel for this Reverend Prelate, one single supposed Conspirator; and it would ill become us in the least to controvert, that there has been a Conspiracy formed and carried on by some Persons abroad, and by others at home, after it has been so solemnly resolved by both Houses of Parliament. Nor can we deny, but that Mr. *Layer* has been tried, convicted, and attainted of it: But we are yet to seek how these Things have any Relation to the Case now before your Lordships; or how that unhappy Gentleman's Case comes to be connected and made Part of my Lord Bishop's, as it is by this Bill. We may justly appeal to every one that heard or read that Trial, whether this Reverend Prelate's Name is so much as mentioned in any one Line of it; whether there are any Grounds to think, from any of that Gentleman's Papers or Examinations, that his Lordship was privy to, or in the least concerned or acquainted with his Person or his Intentions: And I dare say, his Lordship is as much amazed at the Rashness and Folly of his Schemes, as he detests the Wickedness of them. Notwithstanding which, it is his Misfortune to be charged in this Bill as a principal Actor and Director in the framing and carrying on of those very Schemes and Designs for which that Gentleman has been convicted. And as to the Cyphers and Papers of *Plunkett*, I am as much at a Loss to imagine, upon what Grounds they should be given in Evidence against the Bishop, since 'tis not so much as suggested in the Bill; nor is there any thing throughout the *Report* or *Appendix*, that in the least charges his Lordship with any Intercourse or Correspondence with him.

It is strange, my Lords, that Persons Thoughts and Intentions, so widely distant in all other Respects, should yet center in such unnatural Projects and wild Undertakings, without some previous Discourse, some Consultations, or Acquaintance one with the other; and yet as strange and unaccountable as it is, this Reverend Prelate is charged in the very same Manner by this Bill, with consulting and endeavouring to raise an Insurrection, to procure a foreign Force to invade the Kingdom, and corresponding with the Pretender, and Persons employed by him, knowing them to be so employed. And if these Facts, my Lords, had been duly and legally proved, I should have very little to say in his Defence, but humbly intreat the Mercy and Compassion of this Honourable House; for they are Offences in themselves so great, that on the one Hand they are not capable of Aggravation, nor on the other of Excuse or Diminution, by any Thing I can say. But if the Facts have not been proved in the Whole nor in Part, the bare Affirmation or Allegation of them is only *Brutum fulmen*, and does his Lordship no more Harm than any other innocent Man, whose Misfortune it is to fall under an unjust Accusation. Or if those Circumstances which have been proved are not criminal in themselves, they shall not, we hope, by Inferences and Deductions, be heightened into Crimes; and the Number or Complication of them shall never make them exceed their Nature. And, my Lords, we hope, that notwithstanding all that has been affirmed, alledged, or proved, this Reverend Prelate can still say, not only in the Form of Law, but boldly and with a safe Conscience, and upon an impartial and serious Recollection, That he is Not Guilty of any one of the Charges contained in the Bill: That he is not conscious to himself of any one treasonable or irreverent Expression, or of any one Degree of Offence committed by him, with respect to any of those Charges. He can still say, that he has not acted in direct Violation of his Oaths and Obligations, nor to the Scandal of Religion or his Holy Function. I am, sure, my Lords, I should not take upon me to say this for his Lordship, or any Man alive, unless I thought we had a full and positive Answer to every thing that has been said; unless I was verily persuaded we had a sufficient and a legal Proof to encounter all that has been offered on the other Side; or unless my Instructions told me, that many things in the Course of their Evidence are utterly false and groundless; false, I say, as we shall prove (if my Instructions are true) by the fullest Proof, and the most satisfactory Evidence that is possible in the Case; by such Arguments and Reasonings as we think are clear and undeniable; by some Witnesses we never saw nor heard of before, consequently the more credible and impartial; by others, whom I am sure we had no Opportunity to lead or instruct; and all (as I am informed) glad, that it is consistent with the Rules of your Lordships House, to receive their Testimony upon Oath. In short, every Circumstance, every Part of the Evidence produced against us, your Lordships, in the End, we hope, will find turn strongly for us.

There is one Thing which I take for granted, from the Nature of the Evidence that has been offered, That it is admitted as fully by the Counsel for the Bill (as if they had said so in express Terms) that there is no legal Evidence against his Lordship in all they have offered; or else this extraordinary Method of Proceeding, and this new Sort of Evidence had never been set up. Nay, I am sure, it is a Sort of Force upon those learned Gentlemen, so well versed in Methods and Notions of Law, to maintain so many gross Paradoxes, which have not the least Colour of a legal, or even a reasonable Evidence, and would never be allowed, they well know, in any Court of Law or Equity. And though your Lordships have been pleased to permit those Papers and Letters to be read, your Lordships did not (as I apprehend) finally declare or determine them to be Evidence; but were willing to hear all Things, and afterwards judge how far it was reasonable or fitting to admit them as Ingredients in your Lordships Judgments. And whatever Opinion your Lordships might be of on the two former Bills, as we are Strangers to them, so we hope we are not precluded from offering any Thing farther, why they ought not to be allowed in this Case. If it be your Lordships Pleasure at last to adhere to that Opinion, or to resolve the like in this Case, we must submit.

If there is any thing certain in Law, or agreeable to Reason, it is this, That in all criminal Charges, the Evidence ought to be clear and positive; and that the higher and more heinous the Nature of the Charge is, the more clear and undeniable the Evidence ought to be by which a Man is convicted. Now I beseech your Lordships to consider at one View (as far as it is possible in such various and perplexed Facts) the Methods made use of to prove his Lordship Guilty, and what they have offered to your Lordships under the Name of Evidence. Where Words have been capable, and sometimes where they have not been capable of two Senses, an arbitrary and invidious Interpretation has been put upon them. Where Words have been plain and proper for the Occasion, and which, considered separately by themselves, it was impossible to put a criminal Gloss upon, the Writer is supposed to have some mysterious Meaning or double Entendre; or else they are complicated and thrown together with those which will infer some criminal Meaning. In other Letters the Names and Words relative to Men, are supposed to be used for those of Women, and the proper and usual Appellation of Women for those of Men; and because one fictitious Name will not answer all they would have it, the Names are often shifted; one and the same Person is supposed to pass under seven or eight different Denominations: And often two or three Names in the same Letter, within the Compass of two Lines one to the other, are urged to stand for the same Person. Some Letters which are writ of another, and speak in direct Terms of a third Person, they would have to mean the Writer himself, though as often without any Name, Date, Subscription, or Superscription at all. Books of Account, Manuscripts, and common Mercantile Terms, which seem proper for the Person and the Occasion of the Correspondence; and the Name of Stocks, which every one knows the true Meaning of, and carries all the Appearance of Reality, are very particular and exact in the current Prices at that Time, by a new Kind of Metaphor, are to be taken in an ill Sense. Others; which are only to be informed of the Distemper of a Friend, the Variations which happen in it, and the Opinion of Doctors upon it, by a strange and arbitrary Construction are applied to explain very different Purposes: And as if they were suspicious even of their own Suspicions, and distrustful of these Explanations, they call in for Aid several disjointed Fragments, Extracts, and Scraps of Papers, which no Man but themselves can tell what to make of; and when there happen to be some Words which cannot be reconciled with such a Construction, or the Uses which they would make of them, they are totally omitted, and we are told they are not material, or not yet decyphered, or not legible in the original, but your Lordships and the World must intend them to mean something criminal.

My Lords, if such foreign Suppositions, Glosses, and Intendments, such unnatural Constructions, false Inferences, and Innuendos, are to be admitted as Evidence, and deserve the Name of Proof, I must confess, they have given you some. If the Whimsies and Conjectures of Decypherers, the Hearsays and Reports of third, fourth, and fifth Persons, are to take Place in your judicial Proceedings, instead of that plain, honest, and positive Proof which the Law requires; or if the Number of Facts and the Variety of Circumstances could make them alter or exceed their Nature, I must confess they have offered some things worthy of your Lordships Consideration.

But if it were your Lordships Pleasure to construe Things according to the most natural, plain Sense and Import of the Words, as others would have understood them, and in such a Sense as the Writer probably meant them, or in that just Manner which your Lordships have hitherto done on criminal Prosecutions, no one can say they have shewn one Degree of legal or reasonable Evidence, to prove any one Suggestion in the Bill. This I most humbly assert, and, I think, no one can disprove my Assertion.

Thus far, in general, of the Proofs that have been offered; but I shall, under your Lordships Favour, speak now more particularly to them, and shall be so far from abridging or sliding over any thing that has been said, that I am willing every Thing those learned Gentlemen for the Bill have been pleased to offer, or that Honourable Committee have observed in their *Report*, should have its full Weight, and be put in the strongest Light against us.

It has been observed, that there were three several Methods and Times fixed for the Execution of this intended Conspiracy.

The first was to have procured a regular Body of foreign Forces to invade the Kingdom at the Time of the late Elections, which was from the Middle of *March* to the Middle of *April* 1722.

But have they shewed your Lordships any Evidence, or even one Passage in the *Report* of that Honourable Committee, that particularly charges his Lordship with being privy to any one of these three Designs thus generally and roundly affirmed? He is not charged with being privy to either of the three Memorials to the Regent for Forces. The only Passage that can be pretended to contain any Imputation of that Kind, is in the Letter signed 1387 to *Jackson*, which, they say, there is Reason to believe was from my Lord Bishop to the Pretender: But this we hope in the Course of our Evidence effectually to disprove.

The second Design was to have made an Attempt at the Time it was believed his Majesty would go abroad; but all that is insinuated in relation to his Lordship, is contained in two or three obscure Passages relating to one *Jones*, in Letters said to have passed between *Dillon*, or his Secretary and Mr. *Kelly*; which Passages being something ambiguous, are interpreted in an ill Meaning, by Hearsays from *Neynoe* and *Pancier* and *Plunkett*'s Cypher; but cannot, without the greatest Absurdity, be thought to relate to his Lordship.

Two of these Passages (*a*) relate to Remittances of Money, which they insinuate the Bishop was to furnish; but it amounts in the whole to no more than the bare Hearsay of one Man, and an arbitrary Interpretation of some Expressions in the Letters of two others, (to either of which his

(*a*) Rep. P. 47. 8. App. E. 43. 4. C. 51.

Lordſhip has not in the leaſt been prov'd privy;) and the whole depends upon a Suppoſition, that *Jones* here, and elſewhere in the Correſpondence, means him; which depends again upon another Suppoſition, that the Biſhop dictated thoſe three Letters of the 20th of *April*, one of which is ſigned *Jones*; a Suppoſition which we hope likewiſe to prove abſolutely falſe, and by that means ſhake the Foundation of the whole Charge.

The other Paſſage (*a*) is in a Letter from *Dillon*'s Secretary to *Kelly*, about *Jones*'s fitting and providing himſelf with Saddles; which by the ſame Methods is explained to mean Soldiers and Regiments which his Lordſhip is ſuppoſed to have undertaken to procure: And if the Words are to be taken in that Senſe, and applied to him, he muſt likewiſe be ſuppoſed to have undertaken to be at the Head of them; which, conſidering his Lordſhip's Function, Age, and Infirmities, is ſo abſurd and ridiculous, that, inſtead of ſpending more of your Lordſhips Time in anſwering of it, I ſhall only make uſe of it hereafter, as one Inſtance (among many others) to ſhew, how much they are miſtaken in affirming, that, wherever *Jones* is named, his Lordſhip is to be underſtood.

The third and laſt Deſign, tho' I muſt confeſs the moſt enormous, if it were true, becauſe Part of it was the Seizure of his Majeſty's Perſon, was to have been put in Execution at the breaking up of the Camp. But, I am ſure, there is not one the leaſt Hint throughout all this voluminous Affair, that his Lordſhip was concern'd or privy to that.

And therefore 'tis ſurprizing to think upon what Grounds his Lordſhip can be (as he is in the Preamble of the Bill) charg'd with having been deeply concern'd in forming and directing this Conſpiracy; which, as your Lordſhips have heard, conſiſted of thoſe three ſeveral Deſigns. The Counſel, indeed, for the Bill, have endeavour'd by divers Methods and Reaſonings, by ſome little Circumſtances, and ſeeming Probabilities, to charge upon his Lordſhip in general ſuch a Correſpondence: And they may all be reduc'd to theſe four Heads:

1. Hearſays.
2. The three Letters ſaid to be dictated by his Lordſhip, and wrote by *Kelly* to Lord *Marr*, *Dillon*, and the Pretender.
3. Two Letters ſaid to be wrote to the Biſhop.
4. The Co-incidences of Circumſtances, Times, and Names, in the intercepted Correſpondence, to induce a Belief of the before-mention'd Hearſays, and ſuppoſed Facts.

To all which I ſhall endeavour to give ſome Anſwers.

But before I enter upon theſe Particulars, I ſhall beg leave to obſerve to your Lordſhips, That if ſuch Evidence is to be countenanced, it will be in the Power of any two Men, the one in *England*, the other beyond Sea, getting an Account of the Circumſtances and Motions of a third Perſon, by an artificial, intercepted Correſpondence, to raiſe what Suſpicions of him they pleaſe; and yet he be all the while innocent and ignorant of what is doing. Whether that is the Caſe here, I ſhall afterwards ſubmit to your Lordſhips Judgments.

But it is very remarkable, that in all the intercepted Correſpondence to and fro, there are no Footſteps or Deſcriptions which any ways point out to, or of whom they are written, but thoſe alone which are ſuppoſed to relate to his Lordſhip; and in them, as the Counſel obſerve, Things are ſaid and done in ſuch a manner, and with ſuch particular Circumſtances, as lead directly to him, and him only. And this being ſo contrary to the Caution and Reſerve practiſed in all other Inſtances, carries in it ſome manifeſt Marks of Fraud and Contrivance.

This Remark I humbly apprehend to be the ſtronger, becauſe there has been no Proof of any particular Meetings or Conſultations with other Perſons, towards carrying on theſe Deſigns. And how a Man can conſpire with himſelf, I know not, except that it is barely alledg'd he was a Member of the *Burford Club*; the Falſity of which Aſſertion that Honourable Committee themſelves ſeem ſo ſenſible of, and by that Indulgence and Enlargement which one of thoſe noble Perſons (tho' ſaid to be the chief of them) has ſince met with, is now ſo well underſtood, as to need no manner of Refutation.

I may alſo as juſtly obſerve, that there is no one Witneſs againſt this Reverend Prelate of any one criminal Act or Expreſſion, from the Time of his Majeſty's Acceſſion to the Throne; tho' one of the Counſel (as your Lordſhips may remember) was very particular about the Manner of his paſſing of the 10th of *June*, which the Coachman gave them an Account of for four Years together; and tho' all his Papers were ſeiz'd, not one Letter, or Paper, under his own Hand, produced of a criminal Nature, or pretended to have been ſeen or intercepted. Not any one Letter intercepted that is pretended to have been written to him, much leſs any prov'd to have been receiv'd by him, the Matter of which appears to be Treaſonable, or any ways Criminal. My Lords, I muſt own a great Conſequence is drawn by that Honourable Committee, becauſe a great Quantity of Letters and Papers were found dated before the Year 1712. This very Objection was made in the Accuſation of his Lordſhip's worthy Predeceſſor, and a ſlight Anſwer ſatisfy'd his Examinants; and the plain Reaſon is, that his Lordſhip at that time had a ſettled Correſpondence with many eminent Men on Matters of Learning, which he eſteemed ſo valuable as to preſerve: But ſince the finiſhing of thoſe Controverſies, he had leſs occaſion to write, and his Lordſhip's Merits having call'd him up to a more high and buſy Station, he had leſs Opportunity to write; and he that writes little will receive but little. From that Year therefore (they juſtly obſerve) few of any Conſequence were found, and even thoſe few (if no other than what are printed, and as yet produc'd) we beg leave to ſay, are of no Conſequence at all, to ſupport the Inference drawn from them.

The firſt, I think, is from a great Lady; but ſo general and uncertain, that it does by no means warrant the Concluſion drawn from it; for it does not ſo much as appear to have been a Letter, or what it was that was enclos'd. And I beſeech your Lordſhips, what more can be inferr'd from Captain *Halſtead*'s Letter (*b*), the Contents of which are no more, than that a Neighbour, as Captain *Halſtead* was to the Biſhop, deſires leave to dine with his Lordſhip on a *Thurſday*, which was his publick Day, in Company of 20 other People? I muſt confeſs they have laid a Streſs upon the Character of the Man in their Opening; but nothing more has been prov'd, than that he was in a Ship by ſome Name different from his own. Another Letter that was ſaid to be found among his Lordſhip's Papers, was that directed to *Dubois*. But this (my Lords) I ſhall beg leave to reſerve for a more proper Occaſion.

I ſhall now conſider the four ſeveral Charges againſt the Biſhop: And the firſt ariſes from *Neynoe* and *Pancier*'s Informations, all mere Hearſays; ſome from living, and ſome from a dead Perſon; but poſitively and expreſsly denied by the living Perſons, from whom ſuch Informations are ſuppoſed to have come.

All that *Pancier*'s Informations (*a*) ſay, relating to this Reverend Prelate, is, That one *Skeen* told him, that the Biſhop of *Rocheſter* had the Principal Direction of the Conſpiracy; and that 200,000*l.* had been rais'd and put into his Management. This *Skeen*, it ſeems, is ſtill in Cuſtody, and your Lordſhips will hear how far he will ſupport this Charge.

Tho' the very Accuſation itſelf we beg leave to call abſurd and incredible, that ſuch a Sum of Money as 200,000*l.* could be rais'd and depoſited in one Man's Hands, and not yet traced up to ſome of the Contributors, or to the Hand where it was depoſited, eſpecially when it is charged upon a Perſon not uſed to deal in Merchandizes, or Remittances. Tho' the Counſel for the Bill have ſlid over this, yet being often repeated in the Report, as if there had been ſome Weight in it, I thought myſelf oblig'd to take Notice of it, tho' it is ſo incredible, I confeſs, that it is ſcarce worth removing.

Of *Neynoe*'s Informations, your Lordſhips may obſerve there are Four, but none of them ſworn to nor ſigned; and it was expreſly reſolved, in Lord *Audley*'s Caſe (*b*), by all the Judges of *England* that no Examination, without Oath ought to be read except of the Party himſelf that is tried. They are all either of a Date ſubſequent to his Lordſhip's Commitment, (and therefore till then thought (*c*) inconſiderable, and not worth reducing into Writing,) or elſe they are of no Date at all. One of the Two without a Date appears manifeſtly to have been taken after he was ſeiz'd, and brought up from *Deal* in *September*, which ſufficiently ſhews what juſt Diſtruſt there was at that Time of his Credit; that on the 27th of *September*, was on the Day before he drowned himſelf; and both, when he is known to have been under the greateſt Terrors and Apprehenſions, in that he was not able to make good what appears by the Paper (mark'd E. 11. and found afterwards in his Pocket) to have been undertaken by him, or required of him. It is not ſaid, as to one of his Examinations (*d*), before whom it was taken: Another of them, and the only one they now think fit to make uſe of, is an Extract only from three other Papers, and ſaid to contain the Subſtance of them; but the Papers themſelves, out of which it was extracted, do no where appear. And there are ſome Particulars in the Report (*e*) of that Honourable Committee which he is ſaid to have confeſs'd, which do not appear in any one of theſe Examinations, and are of ſuch a Nature as to affect the Credit of all he ſaid, and (if produced) would, we doubt not, in other Reſpects entirely blaſt the Credit of his Teſtimony. And, my Lords, if the Examination of a Man is thus taken to pieces, the Antecedents and the Conſequents left out, Treaſon (and what not) may be made and inferred from the moſt innocent Things and Expreſſions.

But his Examinations, even as they lie in the Appendix, are full of Inconſiſtencies and Abſurdities: Inconſiſtencies, I mean not only with *Pancier*'s and the Depoſitions of other Perſons, but even with themſelves. For *Pancier* ſays, little paſs'd in Writing in the Conduct of the whole Affair: *Neynoe* ſays, there were many Bundles of Letters that Mr. *Kelly* brought with him from *France*, and which he had ſeen him write at ſeveral Times. But yet they are much more inconſiſtent with themſelves; for inſtance, *Neynoe* ſays, in his Examination, mark'd E. 7. that he had ſeen ſeveral Letters written by *Kelly*, and ſent to him from *Paris*, and other Parts, but they never contain'd any thing material: And yet in E. 8. he ſays, that he had ſeen ſeveral Cyphers of *Kelly*'s, and ſeen him make uſe of them; and that *Kelly* with great Freedom acknowledged they were for carrying on the Correſpondence with the Pretender's Agents. Whereas it is utterly incredible that a Man, who had really been ſo communicative in his Diſcourſe, and of his Cyphers, ſhould yet be ſo reſerv'd as to hide from him any thing material in his Letters. In the very ſame Examination (he ſays) he was well acquainted with one *Watſon*, *i. e.* the late Earl *Mariſhall*, and lay ſeveral Nights with him; but after all his Intimacy, at laſt it comes out, that he did not know really who he was. There are ſome other Inconſiſtencies, which have been already taken notice of by Sir *Conſtantine*, which I ſhall not repeat.

But, my Lords, if the Perſons and Credit of *Neynoe* and *Pancier* were unexceptionable, yet what they ſay is only Hearſay, or mere Affirmation: And was ever that allow'd as Evidence in any material Point by any Law, or in any Court in the World? 'Tis expreſly reſolv'd in the Trials of *Langhorn* and Lord *Ruſſel* to be no Evidence; and that it is the firſt Time it ever receiv'd ſo much Countenance as to be read in judicial Proceedings; and I dare ſay, there is no ſuch Practice in the Courts of *Inquiſition* abroad. Even common Fame and Reputation is but of little Weight in any Caſe that I know of. It may, my Lords, be a ſufficient Ground for an Officer of the Peace, in ſome few Caſes, to arreſt a Perſon, or for a vigilant Miniſtry to make Enquiries, *i. e.* to accuſe or apprehend; but was never yet allow'd to be a Guide in judicial Proceedings, or to condemn any Man in any Criminal Caſe, whatever. But even when the Commons (in the Caſe of the Duke of *Buckingham*, 1 *Car.* I.) had declar'd, that common Fame was a good Ground of Enquiry, it was complain'd of, and the Commons afterwards receded from it, and proceeded upon the Examination of Witneſſes, and other Evidences, and in every Article of their Accuſation the particular Facts are expreſs'd. Much leſs will your Lordſhips allow the Hearſay of one ſingle Man, and only Extracts of that Hearſay, to be of any Weight, nay, to be of more Weight and Authority now he is dead, than if he were living; for if he were living, and could only depoſe by Hear-

(*a*) Rep. p. 47. App. D. 17. (*b*) D. 9.

(*a*) Report. 10. 35. Append. D. 1. (*b*) State Trials. (*c*) E. 7.
(*d*) E. 9, E. 10. (*e*) Page 38.

ſay,

say, no one surely can say it would be admitted as Evidence; but since he is dead, and we have no Opportunity of cross-examining of him, why ought not his Lordship to have the Advantage of it, as was resolv'd in the Case of the (*a*) King against *Pain?* Or like the known Case of a Man dying in Execution, the Law is satisfied, and his Creditor is without remedy? And it cannot de deny'd, but if one of our Witnesses had died, and a Person had taken Minutes of what he could say, we should not have had the Benefit of his Testimony; and where there is the same Reason, there ought in Justice to be the same Law and Construction. And yet this is the Foundation and Support of the whole Charge against his Lordship. It is upon this Man's Examination singly that it is affirm'd, among other notorious Untruths, that the Pretender rely'd more upon Advices from the Bishop, than from any other Persons. But this, and whatever else is in them, with Submission to your Lordships, amounts to no more than this, that *Neynoe* was heard to say, what he heard *Kelly* say, what *Kelly* must have heard some other Persons say, what they had heard the Pretender say, what neither they, nor any one else, ever had Reason to say.

But, my Lords, there is still something more strange in what is now attempted; for the Persons of whom 'tis pretended they heard all this, and into whose Testimony it must all be resolv'd, are now both living, and are so far from supporting what 'tis pretended they have heard from them, that they absolutely deny and contradict every Word of it. One of them has already done it (if my Instructions are true) in the most solemn Manner at your Lordships Bar, and the other is now ready to do the same. And *Neynoe* was so conscious to himself of the Falsity of what he had said, that he lost his Life to avoid the Punishment that might otherwise have fallen on him, (for his Flight, my Lords, can admit of no other Sense or Construction). He could not apprehend himself in Danger, if what he had said was true; but, on the contrary, had Reason to expect Rewards, if he could make out the Truth of his Information. Charity forbids me now, my Lords, to say any more of him, unless it be thought requisite to prove the Falsity of his Information by his own free and voluntary Confession, often repeated and confirm'd to Strangers and indifferent Persons. And (if my Instructions are true) we have those that will speak most fully to it.

This is the first and the principal Part of their Proof; and if we take away this Foundation, all the mighty Superstructure raised upon it must fall to the Ground, and all their corroborated Proofs and concurrent Circumstances must come to nothing.

The second Head of Accusation against his Lordship, is, from three Letters, supposed to be dictated by him, of the 20th of *April*. The first to *Chivers*, interpreted *Dillon*, signed by the Name of *Jones*; the second to *Musgrave*, interpreted *Marr*, sign'd *Illington*; a third to *Jackson*, explain'd to mean the Pretender, sign'd 1378, and sometiems 'tis printed 1387; and therefore which of these two is right I cannot tell.

Before I speak of the Letters themselves, I shall mention one Word as to the Manner of their Conveyance: They are said to be enclosed in a Packet to one *Gordon* of *Boulogne*, in a Letter from *Kelly* himself, sent by the ordinary Post, and sign'd with a Name, which they say he most usually signed and went by. This is so improbable, that out of eight or ten Names they are pleased to give him, he could bethink himself at that Time of no other Name to sign a Letter enclosing three of the utmost Consequence; and is so inconsistent with that Caution and Subtlety all along insinuated in this Correpondence, that it almost needs no Confutation. But yet (if my Instructions are true) Mr. *Gordon*, to whom they are said to have been directed, and the only indifferent Person in the Case, and can be under no sort of Influence from hence, has attested upon his Oath, that there was no such Letter, or Packet, ever came to his Hands.

And supposing these Letters were sent, as they suppose, to the Persons they suppose, and dictated by the Persons they suppose; is there one Passage in them of such a criminal Import, as would be sufficient to found an Indictment at Law? If there is not, they are not to be made criminal by Arguments, Innuendos, and Implications. The Case of Sir *Samuel Barnardiston*, already mention'd by Sir *Constantine*, is expresly in Print; and the Reason given for the Reversal of that Judgment (as appears by your own Journals) is, because the Information was grounded upon Letters, which in themselves were not criminal, but made so by Innuendos and forced Constructions. There is *Crosby's* Case to the same Purpose, before the Court of *King's-Bench*, in the Year 1695, who was indicted of Treason; and the Overt-Acts laid in the Indictment, were for inviting the *French* King to invade the Kingdom, and by sending Letters and Instructions, how and where to make the Descent. Tho' the Court thought his Hand-writing was prov'd, and the Matter of the Papers of a very odd and suspicious Nature, and the *French* King frequently mention'd in them, and the Indictment supposed them to be contriv'd for to invite him over; yet they held it not Treason.

And the chief Thing that gives any Ground of Suspicion, in this Case, is the Person to whom they are supposed to be directed: But I must submit to your Lordships, that there has been no Proof that either *Chivers* and *Musgrave*, or *Jackson*, are the very Persons supposed, or that his Lordship was privy to the Writing of one, or the other of them; nor are they capable of Proof, as we hope immediately to make appear.

However, for the present, supposing, as they have supposed, that *Chivers* and *Musgrave* mean *Dillon* and *Marr*, and that such Letters were wrote to them by his Lordship without any Disguise, (unless the Matter of them, as I before said, were plainly criminal) or unless your Lordships will suppose (as they suppose) something criminal contained in the Words not decypher'd; and unless it could have been proved that the Persons writing or dictating these Letters, knew them to be the Pretender's Agents, and as such address'd to them; I don't know (my Lords) how it could be construed a treasonable or criminal Correspondence, either within the Letter or Intention of *Stat.* 14 *W.* III. c. 3. or any other Law whatsoever.

For tho' the late Lord *Marr* is an attainted Person, it can't be denied but he is still in many Senses a Subject of *England*, and is no more divested of his natural Allegiance, than a banish'd, or an out-lawed Man: And tho' he appear'd in open Arms and Rebellion against his Majesty, he was not thought so dreadful a Man, as to have a Correspondence with him made Treason or Felony; but that was a peculiar Favour, reserved for this Reverend Prelate and his Friends. My Lords, I would not be understood to mean, as if the most innocent Correspondence with a Person under such Circumstances, was prudent or convenient; but I think I may affirm (even from the Clause of this Bill) it would not of itself have been criminal. But (according to my Instructions) this Reverend Prelate was little known to that Lord, and never had any Friendship or Acquaintance with him while in *England*, and cannot be supposed to have contracted such a Friendship since he was abroad.

That *Dillon* was an Agent of the Pretender's, nothing appears antecedent to these Letters: Nor did *Marr* at that Time appear to be one of his Agents, when it was so well known (as that Honourable Committee observe) that he was at that Time subsisted by a Pension from the Court of *England*. This Pension, indeed, is said to be stopt last *August*; but the Letter to him of the 20th of *April* (by whomsoever wrote) was some Months before.

Indeed, if *Jackson* had been proved to mean the Pretender, the Writing to him would be High-Treason plainly within the Statute: But that the Pretender is not, and cannot be understood by that Name, we hope to make appear fully, before we have done, even from the Lights that Honourable Committee have afforded us.

I shall next consider the Nature of the Proofs to induce your Lordships Belief, that these Letters were dictated by my Lord Bishop: And the first they offer, is, Because the Matter of them agrees with his Lordship's Circumstances at that Time; *i. e.* his being ill of the Gout, and the approaching Death of his Lady; which (they say) is morally impossible should suit so exactly to any one Man else. These two Circumstances must be allow'd to be agreeable to those which his Lordship was then under: But one would think (my Lords) they are Circumstances so melancholy in themselves, that they might have been spared, especially considering the little Use or Advantage that can really be made of them. But these Circumstances were no Secrets: Every one that knew his Lordship, must likewise know them; and whoever wrote these Letters with a Design to have them intercepted, and imputed to him, (as we hope to shew the Case really was) would certainly mention such Matters or Circumstances in them, as might be naturally thought to describe him. Or, if they were written without his Knowledge, (as they will be clearly proved to have been) it is no wonder, if the Writer, who personated his Lordship, should insert all that was proper to fasten the Suspicion he intended on him.

Another Proof that they were dictated by his Lordship, they say, is, from the Subscription of the Names of *Jones*, *Illington*, and the N° 1378, which are all affirmed to denote his Lordship: And the Reason why that Number belongs to him, is, because the Decypherer has found that Number to denote the proper Name or Title of a Person beginning with the Letter *R*. If this is his real Opinion, must that needs be the Bishop? Is there No-body else, whose Name or Title begins with the same Letter?

But, with Submission to your Lordships, it seems impossible to affirm even thus much with any Degree of Certainty, and it must be only Matter of mere Conjecture. Dr. *Wallis*, who is allowed to be the Father of the Science, (such as it is) and was the Wonder and Envy of all Foreigners, directly owns, that the Whole was built upon Conjectures; and he that had the best *Guess*, was the best *Artist*. Such, my Lords, is the Science of Decyphering. And from such uncertain and conjectural Premisses, what certain Conclusion can possibly be drawn? And 'tis plain, Mr. *Willes* is not so infallible as he pretends to be, by that Number of Passages not yet decyphered.

When we took our Objection first against the Nature of this new Sort of Evidence, the Counsel for the Bill were pleased to cite a Statute in Q. *Eliz.* Time, wherein they said the Word *Cypher* is mention'd. I have since looked for that Statute, but could find nothing about it; and, perhaps, may be mistaken in the Statute which they mean. But, my Lords, I am sure they did not mention any particular Trial, where it was ever heard of, or allowed as Evidence. I rather believe that, according to the Notions of those Times, (for soon after the Statute was made against *Witches*) if any Decypherers had appear'd then as Evidence, they might have been in more Danger than the Criminal.

But if there are any certain Rules, or any reasonable Methods in Decyphering, I am sure 'tis highly improbable, that Persons so cunning and wary, as these are all along represented to be, should be guilty of such a fatal Oversight, as just to sign with such Numbers, that all, it seems, who understand Cyphers, must necessarily know to be intended for the Initial Letter of their Names. It would, my Lords, in my humble Opinion have been more consistent with that Care and Caution, to have made those Numbers stand for quite contrary Letters, and those Letters to have been expressed by quite contrary Numbers; and there is no Doubt, but they might have made any others signify the same Thing. However, since the Decypherer has not shew'd us by what Methods he has arrived at this Conclusion, 'tis impossible for us, by any positive or direct Evidence, to confute it: But 'tis sufficient for us, to deny on the one hand, what he has on the other hand affirm'd, without telling us the Reasons of it.

That the Names of *Jones* and *Illington* belong to his Lordship, is endeavoured to be proved by some Passages in subsequent Letters, and by refining on the Matter of them, which they think is applicable to his Lordship only.

I have already mentioned two of those Instances, *viz.* his Lordship's own Indisposition, and the Death of his Lady, which are likewise mentioned in the subsequent Letters, in order to fasten the Imputation intended yet deeper on him. There is a Third, which relates to the Present of a Dog.

That

(*a*) 5 Mod. Rep. 161.

That ſuch a Dog was ſent does indeed appear; but that his Lordſhip had received it, or ſaw it, or had any Letter or Meſſage about it, has not been proved, and he poſitively denies it; and to whom, or from whom it was really ſent, Mr. *Kelly* can beſt determine, and his Lordſhip muſt refer himſelf to what he has always affirmed in his Examination; and (if I am rightly inform'd) ſince re-affirm'd at your Lordſhips Bar, that he gave it to Mrs. *Barnes*, and deſigned it for her from the firſt, and for her only.

My Lords, I ſhould apologize for taking Notice of ſuch minute and low Circumſtances; but it is the Evidence and Nature of the Proof made uſe of againſt us. I ſhould rather have expected, that ingenious Gentleman (the Decypherer) would have ſhewn, by ſome Rules of his Art, that the whole Story of the Dog had been a Fable or Fiction, and explain'd it to ſomething that was reaſonable and probable, which I am ſure this is not, to ſuppoſe (as the Letters read to your Lordſhips do ſuppoſe) *Muſgrave*, i. e. *Marr*, in one Part of the World, General *Dillon* in another (*a*), widely diſtant one from the other, and a learned Prelate, to be in ſuch Tribulation and Concern for a little Dog; which no way ſuits the Characters of any one of the Perſons to whom it is applied; much leſs the Circumſtances of this learned Prelate, who had at that time a much nearer Concern upon him, from the Death of his Wife, and was himſelf in ſuch great Diſorder and Weakneſs of Body. The ſpeaking therefore of this Preſent, backwards and forwards, with ſuch particular Circumſtances, and the Report of it ſo induſtriouſly ſpread many Months before my Lord Biſhop's Apprehenſion, (as ſome of your Lordſhips cannot but remember) is abſurd and ridiculous upon all other Suppoſitions, but upon the Deſign of faſtening ſomething on his Lordſhip, the Point all along in their View.

If the Writer of theſe Letters had been really and truly informed of his Lordſhip's Circumſtances, he might, perhaps more properly, have affirm'd it of his Lady; which 'tis plain the Writer was not, becauſe he ſpeaks of her as Living 11 Days after ſhe was Dead. And how ignorant of them the Writer really was, appears by another Paſſage in that very Letter; where he ſays, (*b*) 'Mr. *Jones* is come to Town for a Day only, '*May* 7th.' Whereas his Lordſhip had been in Town Two Days, and ſtaid Three more, as appears even by their own Evidence, *Lawſon* and *Wood*.

By theſe your Lordſhips may ſee, how many forced Inferences and Conſtructions, and what a Train of Abſurdities and Suppoſitions are neceſſary to ſupport one poor, and (if true) yet inconſiderable Aſſertion, when once we depart from the ſure and known Rules of Law!

A Third Way of proving theſe Letters to be the Biſhop's, is from the Hand-writing, which is ſuppoſed to be *Kelly*'s, and he is ſuppoſed to have been his Lordſhip's Secretary in theſe Matters: Both which Suppoſitions are deſtitute of any proper or ſatisfactory Proof.

The firſt is attempted to be ſupported by the Teſtimony of the Clerks of the Poſt-Office. But before I ſpeak to the Teſtimony which they have given, I muſt beg leave to offer one Word as to their manner of obtaining it; and ſhall endeavour not to tranſgreſs your Lordſhips late Reſolution: And when I mention any Words of that Act of Parliament, it is only to ſhew the cautious Meaſures the Legiſlature took even in imparting this Power to them, and the juſt Apprehenſions they had of the Abuſes and ill Conſequences that might attend it. My Lords, I am ſo far from endeavouring to bring them in danger of a Penalty, as the Counſel were pleaſed to object, that I am willing to ſuppoſe thoſe Clerks had proper Warrants at that Time, and for that particular Opening and Detaining. But that is all which the Act gives, and the Words of it are fully ſatisfied by ſuch a Conſtruction, without going farther, and extending the Words of the Act to that which was not in the leaſt within the Intention or Purview of it. It don't appear to me, my Lords, I confeſs, how they are impower'd to take Copies (for all ſuch Acts which are in Reſtraint of Trade and Commerce, are to be ſtrictly and literally conſtrued): But I am utterly at a Loſs to know, from what Words of the Act it can be inferr'd, that ſuch Copies ſhall be received as Evidence in Courts of Judicature, and not only againſt the Writer himſelf, but againſt other Perſons too.

A private Act of Parliament (tho' printed in *Raſtal* and other authentick Collections of Statutes) has been diſallow'd, when it has not been examined with the Record. But, my Lords, I don't know that a Copy of any Thing was ever allow'd as Evidence, but what was made by a proper Sworn Officer, known in Law, and where every one may have Acceſs to it; and therefore, if falſe, may be diſproved by the other Side. But is there the ſame Reaſon here? My Lords, can the Party ever have an Opportunity to diſprove it, if falſly copied, when the Original is ſent forward? Or, if it were ſtill in their Poſſeſſion, have we any Power to procure a Sight of the Original? or to have a Copy of that Copy? And therefore, we hope your Lordſhips will not regard that Part of the Evidence, if it were material. But to conſider alſo, my Lords, what it is they have depoſed of theſe Copies; That the Originals were written in the ſame Hand with ſome Papers ſhewed them; and which, they were told, were Mr. *Kelly*'s Hand-writing. Your Lordſhips, I doubt not, obſerve the Time when they depoſed this firſt, *viz.* the 24th of *Auguſt*, and afterwards the firſt of *January* laſt; *i. e.* the firſt of theſe Depoſitions four Months, the other eight Months, after they had ſeen the Originals of the 20th of *April:* For, they were forwarded by the Poſt, and the Clerks only took Copies of them, and did not detain any one Original for a Specimen till their firſt Depoſition; and ſurely that was a little of the lateſt: So that it reſts ſingly upon the Memory of the Clerks for four or eight Months. I think St. *James* ſays, *That a Man may even behold his own Face in a Glaſs, but he is no ſooner gone, but he ſtraitway forgetteth what manner of Man he was:* And it is much more impoſſible for any one ſo exactly and nicely to remember all the little Strokes and Daſhes of the Pen, by which the Sameneſs or Diverſity of Hands can only be made out.

And all *Malone* ſwears is, That he believes it to be *Kelly*'s Hand-writing; and 'tis remarkable, that his Depoſition is but in *January* laſt, and he left Mrs. *Barnes*'s Service in *May*, ſo that he could not have ſeen him write ſince that Time. He don't ſay he ever read any of his Writing, or at moſt the Superſcription of a Letter: He might, perhaps, ſee him write at ſome Diſtance, as he came in and out of the Room; but ſurely, that cannot be ſufficient to form a Judgment of a Man's Hand-writing; and I am ſure the Improbability is much greater after nine Months Time. And *Hutchins* the Meſſenger, from ſeeing the Superſcription of a Letter to the Secretary of State, has likewiſe, I think, taken upon him to ſwear the ſame thing.

But ſuppoſing theſe Perſons had ſeen Mr. *Kelly* write frequently, and had, within a more reaſonable Diſtance, ſwore it to be like his Hand, will any one ſay, that it is a ſufficient, or even a reaſonable Proof, in any criminal Caſe? But becauſe Mr. *Kelly* is all along affirmed to have acted in theſe Matters as his Lordſhip's Secretary, I muſt beg your Lordſhips Patience to conſider, How far that Doctrine of Similitude of Hands has prevailed.

Colonel *Sidney*'s Caſe was the firſt wherein it was ever admitted as a Proof in a Criminal Caſe; but that Judgment was afterwards reverſed by Parliament as manifeſtly unjuſt. In Lady *Carr*'s Caſe, *Sid. Rep.* 419. which was only an Information of Perjury, yet a Letter under her own Hand was poſitively denied to be Evidence; tho' a Witneſs ſwore he believed it to be hers. I muſt own, my Lords, this Caſe, at the late Trial of Mr. *Layer*, was not only denied to be Law, but all Men defy'd to make common Senſe of it: But, with the utmoſt Deference to that learned Gentleman that ſaid ſo, I beg leave to mention the Words of Sir *J. Hawles* upon that Caſe, who was of a different Opinion: 'At that Time, 'ſays he, when the Caſe of Lady *Carr* was adjudged, beſides *Twiſden* and '*Keyling*, two very eminent Judges, there ſat in that Court Sir *Wad.* '*Windham*, whom all will own to have been the ſecond beſt Judge who 'ſat in *Weſtminſter-Hall* ſince the Reſtoration; and if it is not Evidence 'in Miſdemeanour, much leſs, ſays he, in Treaſon.' Which Inference, beſides the Reaſon of the Thing itſelf, is ſupported by the Authority of Lord *Coke*.

In my Lord *Preſton*'s Caſe, his Hand-writing was proved by three Witneſſes, that had belonged to him while in the Secretary's Office, and muſt neceſſarily have ſeen him write a thouſand Times: But that was not all; for thoſe Papers were ſeized on him, ſealed with his own Seal, as he was going to *France* in the Heat of War, contrary to an Act of Parliament, which at that Time made it Treaſon.

In the Trial of the Seven Biſhops, the ſame Queſtion aroſe, Whether Similitude of Hands was a Proof in a Criminal Matter? and it was not admitted.

In *Francia*'s Trial, before all the Judges at the *Old-Baily*, it is poſitively laid down by the Chief Baron, and not contradicted by any others, That it was no Proof or Evidence of itſelf; and the Letter in that Caſe would not have been admitted, but that it was found by his Bedſide, and a Copy of the very ſame Letter enter'd in his Pocket-Book, which he had owned and explained to ſome Lords of the Council.

In *Croſby*'s Caſe, the Hand-writing was ſworn to by three poſitive Witneſſes, and owned in one of the Papers by the Priſoner himſelf; yet Lord Chief Juſtice *Holt* and the Court held it no Evidence, *Becauſe one Hand, ſays he, may be like another; and Preſumptions ſhall never take Place in Treaſons.*

In the late Caſe of Mr. *Layer*, 'tis well known, that beſides the Proof of his own Hand-writing, the Treaſonable Papers were delivered by his own Hand to the Witneſs; and 'twas upon that Ground only, they were permitted to be read againſt him. Beſides this, he had ſaid *that* before the Lords of the Council, which the Court thought amounted to a full Acknowledgment that it was his Writing. But even all this, my Lords, was made uſe of againſt him but as concurrent Evidence, becauſe there were two poſitive Witneſſes, *viva voce*, againſt him, as to the other Overt-Acts.

I will mention to your Lordſhips ſome foreign, concurrent Authorities upon this Point, to ſhew, that the Reaſon and Equity of this Doctrine has been uniform and univerſal, That Similitude or Compariſon of Hands is not a ſufficient Proof of it. There is a famous Caſe of *Jean Millard*, in a Book called, *Le Journal du Palais.* He had lived 40 Years from his Wife, and then returned and re-claimed her, after ſhe was marry'd to another. One of his Methods made uſe of to prove him to be the ſame Perſon, was, the Hand-writing of Letters that had formerly paſſed between them: Which occaſion'd this Queſtion before all the famous Judicatures of *France*, 'Whether the Teſtimony of ſkilful Notaries, who 'fully depoſed of the Similitude of the Hands, was a ſufficient Proof in 'this Caſe?' and it was univerſally denied. And yet this, my Lords, was a Caſe highly favour'd in all Laws; but more highly in thoſe Places, where Marriage is reputed as a Sacrament, and in favour of which they will often admit even the Party's own Oath.

Codex Fabrianus, Lib. 4. *Tit.* 14. *Def.* 71. ſays, 'A Proof by Compari'ſon of Hands, is a very dangerous Proof: *Idque in cauſis civilibus duntax'at; ſed in criminalibus, in quibus periculum majus verſatur, aut capitis, aut 'exiſtimationis, non item.*' *Voet*, an eminent Modern Civilian, *Lib.* 22. *Tom.* 4. *Sect.* 11. to the very ſame Purpoſe. And ſo does *Cujacius* in his Commentary on the Novels 73. 'The *Romans*, ſays he, never allow'd 'it, but when no other Proof could be had. And in latter Times, when 'Forgeries became more frequent, they would not allow of it at all, un'leſs the Writing had been acknowledged by the Party, or proved by two 'Witneſſes who ſaw him write it.'

And then it was neceſſary to bring both into Court, that the Judges themſelves might make the Compariſon, and not leave the Witneſſes to be the only Judges of it.

But it was never known, and I may defy all the Writers of Law to ſhew me one Inſtance, that any Evidence of the Similitude of Hands (which can only be made out by Compariſon) was admitted, but where the Papers pretended to be written in the ſame Hand, were produced and compared: Which is ſo far from being the preſent Caſe, that even the atteſting Clerks, who are the only Witneſſes in the Caſe, never had an Opportunity of comparing the Original Letter ſtopp'd in *Auguſt* laſt, with any one of the three original Letters dated *April* 20. or with

(*a*) Rep. 40. App. E. 42. (*b*) App. D. 47. 8.

any of the intermediate Letters, which they affirm to have been written in the same Hand.

And if it be considered, how much more difficult it is to distinguish the Hand of one writing in Figures (which stand single one from another), from the Hand of one writing in Words at length (which are variously connected and combined), your Lordships will never give them the least Degree of Credit.

But at once to put an End to this Evidence (if my Instructions are true), it has already appeared to your Lordships, upon Mr. *Kelly*'s Bill, That the only Original Letter of the twentieth of *August*, stopt as a Sample at the Post-office, and the only Ground of affirming these Three to have been his, was not his Hand-writing; and, if need be, we have the same and stronger Evidence to produce. Upon the whole, therefore, I think I may affirm, That there is no legal or reasonable Ground to infer those Letters to have been wrote by *Kelly*.

And surely, my Lords, it was incumbent on them to prove, as well as to affirm, that they were wrote by his Lordship's Direction, before they can affect him; even tho' the Writer (whoever he was) had presumed to have signed them with his Lordship's own Name and proper Appellation. I beseech your Lordships, how does it in the least appear, that Mr. *Kelly*, or Mr. *Carte* (as is afterwards upon no better Grounds suggested) was employed by his Lordship to carry on that Correspondence? It has, I confess, been frequently said at your Lordships Bar, as well as by that Honourable Committee, but like other Charges, without any Shadow of Proof; unless it be an obscure Passage in a Letter of *Chitwell* from abroad, to one *Williams* here, *D.* 27. which says, *They had a Story in* France *of* Weston's *Clerk being laid up for Debt:* Which, as I shall afterwards shew, could not possibly mean his Lordship. There is another Passage also in the Letter to *Dubois*, from whence the same Inference is made. What unknown Person that *Dubois* is don't appear, or whether it is a real or fictitious Name; for all their Lists and Cyphers afford nothing like it. The Committee are pleased to suppose it a Letter to the Bishop, and received by him from abroad; and from thence infer, he used to receive Letters directed to him by fictitious Names. The Counsel for the Bill suppose it a Letter from *himself* to *himself*, because the Hand-writing, they say, (or rather the Letter *e*) is something like his Lordship's. It is not signed by any one, and dated only the sixteenth of *December* without any Year; and tho' that Honourable Committee are pleased to affix, in their Observations on it, 1721, because *Johnson*, they say, was about that Time at *Paris*, yet for what appears from the Letter itself, it might be written before his Majesty's Accession, or before the several Acts of Grace that have been; and if it had any Criminal Meaning, 'tis improbable his Lordship would have mentioned the Hand of Conveyance at length; and much more improbable, that he should have destroyed all his other Letters (as the Committee are pleased to insinuate), and to preserve this only, which is of no Consequence, but to furnish Evidence against himself, and to explain the Thing most wanted. Another Proof that it is his Letter, is from a broken Seal, which, they say, is made by the same Seal as that seized on his Servant at the *Tower*. But consider, my Lords, how many *Similitudes* we are at last come to in this one Attempt, *Similitude of Hands*, *Similitude of Figures*, *Similitude of Characters*, and *Similitude of Seals*.

That Similitude of Hand-writing is no Proof I have shewn by a Variety of the best Authorities: much less, the Similitude of one Letter in the Alphabet; that is, I dare say, a Conceit perfectly new. And 'tis well known, Artists are capable of counterfeiting any Man's Hand or Seal in such a Manner, that even the Person whose Hand or Seal it is, shall not be able to distinguish it from his own: And your Lordships Yesterday saw an ample Specimen of it.

It is upon these Grounds, my Lords, that *Kelly* hath been affirmed to have been his Lordship's Secretary in these Matters; but there is not the least Charge or Pretence of his having writ any other Letters of any kind for the Bishop but these Three only, and not one throughout the whole Correspondence charged to have been written by *Carte*, (tho' he is in general charged as another Manager of this Correspondence). This, my Lords, we must insist, ought to have had the fullest Proof, and the most undeniable Evidence: For it is the Gist of the Offence, 'tis the Foundation of the Statute 14 *W.* III. *c.* 3. and 'tis the particular Suggestion of this Bill. 'Tis possible some such Letter might be wrote by *Kelly* or *Carte* to the Persons they are addressed to, without the Bishop's Privity or Direction; 'tis not so uncommon a thing to pretend Acquaintance with Persons of Distinction, or to make use of their Name and Authority, to give themselves a greater Degree of Credit with their Correspondents.

If this may be so, and ought now to be presumed so, since no Man has proved it otherwise; then no Man surely ought to suffer by the Act of another, or to be punished for another Man's Fault.

I believe no one will think it any Reflection to hear many of your Lordships Names in these Cyphers, and afterwards to find a frequent Mention of them in the Correspondence; or to find his Majesty's own Name in *Plunkett*'s Cypher, under the Disguise of *Hawkesby*; and Page 62 of the *Report*, Compliments from the Pretender and his Wife to one *Hawkesby*. No man, I say, will apply these, or many other Names of Persons of Honour mentioned in them, to the Persons themselves, or imagine those Letters were really wrote by their Privity or Consent. By the same Rule of Justice, and by a Parity of Reason, my Lord Bishop's Name may be presumed to have been made use of without his Privity or Consent; and if there is any certain Rule or Position in Law, it is this, That all Presumption ought to be in favour of Innocency.

And to shew the little Intimacy there was between his Lordship and Mr. *Kelly*, (if *Rig* means his Lordship, as they suppose, or that Letter *E.* 64. was from *Kelly*, as they also suppose) it will be sufficient to remind your Lordships of one Part of it, where the Writer says,—'That *Rig* 'and one *Skin* had been together; but the Result of their Meeting he 'knew nothing of. *Rig* had fixed his Suspicion some-where, tho' I can-'not find out the Place; but you will hear it from *Skin*, to whom, it's 'probable, he may have communicated his Sentiments that way.' That is, my Lords, if I understand the Meaning of those Words, that *Kelly*, the supposed Secretary on all these Occasions, knew nothing of the Matters, or at least much less than *Skin*, whom *Kelly* had but just before introduc'd into *Rig*'s Acquaintance.

There is another Letter which has likewise been read, *E.* 47. (if it is to be understood to be Mr. *Kelly*'s, as they suppose, and *Rig* is to mean his Lordship; tho' we are far from admitting the one or the other) which we desire to make use of, and amounts to a full and direct Confession, that the Writer (whoever he is) had nothing in his Power or Knowledge to charge him with. I have the more Countenance, my Lords, to repeat the Words of this Letter, because that Honourable Committee have let it pass without Exception, *Fol.* 59. of the *Report:* Wherein the Writer vows, 'He 'never heard of the Cant Names of *Jones* and *Illington*, or who was meant 'by them: That some Persons in whose Power it was to do for him, had 'shewed no Concern at all for his Misfortunes; that it was well he had no 'Secrets to reveal, since such Usage might provoke a passionate Man.' And all the World is since convinced he had not, since no Person seemed to be apprehensive that he could do them any Mischief. My Lords, I say, if this Letter is to be understood as from that Gentleman, we think we are intitled to have the Benefit of his open and candid Declaration.

But however, my Lords, if we should not be allowed to make this Use of it, yet (if my Instructions are true) Mr. *Kelly* fully asserted this himself at your Lordships Bar; and even without it, we shall be able to make appear most plainly, in the Course of our Evidence, that *Kelly* did not, and could not write those Three Letters from his Lordship's Mouth, or by his Lordship's Direction.

The Date of all Three is 20 *April*; when this Reverend Prelate (as has been already mentioned to your Lordships) was deprived of the Use of both Hand and Foot: had for a great while been confined to his Room, under the greatest Weakness and Disorder, when his Lady lay in the next Room, on her Death-bed.

These, my Lords, and other remarkable Circumstances in his Family which distinguish this particular Period of Time, as on the one hand, they have given the Writer of these fictitious Letters some Advantage towards fixing them on the Bishop; so, on the other hand, they afford his Lordship a like Advantage (in the most providential Manner, I may say) towards clearing himself from the Imputation of them. Because his Servants then attending him, are able to recollect what passed on that Occasion, and to be very positive and particular in their Evidence concerning it.

His Lordship happened then to have Three Men-Servants actually attending on him, and some one of these always, both Day and Night, either present with him in the Room, or waiting in the Passage at his Chamber-Door; and the Weather being warm, and the Room close, the Door was generally wide open: It was then this Reverend Prelate's Misfortune, that he was not able, without their Help, to stir, or even to lift up what he eat or drank to his Mouth. Besides these, there were Two Women-Servants, which constantly attended his Lady in her Room, which is next adjoining, and came frequently to him (once or twice an Hour) every Day with Accounts how she did, the Bishop himself being disabled (for several Days before her Death) to go out of his Room.

And all these five Servants will depose, That for 14 or 15 Days before his Lady's Death, no Stranger whatever visited his Lordship, much less stayed there any Time with him. This (my Lords) the Women-Servants will affirm, as far as their frequent seeing of him gave them Opportunity to make these Observations. His Coachman (tho' now Witness against him) has constantly affirmed the same thing, both below, as well as before your Lordships. But the three Men (one of which was always in the Room, Day and Night, as I before observed) can be most full and peremptory in their Testimony. So that the Bishop could not possibly dictate these Letters, either to Mr. *Kelly*, or to any Body else, without the Privity and Observation of some of them.

This being a Negative, it is impossible to be more fully proved in any Case; and nothing but the remarkable Circumstances which happened at that time, to which the Writer of those Letters unluckily pinned them down, could have help'd us to so strong and undeniable a Proof of it.

Whether Mr. *Kelly* was ever acquainted or visited his Lordship, indeed I am not instructed; their Evidence, (*a*) I am sure, has proved nothing like it, nor is it material, much less criminal. But as to the particular time (12 *April*), when Mr. *Kelly* is supposed to have told Mrs. *Barnes*, and she is suppos'd to have told Mrs. *Levett*, that his Lordship sent his Coach for *Kelly*, we shall expressly prove the contrary: and besides that it is only Hearsay of Mrs. *Levett* from Mrs. *Barnes* who denies it, and his Lordship's Disability at that time to receive Company; I say (my Lords) besides these Circumstances, it is remarkable that the Coachman and the Baker (who it seems were directed to keep a Diary of every Body that came, and of all that happened in his Lordship's Family) say not one Word of this remarkable Incident, in either of their Depositions. The Coachman has denied that he ever fetch'd Mr. *Kelly* in his Lordship's Coach since he lived with his Lordship, or ever was at *Kelly*'s Lodgings, or that he ever saw him or Mr. *Carte* in his Life-time; and surely their Silence (if there were nothing else in the Case) is sufficient to infer, that he was not there at that time: And all Mrs. *Kay* and *Malone* swear is no more, than that they don't remember *Kelly* lay at Mrs. *Barnes*'s that *Thursday* or *Friday* (the first only speaks in her printed Deposition of a *Thursday* or *Friday* about the middle of *April*). And how is it possible they should remember the Time so exactly, for neither of them belonged immediately to *Kelly*, but were only Servants to Mrs. *Barnes*, who had other Lodgers in her House? They did not even make these Affidavits till the 6th of *February* last; and 'tis no easy Matter to remember such an inconsiderable Circumstance of a Lodger (ten Months together)

(*a*) D. 47. 8. 9. E. 6. *b. c.*

together) unleſs they likewiſe had been inſtructed before-hand to keep Diaries of Mr. *Kelly*'s Motions.

The Third General Charge againſt my Lord Biſhop, is *(a)* the receiving of Letters from abroad relating to this Conſpiracy.

Two Inſtances only of this Kind have been *(b)* produced. The firſt from *Motfield* (interpreted *Marr*) 11th of *May*, addreſſed to *Illington*.

The other from *Digby* (ſuppoſed to be *Dillon*) 14th of *July*, addreſſed to Mrs. *Weſton*. Neither of which (do they pretend to ſay) came to his Lordſhip's Hands, or if they had, that there is one criminal Word contained in them, and conſequently could not be (as I before proved) a treaſonable Correſpondence, within the Letter or Intent of any Law.

That of *Motfield*'s is a mere Letter of Friendſhip, and (if from Lord *Marr*, as they ſuppoſe) is to a Perſon with whom he never had either Friendſhip or Acquaintance; but really ſeems deſigned for no other Purpoſe but to fix upon his Lordſhip the Letter directed to *Muſgrave* of the 20th of *April*, (for the ſame Reaſon interpreted *Marr*) the Receipt of which is there acknowledged; and in his Words of Condolence there is ſomething, which, 'tis ſaid, points out his Lordſhip's Character and Function, tho', in my humble Apprehenſion, no more applicable to his Lordſhip, either as a Biſhop or a Clergyman, than to any other Perſon; eſpecially if it be conſidered (as it really is) the Style of a Letter of Compliment. But if the Letter itſelf, to which this is pretended to be an Anſwer, ſhould prove to be a mere fiction, the Anſwer to it (tho' it were Criminal) muſt fall with it, as a Part of the ſame Contrivance.

And as to the Letter from *Digby* to *Weſton*, tho' that Hon. Committee ſeem to lay ſome Streſs upon it, by printing it at Length in their Report, yet there is nothing in it that can affect any Man criminally, but his Lordſhip not at all; becauſe the Paſſage in it relating to his Health, and the Concerns of his Family, cannot poſſibly be applied to him. It implies, that he was then in a very ill State of Health (*July* 25.) and his Family in great Diſorder; whereas his Lordſhip (I can ſpeak it, my Lords, upon my own Knowledge, as well as the Teſtimony of ſeveral Clergy of his Dioceſe, and others) was then perfectly well, and able to tranſact all the ordinary Buſineſs of his Dioceſe and Deanery, and had been ſo for above two Months, having myſelf the Honour at that Time to be concerned with his Lordſhip in a very tedious and intricate Enquiry; and the Diſorder in his Family (if it means the Death of his Lady, for that or nothing is meant by it) had been over a much longer Space of Time.

Nor is it probable that ſuch a Miſtake ſhould be made by the Perſon (whom the Name of *Digby* is ſuppoſed to denote), if what the Report *p.* 39. and the Appendix D. 32 and 29. informs us, be true, that two Letters had ſome Time before been written to *Digby*, or his Secretary; the one (*July* 4.) aſſuring, *Weſton* was never better in his Life, the other (14 *July*) affirming he was then perfectly well. But it is ſtill more improbable, if your Lordſhips will conſider what that Hon. Committee have juſtly obſerved, in the very ſame Leaf, that the Profeſſions of theſe two Correſpondents were ſo foreign and different, as to lay no ſort of Foundation for Intimacy or Intercourſe between them: and the natural and only Concluſion (we think) from hence, is, that the Letters on this Head, either from this or the other Side of the Water, cannot be genuine; and that no fair or regular Correſpendent could be guilty of ſuch groſs Miſtakes.

And of both theſe Letters from *Motfield* and *Digby*, your Lordſhips have (I doubt not) obſerved, that there is no Pretence of Proof concerning the Hands in which they are written; which ſurely would have been more requiſite, than the Application of feigned Names, to aſcertain them. Otherwiſe any one who was acquainted with ſuch Names might write Letters from the other Side, as coming from the Perſons deſigned by thoſe Names, which they themſelves were ignorant of.

And as the Receipt of theſe Letters by his Lordſhip has not been proved, ſo there is not any Inſinuation or Pretence that he ever anſwered them, tho' they both bear Date long before his Lordſhip's Commitment.

This Part of the Scheme, therefore, for charging his Lordſhip with a foreign Correſpondence under fictitious Names, was not ſo artfully contrived as the former; and ſeems, by ſo many groſſer Miſtakes, to have proceeded from Somebody that had a much worſe Intelligence concerning his Lordſhip's Affairs.

I ſhall here beg Leave to take Notice of the Letter taken from one of his Lordſhip's Servants in the *Tower*, on which the learned Counſel have laid ſuch great Streſs, becauſe there were no Profeſſions of his Innocency in it. If there had been, I ſuppoſe they would not have been much regarded. Why therefore ſhould it be any Argument againſt him, becauſe there is no ſuch Thing? Matters are at a very low Ebb, when ſuch Trifles are relied on. But there is another Reaſon. The Letter I ſuppoſe to have been intended for ſome near or intimate Friends, and to ſuch Perſons there was no Need of making ſuch a Profeſſion. They knew (whoever they were), and were before ſufficiently perſuaded of his Lordſhip's Innocency, and that it was impoſſible he ſhould be guilty of what is laid to his Charge. And by what has already appeared to your Lordſhips, I may ſay, this Reverend Prelate had no need of making ſuch an Apology, and that the Perſuaſions of his Friends were not ill-grounded.

The Fourth Head, to which the Charge againſt his Lordſhip may be reduced, is the Co-incidence of Circumſtances, Times, and feigned Names in the intercepted Correſpondence, to induce your Lordſhips Belief of the before-mentioned Hearſays and ſuppoſed Facts, that his Lordſhip, and he only, is meant by that Correſpondence.

And the chief Obſervation about the Co-incidence of Times and Circumſtances relates to the three Letters of *April* 20. his Lordſhip's Illneſs, and the Death of his Lady, and the Preſent of the Dog, about the ſame Time. All which have already been accounted for, either as Truths publickly known, turned by ignorant or malicious Correſpondents to ill Purpoſes, or as abſolute Falſities, as will appear to your Lordſhips by our Evidence.

1. As to the Article of Times, of his Lordſhip's coming and going, it muſt be owned, the Penmen of theſe Letters are ſometimes right, but they are as often wrong, and the Miſtakes are of more Conſequence to deſtroy what is inferred from them, than the real Agreements, in Point of Time, are or can be to eſtabliſh it. There is no doubt, but the Correſpondents on this Side (whoever they were, and whether out of Malice or Vanity) apprized themſelves as well as they could of his Lordſhip's Motions, in order to give a Colour of Probability to what they ſaid of him; and yet it happens, that out of ſeven Inſtances occurring in theſe Letters, and referred to in the Report, three of them (if not four) are plain and groſs Miſtakes: Two only are true in all their Circumſtances; and of the other two, it may be doubted whether they anſwer the Truth in every reſpect, or not.

Firſt, As to the two doubtful Inſtances, one is 49 *pag. Rep.* D. 29. where *June* 14. *G. W.* writes to *Quitwell*, Mr. *Weſton* is in the Country, I ſaw him two Days ago. If theſe Words mean, that he ſaw him two Days ago in the Country, (which is the moſt obvious Senſe of them) then the Aſſertion is falſe; for his Lordſhip came to Town *June* 12. as appeared Yeſterday by the Coachman's Book: But if they mean, I ſaw him two Days ago in Town, then the Aſſertion may be true.

The other Inſtance is *Report* 51, 52. D. 14. Somebody writes *July* 26. to *Maiſonneuve*, that *Rig* and *Skin* had been lately together, and that *Rig* went into the Country the Day after. Now by Depoſitions D. 48. it appears, the Biſhop went out of Town *July* 21; they muſt have met therefore on the 20th, which don't well anſwer the Word *lately*, which one would think imported 6 or 7 Days more. And therefore theſe two Inſtances we ſet aſide, as neither plainly true nor plainly falſe. The three next are manifeſt Miſtakes.

In *Hatfield*'s Letter to *Muſgrave*, *May* 7. it's ſaid, *(a)* Mr. *Jones* is come to Town only for a Day, and yet (if *Jones* means the Biſhop) he had been in Town two Days, and ſtay'd in Town three Days longer; for he came 5th *May*, and returned 10th *May*, as appears by *Lawſon* and *Wood*'s Examination.

So in a Letter of *J. H.* to *Dixwell*, *June* 12. 'tis ſaid, *Rig* (ſuppoſed to mean the Biſhop) is, I hear, in the Country; whereas his Lordſhip was at *Weſtminſter*, *June* 18 and 19, as appears by the Coachman's Books.

In a Letter to *Maiſonneuve*, *July* 19. F. 59. *Rig* is again ſaid to be in the Country, whereas his Lordſhip was at *Weſtminſter* that very Day, and continued there till the 21ſt, as appears by the ſame printed Depoſitions.

And the Miſtakes in theſe three Inſtances are the more remarkable, becauſe they all affirm his Lordſhip to be in the Country, when he poſitively was not; whereas it was ten to one, but that even mere Gueſſes had been true, at a Time of Year that every one almoſt is in the Country; and his Lordſhip was really ten Days in the Country, to one that he was in Town, during the whole Summer.

But, *My Lords*, I muſt with ſome Regret take Notice, that none of theſe Miſtakes are acknowledged in the Report of that Honourable Committee, tho' all the Letters and Paſſages are tranſcribed in it, particularly that of the 7th of *May*, E. 42. Theſe Words are inſerted in the Report, *page* 41. [*Mr.* Jones *is come to Town*] but the following Words [*only for a Day*] are omitted; and yet the Section concludes, *that it agrees with the Enquiry made at that Time*; which indeed it does (as far as it is there quoted) tho' not with the Append. *E.* 42.

What Enquiry of this Kind was then made, and with what Views, we cannot ſay, unleſs we may ſuppoſe it to be made by his Neighbour *Lawſon*. If it was, 'tis ſtrange that he could not depoſe from his own Knowledge and Obſervations in *May*, but only as to what he had heard and was told by *Wood*, his Lordſhip's Coachman, ſo lately as the 19th of *February* laſt. I would reconcile this if it be poſſible: And the moſt natural Inference I can draw from it is, that *Lawſon* (or whoever that Inquirer was) had pretended to take ſome Account of his own at the Time mentioned by the Committee, which, upon Compariſon with that of the Coachman's, he found to be manifeſtly falſe and erroneous, and therefore would not produce or depend upon that: But we hope his Teſtimony can receive no Advantage from ſuch a Conduct. And upon the Whole it appears, that tho' more Induſtry has been employed on the Article of Enquiry, yet as many Miſtakes have been made in it, as in any other.

And as for the Coachman's Book, after all it cannot be entirely relied on; becauſe the Entries made in his Book can only relate (as we apprehend) to the Charges of Turnpikes and Ferryings, or ſuch other Matters for which he was accountable. He had no Reaſon to take Notice in ſuch an Account, when his Lordſhip was in the Coach, when *Not*; and your Lordſhips have heard, cannot be poſitive on that Head. And therefore how exact ſoever his Accounts may be, in reſpect to thoſe little Diſburſements, they can add no Weight to the Obſervation drawn from them by that Honourable Committee; and tho' great Streſs has been laid on them, (with Submiſſion to your Lordſhips) they amount to no more, than *that ſome Perſons on this Side the Water, writing to ſome on the other Side, are ſuppoſed to mention his Lordſhip, ſometimes as in Town, or in the Country:* And from thence 'tis inferred, That they had frequent Acceſs to him, and conſequently the Matter of their Correſpondence is imputed to him.

Had theſe Correſpondents been exact, *my Lords*, in all their Accounts of his Motions, ſurely no ſuch Concluſions could have been reaſonably made: But as they are oftener wrong than right, it follows, they were not ſo well acquainted with his Lordſhip or his Circumſtances, as (to ſerve their evil Purpoſes) they have pretended to be.

Having thus ſpoken as to the Circumſtances of Times, (which are thrown in to induce a Belief that his Lordſhip was meant by that Correſpon-

(a) Rep. 41. Append. D. 24. *(b)* Rep. 51. Append. D. 35. *(a)* D. 47, 8. E. 49.

dence) I shall next offer something as to the Cant Names: And though it has been already observed to your Lordships in various Instances, that the Names of *Jones*, *Illington*, and *Weston*, could not possibly belong to him; yet give me Leave (*my Lords*) to say further, that *Jones* is not only a very common Name (for in one Society, I think, I remember no less than sixteen of the Name at once), but that Name is manifestly applied to very different Persons, even in the Papers contained in the Appendix. In *Plunkett*'s Cypher *Jones* denotes the *Germans*: Twelve or fourteen Times it is supposed to denote the Duke of *Norfolk*, in three other Places to denote Sir *W. Ellis*; and even in the Letters imputed to *Kelly*, there are (*a*) Passages (besides those already mentioned to your Lordships) which cannot with any Reason or Probability be applied to his Lordship: For Instance, *D.* 23. *Jones* and *Illington* are, within the Compass of two Lines, plainly distinguished as two different Persons, and therefore both cannot be applied to his Lordship. And in the same Letter, as well as a preceding Letter, *D.* 13. *Jones* is mentioned as having undertaken to do something for a Boy at *Eaton*, where it is well known his Lordship has no Influence or Acquaintance; and if he had interested himself there on any such Account, it would easily have been discovered. And this, my Lords, is one strong Instance, to shew the Ignorance of the Writer, even in some of his Lordship's most notorius Circumstances.

A great deal of Pains has likewise been taken by the Help of divers Suppositions and Reasonings, to prove that *Rig* denotes his Lordship. However, I shall take Notice but of one, in the Letter to *Gerrard*, which is said to be Sir *J. D'Obrian*, Report 49 *E.* 47. where something is said of *Rig*, highly improper, and absolutely false, if to be understood of the Bishop. An Account is said to be given of the Difficulty *Kelly* had to get Bail, and it is added—*Your Old Friend* Rig *indeed offered all that could be expected of the poor Man.* (If my Instructions are true) *D'Obryan* is a Name his Lordship never heard of before, nor had the least Concern in procuring *Kelly*'s Bail, nor knows to this Day who they are; the only Words applicable to him in this Passage, are those of *Poor Man*; and his Lordship permits me to say, that he is really such, poor both in Body and Purse, and as poor as his Enemies almost can make him: And tho' he may have Reason (if your Lordships should pass this Bill with all the Severities intended by it) to be heartily sorry he is so, and that he has neglected those Opportunities of enriching himself, which others would have laid hold of; yet he gives me Leave, my Lords, to say, he is not ashamed of that Poverty, because free from all unjust Acquisitions, and unworthy Compliances. But that he was a poor Man at that Time, *i. e.* unable to procure Bail, (which is the Sense that Writer means it in) cannot with any Decency or Justice be applied to one of his Lordship's Interest and Station, if he had concerned himself in it.

Give me Leave, my Lords, to take Notice of another Mistake of that Honourable Committee in the very same Letter; I mean a Passage cited from it which is not in it, to prove that *Rig* and his Lordship are the same Persons; which I should have omitted, but that it breaks at once the Chain of Reasoning there made use of. The Words are, *how far this late Affair may affect him* (Rig) *I cannot tell*, and *E.* 47. is cited for them. Now *E.* 47. gives an Account of *Kelly*'s Examination promiscuously with other Matters, and was written *June* 11th; but the Letter where the Words really are, is *E.* 49. of the 18th of *June* (near a Month after *Kelly*'s Examination). Nor is there a Word in that about the Dog; but it might be proper to confound these two Letters, and connect these two Particulars, in order to make out, that *Rig* and his Lordship are the same, tho' they have really no Relation one to the other.

We might add, my Lords, many gross Errors in the Application of Names: But if your Loidships are satisfied with the Justice of those already mentioned, (as I hope your Lordships are) there will be no Need to regard the rest; for although they have some little Co-incidences of Time, yet they are dashed with so many Inconsistencies, and so many Falsities, that no fair Correspondent could be guilty of But there is one which of all others bears hardest upon this Reverend Prelate, the most criminal in the Matter of it, and from which he is most deeply concerned to clear himself; *i. e.* the Letter of *April* 20th, which has been over and over affirmed by that Honourable Committee, as well as by the Counsel for the Bill, to be a Letter to the Pretender. If that be so, and had been proved by any Degree of Evidence to have been dictated by his Lordship, we should have been utterly at a Loss what to have said, in a Case that would have been so fully within the Letter of the Law. Part of it, my Lords, we have already shewn to have been charged on his Lordship without the least Proof or Shadow of Evidence; the other Part of the Charge we hope now to prove equally groundless and false.

That the Letter addressed to *Jackson* was not to the Pretender (whomever else it may mean) we think, appears clearly from the Words of it, *our Circumstance on this Side*; a Phrase not only used by all Writers, but is the constant, usual Style throughout all the Papers in the Appendix, in Contradistinction to *France*, which is the other Side, but never to *Italy*, as the Case must be here, if *Jackson* means the Pretender. The Instances in the Appendix are almost infinite.

Another Reason why we think the Name of *Jackson* cannot reasonably be supposed to denote the Pretender, is from *E.* 30, where there is Mention of dividing *Clinton*'s Money between *Medley* and *Jackson*; *i. e.* says the Rep. p. 54. between *Ormond* and the Pretender. But it is not to be imagined, that a Letter written from one devoted to the Pretender's Interest, should place *Ormond* before him; this is so unlikely, that even the Committee, speaking in their own Persons at the Bottom of this very Page, slide naturally into the other Way of placing the Words, the *Pretender* and *Ormond*. Besides this, my Lords, there are so many Familiarities [to mention but one, *all such pretending People*] in the Letter itself that it could never come from any one (as I before said) devoted to that Interest, at least not to the Pretender himself, but to some Equal, or rather to some Inferior. *Jackson* therefore must mean somebody else, somebody in *France*, and not the Pretender in *Italy*; and on this Supposition, every Word and Phrase of that Letter is better accounted for than on any other.

(*a*) Rep. 48, 9, 59. 68.

The Committee of that Honourable House below, have been pleased also to observe, *p.* 45, 46. that *Jackson* appears from other Letters to be the same as *Malcolm*, (which they say means the Pretender), and for this Reason, because (*p.* 54. E. 30.) *Clinton*'s Money is to be divided between *Medley* and *Jackson*. And *p.* 56. somebody hopes *Clinton* has sent *Malcolm* half Money; which proves, indeed, that either *Medley* or *Jackson* means *Malcolm*, but which may be still a Question as much as it was before.

That *Malcolm* means the Pretender, 'tis proved; because Application is made to *Malcolm*, in a Letter from *Scotland*, for a Patent; and for Power to raise a Regiment, *Rep. p.* 45, 75. But with Submission to that Honourable Committee, neither of these Instances prove that Assertion; since the most natural Way of applying in such Cases, is to Persons employed under the Principal, and not immediately to the Fountain Head itself: And if the late Duke of *Ormond* was to have come over last Summer to head the *Scots*, and they daily sent pressing Messages to that Effect, (as Mr. *Stanhope* writes from *Madrid*, *Rep. p.* 75.) who more proper to be applied to by a *Scots Man* on both these Occasions? *Malcolm* therefore (with Submission to the Committee) more naturally means the late Duke of *Ormond*.

I may add to this, my Lords, that in the Cypher inserted among the *Scotch* Papers, I 14. *Davis* and *Lloyd* (not *Malcolm*) is said to be the Name and Designation of the Pretender.

I hope we may be allowed to argue in this manner, from one Cypher to another, because the same Method has been made use of against us, upon this very Article, both by that Honourable Committee, and the Counsel for the Bill: For the only Colour there is for interpreting *Jackson* to be the Pretender, is taken from *Plunkett*'s Cypher, in which (as it is printed) *Jackson* is set over against the Name of the Pretender, and from the Titling to the Draught of a Letter of *Plunkett*'s to *Jackson*, C. 41. and admitting this Letter to have been so entitled by himself, (which has not yet been proved) yet it does not follow, (as I observed) that because a Letter addressed to one at *Rome* by *Plunkett*, under the Name of *Jackson* signified the Pretender, that another Letter directed to one of that Name in *France*, by a quite different Person, should likewise necessarily signify the Pretender. This, my Lords, I beg Leave to say, is no certain or natural Consequence: But it is most certain, that that Draught (whomsoever it was intended to) was not written upon that Cypher which the Committee referred to, in order to have it thought to have been written for the Pretender; for there is but one only of the many Cant Names in the whole Letter which is to be found in that Cypher. But if your Lordships will be pleased to consider that Cypher a little farther, it will appear, that the very Persons supposed to be concerned in dictating this Letter to *Jackson*, were utterly Strangers to the Correspondence; for it consists of a hundred and fifty Names, and no Man can find above four that are in this Cypher, or in all that voluminous Correspondence attributed to *Kelly*, nor any of those four ever used in the Letters supposed to be writ by *Kelly*; but in those only supposed to be written to him from abroad.

The Name of *Jackson* is not once in all that Correspondence applied to the Pretender: And though there be a hundred proper Occasions of mentioning him, it is always under some other Appellation. And *Plunkett* himself, in his Examination C. 73. Sect. 14. (when he could not possibly know the Tendency of the Question) not only says positively, that he never writ to any Person by the Name of *Jackson*, and does not know who is meant by it, but it is also remarkable (my Lords) that in all the Letters said to be written by him upon that Cypher (after it was formed) he never once styles the Pretender *Jackson*, but either *Joseph* or *Jephson*.

The first of these Letters is in *May*, 1721, and therefore that Honourable Committee have with great Exactness placed this Cypher immediately before it, as supposing it about that Time framed; for all the preceding Letters are manifestly written upon another Cypher. Now this Letter of the 20th of *April*, supposed to be dictated by his Lordship, was written before that Cypher of *Plunkett*'s was framed, and consequently could not take a Name from a Cypher which then had no Existence.

There is another Observation of that Honourable Committee, which I beg Leave to take Notice of. They say, that the Cypher made use of in this Letter to *Jackson* is the same made use of in the Letters from the late Duke of *Ormond*'s Agents, and in Letters to *Dennis Kelly*; and yet the Pretender has some other Names in such Letters, but in none of them ever once styled *Jackson*. How comes it then, my Lords, that he should be styled so once in this one Letter, and never before nor after by that Writer, or by any other?

We have been the longer, my Lords, in removing this Imputation, because of all others it is the hardest and most unjust upon this Reverend Prelate; and, upon the whole, we hope it is fully and effectually done, (notwithstanding the Difficulties we had of proving a Negative), and even from those Lights and Materials the Committee themselves have afforded us: And if we had had an Opportunity of inspecting the Originals, we doubt not we should have been able to have proved much better, that *Jackson* (to whom this Letter of the 20th of *April* was directed) could not possibly mean the Pretender.

And if that be the Case, as it certainly is, and it appears farther by the Evidence which we shall produce, that these three Letters of *April* 20th, were not, and could not possibly be dictated by the Bishop, the Foundation of the whole Charge is destroyed, and consequently all the Superstructure must fall to the Ground. Nay, I will venture to affirm, that it is impossible for them to form any Scheme to prove the Bishop wrote these Letters, but what is, and will be actually disproved and falsified, by some Part of their own Evidence.

Having thus, my Lords, gone through every Part of the Charge, I must crave your Lordships Patience yet to speak to two Things, which have been much insisted on by the Counsel for the Bill. That when your Lordships proceed in *a Legislative Capacity, you are not to be guided by the Rules and Niceties of Law*, and therefore that we are not in this Case to expect an Evidence strictly legal. The other Thing was, *that at this time of Day,*

Day, circumſtantial Evidence is ſufficient in a *Charge of High-Treaſon*, as the Caſe now before you is. This (my Lords) we have heard fully and often repeated, as it were, to anticipate us in this Objection, which they themſelves know to be ſo juſtly founded.

I have ſo far acted in complaiſance to them, as to argue chiefly on the Facts and Circumſtances themſelves, and under the very ſame Lights they have preſented them to us, and hope (my Lords) our Inferences from them have been more juſt, our Conſtruction more natural, and our Probabilities much greater than theirs; and even in that View (conſidered abſtractly from what the Common Law and the Common Juſtice of the Realm requires), I hope we have fully ſhewn to your Lordſhips Satisfaction, and to the Conviction of every reaſonable or impartial Perſon, that there are no Grounds for what is ſuggeſted in the Bill; and that all who hear me may juſtly wonder, how this Reverend Prelate comes to be charged (as he is in the Preamble of the Bill) with being deeply concerned in forming, directing, and carrying on a Conſpiracy: when it has not been proved, that he entered into any one Conſultation concerning any one Meaſure, gave any one Direction, that he has done any one criminal Act, written, dictated, or received any one criminal Letter; and if we ſhould wave inſiſting on an Evidence ſtrictly legal, or a Proof according to the known Rules of Law; give me Leave to ſay, my Lords, becauſe it is true, there has not been a reaſonable Evidence.

But yet, my Lords, I ſhall always inſiſt, both as an *Engliſhman* and as Counſel to this Reverend Prelate, that there ought to be a legal Evidence in theſe, as well as in any other criminal Proceedings. If there is any Difference, it is in this only, that as there are certainly many greater Inconveniences to the Subject in this Method of Proceeding, there ought to be a ſtronger Proof, and a Conviction more ſtrictly legal. I will always hope, your Lordſhips will expect a Proof in ſuch heavy Charges, agreeable to the Laws of the Land, and the Rules and Reſolutions of other Judicatures. I am far from thinking your Lordſhips are circumſcribed by the Forms of inferior Courts, becauſe they are in their own Nature diſcretionary, and the Courts themſelves often vary and depart from them. But the fundamental Maxims of Law, the unalterable Meaſures of Juſtice, and the poſitive Directions of an Act of Parliament, are of another Nature; they are binding every where, to all Perſons and Authorities, (as long as they continue Laws) the King himſelf not excepted. I ſhould beg Pardon, for carrying my Aſſertion ſo far, but that I am taught by the Bill of Rights that the King himſelf is bound by the Law; that it is not in his Power to alter, ſuſpend, or diſpenſe with Laws. But if the Doctrine of the Counſel for the Bill is true, and every one at Liberty to follow the Dictates of his own Judgment, and what Rules he pleaſes; what Confuſions, Uncertainties, and Arbitrarineſs muſt that introduce in all Proceedings! Private Opinion will too often be a Pretence to exerciſe private Malice, Revenge, or Ambition.

I might appeal to every one that hears me, whether he has not at ſome Time or other believed ſome Things as ſtrongly, as he did at firſt this Reverend Prelate to be guilty of what was ſuggeſted againſt him, and has afterwards found himſelf miſtaken? What is more common than for Men that agree in the ſame Notions of Morality, to deduce different Concluſions and Applications from them? (even where Intereſt or Partiality do not intervene;) And therefore the Wiſdom of the Law of *England* has been, to determine general Notions of Juſtice and Right by particular Rules and Applications, in order to ſettle that Variety and Inconſtancy, which, without ſome eſtabliſhed Rule, muſt neceſſarily follow. Where then ſhall we go for true and proper Notions of Law or Equity, but to thoſe great Oracles and Fountains, my Lords the Judges? What better Guide or more certain Rule, can any one of your Lordſhips propoſe to himſelf, than the conſtant and uniform Judgment of thoſe, whom the Conſtitution of this Kingdom have made the proper Diſpenſers of Juſtice, and the Interpreters of Law?

'Tis your Lordſhips peculiar Advantage, to be continually aſſiſted by ſome of my Lords the Judges; and we hope in this Inſtance (if any Doubt can at laſt remain) your Lordſhips will hear their Opinion, with the ſame Deference and Candor as in former Caſes. Let it never be ſaid, my Lords, that you, who are the ſupreme Oyer of the Kingdom, whoſe Judgments and Reſolutions are Laws to other Courts, and ought to be an example to all others in the Juſtice and Equity of your Proceedings, that your Lordſhips will not regard the ſolemn Judgment of the Judges, or the Uſages of former Parliaments: and let it not be ſaid, that becauſe other Courts are bound by a Law to require ſuch and ſuch Circumſtances to infer an Offence, or ſuch a Proof before they condemn a Man, that you (my Lords) will follow your own private Opinion, make what you pleaſe to be an Offence, without any Evidence at all, but upon mere Hearſays, Conjectures, and Suppoſitions. Who can read that melancholy Caſe without Concern, which my Lord *Coke* has in his 3d *Inſtit.* of an Uncle that was condemned and executed for the ſuppoſed Death of his Niece, merely upon a Train of Preſumptions and circumſtantial Evidence; or *Harriſon*'s Caſe within Memory, where the Father and Mother both ſuffered upon Preſumption for a ſuppoſed Murder? And with what Shame and Remorſe did that haſty Judge ſee himſelf convicted by the Perſons returning from beyond Sea? And every one almoſt remembers the Charge of Treaſon againſt this Reverend Prelate's Predeceſſor. If ſuch a Bill had been thought on, or much ſtronger Evidence had been received, it might have paſs'd before the Truth could have appeared: But happy was it for that innocent Prelate, that a quite contrary Method was taken, and his Accuſers brought Face to Face to him, by which he quickly diſcovered the Villainy of thoſe Miſcreants. Private Opinion or Perſuaſion, therefore, is ſuch a Poſition, that every honeſt Man ought to diſclaim in theſe Caſes; and the greater the Crime is, in which he is to judge, the ſtronger Proof he ought to require: and when one adheres ſtrictly to Juſtice, and goes according to the *Allegata & Probata*, by the beſt Rules and Reaſons of Law; whatever Miſtakes, Miſinformations, or falſe Evidence may happen in the Caſe, he can never have Cauſe to repent; and neither the preſent Age nor Poſterity can blame him.

It was formerly a Queſtion, whether the *Star-Chamber* was bound by the Rules and Reſolutions of other Courts? And the many Exceſſes, and extravagant Opinions in this Reſpect was the Reaſon that ancient Court was laid aſide. And it has been as great a Queſtion, whether the Court of Chancery was to be guided by Rules and Precedents? But the better Opinion has always been, that a Judge in Equity ought to regard the Rules and Reſolutions that have been in like Caſes; unleſs he is reſolved to make Decrees totally arbitrary.

For tho' Equity and Reaſon, in itſelf, is the ſame all the World over, and nothing can alter the proper and intrinſick Notions of it; yet, as the Matters about which it is converſant are repreſented in different Circumſtances, and, like Streams of Water, will receive ſome little Tincture from the Soil thro' which it runs, and there is ſomething in every Man's Temper that will ſlide into his beſt formed Notions; it ſhews the Neceſſity of ſome fix'd and eſtabliſh'd Rules, at all Times, and in all Places of Judicature. And therefore, in that high Court of Equity, tho' the Rigor of the Common Law is in ſome Reſpects ſoftened, yet there is nothing more known, than that it is not to be impeach'd in any of its eſſential and fundamental Points.

I hope your Lordſhips will pardon me, if I mention an Authority or two of great Name, that expreſly ſay, the High Court of Parliament is likewiſe bound by the Rules of Law. Lord Chief Juſtice *Holt* ſays, 'The Authority of Parliament is from the *(a)* Law; as it is circumſcribed by Law, ſo it may be exceeded; and if they do exceed their legal Bounds and Authority, their Acts are wrongful, and cannot be juſtified any more than the Acts of private Men. I might add to this, the Opinions of *Vaughan*, *Hale*, and *Hobart*, to the ſame Purpoſe; that the Rules of Law ought to guide in paſſing of Acts of Parliament, as well as in the ordinary Courſe of Judicature. But when I mention the Senſe of a living Authority, that has filled the higheſt Stations in the Law, and ſo great an Ornament to your Lordſhips Houſe, and whoſe Merits have been ſo lately diſtinguiſhed by new Honours, I need cite no more. It was in a Caſe, where the ſame Doctrine was advanced (that the Parliament was not bound to conform to the Rules and Proceedings of other Courts): In anſwer to which, that noble Lord with great Truth obſerved, that thoſe Rules were not to be Patterns to them, only becauſe they were Rules of thoſe Courts, but becauſe they were Reaſon, and Reaſon approved of by long Experience, and they obtain there as Rules for that Cauſe; and I hope (ſays he) that is a Cauſe why the Houſe ſhould imitate them, as much as *Weſtminſter-Hall*; or elſe how can they be ſaid to go according to Reaſon or Juſtice, when they go beſide, or tranſgreſs thoſe Rules?

Beſides theſe great Authorities, there have been Times, when Parliaments have thought themſelves bound by the common Rules and Proceedings of Law, and Parliaments that were very tender and ſenſible of their own Power, in other Reſpects. Not to mention ſeveral antient Acts of Reverſal, becauſe Judgments given in Parliament were not pronounced according to the known Laws; there is the Act for the Attainder of the Earl of *March*, becauſe he had been inſtrumental in procuring the Attainder of another Lord, under pretence of a Letter, which (the Record expreſly ſays) was no Evidence. And the Record for reverſing the Attainder of *Roger Mortimer*, 28 *E.* III. Sir *Thomas Haxley*, &c. is expreſly declared to be, becauſe they were attainted contrary to the good Laws and Cuſtoms of the Realm. And not only the Lawyers and the Hiſtories of thoſe Times condemn them as groſly contrary to Law and Juſtice, but the Stat. 1 *E.* VI. *cap.* 12. is directly levelled at them. For it recites that thoſe Proceedings were terrible and extreme, introduced for particular Policies and Purpoſes; repeals ſeveral Statutes that had been enacted in the preceding Reigns; and, that there might be no more ſuch for the future, reduces all Treaſons to the ancient Standard of the 25 *E.* III. and goes on and enacts, That no Perſon or Perſons (*i. e.* my Lords, as I humbly apprehend, no manner of Perſons, in no manner of Place, Court, or Method) ſhall be convicted for any Offence of Treaſons, Petit Treaſons, Miſpriſions, for which the Offender ſhall in any wiſe ſuffer any Pains of Death, Impriſonment, Loſs of Goods, or the like, unleſs accuſed by the Teſtimony of two lawful and ſufficient Witneſſes. The Stat. 5 *E.* VI. *cap.* 11. goes further, and ſays, 'There ſhall not only be two Witneſſes, but thoſe two Witneſſes ſhall be produced in Perſon before the Party, and ſhall before his Face maintain and avow what they have to ſay. The Words of this Statute, as well as the former, are as general as they can be, without any Exception of Place or Proceeding.

But notwithſtanding theſe two Statutes, there was ſtill Occaſion for the Stat. 7 *W.* III. to aſcertain Treaſons, and to regulate the Method of Trials. For there had been ſeveral tender, complaiſant Laws introduced by the pretended Zeal of Miniſters, with a peculiar Eye to the Prince on the Throne; which tho' others could not apprehend the Juſtice or Neceſſity of, yet on theſe Laws there had been many unreaſonable Penalties, undue and irregular Proſecutions in the preceding Reigns, and which Sir *Jo. Hawles* remarks as one of the great and immediate Cauſes of the Revolution. And to ſhew the Reſentment of the Nation on theſe Proceedings, they were all reverſed by particular Acts of Parliament; and to prevent the ſame for the future, that glorious Statute was made of the 7 *W.* III. *cap.* 3. That Perſons accuſed as Offenders ſhould be juſtly and equally try'd, and not debarr'd of all juſt and equal Means for the Defence of their Innocency. And whoever caſts his Eye over the preceding Trials, will find every Clauſe of that Statute, as it were, a particular Proviſion againſt the Miſchiefs that had been, and to prevent the like for the Time to come.

I do admit (my Lords) there is a Proviſo in the End of that Statute, that it ſhall not extend to any Impeachments or Proceedings in Parliament, and therefore I don't mention it as a Rule to Parliamentary Proceedings in all Reſpects, as it is to inferior Courts: But ſurely the Reaſon and Juſtice of that Act ought to be a Guide, as far as it is conſiſtent with the Nature of your Lordſhips Proceedings. And inaſmuch as it was the Senſe of the whole Legiſlature, and the united Voice of the Nation at that Time, and on a dear-bought Experience, it is ſurely ſo far worthy of your

(a) Saun. Rep. 505.

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with publick Wisdom, to run again into the same Mischief from which we are so happily rescued, or to split on the very same Rocks, on which many of your Lordships noble Ancestors have perish'd.

And it can never be (with Submission to your Lordship's better Judments) a natural or a reasonable Construction of that Proviso to enlarge the Proceedings of Parliament, or to give a greater Latitude than ever they had before. And to remind your Lordships how the Usage of Parliament was, preceding this Statute, I need mention but two or three Instances out of many. Lord *Delamere*'s Case in King *James*'s Time, 1685, where there was one positive Witness and a strong circumstantial Evidence; and yet your Lordships Predecessors thought that not sufficient to find him guilty The Lord *Stamford*'s Case in the very same Year, where there was also one Witness, and strong Circumstances; and he was in the like manner acquitted. In the Case of the Earl of *Pembroke*, 1677, for Blasphemy and Abuse of the Sacrament, your Lordships Predecessors declared, That the single Testimony of a Commoner, tho' on Oath, was no sufficient Evidence against a Peer denying the Fact upon his Honour; and upon that address'd his Majesty that he might be releas'd from his Imprisonment.

And, as I humbly apprehend, your Lordships have thought fit to admit some of the Regulations of that Act into your Proceedings, such of them (as I before said) as are agreeable and consistent with the Nature of your Proceedings Your Lordships have been pleased to allow Counsel to a Prisoner in Treason to speak to Matters of Fact as well as Law: You allow a Copy of the Charge against him; you require the Witness for him to be upon Oath, as well as against him; neither will your Lordsh ps admit Evidence of a Fact not in the Charge. And surely, my Lords, there is as much Reason, and as much Equity to require (as that Statute requires in the Courts below) the Testimony of two lawful and sufficient Witnesses. Nay, my Lords, I hope the Reason is much stronger, because (altho' your Lordships should consider yourselves as unrestrained by the Stat. *7 Will.*) yet it is positively requir'd by both the Statutes of *Ed.* VI. which are general and without Exception, (as I before observ'd) and because it is agreeable to the Usage of Parliament (as I have likewise shewn) from that Time even down to the Stat. *7 Will.* And if your Lordsh ps are not enlarged by the Statute of King *William*, and the Statutes of *Edward* VI. are still Laws, give me leave, my Lords, to say, it can never be just or lawful to take away any Man's Life or Liberty on less Evidence than what those Statutes require, in any Place, or by any Method whatsoever. Because I am taught by Casuists, that every just Law is a Rule of Conscience, whether divine or human; and no Man can say his Conscience is void of offence towards God or Man, unless he acts according to the Laws of the one Sort, as well as of the other.

And if your Lordships will give me leave to step once more out of the Verge of my own Profession, I will mention a Word out of the Civil Law conformable to this: That is a Law, my Lords, in some Degree receiv'd by all Nations, as a Scheme of the greatest Equity and Justice. The Number of Witnesses by that (*a*) Law, ought to be two at least, to make a full Proof, and free from all Exceptions, both as to their Persons and to their Deposition. The Testimony of a single Witness is of no Validity, unless where other Circumstances concur; and it was not the Manner of the *Romans* to condemn any Man, before that he, which is accused, have his Accusers Face to Face. And this, my Lords, is not only the dead Letter of the *Code* and the *Dig.* but the learned *Groenw.* in his Notes upon these Laws, says, It is the general Policy, and obtains at this Day in most Parts of the World. I do own that there are many Cases that happen with us in the Courts below, where the Testimony of two Witnesses is not required; but then, my Lords, it is when the Trial is by Jury, that is, when twelve Men, coming from the Party's own Neighbourhood, and consequently must be supposed to know something of the Fact upon their own Knowledge find a Verdict upon their Oaths. But I need not say, that even in a Trial by Jury, if it is a Case of High-Treason, like this now before your Lordships, there must be two Witnesses, and nothing less can warrant the Verdict. And surely, my Lords, it is a Practice founded on Reason; not because this or that Law, or this or that Court requires it, but because it is absolutely necessary for the Discovery of Truth, and for the forming of a right Judgment, whether what is swore be true or false. One Witness may mistake, or be perjured, and yet happen to be consistent with himself; but when there are two separately examined, the Truth is much more easily found out. And tho' a Criminal may now and then escape for want of such a Proof, yet that would be a far less Evil, than to trust so much, in Cases so Penal, to Circumstances and Presumption, and to the Malice and Mistakes of one Person.

But if, notwithstanding the Opinion of the greatest Lawyers both *English* and Foreign, your own uniform Usage and Resolution, and the Reason of the Thing itself, your Lordships are resolved, in this one Instance, to follow every one his own private and particular Conscience; let every one hearken to that still Voice within him, with an honest Attention, unto those secret Whisperings, with Temper and Moderation. Let no Man be sway'd by Hopes, over-rul'd by Fears, or transported by Zeal beyond the Bounds of Justice, and through this Reverend Prelate's Side give a Wound to himself or Posterity, which may never be cured. Consider, my Lords, if not for his, yet for your own Sakes, the Circumstances, the Probabilities, and Evidence on both Sides, with an unbiass'd Conscience, and by the Measures of Law and Justice. For tho' some Proceedings may seem convenient to certain Times and Occasions, yet unless they agree with the Law, with Reason, and with Justice, no Man ought to think he has any Power to consent.

There is a noble Instance on Record of the Lord *Digby*, and worthy of every one's Imitation. He had been, my Lords, one of the most violent Managers in the Impeachment of the Lord *Strafford*; and yet when that Proceeding was waved, and a Bill of Attainder brought in, he spoke as violently against it: Tho' he was still of Opinion (he said) that that Lord was the same dangerous Minister, and great Apostate to the Commonwealth, who must not expect to be pardoned in this World till he was dispatched to another; yet he had rather lose his Hand than put it to that Dispatch. He put them in mind of the Difference between Prosecutors and Judges, and how unbecoming that Fervor was in them, now they were Judges, which perhaps might be commendable in them as Prosecuters: That when he gave his Consent to the Accusation, he was assured, his Crimes would have been fully and legally proved, which if they had, he cou'd have condemn'd him with Innocency, as he had prosecuted him with Earnestness; but as the Case then appear'd, no Man could satisfy his Conscience in the doing of it. The Parliament, 'tis true, had a Judicial and a Legislative Capacity; the Measure of the one ought to be legally just, the other political and prudential: but these two Capacities were not to be confounded in Judgment; they were not to piece up (says he) the Want of Legality by Matters of Convenience, to the Ruin of a Man, by a Law made *ex posteriori*.

What can I say more? For it must appear to your Lordships by this Time, that this Proceeding is contrary to the fundamental Laws of the Kingdom, contrary to Publick Wisdom, and unjust in itself: That the Reasons and Suggestions upon which it is grounded have not been proved with any Colour of legal Evidence, or with any Degree of Proof or Probability, which ought to satisfy the Conscience of an honest, reasonable Man. But if the Matters, which I have humbly laid before your Lordships, have not all the Weight, which I hope they have; or if I have omitted any thing that is material or necessary for this Reverend Prelate's Defence, Your Lordships, I hope, as Judges, (and consequently in some measure of Counsel for the Prisoner) will, from your own Observation, supply it. Or if I have laid them before your Lordships in an improper Light, or a less effectual manner than others might have done; yet the Case itself will speak better and more strongly than any Words or Expressions of mine can do. It is the Cause, the Fortune, and the Liberty of a most Reverend and Learned Prelate, who is to be stripp'd and torn from those Dignities and Preferments which his own high Merits justly call'd him to, and which he has ever since adorned with the greatest Lustre; upon what slender and insufficient Grounds, your Lordships have already heard, and I was going to say, without Precedent: but I must own there have been Instances of Deprivation, some in the Beginning of Queen *Elizabeth*'s Reign, and some others since the Revolution. But yet they were upon a general Law, then in being, and an Incapacity voluntarily incurr'd by those Prelates, after the full Knowledge and Publication of those Laws, by refusing to give that Security to the Government, which at those Times was absolutely necessary. And tho' they were peremptory in the last Degree, and their Example might have produced worse Consequences than it did; yet their Punishment went no further. But this is a particular Law, to be introduced for this particular Prelate, subsequent to the supposed Offence, and which is not thought fit to be enacted as a Law for any other Person hereafter; and I wish, my Lords, I could say, this Act went no further. But this Reverend Prelate is likewise to be deprived, not of his Life, indeed, but of all the Conveniences and Comforts of it, of the Commerce of his Friends and Relations, and of all that is valuable to an *Englishman*. He is to be doom'd to the Curse of *Cain*, and to be turn'd out of his native Country, full of Age and Infirmities, to the Cruelty of Strangers and Foreigners, and even beyond the reach of his Majesty's most extensive Goodness.

But if your Lordships should pass this Bill, he will still have, I doubt not, the Peace of his own Mind, and this comfortable Reflection, which no Man can take from him; That he shares the Fate of the greatest and most honest Statesman of the last Century: tho' in this Instance also 'tis his Lordship's Misfortune to be very much distinguish'd. For he, tho' innocent, was afraid of the Violence of the Times, and withdrew from Prosecution. But this Reverend Prelate has been all along forth-coming, and, as it were, fearful of nothing; and, conscious of nothing but his own Innocence, has sought in all Places to be brought to Trial. That noble Lord's Crimes (or at least his Accusation) were going to be prov'd in a proper Parliamentary Manner by Numbers of Persons: But this Reverend Prelate is to be involved by Implications, Inferences, Constructions, and the Conjectures of Decypherers, in Crimes which he is here ready to deny, and of which no Man accuses him.

I would not be understood, my Lords, by any Thing I have offered in relation to the particular Penalties, as if I thought any one Suggestion of the Bill had been duly proved, so as to deserve this or that Part of the Penalties; tho' I must say, they are all so extraordinary in their Nature, as to deserve your Lordships Attention. And I doubt not but your Lordships, in your Goodness, will consider what is already passed, the Length and Closeness of the Imprisonment which this Reverend Prelate has already suffer'd as a supposed Criminal. Prisons before Conviction are only for the safe Custody of a Man, and not for Punishment; but his Imprisonment has not been so: which (if my Instructions are true) has been attended with such unheard-of Barbarities, and such distinguishing Severities as are a Shame and Reproach to every civiliz'd Nation. The Case of *Colledge* every one has thought hard and barbarous; but 'tis this Reverend Prelate's Misfortune to be distinguish'd in this also, as well as in every thing else: For that Case was before the Law allowed Counsel or Sollicitors to assist a Prisoner in his Defence, but now they are allow'd by Law, and were actually and duly assign'd to my Lord Bishop; and yet Part of his Defence, and Part of his Evidence torn and taken from him. So that, all these Things considered, his Lordship cannot escape without being a very great Sufferer, tho 'your Lordships should utterly reject this Bill.

Your Lordships will also consider the Infirmities of Body under which that great and noble Mind even now labours before you; which have render'd him almost uncapable of attending his Defence. Your Lordships will also consider the Grief and Vexation it must be to appear as a Criminal before this Honourable House, where he has so long sat as a Judge, and under the Suspicion of those Crimes which are laid to his Charge; and how grievous it is for one of his Lordship's Character and Function,

(*a*) *Dig.* 22 5, 12. *Cod.* 4. 20. 9.

to be tax'd with Breaches of his Duty to God and Man, of Scandal to Religion, of Deſigns of overthrowing Church and State, in favour of Popery; who happens to be the only Clergyman in *England*, that ever thought it worth his while to draw his Pen in Defence of *Martin Luther*, the great Inſtrument of our Reformation from Popery; and who has, upon all other Occaſions, appear'd the moſt ſtrenuous Aſſerter of it. I might add much more of his Lordſhip's perſonal Merits, and of thoſe high Abilities ſo eminently conſpicuous in him; but that I know it is ſome kind of Violence to his Lordſhip to hear even thus much mention'd.

Yet ſuffer me to ſay, That if theſe Suggeſtions ſhould be carried into a Law, without any Degree of Evidence or Probability, but rather (as your Lordſhips will immediately hear) againſt the ſtrongeſt Evidence and Probabilities that are poſſible of the contrary: I ſay, if this Bill ſhould paſs on ſuch Circumſtances, whatever the preſent Age may think, his Caſe will be a ſtanding Mark of Reproach to it, and he will be the Wonder and the Pity of all ſucceeding Generations.

I ſhall add to your Lordſhips Trouble but one Word more in behalf of myſelf: That your Lordſhips will pardon any Warmth of Temper, any unguarded Word or Expreſſion that I may have been guilty of in the Courſe of this long Defence, in a Caſe, which every *Engliſhman* naturally conſiders as his own, and therefore will, in ſome meaſure, warm the moſt even Temper. And that this Learned (and whom I will now call Innocent) Prelate, will accept thoſe little Services I have been able to perform, and will pardon the many Failings, which I may already have been guilty of, in his neceſſary and moſt juſt Defence.

After the Biſhop's Counſel had done ſpeaking, the Biſhop produc'd ſeveral Witneſſes to be examin'd, and on *Saturday*, *May* 11. Sir *Conſtantine Phipps* made a ſhort Recapitulation of the Evidence, as follows.

My Lords,

WE have done with our Evidence; and hope we have fully anſwer'd every Part of the Charge contain'd in the Bill, and apprehend there is no one Circumſtance left unanſwer'd. Particularly, that we have totally deſtroy'd the Credit of *Neynoe's Hearſay* Evidence: For when the *Improbabilities*, *Inconſiſtencies*, and *Contradictions* of his Examinations are conſider'd, and the *Teſtimony* of the *Witneſſes* is duly weighed; no Perſon can give the *leaſt Credit* to what *He* hath ſaid, without offering the greateſt Violence imaginable to his Reaſon.

And it is wonderful, that the Counſel for the Bill ſhould inſiſt he ſhould be credited in *any Thing:* When we have *proved*, he had the Confidence to declare, that a *Right Honourable Perſon* had *endeavour'd to perſuade* Him to *accuſe* Perſons of Quality of Things He *knew nothing of.*

Hath he not ſaid that, when he was to be examin'd, *That Right Honourable Perſon* had him firſt *in private*, and told Him, *what Queſtions* would be *aſk'd* Him, and *what Anſwers* He ſhould *give?* Did he not ſay, that the very ſame Gentleman gave Him *five Queſtions* or *Enquiries*, and told Him *what he ſhould reply* to each of them? Hath he not ſaid, that refuſing to give Evidence, He was *threatned* with *Newgate*; and that *thereupon* He gave Them *Informations* againſt *my Lord Biſhop* and *Others?* Nay, had He not the Impudence to ſay, that the *ſame Right Honourable Perſon* offer'd Him 2000 *l.* 500 *l. per annum*, and a *Place*, to accuſe the *proteſting Lords*, the Earl of *Orrery*, and *this Reverend Prelate?* And that being aſk'd, whether He *knew any thing of the Plot?* He ſwore *No*, nor *Any body* elſe; but that he knew of *two other Plots*, viz. *One* of Mr. *Walpole* againſt the *Proteſting Lords*, the *Other* of *Himſelf* upon Mr. *Walpole*, to get 2000 *l.* of Him. Nay, it is *proved* He declared that the *ſame Gentleman* preſs'd Him *ſo hard* to *accuſe ſome Perſons*, that He had it once in his Mind to take up That *Right Honourable Perſon*'s Sword, and *run him thro'* with it; and ſo make an End of the *Plot.*

Theſe are things which have been *proved* upon *Neynoe:* And all theſe Things being conſider'd, I believe the Counſel for the Bill will readily agree with me, that *no Credit* ought to be given to one Word *He* has ſaid: And if *His* Evidence be laid aſide, the greateſt Part of the *Charge* againſt my Lord Biſhop *falls to the Ground.*

My Lords, the Evidence Mr. *Lewis* gave was very material. For he ſhew'd your Lordſhips, that *Brockett*, who was of the Poſt-Office, was ſo ſkilful in *counterfeiting Hands and Seals*, that he wrote the Superſcription of a Letter, and took the Impreſſion of a Seal, and ſeal'd it again; and did it ſo well, and gave it ſuch a Luſtre, that Mr. *Lewis* could not diſtinguiſh it from the Original.

The *Engravers* likewiſe ſaid, they could take off the Impreſſions of Seals ſo well, that they could not be diſtinguiſh'd: Nay, tho' the Wax were broken, yet if no Part of the Wax were loſt, it might be done.

Your Lordſhips obſerve how the Engravers themſelves were miſtaken in relation to ſome Impreſſions, which were produced to them: And You farther obſerve, that the Seal in queſtion was a *Cicero*'s Head, which all the Engravers agree to be a very *common* one; and they had many of them: So that no Objection can be made againſt my Lord on account of That Seal. Nay, one of the Engravers ſaid, It appear'd to him that the *Seals* of the *two* Letters were not *the ſame.* As to the *Dog*, there is Mr. *Crawford*'s Certificate, and *Birmingham's Affidavit.*

As to Mrs. *Barnes*'s Evidence, ſhe hath found out now, That there were *Two Dogs*, tho' nobody elſe ever heard of Two. She ſaid, the firſt was for the Biſhop of *Rocheſter.* Now it is plain, the *Firſt* was ſent in *March*; and it was *His Leg that was broken:* And *Birmingham* ſwears, and Mr. *Kelly* ſolemnly affirms, that it was for Mrs. *Barnes*, and not for the *Biſhop.*

As to the *Three Letters* of the 20th of *April*, we have proved it impoſſible that the Biſhop ſhould write, or dictate thoſe Letters to Mr. *Kelly.* And your Lordſhips take Notice, how the *Butler* came to obſerve theſe Letters could not be written by the Biſhop; and the Servants, tho' under Confinement, and not permitted to ſee any Body, agree in their Evidence. There is *Gordon*'s Affidavit that he never had ſuch a Pacquet: And *James Talbot* was here in Town the 29th of *April.*

Thus, your Lordſhips obſerve that a *Bill* of the moſt *extraordinary Nature* that ever was *ſeen*, hath been ſupported by the moſt *extraordinary Evidence* that ever was *heard:* And we hope, we have ſet the *dark Paſſages*, of which the *Charge* is compounded, in ſuch a Light, that every One may plainly ſee the Right Reverend Prelate is *not guilty* of *any One Offence* charged againſt him.

Mr. *Wynne* ſpoke next.

My Lords,

I Shall beg your Patience to cloſe our Defence with an Obſervation or two on the Evidence that has been given by my Lord Biſhop: and I need take up the leſs of your Lordſhips Time, becauſe our Witneſſes have fully anſwered all I opened, and in many Things have exceeded my Inſtructions.

And for your Lordſhips clearer Apprehenſion of ſo many various and perplex'd Facts, I ſhall juſt recapitulate what I humbly conceive to have been the Subſtance of the Charge againſt my Lord Biſhop, and, as briefly as I can, ſtate the Evidence, which we have produced in order to falſify and diſprove it.

The firſt and chief Accuſation againſt his Lordſhip was founded on the Informations of *Philip Neynoe*, and therefore the firſt Part of our Proof was as to his Credit. Your Lordſhips, I doubt not, remember the Purport of his Information read againſt us, and the many groſs Abſurdities and Inconſiſtencies in his other Information read by us; and likewiſe how fully they have been all diſproved, and the Credit of them entirely blaſted, even from *Neynoe*'s own Confeſſion, ſeveral Times repeated, and confirmed by three unexceptionable Witneſſes.

Your Lordſhips have fully heard of the Terrors and Apprehenſions he was continually under; becauſe (as he himſelf expreſs'd it) he had given falſe Informations againſt this Reverend Prelate, and ſo many other innocent Perſons. Your Lordſhips have heard the Inducements he had to give thoſe Informations, and how often he had declared his Intentions to eſcape, in order to avoid the Puniſhment which he apprehended moſt juſtly due to him, becauſe he could not make out the Truth of them.

Two of thoſe Witneſſes (*Bingley* and *Skeen*) are ſtill in Cuſtody, and deſtitute almoſt of all the Neceſſaries of Life: I ſay, my Lords, they are ſtill in cloſe and ſtrict Cuſtody, and conſequently there could have been no Opportunity to lead or inſtruct them in what they ſhould ſay, or ſo much as to be apprized before-hand (which ſurely would have been a reaſonable Liberty) whether they could ſay any thing material or not; and we are only beholden to thoſe lights, which the Report of that Honourable Committee has afforded us: And all three of theſe Witneſſes, utterly unknown to my Lord Biſhop both in Perſon and Reputation, as well as his Lordſhip is unknown to them. They have not converſed together for ſeveral Months, but yet are perfectly conſiſtent with themſelves, and entirely ſupported and confirmed by each other. And all three declare, they had very early told, and frequently repeated this Account of *Neynoe* to their Fellow-Priſoners and Acquaintance, as long as they were permitted to have Acceſs to them. Mr. *Skeen* being aſk'd in relation to the Diſcourſe between him and Captain *Pancier*, as in the printed Depoſition of *Pancier*, *App. D.* 1. has denied on his Oath every Word of it. He ſays, indeed, that Captain *Pancier* us'd all his Endeavours by Treats and Entertainments to induce him to ſupport this Information; but that he never gave him, nor could give him Grounds to ſay any ſuch Thing of him.

We have ſhewn your Lordſhips, that Mr. *Stewart* in particular was ſo far from patching up, or contriving Evidence (as was objected to him by the Counſel for the Bill) after he had ſeen the Report and Appendix, that he had given this whole Account to ſeveral Perſons long before. For he ſays, the Things which *Neynoe* told him were ſo ſurprizing, that he could not ſtifle them in his own Breaſt. Though your Lordſhips, I doubt not, obſerved with what Difficulty and Modeſty he was brought to ſpeak out in this publick Manner, where his Evidence ſeem'd to reflect on a great and Honourable Perſon.

Two of theſe Perſons have likewiſe been produced to your Lordſhips. To one of whom (Mr. *Gordon*) he told theſe Matters ſome Days even before *Neynoe*'s Death; and to Mr. *Kynaſton* ſome conſiderable Time before the Meeting of the Parliament: and we could have called others to the ſame purpoſe, but that we were unwilling to give your Lordſhips further Trouble in a Matter which already had, as we thought, the fulleſt, the moſt ſatisfactory, and conſiſtent Evidence that could be.

The ſecond Head of Accuſation againſt this Reverend Prelate, was upon Account of the three Letters of the 20th of *April.* The two firſt we before obſerved to your Lordſhips not to be criminal, if really deſigned for, and addreſſed to the Perſons ſuppoſed. The third we have likewiſe ſhewn by various Circumſtances and Reaſonings, could not poſſibly be addreſſed to the Pretender, whoever wrote it, or whomſoever elſe it might be wrote to.

And the Evidence offer'd to prove them to have been dictated or wrote by my Lord Biſhop, was firſt by the Subſcription of the common Name of *Jones*, which they would have to denote his Lordſhip. As to this, I doubt not, your Lordſhips remember, that even in the Cyphers and Letters that have been read, the Name of *Jones* is manifeſtly applied (as the Committee themſelves have obſerv'd) to many different Perſons; ſometimes to one, and ſometimes to another, as the Circumſtances there mentioned ſeem'd to give Occaſion; but cannot once in any Place, with Reaſon or Juſtice, be applied to my Lord Biſhop.

The next Proof that has been offer'd to your Lordſhips, to prove theſe Letters to have been dictated or wrote by the Biſhop's Privity, is, from the ill State of Health, the Death of his Lady, and the Preſent of a Dog; Circumſtances which, they ſay, are applicable to the Biſhop, and to him only.

That his Lordſhip did not, nor could poſſibly write or dictate theſe three Letters, we have laid before your Lordſhips ſuch a Proof, as the like hardly ever was before: and 'tis impoſſible, in my humble Apprehenſion, for a Negative to be more fully proved in any Caſe. Your Lordſhips have heard the great Weakneſs and Inability of this Reverend Prelate at that very Time for all manner of Buſineſs and Converſation. No leſs than ſix, if not ſeven of his Servants, have ſpoken fully and poſitively to it, That his Lordſhip was not able, without their Help, to ſtir, turn in his Bed, or even to perform the common and ordinary Offices of Life. One would think, my Lords, ſuch melancholy Circumſtances, in themſelves, ſufficient to guard any Man from Suſpicion.

But

But the Witneſſes have gone much further; for they have told your Lordſhips, that no Stranger approached the Biſhop's Room all that Time; nor had any one been, for a conſiderable Time before and after the 20th of *April*, under his Roof. Even ſome of thoſe Perſons that uſually were with my Lord Biſhop at other times (as his Son, his Chaplain, and his Son's Tutor) happened then all to be abſent at the Election of *Weſtminſter* School.

One of thoſe Servants, who happens to be a Priſoner with his Lordſhip in the *Tower*, being aſked, whether my Lord Biſhop had not put him in mind of theſe Circumſtances? Told your Lordſhips, that it was entirely his own Recollection, by caſually taking up the Report, after my Lord Biſhop was gone to Bed, and dipping on that Part of it, in which his Lordſhip is charged with having writ theſe three Letters. Upon which, the next Day (he ſaid), talking to his Fellow-Servant, and he agreeing to the very ſame Circumſtances, they acquainted the Biſhop with what they had read, and how they could, from their own Knowledge and Remembrance, falſify and diſprove that Circumſtance.

I muſt likewiſe crave leave to obſerve to your Lordſhips, that four or five of theſe Servants, that have ſpoke to theſe particular Facts and Times, are ſtill in Cuſtody, under ſeparate Meſſengers, without any Opportunity to converſe together, and were hardly to be found by my Lord Biſhop, when he had need of their Evidence; and yet every one of them have been perfectly conſiſtent with themſelves, and one with the other, and all equally poſitive.

The Biſhop's Coachman, your Lordſhips, I doubt not, remember, tho' now under another Influence, and called as Witneſs againſt his Maſter, confirmed what they ſaid, and was as poſitive and peremptory in his Teſtimony concerning this Matter, as far as the Nature of his Employment gave him an Opportunity to make ſuch Obſervations. And upon the whole, I may now, with more Reaſon, and with greater Confidence, repeat my former Aſſertion, that it is impoſſible for them even to deviſe or frame any Scheme, to prove his Lordſhip to have wrote or dictated theſe three Letters, but what will be actually diſproved and falſified by ſome Part of the Evidence.

Another Reaſon, by which 'tis proved that his Lordſhip wrote theſe three Letters, was, from the Subſcription of the Number 1378, to the Letter addreſſed to *Jackſon*. Which Number Mr. *Willes* (a Decypherer) ſays, denotes the proper Name or Title of a Perſon beginning with the Letter *R*. The little Time we have had to enquire into this Aſſertion, and your Lordſhips not permitting ſome Queſtions put by us to the Decypherer to be anſwered, won't enable us flatly to diſprove it. But, with Submiſſion to your Lordſhips, it ſeems impoſſible to affirm even thus much with any degree of Certainty, and it muſt be (as I before obſerved to your Lordſhips) Matter of Conjecture only; and it appears manifeſtly to your Lordſhips, by ſeveral Paſſages occurring up and down in this Correſpondence, not yet decyphered, that either the Art is not ſo infallible, or that Mr. *Willes* is not ſo great an Artiſt as he pretends to be.

But, my Lords, admitting ſuch a Number in this Cypher does really denote a Perſon's Name, or Title, beginning with the Letter *R*. what a ſtrange and uncertain Proof is that, to fix a Charge of High-Treaſon on the Biſhop, when there are other Perſons Names and Titles found like his, and many others which begin with the very ſame Letter; and this not to be admitted as Evidence in a minute or inconſiderable Circumſtance, but in the very Giſt of the ſuppoſed Offence, in the principal Foundation of the Charge, in the only Letter that is criminal; and, which is to magnify and improve the reſt, into High-Treaſon?

Another way of proving theſe Letters to have been dictated by the Biſhop was, becauſe another, ſuppoſed to be an Anſwer to this, mentions the Preſent of a Dog. I need not here repeat what Mr. *Kelly* himſelf has conſtantly ſaid in his Examination, becauſe your Lordſhips, I doubt not, remember what Mrs. *Barnes* ſaid; That Mr. *Kelly* indeed ſometimes told her of another Dog that was for the Biſhop, but that ſhe always apprehended that Dog, which ſhe had in her Poſſeſſion, was deſigned for her, and never heard of any other Dog that did come from *France:* She owns, that ſhe never received any one Meſſage from the Biſhop about it, but ſtill kept it, when it was recovered, as her own, as long as it lived; and tho' his Lordſhip never had, nor loved a Dog in his Life, yet it would have been natural, and good Manners to the Perſon that ſent it, eſpecially if ſo conſiderable a Perſon as is ſuppoſed, to have made now and then ſome little Enquiry about it, if my Lord Biſhop had really known any thing of the Dog.

But we have ſhewn your Lordſhips by the ſolemn Atteſtation of Mr. *Birmingham*, the *French* Surgeon, that he was the Perſon who gave this Dog (in *March* 22.) to Mr. *Kelly*, for Madam *Barnes*, of whom he had received Civilities in *London*, and for no other Perſon, nor with any other Intent. He likewiſe ſays, that he never received any ſuch thing as a Dog, or Meſſage from Lord *Marr*, (as alledged in the Report) never had any the leaſt Thought of the Biſhop of *Rocheſter*, or his Lady, much leſs of making either the one or the other (to both of which he was utterly unknown) any ſuch Preſent.

Your Lordſhips obſerve this to have been a ſolemn notarial Act upon Oath, of a Perſon not only reputed, but atteſted likewiſe by the Lord of the Seigneury, to have been a legal Notary, and to have exercis'd his Office as ſuch for ſome time. That the Teſtimony of ſuch a Perſon beyond Sea is a good and unexceptionable Proof in every Caſe, I need not ſay; or that it has been often allow'd here, where no other is to be had, nor any other *(a)* Method to have the Benefit of a Man's Teſtimony that is beyond Sea. And our Witneſs has told your Lordſhips that he has frequently tranſlated ſuch Inſtruments: That he believes it to be the Notary's Hand-writing, and the publick Seal of his Office. I need not, my Lords, have ſaid thus much; for in all Events it muſt ſurely have been of more Weight in your Lordſhips Judgments, than the Extract of an Information given by a Perſon infamous in his Character, abſurd and inconſiſtent in all he ſaid, and without being ſigned or ſworn to, even by that Perſon.

(a) 2 *Rolls Rep.* 346. *Law of Evid.* 3.

But yet this Affidavit of Mr. *Birmingham* has the more Credit, becauſe his Majeſty's own Reſident at *Paris* (Mr. *Crawford*) has been pleaſed to examine him about this Matter, (being employ'd by him in his Profeſſion as a Surgeon), and he has confirm'd the ſame Account to him, which has been likewiſe tranſmitted, and read to your Lordſhips.

Another way of proving my Lord Biſhop to have been concerned in theſe Letters, was from the Hand-writing, which is ſuppos'd to have been *Kelly*'s, and he is ſuppoſed to have been his Lordſhip's Secretary in theſe Matters. But both theſe Allegations we think, with Submiſſion to your Lordſhips, are ſtill utterly deſtitute of any proper or ſatisfactory Proof.

I before obſerv'd to your Lordſhips, that the firſt time the Clerks of the Poſt-Office have made any Depoſition about the Similitude of the Hand-writing, was four and eight Months after they had ſeen the Original Letters; which is a little of the lateſt ſo exactly to remember all the little Strokes and Turnings of a Pen, by which the Identity or Diverſity of a Hand can only be made out. That *Malone*, the Footman of Mrs. *Barnes*, was never called upon for his Teſtimony till *January* laſt, that is, nine Months after he had ſeen any of *Kelly*'s Writing, and conſequently not then very able (if ever he was) to form a Judgment of it.

I have already obſerved to your Lordſhips, that this was the firſt, and the only Inſtance, that any Evidence of the Similitude of Hands was ever admitted, but where the Papers pretended to be in the ſame Hand were produced and compared in Court; which is ſo far from being the preſent Caſe, that the Clerks of the Poſt-Office never had any Opportunity of comparing the Original of the 20th of *Auguſt*, with any one of the three Originals of the 20th of *April*, or with any one of the intermediate Letters which they affirm to have been in the ſame Hand: ſo that they are made the abſolute and ultimate Judges of this Matter, without any poſſibility, on our Side, of detecting any caſual or wilful Miſtake.

And I would not again repeat an Obſervation I have before made to your Lordſhips, that a great part of theſe Letters are in Figures; and how much more difficult it is to diſtinguiſh the Hand of one writing in Figures, from Words and Syllables in length; becauſe we have ſhewn your Lordſhips, by three poſitive Witneſſes (well acquainted with Mr. *Kelly*'s Writing, one of them above 20 Years, and his School-fellow), that the only original Letter of the 20th of *Auguſt*, ſtopp'd at the Poſt-Office, as a Sample to the reſt, (and which is the only Foundation upon which thoſe Clerks have affirmed theſe three Letters to have been *Kelly*'s Writing) really and in fact was not his, nor like it. This, my Lords, we have fully proved by three Witneſſes; and as a Demonſtration of what they ſaid, they ſhew'd your Lordſhips, among a Variety of Papers produced to them at your Bar, that they could at once diſtinguiſh which was *Kelly*'s Hand, which was any thing like it, and which was not.

We have likewiſe produced to your Lordſhips, the ſolemn Atteſtation, on Oath, of *(a) Alexander Gordon* Junior, the Son, Banker at *Boulogne*, that no ſuch Packet of Letters ever came to his Hands, as mentioned by the Counſel for the Bill; and conſequently he could not deliver any ſuch to *Talbot*, (who, they ſay, called for them at *Boulogne*). He farther depoſes, That he never had any Buſineſs or Intercourſe with *Kelly* or *Johnſon*, nor ever had acquaintance with any Perſon ſo called, in his whole Life.

And we have proved to your Lordſhips, that *James Talbot*, the tall black Man, *(b)* deſcribed in the Letter printed in the Appendix, and who is ſuppoſed to have been the Perſon that called upon *Alexander Gordon* at *Boulogne* for this Packet, was ſo far from doing it at the Time ſuppoſed, that he was at *London* that very Day, as appears by the unexceptionable Teſtimony of *Edward Crofton*, his Shoemaker, and by the Entries of his Shop-book, to whom he accidentally paid a Bill upon that very Day, at his Houſe in *London*.

We have likewiſe ſhewn your Lordſhips by two Witneſſes, Mrs. *Kilborn*, and her Maid *Anne Ellis*, that Mr. *Kelly*, was at her Houſe in *London* on the 20th of *April*, (the very Day upon which my Lord Biſhop is ſuppoſed to have dictated theſe Letters to him) and by a great Variety of Evidence, impoſſible to eſcapeany one's Memory, that my Lord Biſhop was ill in Bed, at *Bromley* in *Kent:* and *Quod non datur actio in diſtans*, is an Axiom of Reaſon as well as of Philoſophy.

And I muſt humbly ſubmit it to your Lordſhips, that it has not yet, in the leaſt, appeared by any Shadow of Evidence, that Mr. *Kelly* ever was employed by my Lord Biſhop to carry on a Correſpondence; that he wrote any one Letter for the Biſhop, upon that, or upon any other Occaſion whatſoever.

That Paſſage in the Letter to *Weſton*, that ſeems to give countenance to ſuch a Suppoſition, the learned Counſel for the Bill told us Yeſterday they had waved, and were angry that we ſhould offer to diſprove that which they had not proved. But, with Submiſſion to your Lordſhips, tho' they have been pleaſed to wave that Part of the Charge againſt my Lord Biſhop, yet, as it makes no ſmall or inconſiderable Appearance in the Report of that Honourable Houſe, and will be ſo handed down to Poſterity, we thought it proper to give an Anſwer to it; and, we hope, it has been to your Lordſhips Satisfaction, and ſtill in your Memory.

The next thing was the Letter to *Dubois*; and I confeſs myſelf at ſome loſs to know for what purpoſe that was read in Evidence to your Lordſhips; for the Counſel for the Bill have not, as yet, made any particular and direct Uſe or Application of that piece of Evidence, and therefore I ſhall ſubmit it to your Lordſhips upon the Obſervations I before made on it.

There was indeed ſome of your Lordſhips Time ſpent in comparing the Seal of that Letter, with that which happen'd to be taken on my Lord Biſhop's Servant at the *Tower:* if it was intended as any Proof, I cannot at preſent judge; however, we thought it proper to follow them in the Courſe and Manner of their Proof, and your Lordſhips Yeſterday have fully heard the Danger and Uncertainty of admitting ſuch a Proof. Firſt, You have had ſome Account from Mr. *Eraſmus Lewis* of the known Practice of

(a) *Rep. Pap.* 42. 45. *Append.* E. 26. *(b)* *Append.* E. 26.

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one *Brockett*, who was able to counterfeit any Man's Hand or Seal, in ſuch a manner, that even the Perſon (whoſe Hand or Seal it was) ſhould not be able to diſtinguiſh it from his own.

Then we produced to your Lordſhips two Seal-gravers, who fully atteſted the ſame thing. Mr. *Atkins* ſaid, That he himſelf could make ſuch an Impreſſion, ſo as not to be diſtinguiſh'd by an Artiſt, and give it the very ſame Luſtre. That he could even take an Impreſſion from a broken Seal, and tho' there would at firſt neceſſarily be ſome little Flaw in it, yet he ſaid he could mend it, and then make ſuch an Impreſſion from it, that even an Artiſt could not diſcover it from the Original.

Mr. *Johnſon*, another eminent Seal-graver, likewiſe told your Lordſhips, that he could do the ſame thing: In particular, That he had once ſuch an Impreſſion taken in Paſte by one Mr. *Wiſembergh*, and from that he made another Impreſſion, ſo perfect and exact, that Mr. *Wiſemberg* himſelf could not diſtinguiſh one from the other: But as to the Seals of theſe two Letters, he doubted very much whether they were made by the ſame Seal or not; and from ſome little Strokes in the Head, that were very viſible to any one, tho' not ſo eaſy to be expreſſed, he rather inclin'd to believe, that they could not be made from one and the ſame Seal.

And when your Lordſhips were pleaſed to enquire of them, How ſuch a thing was practicable? They did not cover themſelves (as their Decycypherer did) by ſaying, It would diſcover the Secrets of their Art, but frankly told your Lordſhips the very Manner and Method of doing it.

Their own Seal-graver, Mr. *Chriſtian*, owned, That this might be done, altho' he had never done it: And in the Experiment made on Mr. *Raulus*, their other Seal-graver, he was once plainly in the wrong, as well as once in the right. And it manifeſtly appears from every one of their Teſtimonies, that this Practice of taking Impreſſions is very eaſy. And, as one of my Noble Lords informed the Houſe, his Footman could do it as well as any of them; and, as your Lordſhips yeſterday obſerved, even to deceive Mr. *Raulus* himſelf, who, they ſay, is ſo great an Artiſt. And therefore, my Lords, it is a moſt dangerous ſort of Proof, and too uncertain at the beſt, to receive any judicial Countenance in a criminal Matter.

So that I muſt humbly inſiſt, that this Part of the Charge againſt my Lord Biſhop has not been proved any better than the former; and that when your Lordſhips do not conſider the Evidence that has been given on the one Side, as well as on the other, as to this particular Charge, we hope you will be of Opinion, that there is no juſt or reaſonable Ground to preſume, that theſe three Letters were wrote by Mr. *Kelly*, and much leſs that they were dictated by my Lord Biſhop.

The next general Charge againſt this Reverend Prelate, was the receiving of two Letters from abroad, in relation to this Conſpiracy. The Counſel indeed for the Bill have waved the Letter ſigned *Digby*, addreſs'd to *Weſton*, and (as I apprehended from them laſt Night) did not now pretend to prove any Thing concerning the Biſhop, under the Name of *Weſton*.

Neither have they as yet pretended to prove, that the other Letter from *Motfield* to *Illington* ever came to his Lordſhip's Hands, or in whoſe Hand-writing it was wrote; tho' if it were the Lord *Marr*'s (as it is ſuppoſed) many of your Lordſhips muſt have been well acquainted with it. Nor has it been yet ſaid, that my Lord Biſhop ever returned any Anſwer to it.

And as we have now proved (and fully too, we apprehend) the Letters of the 20th of *April*, to which this is ſuppoſed to have been an Anſwer, to be a mere Fiction, or Impoſition upon the Biſhop; this, which is deſigned as an Anſwer to it, muſt likewiſe fall to the Ground, as Part of the ſame Contrivance.

The next and laſt general Charge ariſes from the Co-incidencies of Times and Names in the intercepted Correſpondence, the more readily to induce your Lordſhips Belief, that my Lord Biſhop was really meant by that Correſpondence.

Some of them I accounted for before, as Truths publickly known, but turned by ignorant and malicious Correſpondents to ill Purpoſes, or elſe as abſolute Falſities, and manifeſt Miſtakes.

We have ſhown your Lordſhips by various Reaſons, that the fictitious Names ſuppoſed to denote my Lord Biſhop cannot be applicable to him with any Colour, Truth, or Decency; that there is a great Doubt to be made, whether many others of thoſe fictitious Names were really intended for the Perſons ſuppoſed to be denoted by them; and eſpecially, that *Jackſon*, to whom the Letter of the 20th of *April* is addreſſed, we have proved by various Arguments, and even from thoſe Lights the Committee have afforded us, could not poſſibly mean the Pretender, whoſoever elſe it may mean; and conſequently that that Letter (if it were wrote by *Kelly*, and dictated by the Biſhop) cannot be High-Treaſon.

And as to the Articles of Times, and the Accounts of my Lord Biſhop's coming and going, it muſt be owned, they are ſometimes right, but as often wrong.

There is no doubt, but the Correſpondents on this Side the Water, whoever they were, whether out of Malice or Vanity, or out of any other Inducement, appriz'd themſelves as well as they could of the Biſhop's Motions to and fro, in order to give the better Colour or Probability to what they ſaid of him. But yet it has happened, unluckily to them, as your Lordſhips have heard, that out of ſix or ſeven Inſtances occurring in theſe Letters, two only are true; two of them may be doubted whether true or falſe, becauſe ambiguouſly expreſſed; but three of them are groſs Miſtakes, as appears even by the Accounts of their own Witneſſes.

And the Miſtakes are the more remarkable, becauſe they all affirm the Biſhop to have been in the Country, when he poſitively was not: whereas it was ten to one, but that the mere Gueſſes of a Stranger, at that time of the Year, had been true; and the rather, becauſe his Lordſhip was really in the Country ten Days to one that he was in Town, all laſt Summer.

There is another Thing remains for me yet to ſpeak to, and that is the Intimacy of my Lord Biſhop with Mr. *Kelly*; which was likewiſe thrown in to ſwell the Number of Circumſtances, and as another weighty Argument to induce your Lordſhips Belief of the foregoing Matters.

But has any thing appeared to your Lordſhips like it, even upon their own Evidence? Firſt, a Chairman is brought to tell your Lordſhips that he carry'd Mr. *Kelly* to the Deanery three or four Times about four Years ago, but the Biſhop was not once at home. And a Porter ſays, he carry'd two Letters from *Kelly* to the Biſhop; one of them about *Chriſtmas* laſt was Twelvemonth, and the other Letter ſome time before that; but received no Anſwer in Writing, nor Meſſage, but only his Service to Mr. *Kelly*. But there is one extraordinary Circumſtance, which ſhews him, I confeſs, to be a very willing Evidence, tho' not ſo very likely and credible; that is, that this Porter, dirty as he muſt be in the midſt of Winter, deliver'd his Meſſage to the Biſhop in his Bed-Chamber.

And *Malone*, the Perſon that uſually attended Mr. *Kelly*, and went on his Errands, was aſked to the ſame Purpoſe; and one might have expected that he ſhould have given ſome Account of it, and had been often employed on Errands to and from the Deanery: But I ſubmit it to your Lordſhips Memory whether he did not ſay, that he never was at the Deanery in his Life-time, nor did know to this Day where it ſtood.

Mrs. *Kilborn*, with whom Mr. *Kelly* had lodged a conſiderable Time, ſays, ſhe remembers a Meſſage once came to *Kelly* from the Biſhop; but poſitively denies that my Lord Biſhop's Coach ever came to fetch Mr. *Kelly* at her Houſe, as that Honourable Committee have been pleaſed to affirm in their Report. And I appeal to your Lordſhips Memory, whether Mrs. *Barnes*, whom the Counſel for the Bill think ſo credible a Witneſs in ſome other reſpects, and with whom it muſt be confeſs'd *Kelly* frequently lodged, was not equally poſitive in this Matter, and that ſhe did not believe there could be any Friendſhip or Intercourſe between the Biſhop and Mr. *Kelly* without her knowing of it.

Thus the ſuppoſed Intimacy and great Acquaintance between my Lord Biſhop and Mr. *Kelly* ſtand upon their own Evidence. And I beſeech your Lordſhips to conſider, what ſort or degree of Proof all this can poſſibly amount to. But we have ſhown your Lordſhips the direct contrary, by no leſs than ten Witneſſes, Servants to my Lord Biſhop, ſome or other of which were always with him, whether he was in Town or in the Country, and every one of them has lived with his Lordſhip above two Years; and they ſay, as it were with one Voice, that they don't remember any ſuch Perſon or Name as *Kelly* or *Johnſon* coming to the Houſe; as they muſt have remember'd him, they ſay, if he had been frequent in his Viſits or Meſſages; and ſome of them ſay, they uſually wrote down the Names of thoſe that did come: and the Coachman in particular, who has lived four Years with his Lordſhip, and appears now as Evidence againſt the Biſhop, and therefore cannot be ſuppos'd partial to him in his Teſtimony, is yet as poſitive and peremptory, that he never ſaw Mr. *Kelly*, or *Johnſon*, at his Maſter's Houſe, in all his Time. And being carry'd to the *Tower* by a Meſſenger, to ſee if he could recollect his Face, then frankly own'd, he had never ſeen his Face before. And being aſk'd how he could pretend to know all Perſons that came to the Houſe, whoſe Buſineſs was at the Stables? He told your Lordſhips, that he was as often in the Houſe, us'd to wait at Table when Company was there; and that let him come which way he would, he ſhould have ſeen him coming or going, or have heard of him in the Family, if he was a Perſon that had frequented his Maſter's Houſe.

Some of the other Servants likewiſe ſpoke as fully to theſe Circumſtances.

We have likewiſe ſhewn your Lordſhips by Mr. *Pope*, who has been for thoſe two or three laſt Years, the moſt conſtant Companion of his Lordſhip's Hours; two or three Days, he ſays, almoſt in every Week, and an Hour or two almoſt in every of thoſe Days: That his Lordſhip generally ſat in one Room, which I think was his Bed-Chamber; that he was admitted to him at all Hours, and into all Companies, and never found the Diſcourſe change at his coming in: That his Lordſhip never in the leaſt diſcover'd any Thoughts or Intentions like thoſe now charged upon him; but had heard occaſionally many Things drop from the Biſhop, of a Tendency directly contrary. And to this we might have called many others, if it were neceſſary.

We were likewiſe ready to lay before your Lordſhips, ſeveral laborious and intricate Searches, ſeveral Publick Buildings, and Controverſies in Matters of Literature with different Perſons, which my Lord Biſhop was engaged in laſt Summer; and would have been a full Employment for ſome Men's whole Lives: But your Lordſhips did not think it neceſſary; being (as we hope) fully ſatisfied and convinced of my Lord Biſhop's Innocency, by that Variety of Proof which we had before made.

There are, my Lords, ſome other Obſervations that might be made: but have been, I doubt not, already much better taken notice of by the learned Gentleman that ſpoke before me: And I think this is the Subſtance and Purport of the Evidence that has been hitherto offer'd on both Sides.

What the Iſſue or Succeſs of this long Hearing may be, I know not; That is in your Lordſhips Pleaſure only to determine; to Acquit, or to Condemn: But I hope you will ſay, We find in him no Fault at all.

The Proof which has been againſt the Biſhop, (if it can deſerve that Name) has neither been ſuch as is reaſonable in itſelf, nor agreeable to the known Rules and Proceedings of Law; but chiefly by Probabilities, Circumſtances, Conjectures and Suppoſitions: Whereas we have encounter'd and diſprov'd even them, by far greater Probabilities, much ſtronger Circumſtances, and alſo by ſuch Evidence, as would be convincing and ſufficient in any Court of Law or Equity within the Kingdom.

And, upon the whole, I hope I may venture to affirm, That there does not now remain the leaſt Suſpicion of the Charge brought againſt the Biſhop; not even a Suſpicion of a Suſpicion of High-Treaſon; not one probable Probability, or one preſumptive Preſumption: I mean, That there is not now remaining before your Lordſhips the leaſt Degree of Probability, or the very loweſt ſort of Preſumption that is known in Law: And therefore, ſhall humbly conclude with the ſame Prayer Sir *Conſtantine Phipps* has made before me, That your Lordſhips will reject this Bill.

The Bishop then spoke in his own Defence as follows:

My Lords,

I Have been under a very long and close Confinement, and have been treated with such Severity, and so great Indignity, as I believe no Prisoner in the *Tower*, of my Age, and Function, and Rank, ever was. By which means, what Strength and Use of my Limbs I had, when I was first committed in *August* last, is now so far declined, that I am very unfit to make my Defence against a Bill of such an extraordinary Nature.

The great Weakness of Body and Mind under which I labour, such Usage, such Hardships, such Insults, as I have undergone, might have broken a more resolute Spirit, and much stronger Constitution than falls to my Share.

Your Lordships were pleased to permit me to appear before the House of Commons, if I thought fit, lest my Silence should be turned to my Disadvantage; as, in Fact, the Counsel for the Bill have done their utmost towards it.

I should not have thought to decline any Occasion of justifying myself; but I crave Leave to tell your Lordships some Reasons why I did not appear there, and make Use of the Leave your Lordships gave me.

After seven Months of close Imprisonment, I was not a little surprized when I heard, that on the 11th of *March*, by the House of Commons, it was thus resolved, 'That it appears to this House, that *Francis* Lord Bishop 'of *Rochester*, was principally concerned in forming, directing, and carrying on a detestable Conspiracy, *&c.*'

Upon duly weighing which Resolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was fully contained, and previously resolved in this Vote; and therefore whatsoever should have been offered on my Behalf to that House, would have been an express Contradiction to it. And what Hopes I could have of Success in such an Attempt, I need not say: What they sent me was the Preamble of the Bill only, which they could not alter consistent with what they had resolved.

The Bill itself was to inflict Pains and Penalties, which followed; but there was no Room to object against any of those which they had not then declared; they have since been added, and sent up to your Lordships, in like Manner, without any Oath made, or any criminal Act proved against me by any living Witness. And is a Person, thus sentenced below, to be deprived of all his Preferments, and his very Function, and to be a perpetual Exile, and to be rendered incapable of any Office and Employment? To be one whom no Man must correspond with by Letters, Messages, or otherwise? And, my Lords, one who is a Bishop of the Church of *England*, and a Lord of Parliament?

It is the first Instance wherein a Member of this House hath been so treated and prejudged, and (as I have once before said to your Lordships) I pray God it may be the last, and that such Precedents in this Kingdom may not be multiplied in After-times.

My Counsel have amply done their Part, by arguing the Points of Law, by explaining and enforcing the Evidence, and shewing the little Colour, Appearance and Shadow of Proofs against me, (permit me to call them so) by answering what hath been offered against me, and by setting out the Consequence which such a Bill, founded and carried on in such a Manner, and which enacts such severe Penalties, must and will be attended with.

Yet it becomes me to say something for myself, lest my Silence be construed Consciousness of Guilt, or at least an Unwillingness to enter into Matters of so dark and perplexed, so nice and tender a Nature; as if I was not able, or did not care to clear and explain myself, and rather chose to leave it to the Management of others: I thank God, I am under no such Restraint, and can speak to your Lordships on this Subject with great Freedom and Plainness.

But before I proceed, I beg Leave that I may represent to your Lordships some particular Hardships under which I have laboured.

The first is, reading Extracts of anonymous Letters, without suffering any other Parts of the same Letters, though relating to the same Subject, to be read.———Another is,———Excusing the Decypherers from answering Questions asked by me, and which I thought necessary for my Defence, lest they should reveal their Art.———The next is, not suffering me to be answered by the Clerks of the Post-Office, lest the Secrets of that Office should be discovered.—Another was, not suffering a Person, who had been at least ten Years out of the Secretary's Office, to answer any Questions which came to his Knowledge by being some Years in that Office.

Another is, reading Examinations neither dated, signed, nor sworn to.

Another is, reading Letters supposed to be Criminal, writ in another Man's Hand, and supposed to be dictated by me, without offering any Proof that I either dictated them, or was privy to them.

Another is, not allowing me Copies of the decyphered Letters, though petitioned for, till the Trial was so far advanced, and I so employed and weakened by it, that I had not sufficient Time to consider them.——Another is, not allowing me to read out of the Collection of Papers before the House any Part of them, in order to discharge myself, but what hath been read by Clerks.———And all this in a Proceeding where the Counsel for the Bill profess they have no legal Evidence, and that they are not to be confined to the Rules of any Court of Law or Equity; though, as often as it is for their Service, they constantly shelter themselves under it.

My Lords, these are the Hardships which I previously mention, and humbly lay before your Lordships.

By your Lordships Leave, I proceed now to make that Defence, as well as I am able to make it, in the Condition of Health I am now in; humbly praying your Lordships, if I find myself in any Degree sinking under it, that you will indulge me, and allow me a little Time to go on.

The general Charge of the Bill is, That I have been deeply concerned in forming, directing, and carrying on a wicked and detestable Conspiracy, and was a principal Actor therein.

The Charge is divided into two Heads:

First, That I traitorously consulted and corresponded with divers Persons to raise an Insurrection, *&c.* in this Kingdom, to procure foreign Forces to invade it, *&c.*

Secondly, That I traitorously corresponded, with the same Intent, with Persons employed, *&c.* But neither Part of this Charge hath been made good by the Counsel for the Bill, nor have they proved, nor attempted to prove me at one Consulation, nor is there any thing tends towards such a Proof, except the exploded Story of the *Burford* Club (*a*), and two or three Hearsay Informations which were mentioned of my Lord *Strafford*, Lord *North* and *Grey*, Lord *Orrery*, and Sir *Henry Goring*, said to be concerned in the Management of this Affair. I have met all these Lords, I own it, but at different Times; and upon the best Recollection I can make, I never was in all my Life with any three of them at once, unless, perhaps, about some general Matters depending in Parliament. The Earl of *Strafford* hath visited me, and I have, when in Health, dined with him once at his House. At my Lord *North*'s Table I have not eat: Though I have great Honour for him, yet I never had any Intimacy with him, especially since the Affair of the Dormitory, wherein he appeared so against me, that I certainly had lost the Cause, had not his Affairs called him to *Holland*.

Lawson had sworn, That this Lord did often visit me at *Bromley*; but in Truth he never was there above twice or thrice in all his Life-time.

I have not been once these two Years with Lord *Orrery* on any Business whatsoever; we twice dined together at the House of a Person, whose Name if I should mention, your Lordships would not think there was any Harm at all in dining there. Sir *Henry Goring* I never saw in all my Life, till he saw me at St. *James*'s, and he was but once at *Bromley*; and the Occasion of his coming to me, was his placing four Sons at *Westminster* School, and intending to breed up some of them to the Gospel: The last Time I saw Sir *Harry Goring* was about twelve Months ago, when I promised to bring down one of his Sons to be upon the Foundation; and I shall be sorry if I can't be as good as my Word.

Your Lordships will excuse me for being so particular, when you consider how dangerous the Charge is, and how fit it is to clear the Persons charged from such mischievous Correspondence; especially since it is with these, and these only, that I have been speaking of, and it is insinuated, that I have held Consultations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy, without a Consultation. But how hath that too been made good? Your Lordships will observe, that there is not one Overt-Act, or Circumstance of Time or Place mentioned, proved, or alledged. I have not therefore consulted or conspired at Home.

The next, and the only material Part of the Charge is, corresponding abroad with the Pretender, *&c.*

A high and heinous Accusation, strongly asserted, much insisted upon; but how maintained, is the Question.

The true State of this Part of my Charge, as well and as fully as I can recollect, is this, (I will not in any Degree dissemble before you): 1st, That I did, the 20th of *April* 1722, dictate three Letters to Mr. *Dillon*, the late Lord *Marr*, and to the Pretender himself, under the feigned Names of *Chivers*, *Musgrave*, and *Jackson*; to which Letters the Names of *Jones*, *Illington*, and 1378, were, by my Directions, subscribed.

Secondly, That afterwards two Letters, in Answer to these two sent to *Marr* and *Dillon*, one dated *May* the 11th, and the other *July* the 25th, under the feigned Names of *Motfield* and *Digby*, were intercepted.

Thirdly, That there is certain intercepted Correspondence between the Pretender's Agents abroad and *Kelly* here, carried on by him; and that I was at the Head of it, and am answerable for what it contains.

This is the Substance of my Charge; all other particular Circumstances are made use of, as they thought would give Light and Strength to one or other of those Articles.

As to the first of these Points, *that I did dictate these Letters.*

That it could not be possible that I dictated these Letters, hath been made out to your Lordships by such a Concurrence of Evidence, so clear, so full and legal, as I persuade myself can have left no Doubt remaining upon any candid and indifferent Person: A plain Matter of Fact, supported by such Testimony, cannot be overthrown by little Guesses and consequential Surmises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Case, that peculiar Circumstances attend it as to the Point of Time. My being disabled in my Chamber, and attended before and after that Time by some of my Servants, and receiving frequent Messages from others: The agreeing Testimony of my Servants, that no Stranger came near me about that Time, and for some Time before and after; and the full Evidence of the School at *Westminster* hath enabled my several Servants to recollect the Time, and to furnish such a Proof of my Innocence in this Matter, as is not to be mistaken, and shews the Clearness of the Impossibility of it.

The Clerks of the Post-Office swear, they believe these three Letters to have been in the Hand-writing of Mr. *Kelly*, my supposed Amanuensis. Your Lordships will remember, that their Oaths were at four Months Distance from the Time of seeing those Letters; during the whole Series of which Time it never hath appeared, that they have compared one Original with another, and the only Original, as a Specimen, hath been proved at your Lordships Bar, not to be the Hand-writing of Mr. *Kelly*: And be pleased to remember, the very Supposition of Mr. *Kelly*'s being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, Who then writ those Letters, and with what View were they writ? The answer to this is obvious: My being here at your Lordships Bar sufficiently explains it. It is enough to prove, that I did not write or dictate them, and I have proved it aboundantly. Let but any momentous Part of the Charge against me be made out with half the Evidence, and I will submit without any Dispute. Eight or nine such Witnesses would have borne down the Evidence of one or two that had sworn:

(*a*) See State Trials, Vol. 8. 570, 571.

But where there is none on the one Side, but all on the other Side who appear, and that give direct poſitive Evidence, can your Lordſhips deliberate a Moment for the Reaſon of giving your Judgment, which in doubtful Caſes ought always to lean to the doubtful Side? And ſo taking this Point as it ſtands, there is an End of the whole Matter; for all other Inſinuations, feigned Names, and obſcure Paſſages in Letters, depending upon this, muſt fall together.

As to the other Part of the Accuſation, where it is ſaid the Letter to *Jackſon* was a Letter to the Pretender, I have nothing to do with it; he that writ the Letter, when known, will beſt be able, and moſt concerned, to diſprove it.

Since this Objection carries a very odd Sound, I ſhall briefly ſhew your Lordſhips how that ſtands: *Jackſon*, in a Cypher of *Plunkett*'s, is ſaid to denote the Pretender: That Cypher conſiſts of one hundered and fifty Names, of which not one is uſed in any of the Letters attributed to Mr. *Kelly*; three or four of theſe Names are uſed by Perſons ſuppoſed to have writ to Mr. *Kelly* from abroad, but not one them is uſed by him; nor doth *Jackſon* ever, in his Part of the Correſpondence, ſtand for the Pretender, but he is always under other Appellations: Nay, *Plunkett* himſelf, in all his Letters writ in decyphered Names, never ſtiles the Pretender *Jackſon*, but either *Joſeph* or *Jephſon*.——Why ſhould a Name, uſed in *Kelly*'s Correſpondence, be explained by *Plunkett*'s Cypher, when *Kelly* appears to be noways acquainted with him, and *Plunkett* himſelf did never dictate to him? I forbear Repitition; I only add, that at this rate, there is nothing that may not be proved.

The Letter to *Dubois* there is little ſaid of, becauſe there is no Uſe made of it; it is charged in the Report as a Letter which I had received from abroad: The Tables are now turned, and I myſelf deſigned to have ſent this Letter to a feigned Correſpondent. but kept it among my Papers under my Seal: For what End? The Letter itſelf is an arrant Deluſion: Why, to furniſh Proof, which is much wanted, of my receiving Letters that were directed *Jones* and *Illington*; and it is very ſtrange, that I, who am repreſented as being ſo very cautious, ſhould be ſo negligent in this, and preſerve ſomething that is of no Uſe, and yet might hurt me ſo much, when diſcovered.

It is abſurd to think, that I ſhould by that Means mention the Name of my Correſpondent, and mention the Name of *Johnſon*, which the Committee of the Lower Houſe obſerve was conſtantly with me.

I know not what farther can be ſaid for this Matter, till the Counſel have further explained it, and ſhew'd what Uſe they make of this Letter, which hath given your Lordſhips ſo much Trouble, and which I own I do not comprehend.

Here is ſtill a fifth Letter, which I have acknowledg'd to be my Hand; that which was taken on my Servant. Mr. *Reeves* hath made ſome uncharitable Obſervations upon it, which, for aught I know, may be allowed as the Form of Law in the Ordinary Courts; but, I am ſure, in a Court of Equity, the moſt favourable Conſtruction ought to take Place. I have taken Minutes of his Obſervations, and I think they are theſe: He obſerves that the Biſhop doth not in his Letter inſiſt on his Innocence in general, but conſiders only what Evidence doth affect him.

It comes out, at laſt, for whom my Letter was deſigned, and I think that an Anſwer to Mr. *Reeves*'s firſt Obſervation, and I ſhall explain it no further. He obſerves next, tho' I clear myſelf from the Knowledge of *Layer*, *Neynoe*, *&c.* there I ſay nothing of *Kelly*.

The Gentleman I deſigned the Letter for, knows it was in anſwer to one wrote to me about *Layer*, and will ſwear it himſelf, if there was room for it.

The third Obſervation is, where ſpeaking of myſelf, I ſay, 'If I can'not ward the Blow, I muſt be a Priſoner ſome Years without Remedy:' From which he is pleaſed to infer, not in that good-natured way he generally did, my Meaning muſt be, that I was conſcious of Guilt.

I apprehended an Impeachment would have been lodged and never proſecuted, as in the Caſe of my Lord *Danby* and the Earl of *Oxford*; and then I ſhould have lain without Trial, and without Bread.

The ſecond Article of my Charge, is the two Letters from *Marr* and *Dillon*, under the feigned Names of *Motfield* and *Digby*, which were intercepted.

One of theſe they have dropt.

That I received them, is not pretended; both Letters, tho' without a criminal Expreſſion, or Word of Buſineſs in either of them, would yet have affected me in ſome Degree, if received by me, and I was the Perſon, as is ſuppoſed, who writ the Letters to which they are Anſwers. That I uſed to have any Correſpondence, is that proved? Is not one and the ſame neceſſary in order to aſcertain the Charge?

Any Man that pleaſes may write to me, and take thoſe Names upon him; I am not to anſwer for that, unleſs I have appeared to receive them, and kept up the Correſpondence.

The Letter from *Motfield*, dated the 11th of *May*, cannot be reaſonably thought to have been wrote with any other View than that of being intercepted, and of fixing upon me the Letter of *April* 20th.

This Letter is committed to the common Poſt-Office, and ſent upon this Errand; one may doubt who writ it, but one cannot doubt with what Deſign it was writ: your Lordſhips Wiſdom will ſee thro' thoſe malicious Diſguiſes, and not make me account for Letters which have been bandied to and fro, between unknown Correſpondents, on a Deſign to raiſe a Suſpicion of a third Perſon, altogether a Stranger to what is writ. And here I deſire that the Obſervation made by one of my Counſel may not be forgot; that is, All the intercepted Letters from abroad, mention Perſons that lay hid under ſecret Names, and are diſcovered by doing of ſuch Deeds, and by ſuch Circumſtances as will faſten thoſe Names upon them: Tho' the Committee were not at a Gueſs, yet they were often at a Loſs.

In my Caſe, the fictitious Names applied to me are often attended with ſuch Deſcriptions and Circumſtances, as very naturally lead thoſe that offer theſe Letters to fix them on me. The Writers of them uſe all their Art not to diſguiſe, but to open the Thing, and ſeem to be in pain leſt they ſhould not be well enough underſtood.

This being contrary to the Method of Reſerves in all other Caſes, ſmells ſtrong of a malicious Deſign.

The Letter of *July* 25th, from *Digby* to *Weſton*, is not ſo well contrived as it ſhould have been; yet I am to be underſtood by it, becauſe of the Circumſtances I was then under, which the Writer was appriſed of.

Theſe are the only two Inſtances of Letters ſuppoſed to be writ from abroad: They are not conſiſtent: Shall they affect me in ſo high a manner?

It remains to be conſidered in the third Place, Whether there was a ſupported Correſpondence between the Pretender and his Agents, and Mr. *Kelly* here? Whether I was at the Head of it, and am juſtly to anſwer for it? Mr. *Kelly*, I hear, hath owned at your Bar, and declared, which I alſo declare, I never knew a Line of any Letter he writ to foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Preſent of the Dog; the Account of that is in a Letter to *Hatfield*, dated *May* 5, not ſigned; in which are theſe Words, *The little Dog was ſent ten Days ago, and ordered to be delivered to you:* but there is no Intimation in this, or any other Letter from abroad, that this Preſent was intended for me.

In two Letters from hence, by whom writ it doth not appear, ſomebody is meant under the different Names of Mr. *Jones* and Mr. *Illington*, in ſuch Manner as deſigned for the ſame Perſon; but the Circumſtances are neither applicable to myſelf nor my Wife, particularly. The Letter dated *May* 7th, from *Hatfield* to *Muſgrave*, being five Days after the Burial of my Wife, cannot mean her; and being but five Days after, it can as little mean me: So that the Writer of this Letter muſt either have known nothing of my Family-Affairs, or, if he did, muſt diſſemble his Knowledge of them to raiſe a Suſpicion; and in either Caſe what he ſays is not to be regarded. The Surgeon and Mr. *Kelly* only knew any Thing of this Matter, and they can beſt clear it.

Mrs. *Barnes*, ſhe varies, and ſometimes the Dog is for me, and ſometimes for her.

As for myſelf, I never aſked for, received, or ſaw this Preſent, nor know any Thing of it, but from common Fame; nor have I, to this Day, had any Meſſage or Letter whatſoever concerning it. The End of this Deſign ſeems to be, to point me out by the Name of *Jones* and *Illington*, ſubſcribed to the Letters of *April* 20th, by uſing them again in relation to this Preſent.

And perhaps they are not much in the wrong to think, that *one intercepted Dog* ſhould be of as much Uſe as *Ten intercepted Letters*. Both Contrivances then muſt have ſucceeded, had I not been able to prove that thoſe Letters were not writ with my Order or Knowledge; and therefore the Uſe of thoſe Names, in ſubſequent Letters, is a Continuance of the Fraud, and this obviouſly runs thro' the Whole of the Correſpondence: For wherever the Names of *Jones* and *Illington* are, they are uſed in applying them to me, becauſe they are the ſame.

Theſe Points have not only been deny'd, but diſproved with all Manner of Credence and Clearneſs.

My Counſel have ſhew'd, that all theſe ſuſpicious Correſpondencies are to the laſt Degree abſurd to apply to me, and no one would apply them: That I could not order the Letters of the 20th of *April*, to which the Names of *Jones*, *&c.* are ſubſcribed, I think is plain, and then the Evidence falls which depends upon it.

As to the Journeys to and from *Bromley*, where the Priſoner *Kelly* had frequent Acceſs to me, and therefore I might probably dictate thoſe Letters, the Counſel for the Bill have not open'd themſelves on that Head; but your Lordſhips have heard it made out, and becauſe it is material I ſhall repeat it.

[Here *Wood*'s Examination was read.]

By all theſe Accounts, nothing could have been eaſier for the Perſons themſelves to manage here, than getting an Account of my Neighbours, in order to render the Contrivance more plauſible.

That Mr. *Kelly* is no Stranger to me I own; but that he is in any Degree intimate with me, or frequently ſaw me, I deny. And what Evidence is there from them to the contrary? or how is this ſolemn denial at your Bar contradicted?

The Chairman ſays, He carry'd him twice or thrice to the Deanery, three or four Years ago; and this *Brown*, the Chairman, he ſwears, He carry'd me once in three or four Years Time. I believe he may. The Porter he ſays, that he brought a Letter and ſome Stockings from *Kelly* to me. The Foundation of this Story is true, for Mr. *Kelly* uſed to furniſh me with *Beaver* Stockings and Gloves: Not but that the Circumſtance of the Porter coming up to my Bed-Chamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never ſent by me to him.

Now on the other Side, there is the Evidence of almoſt all my Servants, who have, upon Oath, atteſted, that they do not know either the Name or the Face of Mr. *Kelly*, which could not poſſibly be, did he uſe frequently to reſort to me. Such a ſlight Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him, of ſuch a dangerous Conſequence as theſe are, which the Report inſinuates to have paſſed between us: However, Suſpicion is not now the Buſineſs. They that prove ſome Things may be allowed to ſuppoſe more; they that prove Nothing have no Right to indulge their Suſpicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be ſuch, are not equal to any one Matter of Fact, well atteſted; it may ſtrengthen the Fact, but cannot ſupport it. They cannot be Evidence themſelves, becauſe one Probability may be ſet againſt another.

I uſe this Diſtinction between Evidence in Law, and reaſonable Evidence, becauſe the Counſel for the Bill have aſſerted ſomething like it.

I own I always thought the Publick Law of the State, the Publick Reaſon of the State; and whatever it is in another Country, yet, in this Country, no Evidence can be reaſonable that is not legal. But I aſk, What ſort of Evidence, either in Reaſon or Law, is brought againſt me? How am I proved to conſult and correſpond, to raiſe an Inſurrection againſt his Majeſty and his Kingdom, and to procure a foreign Force to invade the ſame in Favour of the Pretender?

How am I prov'd, in the ſecond Place, to have correſponded with the ſame Pretender, and with Perſons employ'd by him? Is one Article of

these Charges made out against me with any Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shewn to be vain, and unjust.

If the Proof in these Cases wants Strength, can the Hearsay of *Neynoe* supply the want of Proof, and render it valid, since *Neynoe* pretends, for aught that appears, not to have known any thing of me? He only heard *Kelly* say so, and Mr. *Kelly* denies it; and there is, I think, no Reason, why such a dead Evidence should affect me, or *Kelly* himself, much less me thro' him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contradicting what *Neynoe* said, I believe what *Neynoe* said would not be of any Weight; besides, what *Neynoe* dead says, and *Kelly* now alive denies, ought not to have any Force.

Concerning Hearsay Evidence in general, and concerning the due Regard to it, I humbly desire your Lordships, that a Passage may be read out of Sir *John Fenwick*'s Bill of Attainder. [*The whole Preamble read.*]

My Lords, I humbly desir'd to have this read, because I thought it would take away a Distinction between Legal and Parliamentary Evidence; that what was not Legal might be Parliamentary. I believe here is a Condemnation of him by Parliament; therefore, I think, the Condemnation of him must be by Parliamentary Evidence. It is recited in this Act, as one of the Inducements that mov'd the King, Lords, and Commons to pass that Act, that Sir *John Fenwick* had contriv'd and fram'd several Papers, *&c.* only by Hearsay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attainting a Man in another? If it was judg'd hard in Sir *John Fenwick*'s Case to charge a Man by Hearsay, can the being thus charg'd be any Proof against me? Sure the House of Commons in 96, that brought that in, would have so thought, nor would those of your Lordships consented here, or elsewhere, to have pass'd it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose Sir *John Fenwick*, but favour'd his Case, and are yet against me. Is the Guilt objected to me, if prov'd, in any Measure like his? Or is there any Comparison between the Proof against him and me?

As to the Paper and Information given in by *Neynoe*, and printed in the Appendix, it is plain he was drawn in to have sworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up some Days before it happen'd. He knew what Use and Purpose the Protests of your Lordships were chiefly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to ask or receive such a Sum of Money.

'Tis said he was the late Earl *Marishall*'s Bed-fellow for several Months, and had drawn up Heads for Memorials to be delivered to the Regent; but he had kept no Copy of these Heads, or foul Draughts which would have shewn whether they were given in to promote it, or discover it; in either Case the Evidence of being then employ'd would have been of Service: but they have not been able to produce a Line of such Heads or Memorials, yet the Report of the House of Commons, upon the Basis of these Memorials, builds the whole Fabrick. He knew that I went under the Names of *Jones* and *Illington*, and undoubtedly he knew Mr. *Dubois*: If the Scheme of writing that Letter myself had been seen, he would have found out a Reason for the Correspondence; and 500*l.* would have made him affirm, That he carry'd the Letter himself. He knew the Pretender's particular Opinion of me, or of any body else, and that he rely'd on Advices from me: How did he know that? He told him so. Who told him? It is not suppos'd Mr. *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretender.

Let me speak, my Lords, as always I hope I shall, with that Modesty as becomes Justice, but yet with Freedom, to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transactions? Is it possible to believe this Pretender to Secrecy could have had, or shall he still have any Degree of Weight, that threw away his Life, rather than venture to stand to the Truth of what he said before his Death, and then he could have been contradicted, or Pangs of Conscience might have made him unsay what he had said? But a dead Man can retract nothing; what he hath writ, he hath writ: The Accusation must stand just as it did, so far as it concerns him; and we are depriv'd of the Advantage, which Truth and Remorse once extorted, and would have again extorted from him. However, I would have been glad to have had all that ever this Wretch said; and would hope that by comparing of the several Stories, which he several Times told, some Light might have been gain'd, which is now wanted: ——Particularly by the Knowledge of what he said freely and voluntarily, when he was in good humour, and before his rough Usage, on his Return from *Rome*, had frighted him; but I think we have the Evidence only of a few of the last Days of his Life, all the preceding Time is blank. He underwent frequent Examinations, but they were not, it seems, so maturely weighed and digested as to be thought worth the committing to writing: but he is gone to his Place, and hath answer'd for what he hath said at another Tribunal. I desire not to disturb his Ashes, farther than what is necessary for my Defence.

Your Lordships will observe first, the Inconsistency of some Part of the Charge. Secondly, the Improbability of it. The Report takes Notice of three several Periods, or Stages of Time, when, by Consequence of some Informations from the Regent, the Design did not take Place: The first was, during the Election; the second was, the King's going to *Hanover*; and the third was, the breaking up of the Camp. There is not the least Hint as to the last of these three Designs, in any of the Papers; tho' in the Recital of the Bill it is mention'd as the third Part of the Plot, and the most detestable Part of the Design, to lay violent Hands on his Majesty and his Royal Highness.

There is not the least Colour of Proof as to the first Part of the Conspiracy, which was to take place at the Election; their only Reason for that, is from a Passage, where it is said, that the present Opportunity is claps'd, that is, the Opportunity of the Election.

I shall recite the Passage, as it lies in the Intercepted Letter, and make some Reflections on it: *Notwithstanding the Opportunity is claps'd*, (says the Writer to *Jackson*) *I agree with you, another may offer before the End of the Year, though not perhaps every Way so favourable.*

The Committee suppose this Letter to be from *Kelly*, and dictated by me; and they suppose the Words to refer to the time of the Election, and from those Suppositions infer that I knew something of it. On the contrary, I shall, on the two first Suppositions shew the Impossibility of it; if this was a Letter from me, or from any other Person, dictated by me to the Pretender, I must write as in Answer to some Letter sent from them to me, in repeating the Expression; and his Opinion in the Letter must have been founded on Intelligence before receiv'd: This Intelligence; considering the Distance between *London* and *Rome*, must have been communicated two Months, if not longer, before the Date of this Letter, if we go back two Months, and talk of *the Election being claps'd*, it was not begun; consequently that Opportunity in the Letter could not possibly mean the *Time of the Election*; and if so, it is impossible that it should be a Letter to the Pretender, that can consist with the Charge of the Person's writing in *April* 1720.

If it be a Letter writ in good Earnest, it appears they had given over all Thoughts at that Time: *I agree with you*, says he, *another may offer before the End of the Year*: and yet he finds some Words in a Letter writ ten Days after, wherein, under the Name of *Jones*, I am made to be deeply concern'd in a Conspiracy.

How can this be consistent, if I writ and directed that Letter, and was engag'd in the second Part of the Conspiracy?

Both cannot be true, both may be false; and I hope I have satisfy'd your Lordships, that as I did not dictate the one, so I was no ways concern'd in the other.

Can any one believe, that under the sad Circumstance of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man, unless under the Power of Prejudice, to believe such an Improbability, or that I had such a Conjecture? I forbear former Instances.

I shall now consider the Improbability, as well as Inconsistency of the Charge brought against me without positive Proof. You will allow me to answer the Indictment in the same Manner as it is laid.

Is it probable that if I were engag'd in any such Design, no Footsteps should be seen of any Correspondence I had with the late Duke of *Ormond*, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is consistent with my Duty to my King and Country?

Is it probable that I would choose rather to engage in such a Design with Mr. *Dillon*, a Military Man I never saw, and with the Earl of *Marr*, whom I never convers'd with, except when he was Secretary of State?

Did I not know, what all the World thinks, that he had left the Pretender several Years, and had a Pension abroad? Is this a Season for me to enter into Conferences with him about restoring the Pretender; and do this not by Messages but by Letters, not sent by Messengers but by the common Post? That by thus writing to him by the Post, I should advise him after the same manner to write to me, and by these Means furnish Opportunities towards detecting the Persons; and bringing myself into Danger? How doth that consist with the Caution and Secrecy which are said to belong to me? Must not I have been rash to have laid myself open in such a Manner? This is an inconsistent Scheme, the other a bold Assertion. Is it probable, when attending the sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should enter into Negotiations of this kind?

There was no need of dispatching any of those three Letters, merely to excuse my not writing: The Circumstances of my Family had been a sufficient Apology, and more effectual.

Is it probable, that when I was carrying on publick Buildings of various kinds at *Westminster*, and *Bromley*, consulting all the Books from the *Westminster* Foundation, engaging in a Correspondence with learned Men, about settling an Important Point of Divinity; that at that very Time I should be carrying on a Conspiracy? Those that entertain such Thoughts without Reason, may also condemn me without Argument.

Is it probable that I should meet, and consult, in order to carry on and forward this Correspondence with nobody, and no where?

That I, who always liv'd at home, and except at Dinner-Time, never stir'd out of my Chamber; receiv'd all Persons that visited me, and was deny'd to none, should have an Opportunity to be so engag'd? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing? No Evidence among my Papers, though they were all seiz'd at both my Houses, and confining all my Servants, but one now, for about 10 or 11 Weeks, searching him twice in the *Tower*, and searching myself, nothing of Consequence appears, nor is there any one living Witness that charges me with any thing that is really true.

Is it probable, that I should form and direct a Conspiracy, and carry it on with any Success, that am not us'd to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions? My way of Life hath not led me to converse with such Men and such Matters, except on the Occasion of meeting in Parliament; but in a Council of War I never was. Have I yet, in any Instance of my Life, meddled remarkably out of my own Sphere, in Affairs foreign to my Business or Character? I might have been thought to have been too active in my proper Station and Business; but I was never charg'd with War, nor any ways inform'd in the Art of it.

Is it just, that Persons concern'd in the Military Way, should be punish'd without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concern'd with them, suffer all the Pains and Penalties, short of Death, which the Parliament can inflict, for a suppos'd I know not what, and what I don't to this Day apprehend?

Here

Here is a Plot of a Year or two ſtanding, to ſubvert the Government with an armed Force, an Invaſion from Abroad, an Inſurrection at Home; juſt when ripe for Execution it is diſcover'd: and 12 Months after the Contrivance of this Scheme, no Conſultation appears, no Men correſponding together, no Proviſion of Money, Arms, or Officers------not a Man in Arms------And yet the poor Biſhop has done all this.

Layer and *Plunkett* carry on a Treaſonable Correſpondence: They go to *Rome* and receive Directions from the Pretender himſelf to promote his Cauſe----It does no where appear that the Biſhop has the leaſt Share in, or is any way privy to their Practices---And yet the Biſhop has done all, He is *principally concern'd in forming, directing, and carrying on this Deteſtable Conſpiracy.*

What could tempt me to ſtep thus out of my Way? Was it Ambition, and a Deſire of climbing into a higher Station in the Church? There is not a Man in my Office farther remov'd from this than I am; I have a hundred Times ſaid, and ſincerely reſolv'd, I would have been nothing more than I was at a Time when I little thought of being any thing before; and I could give an Inſtance of this Kind if I thought proper.

Was Money my Aim? I always deſpis'd it, too much, perhaps, conſidering what occaſion I am now like to have for it: for out of a poor Biſhoprick of 500 *l. per Annum*, I have laid out no leſs than Two Thouſand Pounds, towards Repairs of the Church and Epiſcopal Palace; nor did I take one Shilling for Dilapidations. The reſt of my little Income has been ſpent as is neceſſary, as I am a Biſhop. Nor do I repent of thoſe Expences now, (tho' ſince my long Confinement I have not receiv'd the leaſt Part of the Income in my Deanery) not doubting in the leaſt, but that God, who hath liberally provided for me hitherto, will ſtill do it, and on his good Providence I ſecurely rely.

Was I influenc'd by any Diſlike of the Eſtabliſh'd Religion, and ſecretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords, ever ſince I knew what Popery was, oppos'd it; and the better I knew it, the more I diſlik'd it.

I begun my Study in Divinity, when the Popiſh Controverſy grew hot about that immortal Book of *Tillotſon's*, when he undertook the Defence of the Proteſtant Cauſe in general; and as ſuch I eſteem'd him above all.

You will pardon me, my Lords, if I mention one thing.

Thirty Years ago, I writ in Defence of *Martin Luther*, and have preach'd, and writ to that Purpoſe from my Infancy; and whatever happens to me, I will ſuffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Proteſtant Religion, as profeſs'd in the Church of *England*.

Once more: Can I be ſuppos'd to favour Arbitrary Power? The whole Tenor of my Life hath been otherwiſe: I was always a Friend of the Liberty of the Subject, and to the beſt of my Power conſtantly maintain'd it: I may have been thought miſtaken in the Meaſures I took to ſupport it.

It matters not by what Party I was called, ſo my Actions are uniform.

To return to the Point: The Charge brought againſt me in the Manner it is brought, is improbable: If I could be guilty of it, I muſt have acted under a Spirit of Infatuation; yet I have never been thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contained in this Bill, they are great and grievous beyond Example in their Nature and Direction.

I am here, my Lords, and have been expecting an immediate Trial. I have, my Lords, declin'd no Impeachment. The Correſpondence with the Earl of *Clarendon* was made *Treaſon*, but with me it is only *Felony*. He was allow'd the Converſation of his Children, by the expreſs Words of the Act: Mine are are not ſo much as to write, ſo as to be ſent to me.

What is moſt particular in my Caſe I will repeat diſtinctly, that my Reverend Brethren may hear it. I am render'd incapable of uſing or exerciſing any Office, Function, Authority, or Power Eccleſiaſtical, not only in his Majeſty's Dominions, but any where elſe. Very hard! That ſuch Spiritual Power as is not deriv'd from Men, but God himſelf, ſhould be taken from me!

And I am not only *deprived of all Offices, Dignities, and Benefices Eccleſiaſtical*, and for ever *baniſh'd the Realm*, but likewiſe precluded from the Benefit of Royal Clemency, and *made utterly incapable of any Pardon by his Majeſty, his Heirs and Succeſſors.*

My Lords, I inſiſt on my Innocence, that I am not guilty; and if I am not prov'd ſo, your Lordſhips will thus judge; if otherwiſe, I perſuade myſelf I ſhall find ſome Degree of Mercy.

You will not ſtrip a Man of his Subſtance, and then ſend him where he cannot ſubſiſt; you will not ſend him among Strangers, and then hinder others from performing Humanity to him; you will not give him leſs time to order his Affairs and depart the Kingdom, than the Bill hath taken in paſſing thro' both Houſes.

The Great Man, I laſt mention'd, carry'd a great Fortune with him into foreign Parts, and had the Languages; was well acquainted abroad: The Reverſe of all this is my Caſe; I indeed am like him in nothing but his Innocency, and his Puniſhment. It is in no Man's Power to make us differ in the one, but it is in your Lordſhips Power to make us differ widely in the other, and I hope your Lordſhips will do it.

But to ſum up the Arguments: It hath been frequently obſerv'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High-Treaſon brought againſt me, with no Evidence at all.

My Lords, pardon me, what is not Evidence at Law, can never be made ſo by any Power on Earth: for the Law that requir'd the Evidence, is as much the Law of the Land as that which declares the Crime.

It is equally unjuſt to declare any Proof legal, becauſe of my Proſecution: As extraordnary would it be, to declare the Acts themſelves, *ex poſt facto.*

Never was there a Charge of ſo high a Nature, and ſo weakly prov'd.

A Perſon dead, ſo that there is not an Opportunity to falſify him by contradicting him, a Charge not ſupported by any one Evidence, nor by any one Proof of any Thing that hath been writ or received by me, nor even by any one criminal Word prov'd to have been ſpoken by me; but by intercepted Letters and Correſpondence, in which appears not the leaſt Certainty.

Some of thoſe Letters, ſhown to Perſons with a Deſign to faſten ſomething on them; others writ in Cyphers and fictitious Names, throwing out dark and abſtruſe Hints of what Perſons went by thoſe Names, ſometimes true and ſometimes doubtful, and often falſe, who continue all the while Strangers to the whole Tranſaction, and never make the Diſcovery, till they feel and find it advancing itſelf towards them: My Lords, this is my Caſe, in ſhort.

I have a hard Taſk to prove my Innocency: Shall I ſtand convicted before your Lordſhips on ſuch an Evidence as this? The Hearſay of an Hearſay; a Party dead, and that deny'd what he ſaid; by ſtrange and obſcure Paſſages; and fictitious Names in Letters, by the Conjecture of Decypherers, without any Opportunity given me of examining and looking into the Decyphering; by the Depoſitions of Poſt-Office Clerks about the Similitude of Hands; their Depoſitions made at diſtant Times, and without comparing any one of the Originals, by a ſtrange Interpretation of them: for nothing more, I am perſuaded, can be made of the Arguments, than what is call'd the intercepted Correſpondence.

Shall I, my Lords, be depriv'd of all that is dear to me, and in the Circumſtances I am in, ſcarceable to bear up, and by ſuch an Evidence as would not be admitted in any other Cauſe or any other Court; and would hardly affect a *Jew* in the Inquiſition of *Spain?*

And ſhall it be received againſt a Biſhop of this Church, and a Member of this Houſe? God forbid! Give me leave to make mention of a Text in Holy Writ: *Againſt an Elder receive not an Accuſation, but before two or three Witneſſes.* It is not ſaid, Condemn him not upon an Accuſation, *&c.* but receive it not: I am ſomething more than an Elder; and ſhall an Accuſation againſt me be countenanced, without any one Inſtance of Proof to ſupport it?

This is not directly Matter of Eccleſiaſtical Conſtitution: There you read, one Witneſs ſhould not riſe up againſt an Elder; but here, at the Mouth of two Witneſſes, or three Witneſſes, ſhall the Matter be eſtabliſh'd: And as this Rule was tranſlated into the State of the Church, People always thought fit to allow it.

Shall I be the firſt Biſhop in this Church condemn'd upon Conjecture, on fictitious Names and obſcure Paſſages in Letters, inſtead of two or three Witneſſes?

Will not others endeavour to make the ſame Precedent, and deſire the ſame Influence of it to ſucceeding Ages; and even concur in ſuch an Act, in order to render me incapable of uſing or exerciſing any Power or Authority, *&c?* Is this good Divinity, or good Policy?

As to the Juſtice of the Legiſlature, in ſome Reſpects it hath a greater Power than the Sovereign Legiſlator of the Univerſe: For he can do nothing unjuſt. But tho' there are no Limits to be ſet to a Parliament, yet they are generally thought to reſtrain themſelves, to guide their Proceedings in Criminal Caſes, according to the known Law.

The Parliament may order a Criminal to be tortur'd: Who can ſay they cannot? But they never did, nor never will, I hope; becauſe Torture, tho' uſed in other Countries, is not known here.

Is it not torturing, to inflict Pains and Penalties on Perſons only ſuſpected of Guilt, not plainly prov'd guilty? It is not much unlike it. The Parliament may, if they pleaſe, as well upon Bills of perpetual Impriſonment, as upon Bills of perpetual Exile, reſerve to the Crown a Power to determine the one as well as the other. They have reſerv'd it in the former Caſe, but have not reſerv'd it here in the other. The Law knows nothing of ſuch abſolute, perpetual Impriſonments.

The Parliament may, in like manner, condemn a Man on a Charge of Accumulated and Conſtructive Treaſon. They did ſo in the Caſe of the great Lord *Strafford*, and that by Accumulated and Conſtructive Proof of ſuch Treaſon; that is, by Proofs ſo interpreted, as plainly to communicate Light and Strength to each other, and ſo to have all the Force without the Formality of Evidence. Was ſuch Proof ever admitted by any one to deprive his Fellow-Subject of his Fortune, of his Eſtate, his Friends, and Country, and ſend him in his old Age, without Language or Hope, without Employment to get the Neceſſaries of Life, to ſtarve? I ſay again, God forbid!

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or even to ſeem to violate the Conſtitution in any Degree, which they ought to preſerve againſt any Attempts whatſoever.

But where once ſuch extraordinary Steps as theſe are taken, and we depart from the fixed Rules and Forms of Juſtice, to try untrodden paths, no Man knows where this ſhall ſtop.

Tho' I am worthy of no regard, tho' whatſoever is done to me may, for that Reaſon, be look'd upon to be juſt; yet your Lordſhips will have ſome regard to your own laſting Intereſt, and that of Poſterity.

This is a Proceeding with which the Conſtitution is not acquainted; which, under the Pretence of ſupporting it, will at laſt effectually deſtroy it.

For God's ſake lay aſide theſe extraordinary Proceedings; ſet not up theſe new and dangerous Precedents; I, for my Part, will voluntarily and chearfully go into perpetual Baniſhment, and pleaſe myſelf that I am, in ſome meaſure, the Occaſion of putting a Stop to ſuch Precedents, and doing ſome Good to my Country, and will live, where-ever I am, praying for its proſperity; and do, with the Word of Father *Paul* to the State of *Venice*, ſay, *Eſto perpetuo:* It is not my departing from it I am concern'd for; let me depart, and let my Country be fix'd upon the immoveable Foundation of Law and Juſtice, and ſtand for ever.

I have, my Lords, taken up much of your Lordſhips Time, yet I muſt beg your Attention a little longer.

Some Part of my Charge hath been diſproved by direct and full Evidence, particularly that of writing the Letters of the 20th of *April*, or that I knew who wrote them; which I utterly deny that I ever did, or as yet do know. Other Parts of the Charge there are, which are not capable of ſuch Diſproof, nor indeed require it; there I reſt. But, my Lords, there is a Way allow'd of vindicating myſelf, it is generally Negative; that is, by proteſting and declaring my Innocence to your Lordſhips, in the moſt deliberate, ſerious, and ſolemn Manner; and appealing to God, the Searcher of Hearts, as to the Truth of what I ſay, as I do it in what follows.

lows. I am charg'd with the Report with directing a Correſpondence to Mr. *Kelly* ; but I ſolemnly deny that I ever, directly or indirectly, ſaw a ſingle Line of any of their Letters, till I met wtih them in Print. Nor was the Contents of any of them communicated to me. I do in the next place deny, That I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent. Nor was I ever acquainted with any Attempt to be made on the King's going to *Hanover*, or at the Time of the Election. Nor did I hear the leaſt Rumour of a Plot to take place after the breaking up of the Camp, till ſome Time after Mr. *Layer*'s Commitment. I do with the ſame Solemnity declare, That I never collected, remitted, receiv'd, or aſk'd any Money of any Man to facilitate theſe Deſigns ; nor was I ever acquainted with, or had any Remittances whatſoever from, any of thoſe Perſons. I never drew any Declaration, Minutes, or Paper in the Name of the Pretender, as is expreſly charg'd upon me. And I never knew of any Commiſſion iſſu'd, Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raiſe an Inſurrection in theſe Kingdoms. All this I declare to be true, and will ſo declare to the laſt Gaſp of my Breath.

And I am ſure, the further your Lordſhips examine into this Affair, the more you will be convinc'd of my Innocency. Theſe contain all the Capital Articles of which I am accuſed in the Report of the Houſe of Commons.

Had the Charge been as fully prov'd as aſcertain'd, it had been vain to make Proteſtations of my Innocency, tho' never ſo ſolemn.

But as the Charge is only ſupported by the ſlighteſt Probabilities, and which cannot be diſprov'd in any Inſtance, without proving a Negative, allow the ſolemn Aſſeverations of a Man in behalf of his own Innocence to have their due Weight ; and I aſk no more, than that they may have as much Influence with your Lordſhips as they have Truth.

If, on any Account, there ſhall ſtill be thought by your Lordſhips to be any ſeeming Strength in the Proofs againſt me ; if by your Lordſhips Judgments, ſpringing from unknown Motives, I ſhall be thought to be guilty ; if for any Reaſons, or Neceſſity of State, of the Wiſdom and Juſtice of which I am no competent Judge ; if your Lordſhips ſhall proceed to paſs this Bill againſt me, God's Will be done : *Naked came I out of my Mother's Womb, and Naked ſhall I return ; and whether he gives or takes away, bleſſed be the Name of the Lord!*

May 13. was appointed for the Reply of the Counſel for the Bill, who were Mr. *Reeve*, and Mr. *Wearg*. Mr. *Reeve* ſpake as follows :

May it pleaſe your Lordſhips,

TO permit me to offer ſomething, by way of Reply to the Arguments that have been made uſe of, and the Evidence that hath been given, in Behalf of the Biſhop of *Rocheſter*.

My Lords, I ſhall not trouble your Lordſhips with entering far into the Arguments ſo much inſiſted on by the other Side, concerning the Power of the Parliament to paſs Bills of Attainder.

They have been ſpoken of by the Counſel of the other Side, as inconſiſtent with our Conſtitution ; Bills of Pains and Penalties, and Bills of Attainder, have been treated by them as unknown to our Conſtitution, unleſs in a few Inſtances, which afterwards have been condemned.

And yet they have mentioned the Caſe of Sir *John Fenwick*, which is a Precedent of a Perſon attainted without legal Evidence, tho' he were forth-coming and amenable to Juſtice, and his Attainder remains ſtill unreverſed. And as to Bills of Pains and Penalties, they ſhould, before they inveigh'd ſo much againſt them, have conſider'd, that two ſuch Bills have now already paſſed your Lordſhips Houſe ; and the Bills againſt *Counter*, *Bernardi*, and others, and againſt the late *South-Sea* Directors, are Precedents of Bills of this Kind.

They have mention'd many Inſtances where Perſons have been proſecuted according to the known Rules of Law, and the Parliament did not think fit to interpoſe. And doubtleſs, my Lords, generally ſpeaking, where Evidence is to be had and to be produced, and the Perſons are forthcoming, it is right to proceed according to the known Rules of Law in the ordinary Courts of Juſtice.

But where Conſpirators are carrying on their Deſigns with Art, and contriving to ſhelter themſelves from thoſe known Rules of Law ; we apprehend, my Lords, the ordinary Proſecutions at Law will be no Argument againſt the Legiſlature's making uſe of their Authority, when the Circumſtances of the Caſe, the Preſervation of the Publick Peace, and the Safety of the Conſtitution require it.

But I beg leave to mention one Inſtance in which they are miſtaken : They have ſaid, that in the Caſe of the Regicides (that horrid and deteſtable Treaſon!) they were all proſecuted according to the ordinary Courſe of Law ; but if they had look'd into the Acts of Parliament, they would have found, that ſome of them were puniſh'd by Bills of Pains and Penalties. The Lord *Monſon* and others, who ſate as Judges in the pretended High Court of Juſtice, were reſerv'd by two Acts of Parliament that paſs'd, to have Pains and Penalties inflicted upon them ; and tho' there was Evidence in that Caſe to have attainted them according to the ordinary Courſe of Law, the Parliament did proceed to puniſh them by Pains and Penalties ; and they were not try'd according to the ordinary Courſe of Law.

This I beg leave to obſerve to your Lordſhips, in relation to the Power and Uſage of Parliaments in paſſing Bills of this Kind.

My Lords, in the next place, I beg leave to take Notice, That the Obſervations that have been made, and the Evidence that hath been given by them, as to Facts mention'd in the *Report* and *Appendix*, concerning which we have given no Evidence at all, ought to be laid out of this Caſe, as foreign to the Matter before your Lordſhips. The Matters we have given in Evidence, it was proper for them to anſwer ; but they have gone into the *Report* and *Appendix*, in order to diſprove Facts mention'd there, tho' we gave no Evidence concerning them ; and we humbly apprehend, it is not neceſſary for us to follow them as to thoſe Facts ; for if we maintain the Charge we have given, it doth not concern us to make good every Article in the *Report* and *Appendix*, relating to this Reverend Prelate now before your Lordſhips.

My Lords, we muſt admit the Evidence produced to charge the Reverend Prelate at your Lordſhips Bar, is not all of it Evidence ſtrictly legal againſt him, if he was to be try'd according to the ordinary Courſe of Juſtice in *Weſtminſter-Hall*. But, my Lords, we humbly apprehend you are not tied to the Rules of *Weſtminſter-Hall* ; for if your Lordſhips are ſatisfied that the Facts proved, laying them all together, do conclude the Reverend Prelate at the Bar guilty, notwithſtanding they do not amount to Evidence according to the ordinary Rules of *Weſtminſter-Hall*, your Lordſhips will be of Opinion, that it is fit he ſhould be puniſh'd.

My Lords, the Evidence that hath been given by us, as to Facts committed by the Biſhop of *Rocheſter*, hath been chiefly from three Letters, dated the 20th of *April*, 1722 ; each of theſe was written in the Hand of Mr. *Kelly*, and dictated by my Lord Biſhop of *Rocheſter*.

My Lord, theſe Letters are writ, ſome Part in Cyphers, and ſome Part not ; they are ſign'd by the Names of *T. Jones*, *T. Illington*, and the Figures 1378. My Lords, if theſe three Letters are proved to your Lordſhips Satisfaction to be the Letters of my Lord Biſhop of *Rocheſter*, we humbly apprehend they do prove all the Allegations in the Bill, which my Lord Biſhop of *Rocheſter* hath been pleaſed to call upon us to ſhew that he hath been guilty of. They do contain, as we ſay, and as plainly appears from the Letters themſelves, Matters relating to conſulting and conſpiring to invite a foreign Force into this Kingdom for an Invaſion, and to promote an Inſurrection. And if the Name of *Jackſon* is the Name by which the Pretender ie ſignified, that Letter will prove the other Part of the Bill, that the Biſhop of *Rocheſter* hath held Correſpondence with the Pretender himſelf.

My Lords, I beg leave to obſerve upon the Word *Jackſon :* It hath been inſiſted upon, that tho' it is contain'd in *Plunket*'s Cypher, yet *Jackſon* may ſignify in Mr. *Plunket*'s Cypher one thing, and in theſe Letters another ; and theſe Letters are contriv'd in Figures, and not thoſe Cant Words and Names, as in Mr. *Plunket*'s ; but ſo far they go, to admit that in *Plunket*'s Cypher the Name of *Jackſon* ſtands for the Pretender.

My Lord Biſhop of *Rocheſter* was pleaſed to obſerve, that in all the Correſpondence between Mr. *Kelly* and the Perſons with whom he correſponded abroad, there is no Name contain'd in Mr. *Plunket*'s Cypher, which *Kelly* hath made uſe of in any of his Letters, but this.

My Lords, it appears to your Lordſhips, that in the Correſpondence between Mr. *Kelly* and the Perſons abroad, ſeveral other Names, mention'd in *Plunket*'s Cypher, have been uſed : and it is not material, whether theſe Names are contain'd in the Letters writ by *Kelly* himſelf, or in thoſe of his Correſpondents writing to him. When his Correſpondents write to him, in anſwer to his Letters, they uſe ſeveral other of the Names which are contained in *Plunket*'s Cypher ; which, my Lords, we humbly apprehend is the ſame Thing as to this Purpoſe, as if they were uſed in Mr. *Kelly*'s Letter's ; for he muſt be preſumed to know the Meaning of thoſe fictitious Names, when they are contain'd in Letters that come in anſwer to Letters from him, in the Correſpondence which he carries on ; and we humbly apprehend, my Lords, that is as ſtrong an Evidence, as if they had been contain'd in the Letters writ by *Kelly* himſelf. Therefore, my Lords, I beg leave to take Notice of ſeveral Names that are in Mr. *Plunket*'s Cypher, and uſed by Mr. *Kelly*'s Correſpondents, in their Letters to him.

There is the Name of *Xoland*, which ſtands for *Wogan* ; the Name of *Lane*, which ſtands for Lord *Marr* ; the Name of *Cane*, which ſtands for *Dillon* ; and the Name of *Howell*, for *Glaſcock*. My Lords, all theſe Names are in Mr. *Plunket*'s Cypher, and made uſe of in the Letters that paſs'd between Mr. *Kelly* and his Correſpondents.

My Lords, I ſhall beg leave to ſubmit it to your Lordſhips, when, among Perſons concerned in carrying on the ſame Conſpiracy, Cyphers are made uſe of, and in the Cyphers of ſome of the Conſpirators the Names comprized in Letters writ by others of the Conſpirators are contain'd, whether it is not a reaſonable Evidence, that thoſe fictitious Names contain'd in the Cyphers of one of the Conſpirators, and made uſe of in the Letters of the other, ſignify the ſame Perſons ; unleſs there is ſomething to diſtinguiſh the Caſe, and ſhew that the ſame Names are made uſe of to denote ſeveral Perſons.

My Lords, we humbly ſubmit it to your Lordſhips, that it is plain from the Evidence we have given, that theſe three Letters are writ by the ſame Hand ; and by the Circumſtances in the Letters, they appear to be dictated by one and the very ſame Perſon. Therefore, my Lords, the Enquiry will be, who is the Perſon deſcribed by the Names of *T. Jones*, *T. Illington*, and the Figures 1378? For if we have proved the Biſhop of *Rocheſter* to be denoted in this Correſpondence by the Names of *Jones* and *Illington*, and that theſe Letters were written by *Kelly*, and dictated by *Jones* and *Illington*, then the Biſhop of *Rocheſter* is the Perſon by whom theſe Letters were dictated.

This will appear to your Lordſhips from other Facts contained in Letters intercepted in this Correſpondence ; Facts that, all of them together, can relate to no Perſon but the Biſhop of *Rocheſter*.

The Circumſtances of the Biſhop in his Family are exactly deſcribed in the three Letters of the 20th of *April* ; and thoſe Circumſtances plainly ſhew, that all the three Letters were dictated by the ſame Perſon, and that the Figures 1378 denote the ſame Perſon that *Jones* and *Illington* do.

My Lords, there are ſeveral other Facts contain'd in the intercepted Letters, that denote *Jones* and *Illington* to be Biſhop of *Rocheſter*. One of them is, the Fact relating to a Dog ſent over to Mr. *Kelly*, which appears, by the Evidence given, to have been deſigned for the Biſhop of *Rocheſter :* Therefore, in the Letter mark'd *E.* 32. (that is, a Letter to Mr. *Kelly* by the Name of *Hatfield*, and directed to Mr. *Hatfield*, under Mr. *Anthony Saunders*'s Cover, which is one of the Perſons deſcrib'd in the Liſt of Directions taken in *Kelly*'s Pocket-Book) the Letter mentions *the little Dog was ſent ten Days ago, and order'd to be deliver'd to you*, &c. My Lords, afterwards Mr. *Kelly*, by a Letter dated the 30th of *April*, 1722, *E.* 35. (it is a Letter from *J. H.* one of Mr. *Kelly*'s Names to *Howell*, and which have been proved to be Mr. *Kelly*'s Hand-writing) ſays, *I received the Preſent ſent by the young Lady, but in ſuch a bad Condition, that I am afraid he never will do well ; for he had a Leg broken in his Journey, which is ſtill very*

very bad with him; however, I will take all the Care imaginable of him, and inform Mr. Jones *ſoon of it, to whom, I know, any thing from that Quarter will be very acceptable.*

My Lords, it appears by this Letter of Mr. *Kelly*'s, that this Dog, that is there mention'd, was not a Dog for Mr. *Kelly* himſelf, but for Mr. *Jones*; a Dog for a Perſon denoted and underſtood by the fictitious Name of *Jones*: So that if the Evidence that hath been given of this Dog being deſign'd for the Biſhop of *Rocheſter* is true, then it follows that Mr. *Jones* mention'd in this Letter of *Kelly*'s denotes the Biſhop of *Rocheſter*.

There is another Letter relating to this Dog, *E.* 42: there is mention'd the Concern Mrs. *Illington* was in for poor *Harlequin*; *Mrs.* Illington *is in great Tribulation for poor* Harlequin, *who is in a bad Way, having ſlipped his Leg again before it was thoroughly well, however his Obligations to the Lady are as great as if he had come ſafe, which he deſires you to let her know.*

My Lords, this ſhews that *Jones* and *Illington* are the ſame Perſons. It appears by the former Letter, that the Preſent was for Mr. *Jones*, and he ſhould ſoon know of it; this Letter ſays, that *Mrs.* Illington *is in great Tribulation*, &c. *However* his *Obligations to the Lady are as great*, &c. Tho' in the firſt Part of the Letter it is Mrs. *Illington*, in the latter Part it is *HIS Obligations to the Lady are as great as if he had come ſafe, which HE deſires you to let her know.* That ſhews, that the Perſon in the former Letter, deſcribed by the Name of *Jones*, is, in this Letter, deſcribed by *Illington*, and conſequently *Jones* and *Illington* are the ſame Perſon.

My Lords, the next Circumſtance obſervable in theſe Letters, the intercepted Correſpondence between Mr. *Kelly* and his Friends abroad, is the Letter dated the 30th of *April*, 1722, *E.* 35. which ſays, *Mrs.* Jones *died laſt Week, and when the Days of Mourning are over, he will, I hope, be fit for Buſineſs.*

My Lords, it hath been given in Evidence, that the Biſhop's Lady—his own Witneſſes, as well as ours, have given an Account, that the Biſhop's Lady died the 26th of *April:* This Letter is dated he 30th of the ſame *April*, conſequently this ſuits exactly with the Biſhop's Circumſtances as to his Lady being dead.

My Lords, that *Jones* and *Illington* are the ſame, appears likewiſe by the Anſwer given to this Letter, dated the 20th of *May*, 1722, *E.* 43. which ſays, *Mrs.* Chivers *gives you her kind Service, and prays you will condole in his Name on the Death of Mrs.* Illington. My Lords, this Letter is in anſwer to that of the 30th of *April*, for it begins, *Yours of the 30th of* April, *which ſhould have come by laſt Poſt, is come to hand*; and this Letter condoles on the Death of Mrs. *Illington*, whereas the Letter of the 30th of *April* gave an Account that Mrs. *Jones* was dead. So that *Jones* and *Illington* appear by theſe Letters to denote the ſame Perſon.

My Lords, theſe are Letters writ by Correſpondents concern'd, one with another, in carrying on this Conſpiracy. It hath been objected, on the behalf of my Lord Biſhop of *Rocheſter*, that he is not concern'd in writing of theſe Letters, nor did any of them come to his Hands, nor were they writ by his Directions, but that they paſſed between Mr. *Kelly* and his Correſpondents abroad.

Your Lordſhips, we hope, will be of Opinion, in a Correſpondence of this Nature, (unleſs they ſhew ſomething to induce your Lordſhips to believe, that there hath been a malicious Deſign in the Parties between whom theſe Letters paſs'd, to denote the Biſhop of *Rocheſter*, in order to charge him) that theſe are Facts, which amount to a certain Proof who the Perſon is that uſed to go by the Names of *Jones* and *Illington*.

Your Lordſhips obſerve how the Matter ſtands: Mr. *Jones* and *Illington* is a Perſon deſcribed, by the Letters of the 20th of *April*, to be in great Pain himſelf, to be in melancholy Circumſtances in other Reſpects: He appears by the Evidence at that Time to have been ill of the Gout; his Lady appears to have been ill, and dying; Mrs. *Jones* and Mr. *Illington* is a Perſon to whom a Dog was ſent; and as it appears by the Evidence that this Dog was deſign'd for the Biſhop of *Rocheſter*. Mrs. *Jones*, in one Letter 'tis ſaid, died laſt Week; and in another Letter they condole the Death of Mrs. *Illington:* and it appears the Biſhop's Lady died the Week before the 30th of *April*.

My Lords there are other Circumſtances, which I ſhould mention, in relation to the Times when the Biſhop was in *London*, and when in the Country, which, we apprehend, is an additional Proof who was meant by the Names of *Jones* and *Illington*. Therefore in Letter *E.* 41 *a. Kelly* ſays, *Mr.* Illington *is now in Town, and preſents his kind Service to you; he is glad to hear you receiv'd his Letters by* Crow, *and wiſhes his next may be more to your Satisfaction.*

This Letter is dated the 7th of *May*; there it is ſaid, Mr. *Jones* is now in Town: It appears, by the Examination of *Wood*, the Coachman, that on the 7th of *May* my Lord Biſhop of *Rocheſter* was in Town.

There is another Letter dated the 7th of *May*, 1722, directed to *Muſgrave*, E. 42. which I beg leave to make ſome Obſervations on. There it is ſaid, *I had the Favour of yours, which I communicated to Mr.* Jones, *who is come to Town only for a Day.*

My Lords, this Letter ſhews, that the Perſon denoted by the Name of *Jones* was come to Town. But they object, that this Letter cannot be apply'd to denote the Biſhop of *Rocheſter*, becauſe it appears, by the Depoſition of *Wood*, that the Biſhop of *Rocheſter* ſtaid in Town till the 10th of *May*; ſo conſequently he did not come to Town only for a Day, and conſequently can't be the Perſon meant in that Letter.

My Lords, as to that it appears, that the Fact concerning Mr. *Jones* applying it to the Biſhop of *Rocheſter*, of his being come to Town, is true; as to the Biſhop's being come to Town *only* for a Day, that is not Matter of Fact, but of the Apprehenſion of the Writer: He apprehended he was only come to Town for a Day, but he might be miſtaken in that; but the Fact of his being come to Town is true, the Apprehenſion of the Writer that he came only for a Day, is falſe. But we muſt ſubmit it to your Lordſhips; the Apprehenſion of the Writer is not ſufficient to avoid the Truth of the Fact contain'd in that Letter, when we have proved that my Lord Biſhop of *Rocheſter* was in Town on the Day when Mr. *Jones* is mention'd to have been in Town in that Letter.

Another Letter dated *Thurſday* the 10th of *May*, 1722, *E.* 44. ſays, Illington *is gone to the Country, and ſent me Word he would be in Town on* Tueſday *Night, when he hath deſired to ſee me at a particular Hour, by which I conclude it may be about Buſineſs*; and the *Tueſday* following that *Thurſday* happen'd to be the 15th of *May*. Another Letter, *E.* 45. dated the 14th of *May*, 1722, ſays, *Mr.* Jones *is ſtill in the Country, but he hath ſent me Word he will be in Town To-morrow.* My Lords, upon the Examination of the Coachman *Wood*, it doth appear, that the Biſhop of *Rocheſter* was out of Town the 10th of *May*, out of Town the 14th of *May*, but that he came to Town the 15th of *May*, which is the Day mention'd in thoſe Letters that he had promiſed to come to Town: So that here are additional Circumſtances, all agreeing to prove that the Biſhop of *Rocheſter* was denoted by the Names of *Jones* and *Illington*. My Lords, we muſt ſubmit it, that this is not probable, conjectural Evidence only, as has been objected.

Theſe Letters contain Facts, and the Conſequence from them is, that *Jones* and *Illington* is the Biſhop of *Rocheſter*, in whom all theſe Facts agree. It is almoſt morally impoſſible, that all theſe Facts ſhould agree in the Caſe of any other Perſon, as they do in the Caſe of the Biſhop of *Rocheſter*.

It has been argued, as to the Letters of the 20th of *April*, Was he the only Perſon that was in Pain and melancholy Circumſtances at that Time? A great many might be ſo. They go thro' the Particulars of his being in Town and in the Country; a great many Perſons might be in Town and in the Country on thoſe Days beſides him. It is true, it might be ſo. Was there nobody whoſe Lady died the Week before the 30th of *April*, but the Biſhop of *Rocheſter?* Certainly there are a great many to whom that Circumſtance may be applied. But, my Lords, taking the Circumſtances together, they cannot *all* of them concur in the Caſe of any other Perſon, as they do in the Caſe of my Lord Biſhop of *Rocheſter*.

It may not be improper here to take Notice of ſome other of the intercepted Letters, that have been given in Evidence to your Lordſhips, which mention the Names of *Jones* and *Illington*.

In Mr. *Kelly*'s Letters, giving an Account of his being taken up, and his Examination before the Council, he takes Notice of his being examined concerning the Perſons that were meant by ſeveral fictitious Names; and, among the reſt, *Jones* and *Illington*, who, he ſays, *are chiefly ſtruck at.* This is to give an Intimation to his Correſpondents abroad, that there had been a Diſcovery, that the fictitious Names, concerning which he had been examined, were made uſe of in their Correſpondence.

My Lords, he comes afterwards and writes a Letter, after ſuch Time as he was bail'd (he was taken the 19th of *May*, and bail'd the 7th of *June*), wherein he ſays, *It is abſolutely neceſſary now, that there ſhould be a new Book of Accounts*; ſays he, *they muſt uſe no more their preſent Book of Accounts, ſince thoſe who have got Part, may have got the Whole.*

My Lords, we humbly ſubmit it, that he having given an Account of his being examined concerning thoſe ſeveral fictitious Names, after when he comes and ſays, it is abſolutely neceſſary to have a new Book of Accounts, it is a plain owning of *Kelly* by this Letter, that the Names enquired after were the Names made uſe of in the Correſpondence, and therefore he ſays, it is neceſſary to have a new Book of Accounts; that is, other Cyphers and fictitious Names, by which to carry on their Correſpondence: He owns they have got Part, and fears they may have got the Whole.

From that Time the Names of *Jones* and *Illington* are no more met with in the Correſpondence that follows. We have gone no farther in our Evidence to fix any other Names to mean the Biſhop of *Rocheſter*, but only the Names of *Jones* and *Illington*. But there are other Names, which, in the Letters that follow, probably are deſign'd to mean the Biſhop of *Rocheſter*; but they will be out of the Caſe, becauſe we have given no Evidence concerning them: and the plain Reaſon why *Jones* and *Illington* are not made uſe of any longer is, becauſe it appears on the Examination of Mr. *Kelly*, that thoſe Names were mentioned: therefore they were afraid, by making uſe of thoſe Names, the Correſpondence might be diſcover'd, and it might prejudice the Perſons who went by thoſe fictitious Names.

My Lords, this is the Subſtance of the Letters writ to and from Mr. *Kelly* and his Correſpondents, concerning the Perſon that goes by the Names of *Jones* and *Illington*.

Tho' my Lord Biſhop of *Rocheſter* inſiſts, that he is not proved to be the Perſon concern'd in writing theſe Letters, and that he had no Notice of them, and therefore they ought not to be look'd upon as Evidence againſt him; my Lords, we ſubmit it to your Lordſhips, in a Correſpondence of this Nature, when we purſue Facts and Circumſtances that are ſtated, and ariſe from the intercepted Letters, which, when they come to be apply'd together, are a plain Indication of the Perſon that is meant by them; when theſe Circumſtances and Facts can fit none but the Biſhop of *Rocheſter*, we hope, tho' it is not legal Evidence in *Weſtminſter-Hall*, yet it is ſatisfactory Evidence to induce your Lordſhips to believe, and be convinced, that no Perſon can be denoted by theſe Names but the Biſhop of *Rocheſter*.

My Lords, this is a Matter that the Biſhop of *Rocheſter* could not, with all his Care, be aware of; he takes Care that the Letters of the 20th of *April* are in Cyphers, and not writ with his own Hand; fictitious Names are made uſe of, and he thinks he ſhall be ſheltered by this Means from being found out to be the Perſon. The other Facts could not be ſuppoſed would come out to explain the Perſon.

But, my Lords, very often there is a Providence in detectings Things of this Nature; and where the greateſt Caution and Care is uſed, Circumſtances (that human Prudence could not guard againſt) are ſo ſtrong and convincing, that they diſcover ſuch ſecret Correſpondence, and plainly prove who is the Perſon carrying it on.

Some Texts of Scripture have been cited on the other Side: My Lords, I beg leave to uſe one on this Occaſion; and that is, *Curſe not the King, no not in thy Thought; for a Bird of the Air ſhall carry the Voice, and that which hath Wings ſhall tell the Matter.*

In theſe treaſonable Conſpiracies and Correſpondences againſt the King and Government, (notwithſtanding they are carried on ſo ſecretly, tha,

that the Conſpirators think nothing can diſcover them); there happen ſometimes, thro' Providence, ſuch Circumſtances which the Perſons cannot be aware of, that bring thoſe things of Darkneſs to Light: and we hope this may be an Example, that may deter any Perſon from going in the moſt ſecret and concealed Way to engage in any thing of this Nature.

My Lords, there is a Matter I ſhall beg leave to mention to your Lordſhips, becauſe my Lord Biſhop hath inſinuated as if I made hard and harſh Application of the Letter taken upon his Servant. My Lords, he ſays that the Conſtruction I put upon that Letter was not a natural but an ill-natured Explication. The Letter mentions an Impeachment, and ſays the Biſhop in the Letter, *if the Impeachment cannot be ſtopt, I am Priſoner for ſome Years without Remedy.*

My Lords, I did obſerve to your Lordſhips on that Expreſſion in the Letter, that it ſeem'd to import a Senſe of my Lord Biſhop's Guilt, becauſe he ſaid he was unavoidably a Priſoner for ſome Years. My Lord Biſhop ſays, this is by no means a natural, but a forc'd and ill-natur'd Explication; for in that place he meant no more than, if an Impeachment were lodged, it would not be proſecuted, but made uſe of only that he might be detained a Priſoner for ſome Years.

My Lords, I muſt ſubmit to your Lordſhips, which is the moſt genuine and natural Interpretation, that which I put upon the Words, or that which my Lord Biſhop of *Rocheſter* doth, which ſo highly reflects on the Honour and Juſtice of your Lordſhips and the Houſe of Commons.

My Lords, I ſhall beg leave, in the next place, to take notice of the Evidence that hath been given on the behalf of my Lord Biſhop of *Rocheſter*, and to conſider, whether that is ſufficient Evidence to ſatisfy your Lordſhips of his Innocence.

My Lords, we did read the Examination of Mr. *Neynoe*, one of his Examinations, and the laſt that was taken; they on the other Side called for three other examinations, of which the laſt Examination, which we read, was an Abſtract; they read them all, and, my Lords, the Examination which we read was conſiſtent with three other Examinations, with relation to my Lord Biſhop of *Rocheſter*: and I muſt own that the Charge, in the Examination of *Neynoe*, upon my Lord Biſhop of *Rocheſter*, is only Hearſay from *Kelly*; that *Mr.* Kelly *did tell* Neynoe, *that the Biſhop of* Rocheſter *held Correſpondence with the Pretender and his Agents*; and that *he was employed by the Biſhop in writing for him, and carrying on the ſaid Correſpondences*: So far, my Lords, it is Hearſay, what Mr. *Kelly* told *Neynoe*. Now, as to Mr. *Kelly* himſelf, it did affect him, by charging that he had confeſs'd to *Neynoe*, that he did carry on ſuch a Correſpondence: but as to my Lord Biſhop, it cannot affect him but as Hearſay; and we muſt agree that, if there was nothing elſe in the Caſe but this, all the Arguments made uſe of againſt ſuch Evidence would be of great Weight.

My Lords, I can't ſay that this Charge from *Neynoe*'s Examination is of Weight to charge the Biſhop of *Rocheſter*, ſo as to condemn him. My Lords, they have urged that if this Charge is not to be believed, all comes to nothing: This, ſay they, is the Foundation; and if *Neynoe*'s Examination is not ſufficient to affect the Biſhop of *Rocheſter*, then all the ſubſequent Evidence falls to the Ground.

My Lords, I beg leave to obſerve firſt, that if we had not *Neynoe*'s Examination, the Proof againſt my Lord Biſhop of *Rocheſter* is as ſtrong without it as with it; it is certainly Evidence of the Conſpiracy in general, but as to the Biſhop it is only a Circumſtance, to ſhew that another Man had ſaid of the Biſhop of *Rocheſter*, that he was carrying on a Correſpondence with the Pretender, *&c.*

But, My Lords, taking the Examination of *Neynoe* out of the Caſe, and conſidering the other Facts mention'd and prov'd to your Lordſhips, there is no Occaſion of *Neynoe's* Examination; whether *Neynoe*'s Examination be falſe or true, is not material: There is ſufficient to prove the Biſhop of *Rocheſter* guilty, for they can't deſtroy the other Facts and Circumſtances; and as long as they ſubſiſt, they prove the Biſhop of *Rocheſter* to be the Perſon concerned in carrying on this Correſpondence.

My Lords, I beg leave to obſerve in *Neynoe*'s Examination, there is ſomething more than Hearſay, there is a Fact in it, and we are able to ſupport that Fact by other Evidence. *Neynoe* ſays, that he hath gone ſeveral Times with *Kelly* to the Biſhop of *Rocheſter*'s, and hath ſtaid a conſiderable Time for him. My Lords, we ſhall prove by another Witneſs, that *Neynoe* about that Time came ſeveral Times to a Houſe, where he ſaid he waited for a Friend of his that was gone to the Biſhop of *Rocheſter*'s, and he ſtaid and waited for him three or four Times, for an Hour, and an Hour and an half together. This will confirm what *Neynoe* ſaid in that reſpect to be true.

They ſay there are ſeveral Improbabilities contained in *Neynoe*'s Examination, and Inconſiſtencies; as to the Improbabilities, ſome of them are mentioned as if there was great Weight in them. That ſo much inſiſted on by my Lord Biſhop himſelf is, that *Neynoe* ſays, he was employed to write Memorials, and the laſt he wrote was in *December*, and that was to deſire the Regent of *France* to furniſh a Body of 5000 Men, to come and invade theſe Kingdoms: The Obſervation made by the Biſhop of *Rocheſter* is, Where are theſe Memorials? Why did he not keep Copies of them? For he was at that Time concerned in a Deſign to ſerve himſelf one way or other; if he deſigned to betray thoſe Perſons he correſponded with, it would have been of Service to have kept thoſe Memorials, to have delivered them to the Government: If, on the other ſide, he had kept to his Friends, it would have been proper to have kept them, in order to create a Confidence in him, and to ſhew the Part he had in the Conſpiracy. Theſe Obſervations can have no Weight, when your Lordſhips come to conſider this was in *December*, and there was never any Application by him to make any Diſcovery of this Conſpiracy till *July* following. As to the Service it might be to keep them with reſpect to his Party, my Lords, we humbly apprehend that, conſidering him as a Man engaged in a Correſpondence of this kind, a Memorial of this Nature drawn up by him can be of no Uſe, but to detect himſelf and injure his Party, if he happens to be taken up, and ſuch a Memorial found upon him; therefore it was neceſſary to deſtroy it.

My Lords, there is another thing mentioned with relation to *Watſon*, and the Improbability of his being the Earl *Mareſchal*; but *Neynoe* does not ſay that he was the Earl *Mareſchal*, but ſays, There was one *Henry Watſon*, which he took to be a fictitious Name, and does not know who he really was, but he took him to be the Earl *Mareſchal*, and he gave him the Heads to draw up theſe Memorials.

My Lords, we apprehend it is not material who *Watſon* was; he is a Perſon that employed *Neynoe* to write theſe Memorials, and he might be the Earl *Mareſchal*: *Neynoe* ſays he took him to be ſo. Say they, if it was the Earl *Mareſchal* why ſhould he lie ſeveral Nights with *Neynoe?* This, ſay they, is very improbable. If it was him, he was to conceal himſelf, and take the fitteſt Place for that Purpoſe; therefore converſing with *Neynoe*, and not owning himſelf who he was, is not improbable. It is probable he would not diſcover himſelf to every Perſon; and tho' *Neynoe* was a Perſon engaged in the Conſpiracy, if *Neynoe* did not know him to be the Earl *Mareſchal*, it might not be proper for him to diſcover himſelf to *Neynoe*.

My Lords, I think theſe are the principal Things objected; there are ſome other little Matters, but I think dwelling on ſuch Objections as theſe, is but miſpending your Lordſhips Time.

My Lords, that which we humbly inſiſt upon is, Whether *Neynoe*'s Examination is an Examination to be credited or not credited? We agree it is only Hearſay as to the Biſhop of *Rocheſter*, and if we had not other Matter, it would not be ſufficient; ſo that we humbly apprehend its being true or falſe won't affect this Caſe. If your Lordſhips are of Opinion 'tis falſe, there is ſufficient Evidence againſt the Biſhop of *Rocheſter* without it.

My Lords, in the next Place, they have produced in Evidence ſeveral Perſons that come and give your Lordſhips an Account of *Neynoe*'s Confeſſions to them. There is one Mr. *Bingley*, Mr. *Steward* and Mr. *Skeene*, and two other Perſons, that give an Account of what Mr. *Skeene* and *Steward* had told them *Neynoe* had ſaid.

Bingley by his Evidence would have it believed, that *Neynoe* had told him, he was employed by ſome Perſon in Power, to fix ſeveral things upon ſeveral Perſons that they were innocent of; that he had ſaid ſeveral things that were falſe, and had impoſed upon a great Man he had made Application to, and had got great Sums of Money out of him.

My Lords, I don't know how far they would carry this; for by what hath been inſiſted upon by my Lord Biſhop of *Rocheſter*, and his Counſel, it ſhould ſeem as if they were labouring to ſhew from theſe Perſons that they have call'd to be examin'd, that all the Letters relating to this Correſpondence, the Letters of the 20th of *April*, and ſubſequent Letters, that relate to the particular Facts that denote *Jones* and *Illington* to be my Lord Biſhop of *Rocheſter*, were contrived between *Neynoe* and ſome other Perſons, in order to charge my Lord Biſhop of *Rocheſter* with being concern'd in this Conſpiracy. This ſeems to be what they are labouring at by this Evidence.

My Lords, as to *Neynoe*'s being a Perſon employ'd in writing theſe Letters of the 20th of *April*, or any ſubſequent Letters, in manner as is ſuggeſted, we ſhall ſhew your Lordſhips that 'tis impoſſible to be true; we ſhall ſhew that the Letters of the 20th of *April*, and all the other Letters that mention the Facts which denote the Biſhop of *Rocheſter*, were all intercepted and in the Hands of the Government, before ſuch Time as it was known among the Miniſtry that there was ſuch a Perſon as *Neynoe*: for *Neynoe* made Application to the honourable Perſon mentioned by their Witneſſes, ſubſequent to all this Correſpondence, when theſe Letters were in the Hands of the Government, as a Perſon that could make Diſcoveries to the Government. Therefore that Inſinuation muſt vaniſh, that *Neynoe* was employ'd to forge Letters, which contain Facts under the Names of *Jones* and *Illington*, to charge the Biſhop of *Rocheſter*; and that even thoſe Letters of the 20th of *April* were forged by him.

My Lords, we ſhall go into the Character of Mr. *Bingley*, who hath, at your Lordſhips Bar, owned, that he hath been whipt, pilloried, and impriſoned; and as he hath taken his Degrees, as he owned at your Lordſhips Bar, conſequently he hath taken the Oaths.

As to the Character of Mr. *Skeene*, he hath likewiſe been produced as a Witneſs, and he carries his Evidence farther than the Evidence of Mr. *Bingley*; for whereas Mr. *Bingley* ſays, that *Neynoe* confeſſed he had impoſed upon that Honourable Perſon, and had mentioned things that were falſe, yet he could not ſay that after the Time of his Examinations, after *Neynoe* was brought from *Dover* to Town, he had confeſs'd to him that what he ſaid on thoſe Examinations was falſe: But *Skeene* ſays, that after his Examinations he own'd that they were falſe. The laſt Examination was the 27th of *September*, and he was drown'd that Night; but as to the Examinations before the 27th of *September*, and out of which that is collected, Mr. *Skeene* ſays, *Neynoe* ſaid to him that they were falſe.

My Lords, as to Mr. *Skeene*, we ſhall ſhew what ſort of a Man he is, a Man attainted of High-Treaſon; and tho' he is pardoned as to his having his Life and Liberty given him, he is in all reſpects an attainted Perſon: He was tried and condemned in the County of *Surry* for being concerned in the *Preſton* Rebellion, and conſequently a Man of no Credit. And as to what he and *Steward* ſwear, relating to a Converſation with *Neynoe*, when in Cuſtody, we ſhall ſhew they never were together after the firſt Night, when they ſupp'd together. He was aſked, whether it was the firſt Night that he had this Converſation with *Neynoe*, and he did not pretend he had any Converſation of this Nature with *Neynoe* the firſt Night; and if it was not the firſt Night, we ſhall ſhew it could not be afterwards, for *Neynoe* was kept in a Room by himſelf, *Skeene* and *Steward* by themſelves in a Room underneath; and therefore this ſeems to be a Story contrived between *Skeene* and *Steward*.

We ſhall ſhew it could not be poſſible for them to converſe together, for *Skeene* and *Steward* were locked up in their Room; *Neynoe* was lock'd up in his Room ſeparate and apart from theirs; ſo that they could never have Correſpondence with him, nor come near him.

Another thing is ſworn by one of them, about a Meſſage ſent to him by *Neynoe*, and a Paper, while they were in Cuſtody of the Meſſenger; and

and he ſays, this Paper was brought to him by the Meſſenger's Maid from *Neynoe*, and that this Paper contain'd a Juſtification of my Lord *Orrery*, expreſſing that he knew nothing of my Lord *Orrery*, but what he had ſaid of him was utterly falſe; that the Meſſenger finding he had ſome Paper, he, to conceal this Paper, burnt it. But that the Maid came to him with ſuch a Meſſage or Paper is falſe; the Maid never did, nor did the Meſſenger know of the Paper, as we ſhall prove to your Lordſhips.

My Lords, when we have proved this, we humbly apprehend we have taken off any Credit that could be given to what theſe People have ſaid, if they have ſaid any thing material. My Lords, before I leave this Head, I beg leave to obſerve another thing as to *Skeene*. He, upon his Examination concerning a Diſcourſe with *Pancier*, denies it intirely; but ſays, that what *Pancier* hath inform'd in relation to him, is falſe. We ſhall call *Pancier*, who will inform your Lordſhips, that *Skeene* hath own'd that he was privy to this Conſpiracy, and knew who were concern'd in it.

I own there are ſeveral noble Perſons named to be concern'd; that there is no Reaſon to ſay, from what *Skeene* may have ſaid of them, that they are guilty: But ſuch as he may have uſed the Names of great Perſons deſignedly, to keep up the Spirit of their Party, by telling them ſuch and ſuch Perſons were concern'd: and if there is no other Evidence but what ſuch a Perſon hath ſaid, the noble Perſons mentioned will not be affected by it.

My Lords, there is another Head I ſhall beg leave to mention, and what they have inſiſted upon under this Suppoſition; that they would have it taken that there was a Deſign to forge Letters, in order to charge my Lord Biſhop of *Rocheſter*, and ſeveral other Perſons. Say they, it was eaſy to get information of ſuch Circumſtances relating to the Biſhop and his Family as are mentioned in the intercepted Letters, and then to write ſuch Letters with a Deſign falſly to charge the Biſhop with having been concerned in carrying on a treaſonable Correſpondence. Your Lordſhips will pleaſe to conſider who this Charge muſt fall upon, of forging the Letters of the 20th of *April*, or the Letters that ſhew *Jones* and *Illington* to be the Biſhop of *Rocheſter*.

My Lords, we have proved them all to be Mr. *Kelly*'s own Hand-writing, or Letters that have come in Anſwer to them. They have objected we have not given ſufficient Proof of *Kelly*'s Hand: Say they, it is proved by Clerks of the Poſt-Office, who never had compared one original Letter with another; but at laſt they ſtop an original Letter, dated the 20th of *Auguſt*, after the Correſpondence had been carried on ſeveral Months; and then come and ſwear that the originial Letters, that were forwarded, were of the ſame Hand-writing with that of the 20th of *Auguſt*. Can this be looked upon as ſufficient Proof? But we ſubmit it; their Evidence is much ſtronger than if they had only compared one Letter with another, for they not only had theſe Letters come every Week, but they were employ'd every time theſe Letters came, to copy them; ſo that the Hand-writing of theſe Letters muſt, by the conſtant ſtopping of theſe Letters, and their copying of them, be ſo imprinted on their Memory, that they are much better Judges of the Hand, than if they had two of theſe Letters to have only compared them together. And the Hand-writing was ſo well known to them, that they could, as they have informed your Lordſhips, when any of theſe Letters came, diſtinguiſh them by the Hand-writing of the Superſcriptions, before they had open'd them, and they never were miſtaken. And this, we humbly apprehend, is as ſatisfactory an Evidence as can be given, that theſe Letters were the Hand-writing of Mr. *Kelly*, provided the Letter of the 20th of *Auguſt*, which I ſhall take Notice of by and bye, is ſufficiently proved to be of his Hand-writing.

Taking it then, my Lords, that theſe Letters are the Hand-writing of Mr. *Kelly*, and, of his Correſpondents in anſwer to them, I don't find that my Lord Biſhop of *Rocheſter* hath charged Mr. *Kelly* with having any Malice to him. And if he had no Malice to the Biſhop of *Rocheſter*, what ſhould induce him to write thoſe Letters, on purpoſe to charge the Biſhop of *Rocheſter* with being concerned in this Conſpiracy?

My Lords, we humbly apprehend the Pretence of theſe Letters being forg'd, muſt inſinuate, that *Kelly*, a vile Fellow, intending to charge the Biſhop of *Rocheſter* with being concern'd in this Conſpiracy, and make him liable to forfeit every thing that was dear to him, hath contrived Letters containing Circumſtances, in order to fix him to be the Perſon denoted by the Names of *Jones* and *Illington*; he hath written Letters, and by Combination received others in anſwer to them, for this Purpoſe: and by theſe wicked and malicious Practices, hath furniſhed this Evidence againſt the Biſhop, who is an innocent Man.

My Lords, this is the Subſtance of the Defence on this Head; and whether your Lordſhips will believe this, we muſt ſubmit to your Lordſhips. Your Lordſhips have had *Kelly* before you, and by his Behaviour have had no Reaſon to think that he had any Malice againſt my Lord Biſhop of *Rocheſter*, or any Deſign or Intention to prejudice him.

My Lords, the next Part of the Evidence I ſhall beg leave to obſerve, is a Part very conſiderable, and is ſo far from being a Defence, that the Defence attempted, hath confirm'd and ſtrengthen'd the Evidence againſt my Lord Biſhop of *Rocheſter*; that is, with relation to the Letter taken among my Lord Biſhop's Papers, directed to *Dubois*; a Letter which, they obſerve, don't contain any Treaſon, or is of any treaſonable Import; but it ſeems to be a Letter of Indifference, and, I believe, as ſuch, it was not taken care to be deſtroy'd, as it would have been, had there been any Apprehenſion that Uſe would have been made of it, as now, againſt the Biſhop of *Rocheſter*.

My Lords, the Uſe we make of it is, to ſhew that Mr. *Johnſon*, or Mr. *Kelly*, was a Perſon employed by my Lord Biſhop of *Rocheſter* in writing Letters for him. My Lords, your Lordſhips will obſerve by the Letter, he ſays, *I have heard nothing from you ſince the Letter I had about two Months ago by Mr.* Johnſon; *to which I immediately in his Hand returned my Anſwer.*

My Lords, if this is the Biſhop of *Rocheſter*'s Letter, either in his own Hand, or his Letter writ by another Perſon, it plainly proves what we infer from it, that *Johnſon*, i. e. *Kelly*, writ for the Biſhop. You Lordſhips will obſerve, it is a Letter writ in a Hand which no man writes, a ſtiff Hand almoſt like Print; and it is plain that it is writ to diſguiſe the Hand of the Writer, whoever he was. At the latter End of the Letter, when the Perſon that writ it comes to be tired and off of his Guard, there are ſeveral Letters which, compared with the Writing of my Lord Biſhop of *Rocheſter*, and what is own'd to be his, appear to be his writing. In the Date of the Letter, which is *December*, the D you frequently find in the Biſhop's Hand-writing; your Lordſhips obſerve the Letter E, that frequently occurs in the Biſhop's writing; and your Lordſhips, by comparing that with the Letter produced, will find that they exactly agree.

Whether or no your Lordſhips won't think it, on thoſe Circumſtances, to be the writing of my Lord Biſhop of *Rocheſter* in a diſguiſed Hand, we muſt ſubmit to your Lordſhips. But, my Lords, ſuppoſe it was not his Hand-writing, here is Evidence that it was his Letter; and that is evident, becauſe it is under his Seal, it is ſealed with his own Seal, a Seal that he had in his Cuſtody, and made Uſe of no longer ago than the 26th of *February* laſt: I think that is the Day a Letter was taken from his Servant. That, we humbly apprehend, my Lords, will plainly ſhew it is the Biſhop's Letter, becauſe it was ſealed with his Seal, and the ſame Seal is made Uſe of by the Biſhop, on the Letter that was taken upon his Servant in *February* laſt.

My Lords, this Matter hath been controverted by my Lord Biſhop. He hath call'd Engravers, who believe Seals may be counterfeited, and Impreſſions may be taken off the Wax, and another Impreſſion made, ſo as to make it difficult to know which is which. They were a little looſe in anſwering the Queſtion, Whether or no, if the Seal, from whence the Impreſſion was to be taken, was broken in the Middle, it could be done? But one ſaid, the Seal might be mended, and it might paſs unobſerved: but I find it is extremely difficult. But they did ſay, Seals may be ſo counterfeited, that it may be difficult to diſcover one from the other. My Lords, this is to inſinuate, that after ſuch Time as the Letter was taken upon my Lord Biſhop's Servant, the Perſon in whoſe Cuſtody this other Letter of *Dubois* was (which is prov'd to have been taken the 24th of *Aug.* amongſt the Biſhop's Papers), hath cauſed an Impreſſion to be taken off the Seal with which the Letter to *Dubois* was ſealed, (the Wax broken in two as it was) in order to fix it upon the Letter that was taken upon my Lord Biſhop's Servant, ſo as to prove the Letter to *Dubois* to be the Biſhop's Letter. Who is this to be fixed upon? *Neynoe* was gone; I don't know, unleſs upon the Committee of the Houſe of Commons: for the Biſhop's Letter was taken on his Servant the 26th of *February*; the Committee of the Houſe of Commons made their Report on the 1ſt of *March*, and the Letter to *Dubois* had, long before the 26th of *February*, been in Cuſtody of that Committee. And yet while this Letter is in Cuſtody of a Committee of the Houſe of Commons, they will have it, here is an Impreſſion taken off a broken Seal, and put on this other Letter, in order to ſhew that theſe are Letters of the ſame Perſon. Who can believe this to be the Caſe?

An Obſervation hath been made, that truly the Committee of the Houſe of Commons have not made any Obſervation of this Kind, with relation to this Letter to *Dubois*, that it is the Biſhop's Letter: which is true; for they had not this Matter relating to the Identity of the Seals under their Conſideration; but this is a new Diſcovery made ſince: And therefore, my Lords, they apprehended that this was a Letter directed to the Biſhop by the Name of *Dubois*, it being found amongſt his Papers, and nothing to the contrary did appear, till after they had made their Report.

My Lords, there are other Things your Lordſhips would have expected to have had an Account of, in anſwer to this Evidence. Here is a Letter found among my Lord Biſhop's Papers; conſequently, ſo far we apprehend that this Evidence is a legal Evidence againſt the Biſhop, as being a Letter found in his Cuſtody; this Letter is directed to *Dubois*, and mentions the Hand of *Johnſon*. Doth my Lord Biſhop of *Rocheſter* give any Account who *Dubois* is? who this *Johnſon* is? how this Letter came there? No, my Lords, none at all. Doth his Lordſhip give you any Account of the Seal? and hath his Lordſhip ſaid that the Seal, that ſealed the Letter taken on his Servant, he hath not? or that the Letter was not ſealed with his Seal, or that he did not ſeal it himſelf? His Lordſhip did not ſay one Word to that Purpoſe, or make any Denial of the Matter, nor give your Lordſhips any Account who *Dubois* and *Johnſon* were; nothing at all, but hath left it to your Lordſhips on that Foot: That the Letter to *Dubois* had an Impreſſion taken off, after it was in the Cuſtody of the Committee of the Houſe of Commons, and that Impreſſion made uſe of on the other Letter: and that this is another Part of the Contrivance, in order to charge my Lord Biſhop of *Rocheſter* with being concern'd in this Conſpiracy.

My Lords, as to the Seal's being the ſame on the two Letters, we humbly apprehend, the Evidence given on the other Side hath ſtrengthened ours. We have produced two Engravers, one of them they own to be the top Engraver of *England*, Mr. *Chriſtian*; he gave your Lordſhips an Account, that he verily believed theſe two Impreſſions to be taken off from the ſame Seal. Mr. *Rollus* ſaid the ſame thing, and that he had uſed the Art long, and could judge. They made no Endeavours on the other Side to try the Skill of Mr. *Chriſtian:* but as to Mr. *Rollus*, they hoped they ſhould be able to puzzle him; and therefore have produced ſix ſeveral Impreſſions made on Wax by Seals to try his Art; and after he had look'd upon them, he gives you ſuch an Account, that, I believe, your Lordſhips are ſatisfied that he is a Man of Skill and Art; and that if theſe Impreſſions had been taken off, as they would inſinuate they were, he muſt have diſcover'd it.

My Lords, here is an Artiſt brought to make this Experiment on *Rollus*, to try his Skill; yet, notwithſtanding all the Art hath been made uſe of in the Caſe, that could be, the Man was able not only to diſtinguiſh how many Seals the Impreſſions were made with, but alſo to give an Account that they were caſt Seals, and not grav'd Seals, that made thoſe Impreſſions.

This,

This, my Lords, will have ſuch a Weight with your Lordſhips, that we hope your Lordſhips will believe his Evidence is true; and if it is true, what Anſwer hath been given it your Lordſhips have heard. Whether, therefore, any ſatisfactory Anſwer hath been given to an Evidence ſo ſtrong and convincing of *Johnſon*'s being employ'd in writing Letters for the Biſhop of *Rocheſter*, we muſt ſubmit to your Lordſhips.

My Lords, the next Evidence they went upon was in relation to the Dog. Say they, we will ſhew that this Dog was not for the Biſhop of *Rocheſter*, or any other Perſon but Mrs. *Barnes*. As to that, my Lords, I beg Leave to remind your Lordſhips of the Evidence given by Mrs. *Barnes*, that Mr. *Kelly* told her it was for the Biſhop of *Rocheſter*. It is a little improbable, if the Dog had been for Mrs. *Barnes*, that he ſhould come and deliver it to her, and tell her 'tis for the Biſhop of *Rocheſter*. But it appears by Mrs. *Barnes*, that another Dog was deſigned for her, and that this Dog was for the Biſhop of *Rocheſter*. They have read in Evidence a Certificate, ſign'd by Mr. *Birmingham*, and likwiſe an Affidavit, that there was, in the Month of *March*, a Dog deliver'd to *Kelly* in *France* for Mrs. *Barnes*. That, my Lords, muſt be another Dog, and not this, which we ſay was for the Biſhop of *Rocheſter*; for this was not deliver'd to Mr. *Kelly* in *France*, but was ſent over to him after he was in *England*, as appears by the Letters; and after he had receiv'd it, he writes, that *he would inform Mr.* Jones *ſoon of it, to whom any Thing from that Quarter would be very acceptable.* So that, my Lords, if there was another Dog, and by Mr. *Kelly* deſign'd for Mrs. *Barnes*, we humbly apprehend it cannot be applied to this; for this Dog was deſigned for Mr. *Jones*, and Mrs. *Barnes* ſays, that is the Biſhop of *Rocheſter*.

My Lords, the next Evidence given by them is in relation to the Letters of the 20th of *April*. They have endeavour'd to prove that, as to my Lord Biſhop of *Rocheſter*, it is impoſſible that theſe Letters could be written or dictated by him. He came to Town the 11th, and went to *Bromley* again the 12th of *April*; he had a Fit of the Gout ſoon after; had Servants that conſtantly attended him, more than one; and theſe Servants give an Account, that no Perſon whatſoever came near him, or could be employ'd by him to write thoſe Letters.

My Lords, I beg Leave to obſerve, *firſt*, That as to the applying their Evidence to the Writing of thoſe Letters on the 20th of *April*, it is very poſſible that the Letters were writ on another Day than when they bear Date: Therefore if they prove, that it was impoſſible that theſe Letters ſhould be writ or dictated by the Biſhop of *Rocheſter* on the Day they bear Date, yet they might be writ on another Day, and it is very probable they were.

Your Lordſhips will obſerve, that theſe Letters are in Cyphers; and, I believe, where a Perſon dictates a Letter to another, he doth not reduce the Letter into Cyphers as it is dictated, but he firſt writes it out in Words at Length, and afterwards puts it into Cyphers, and when it is proper to ſend it, then is the Time to date it; and if it be left with the Perſon that puts it into Cyphers to ſend, as probably it was in this Caſe, it is left to him to date it when he pleaſeth: So that if they ſhould have ſhewn, that upon the 20th of *April* the Biſhop was incapable of dictating or writing, it is no concluſive Anſwer to the Charge againſt the Biſhop as to theſe Letters.

Your Lordſhips will pleaſe to obſerve, that upon the 11th of *April* the Biſhop of *Rocheſter* came to Town, on the 12th he went into the Country; notwithſtanding what they have attempted to prove as to the Times that *Kelly* was in Town, and the Biſhop was in the Country, yet upon the 11th and 12th they were both in Town; for *Kelly* came to Town from *France* the 11th, and the Biſhop came to Town the 11th from *Bromley*.

When the Servants came to be examin'd, what Time of the Day the Biſhop came to Town on the 11th, they could not give any Account of that: When they were aſked, what Time of Day it was when he went out of Town on the 12th, they could give no Account of that.

There hath been no Account given to your Lordſhips who was with the Biſhop of *Rocheſter* the 11th and 12th when he was in Town, or where my Lord Biſhop was at that Time: So that, my Lords, it is poſſible, from theſe Circumſtances, that theſe Letters might be writ when the Biſhop was in Town, and *Kelly* was in Town.

But ſuppoſe it ſhould not be ſo; the Queſtion is, whether they could not be writ at *Bromley?* On the 12th of *April* Mr. *Kelly* was at Mrs. *Barnes*'s, he did not lie at home that Night, on the 13th he did not lie at home; on the 14th he came, and went to his old Lodgings at Mrs. *Kilbourne*'s. Theſe two Nights it doth not appear where he was; he might have been at *Bromley*, it is but an Hour's Ride. As to the Servants, ſay they, they ſhould have remember'd his ſetting up his Horſe:——He might ſet up his Horſe at an Inn, and go privately to my Lord Biſhop.

Notwithſtanding my Lord Biſhop was ill, and tho' he ſhould have proved to your Lordſhips Satisfaction, that after he was ſo, he did not, nor could admit of Company, yet we ſubmit it to your Lordſhips that it is no Anſwer; for he was not very bad till he had been in the Country two or three Days, and theſe Letters might be dictated or written in thoſe two or three Day before he was ſo ill.

My Lords, I beg Leave to obſerve, what the Servants have ſworn. Here is *Grant*, that is my Lord's Butler, he ſays, that my Lord Biſhop went the 12th of *April* to *Bromley*, and he attended him there till the 21ſt, and on the 21ſt he was ſent to Town upon ſome Matters relating to the *Weſtminſter*-Election; and another Servant about him gives an Account, that two or three Days after my Lord Biſhop came down, he was taken ſo ill in his Hands and Feet, as not to be able to help himſelf.——Theſe are two or three Days beyond the Time that *Kelly* was out of his Lodging, which was the 12th and 13th, (and theſe two or three Days muſt be the 14th and 15th) it may be my Lord Biſhop was ſo diſabled indeed as he ſays; he ſays he is almoſt certain that no Stranger was with the Biſhop; but he ſays the Apothecary or the Miniſter might be with him in his Illneſs, tho' he did not ſee them himſelf. If it is poſſible for the Apothecary or the Miniſter to be with him, and he not ſee them, why is it not as poſſible that Mr. *Kelly* might be there, and he not ſee him there?

The next Witneſs that is called only ſpeaks to the 18th and 19th; when *Grant* came to the Election, another Servant was ſent for, and he went, and he ſays my Lord Biſhop was very ill. *Samuel Steele* gives an Account of my Lord Biſhop's Illneſs, and his attending him.

My Lords, they have brought all the Servants of the Houſe, the very Stable-Boy, to prove that my Lord Biſhop could not ſee any Body without their Knowledge; even the Nurſe that attended his Lady when ſhe was dying. The Servants that were waiting upon his Lady ſwear, That it was impoſſible any Body ſhould come to my Lord Biſhop, and they not know it; and they are as poſitive, in relation to any Body's coming to my Lord Biſhop, as the Servants that immediately attended him.

But, my Lords, there is a Matter, which we ſhall offer in Evidence, that entirely deſtroys this Evidence of my Lord Biſhop's being ſo ill, that he could not move Hand or Foot, and of his not being in a Capacity of dictating Letters: That he did actually ſend a Letter the 21ſt of *April* to a Perſon in Town; and this very *Grant*, that hath given this Account to your Lordſhips, brought up the Letter to Town on the 21ſt of *April*. We have this to give your Lordſhips in Evidence; then what is the Evidence of all thoſe Servants, who ſwear that it is impoſſible theſe Letters ſhould be writ on the 20th of *April*; and that Nobody was admitted to come to him in order to write theſe Letters?

My Lords, as to the Evidence that hath been given, in relation to *Kelly*'s Hand-writing, they have called Witneſſes to diſprove the Evidence on our Side, who, looking upon the Letter of the 20th of *Auguſt*, ſwear they do not believe it to be *Kelly*'s Hand-writing. Our Witneſſes do believe it; their Witneſſes do not believe it to be his Hand-writing, and ſay that it is not like it.

There are ſeveral Letters ſhewn them, tho' in a leſs Hand, that are agreed to be *Kelly*'s Hand-writting; and your Lordſhips may judge, by looking on them, whether they are not of the ſame Hand with the Letter of the 20th of *Auguſt*; tho' the Character is ſomething leſs, we humbly apprehend they will appear ſo to be. Beſides, there are thoſe Circumſtances relating to the Hand-writing of Mr. *Kelly*, that put it beyond all Diſpute that it is his Hand, and that is the Anſwers he hath received to thoſe Letters which we charge to be written by him. We have traced him from Place to Place, where the Letters that came in anſwer to his Letters, were directed; to Mr. *Andrews* at the *Dog* and *Duck*, there *Kelly* employed a Perſon to take them up, and they were delivered to him; and at *Burton*'s Coffee-Houſe *Kelly* took up the Letters that were directed thither, in anſwer to thoſe Letters that were of his Hand-writing. So there is not only the Evidence of Witneſſes that knew his Hand, and believe it to be his Hand, but here are the Anſwers to them actually taken up by *Kelly* himſelf: and that, we humbly apprehend, is ſo ſtrong an Evidence, joined with the other, that, when one or two Witneſſes come and ſay they do not believe it to be his Hand-writing, their Teſtimony ſhall not overthrow it.

My Lords, there is another Piece of Evidence given by them, relating to the Letters of the 20th of *April*, which were encloſed in a Packet ſent to *Boulogne*; the Packet is directed to Mr. *Alexander Gordon*, Banker, at *Boulogne:* they have produced a Certificate from *Boulogne* upon Oath, wherein it is ſaid, that he is no Banker, and denies that he received any Packet from *Kelly*, or that he knew him: This is a Certificate, and prov'd by a Perſon who believes it to be ſo. Your Lordſhips will pleaſe to obſerve what this Paper is, and that it is brought here by a Perſon that knows nothing of its being ſworn, but ſays, he is uſed to Tranſactions of this Kind, and he believes it to be a Certificate from *Boulogne*.

My Lords, we ſhall produce a Gentleman, who was at *Boulogne* at the Time that the printed Report and Appendix of the Houſe of Commons came there, and he was at Mr. *Gordon*'s Houſe when they were diſcourſing about this Matter; and what they then ſaid, we humbly ſubmit will be believed; for what they then ſaid was ſpoken as of an indifferent Thing; and they did not then ſee it could be of any Conſequence to diguiſe the Truth. Mr. *William Gordon* the Father ſaid, That he was at *Paris* when this Packet is ſuppoſed to have come: But Mr. *Alexander Gordon* the Son own'd that he was at home, and that this Packet came to him; but, ſaid he, what was in it I know not, but I delivered it as is mentioned in the Appendix.

My Lords, there is another Piece of Evidence they have given with relation to *James Talbot*, to whom the Packet was deliver'd at *Boulogne*: Here is a Witneſs produced to prove that he was in Town the 29th of *April*, 1722, and he could not be miſtaken, becauſe he had paid him Money, and he had entered it in his Book. The Evidence goes no farther than to prove, that one *James Talbot*, that was a tall black Man, was then in Town; but it doth not appear that this was the Perſon mentioned to have taken this Packet at *Boulogne*, and carry'd it to *Paris*: So that their Proof, as to this Matter, is inſufficent.

But we ſhall ſhew your Lordſhips, from an Account we have here from Mr. *Crawford*, his Majeſty's Reſident at *Paris*, that this *James Talbot* came to *Paris* that very Day, as he is mentioned to have brought thoſe Letters to *Paris*, and was actually there at that Time: and that we humbly apprehend will be a full Anſwer to them, and take away any Ground of Suppoſition, that the Evidence they have given concerning *James Talbot*, can be apply'd to that *James Talbot* who received the Packet at *Boulogne*.

As to the Evidence relating to Mr. *Kelly*'s being in Town the 20th of *April*, we humbly apprehend, from what hath been ſaid, it is not material whether he was there or not; but they have not proved it; for Mrs. *Kilbourne* and her Maid, the two Witneſſes produced by them for this purpoſe, ſay, that he came to Mrs. *Kilbourne*'s Houſe the latter End of *April*, they believe the 20th, but they are not poſitive as to the Day. If he had been at Mrs. *Kilbourne*'s the 20th of *April*, it is no Anſwer at all to our Evidence, and the ſtrong Circumſtances there are to induce a Belief, that the Letters might be dated at another Time than really they were written.

My Lords, another Evidence is Mr. *Pope*, a Gentleman of Learning, with whom my Lord Biſhop of *Rocheſter* uſed to converſe; and he gives you an Account that he knew nothing of this Conſpiracy; that the Biſhop never opened his Mouth to him about it, nor acquainted him with it; that he

was frequently with him, and their Diſcourſe was only about Matters of Literature.

No doubt my Lord Biſhop hath converſed with Perſons on different Subjects, to whom he would communicate nothing of an Affair of this Nature.

My Lords, upon the whole Matter we muſt ſubmit it to your Lordſhips, whether we have not made out the Charge againſt my Lord Biſhop of *Rocheſter* to your Lordſhips Satisfaction; if not by legal Evidence, yet by Evidence that will ſatisfy and convince any Perſon that will conſider it.

My Lords, a great deal of Regard is due to the Character and Function of the Reverend Prelate at the Bar: but if my Lord Biſhop of *Rocheſter*, hath departed from his Character and Function, and hath gone and engaged in a traitorous Conſpiracy, and been guilty of Treaſon towards his King, and Perjury towards his God, we humbly apprehend, if this be proved, that his Character and Function are ſo far from being a Mitigation, that they are a great Aggravation of his Crime.

We ſhall ſubmit it to your Lordſhips, to do what your Lordſhips think is conſiſtent with Juſtice and Equity.

[Mr. *Wearg* ſpoke next.]

My Lords,

IT muſt be admitted, that the Reverend Prelate at the Bar has made his Defence with the utmoſt Force and Beauty of Eloquence.

Was I capable of anſwering it in the like manner, which I own I am not, yet I ſhould not think myſelf at liberty to do it, under the preſent Circumſtances.

For tho' it may be excuſable, in a Perſon upon his Defence, to make uſe of that powerful Inſtrument of Error and Deceit, which always impoſes upon the Reaſon, and miſguides the Judgment in proportion as it affects the Paſſions; yet I can't think the ſame Methods juſtifiable in a Perſon employ'd to carry on the Proſecution.

I ſhall therefore examine the Force of what has been offered on behalf of the Reverend Prelate, ſtripp'd of the Ornaments and Colours of Rhetorick.

I ſhall, in the firſt place, conſider that Catalogue of Hardſhips, which his Lordſhip has complain'd of.

1. The firſt Complaint was that of Severities and Indignities offer'd him during his Confinement: but the Subject of this Complaint not ariſing from any of the Proceedings before your Lordſhips, I can give it no other Anſwer, than by ſaying, that I am very credibly inform'd 'tis a Complaint without Foundation.

2. Reading Extracts of Letters was the next Hardſhip complain'd of by his Lordſhip, and repreſented as if they were read as Evidence againſt him; when it was declared by the Counſel for the Bill, that they were only read upon the general Part of the Bill, and did not affect his Lordſhip.

3. The third Hardſhip was, excuſing the Decypherers from anſwering ſuch Queſtions propoſed by his Lordſhip, as tended to a Diſcovery of their Art; that is, in other Words, refuſing to do an Act which muſt prejudice another Perſon, and could be of no Service to his Lordſhip: for the Truth of what they teſtified, depended upon the Skill and Integrity of the Decypherers, and not upon the Method of coming at that Skill, which they could not diſcloſe in ſo publick a manner, without doing a manifeſt Prejudice to themſelves, which no Witneſs is ever compell'd to do.

4. The next Hardſhip is of the like nature, the not ſuffering the Clerks of the Poſt-Office to be examin'd, as to the Method and Authority by which they open'd Letters, by which they might have been ſubjected to the ſevere Penalties of the Statute 9 *Annæ*, if they had not exactly purſued the Methods preſcribed by that Statute. But his Lordſhip's Innocence could not poſſibly have been manifeſted by it; for are the Letters leſs criminal, if the Perſon who ſtopped them did not punctually purſue the Directions of that Statute? It would be thought a ſtrange Defence in a common Offender, if, inſtead of proving his Innocence at his Trial, he ſhould object that he was taken without a proper Warrant; which, if true, don't make him the leſs criminal.

5. The fifth Hardſhip was refuſing to let Mr. *Lewis* declare any thing that came to his Knowledge by his being employed in the Secretaries Office ſome Years ago. This Hardſhip could be added only to fill up the Catalogue of Complaints, ſince, notwithſtanding your Lordſhips Order, Mr. *Lewis* did declare what he was call'd for, tho' he afterwards own'd, that he came to the Knowledge of it by being employ'd in that Office.

6. The ſixth Hardſhip was in reading an Examination not dated, ſign'd, or ſworn. But I apprehend the Counſel for the Bill have more reaſon to complain of Hardſhips of this ſort, in reading Papers on behalf of his Lordſhip as Examinations ſign'd and ſworn, without ever proving that they were ſign'd or ſworn to, or that any ſuch Perſons were ever examin'd; whereas the Examination hinted at in the Biſhop's Complaint, was read as an Examination, or rather Confeſſion of a Perſon ſince dead, not ſign'd nor ſworn to, and fairly left to your Lordſhips, to have ſuch Weight as the nature of the Evidence deſerved.

7. The next Hardſhip, *viz.* that of reading Letters wrote by another Perſon, without Proof that they were wrote with the Prelate's Privity, is begging the Queſtion upon the whole Proceeding. For whether there was Proof of their being wrote with his Privity or not, is the Subject of the preſent Enquiry.

8, 9. The two laſt Hardſhips complain'd of, ſeem to be calculated for Perſons without Doors, who are Strangers to what paſs'd at your Lordſhips Bar, that he was denied a Copy of the Letters in Cypher, until the Trial was ſo far advanced that he could not make the proper uſe of thoſe Copies. Will any one who reads this Complaint in his Lordſhip's Speech imagine, that after he had a Copy of thoſe Letters, he had twice as much time for his Decypherers to peruſe them as he himſelf deſired?

Or will a Perſon who ſhall read the next Complaint in his Lordſhip's Speech, that he was refuſed to read any of the Papers contain'd in the Trunk that had not been read by the Counſel for the Bill, ever be perſuaded that his Lordſhip read the three firſt Examinations of *Neynoe*, that had not been read by the Counſel, the Papers taken in *Neynoe*'s Pocket, the Certificate of the Surgeon return'd by Mr. *Crawford*, neither of which had been read by the Counſel for the Bill; that his Lordſhip was expreſsly told, he was at Liberty to read any Paper in the Trunk he ſhould think neceſſary to his Defence; and was only refuſed reading one Paper, becauſe he own'd it was for no other purpoſe but to raiſe an Objection to a Matter which had not been inſiſted on by the Counſel for the Bill, that he might anſwer the Objection which he himſelf ſhould raiſe.

Theſe things will ſeem incredible to one who ſhall read this Catalogue of Complaints in his Lordſhip's Speech; and yet theſe are ſome of thoſe Complaints, which, with the Aſſiſtance of a warm and maſterly Style, drew Tears from ſome of your Lordſhips Eyes:——

But when ſtripp'd of that falſe Beauty, and examined by the ſure and unerring Rules of Reaſon, appear to be without Foundation; and to have been made without that ſtrict Regard to Truth, which, I preſume by ſome Part of his Lordſhip's Speech, he would be thought always to have.

From theſe Complaints his Lordſhip proceeds to ſupport ſome of the Objections taken by his Counſel to the Bill.

And one of the firſt Objections is of the ſame nature with ſome of the Hardſhips that have been complain'd of; that is, it might be an Objection, did it not want the Foundation of Truth.

The Objection I mean is, that it is a Bill *ex poſt facto*: Your Lordſhips have heard a great deal ſaid upon the Hardſhips of Bills *ex poſt facto*.

We have been call'd upon to ſhew againſt what Law he has offended: it has been ſaid, if he has not offended againſt any Law, will you make a Law in his Caſe, which will not be a Law in the Caſe of any other Man? This is a ſurprizing Objection.

The Notion I always had of a Law *ex poſt facto* was, where a Fact was made criminal by a Law, which was not ſo at the time that Fact was committed.

But is that the preſent Caſe? Was it no Offence, before this Bill was brought in, to correſpond with the Pretender and his Agents, in order to ſubvert our Conſtitution?

Are we to be call'd upon to ſhew againſt what Law this is an Offence?

Or to have a Complaint made, that in puniſhing a Man for ſuch an Offence, you are making a Law in his Caſe, that will not be a Law in the Caſe of any other Perſon?

I hope it will be a Law in the Caſe of every Man that equally deſerves it.

But his Lordſhip is ſenſible of this Anſwer, and therefore gives it a very artful Turn, by applying it, not to the Fact, but to the Evidence. His Lordſhip ſeems to argue, that accumulative Evidence is as unreaſonable as accumulative Treaſon; and objects that Proofs which communicate Light and Strength to each other, have only the Formality, without the Force of Evidence.

This Objection is deſtructive of all Proof that is not Mathematical; for all other Proof muſt neceſſarily be what he calls accumulative.

That is, it conſiſts of a variety of Facts and Circumſtances laid together, ſufficient to induce a Belief which any of them ſingly would not do. This is the very Principle upon which the Trial of every Matter of Fact, not capable of a Demonſtration, does and muſt proceed.

Your Lordſhips, in the next place, have heard a ſtring of Objections that have been repeated againſt each of the Bills.

That a Subject of *England* ought to be tried according to the Laws of *England* and *Magna Charta*:

To be convicted by legal Evidence:

And that Diſtinction between legal and parliamentary Evidence is abſurd.

All theſe Poſitions I agree to;

But at the ſame time I muſt affirm, that this is a Trial agreeable to the Laws of *England* and *Magna Charta*; and that a Proceeding of this Nature is as neceſſary a Part of our Conſtitution, as the Eſtabliſhment of the ordinary Courts in *Weſtminſter-Hall*.

The Difference between parliamentary and legal Evidence, taken in the general Senſe of the word, Legal, is improper.

And I affirm the Evidence, which has been offered in ſupport of this Bill, is legal Evidence.

What is legal Evidence, depends upon the Nature of the Inquiry, and the Judicature before which the Inquiry is made.

Depoſitions in writing are not legal Evidence in a Court of Law, but they are legal Evidence in a Court of Equity.

Upon an Indictment for Felony, or any other Miſdemeanour, one ſingle poſitive Witneſs, or Circumſtances only without any poſitive Witneſs to the Fact, is legal Evidence.

But upon an Indictment for Treaſon, the Law requiring two Witneſſes in the Courts below, one Witneſs, or Circumſtances, is not legal Evidence.

In parliamentary Enquiries, which are excepted out of that Act and not reſtrained by any other, every thing is legal Evidence which may properly tend to a Diſcovery of the Truth.

I can't think myſelf at liberty, at this time of Day, to mention what fell from the other ſide, againſt the Power of the Parliament in general, and the rather, becauſe the next Objection which they relied upon was introduced with an admiſſion of that Power.

But they ſay it ought never to be exerciſed but in Caſes of Neceſſity; and inſtance particularly in the Bill againſt the *South-Sea* Directors, as a Caſe of that Nature. Is there any Compariſon between the Offence of thoſe Men, and of one who has endeavoured to ſubvert our whole Conſtitution, to deſtroy our Religion, our Liberty, and every thing that is valuable?

When we reflect that theſe Endeavours have been conſtantly carrying on ever ſince the happy Eſtabliſhment of the Proteſtant Succeſſion;

That the many Diſcoveries of their Plots, the many Examples of publick Juſtice, have had no other Effect, than to make them more ſubtle and cunning how to avoid the common Forms of the Law:

Theſe Reflections ſhew the Neceſſity of ſuch a Proceeding, to convince the World, according to your Lordſhips Report, that as Artifice and Diſguiſe don't leſſen the Danger to the Publick, nor mitigate the Guilt of the Offender, ſo neither ought they to protect him from Puniſhment.

The next Objection was addreſſed chiefly to one Part of your Lordſhips, who were told that no civil Power upon Earth could deprive a Biſhop of the Exerciſe of his holy Function, but that muſt be done by another Judicature; and therefore it was obſerv'd by one of the Counſel, that

wherever

wherever Issue is join'd in the Common Law Courts, whether Bishop or no, the Court where such Issue is depending, must write to the Metropolitan to try it, according to the Law of the Church.

Whether an Act of Parliament can deprive a Bishop, so as to make the Acts done by him afterwards invalid, is a Controversy not proper at this time; but it will be admitted on all hands, that an Act of Parliament may restrain a Bishop from the Exercise of his Function within any Part of this Kingdom, so as to make the Exercise of it Criminal in him, or in any that assists him. And I believe if this Bill should pass into a Law, and there should be a Question, whether his Lordship was afterwards Bishop of *Rochester?* the Courts of Law, upon producing the Act of Parliament, would hardly think it necessary to trouble the Metropolitan.

His Lordship has been pleased to say, that this is the first Instance where a Member of this House has been judged in another.

I wonder that his Lordship, who is so great a Master of our *English* Constitution, should have forgot the Case of one of his Predecessors in the See of *Rochester*, in the Reign of *Henry* VIII. against whom a Bill was brought in the House of Commons, inflicting severe Pains and Penalties, which passed in that House, and afterwards received the Approbation of this, and the Royal Assent.

They have closed their Objections to the Bill, with a very pathetick Admonition against the Consequences of it.

They say the wisest Man can't foresee, nor the most innocent Man declare himself safe from the Consequences of this Bill.

That a wise Man should not be able to foresee what will happen hereafter is not very strange;

But he must be a very wise Man indeed, in my poor Opinion, who can foresee any danger to Innocence from the Proceedings upon this Bill. Your Lordships have attended with the utmost Patience, for seven Days together, to the Proofs for and against this Bill; and have given the Person accused all the Opportunities, afforded him all the Assistance possible to make out his Innocence.

And whoever shall use this Precedent as a handle for Oppression and Injustice, would certainly be guilty of the same Oppression and Injustice without this Precedent.

The next Part of their Defence consisted in Observations upon the Evidence for the Bill.

They raise great Triumph from *Neynoe*'s Examination, which they would represent as the Foundation of the whole Charge, or offered as such by the Counsel for the Bill.

But if it was, they have been so far from weakening, that they have added Strength to that Foundation.

As to the Inconsistencies in it, they are not *Neynoe's*, but *Kelly*'s. As to the Tale they have told, that at the very Time when he was deluding a great Man with Confessions, either to get Money out of him, or to find an opportunity of making his Escape, he should declare to *Skeene* and to *Steward* that what he had confessed was false; I say, as this is improbable in itself, so it appears by our Evidence to be a mere Fiction of their own, without any Possibility of being true.

It appears to be an Attempt, by a parcel of desperate People engaged in the same Interest, to weaken *Neynoe*'s Evidence, whom they looked upon as a Betrayor of their Cause and Party.

From the Evidence of *Neynoe* they proceed to the other Evidence.

And here they tell your Lordships that we have supported the Bill by Innuendos, Arbitrary and Invidious Interpretations; that when a Woman is named, it means a Man; that two different Names signify the same Person; that Books of Account, and mercantile Terms, by a new kind of Metaphor, are taken in an ill Sense: and all this assisted with the Whimsies and Conjectures of Decypherers.

These are pretty sounding Expressions; but, when consider'd, are nothing but Sound.

Is it an arbitrary Interpretation, when a Letter says, I saw Mrs. *Illington*, *He* is in great Tribulation for poor *Harlequin*, but *his* Obligations are the same, which he desires may be made known; to apply this to a Man? When two Letters are wrote by the same Person, but sign'd by different Names, to apply those two Names to that Person?

When Letters give a Caution not to write any more, till new Books of Account can be settled and sent over by safe Hands;

Because those who have got Part may by the same means have got the Whole:

To express a doubt whether they have been betray'd by false Friends, or an open the Enemy:

To talk of having Wine, but wanting Barrels: of the Absence of the King and Court, as affording a proper Opportunity of sending over and selling their Wine:

A Man must have laid aside his Reason, that can think this the Language of Persons really dealing in a mercantile way: 'Tis the plain and Common Cant of a treasonable Correspondence.

They next object to the unreasonableness of applying the Circumstances which relate to *Jones* and *Illington* to the Bishop of *Rochester*.

Was Nobody else besides the Bishop out of Town? Was he the only Man that had the Gout, or who lost his Lady at that time?

Were these Questions to be asked singly, they might be answer'd, that there were other Persons in the like Circumstances.

But then the Answers would be nothing to the Purpose.

The only Question applicable to the present Case would be, Is there no other Person who was in Town on the seventh of *May*, out of Town on the tenth and fourteenth, in Town on the fifteenth; whose Wife died the Week before the thirtieth of *April*, he himself then ill of the Gout; to whom a Dog was sent from *France* of the name of *Harlequin*, that broke its Leg, and was brought to Mrs. *Barnes*, by Mr. *Kelly*, in order to be cured?

These are the Circumstances of *Jones* and *Illington*, and they are every one prov'd true of the Bishop of *Rochester*; and I believe your Lordships can hardly think they are so of any other Person.

They said they should falsify several of these Facts; but they have only said it.

In the Papers they have produc'd from the Surgeon concerning the Dog, he contradicts himself.

In the first he says, he gave Mr. *Kelly* a Dog for his own use, to dispose of as he pleased;

In the second he says, he gave it for Mrs. *Barnes*.

But Mrs. *Barnes* tells you, that the Dog design'd for the Bishop was in her Custody, when the other given by the Surgeon was expected over.

Their Attempt to disprove the Circumstances of being in Town, has met with as little Success.

In a Letter of the seventh of *May*, 'tis said Mr. *Illington* is come to Town for a Day only.

We shewed that the Bishop was in Town upon that Day; they answer us by saying, he stay'd in Town two Days after.

Does this disprove his being in Town upon the seventh? or does it weaken the Proof of his being then in Town, because he alter'd his mind, and staid two Days longer than perhaps he at first intended?

This is the only Attempt they made to disprove any of the Circumstances relating to Mr. *Jones* and *Illington*. As to the other Instances which they pretend to disprove, they relate to *Weston* and *Rig*, and were not mentioned by the Counsel for the Bill.

They next object to the Method of proving the Similitude of Hands, and observe, that the original Letter prov'd to be Mr. *Kelly*'s, and the three Letters applied to the Bishop of *Rochester*, are dated at four Months distance; and how is it possible, that the Clerks of the Post-Office should be able to swear upon their Memories that they are of the same Hand-writing?

This is not a fair Representation of the Evidence: For the Clerks told your Lordships that there was not any one Post, during all that time, which did not bring some Letter in the same Hand, all which they copied, and had by that means contracted a perfect Idea of the Hand; so that they did not swear from Memory, but from a Knowledge gain'd by Experience, and many constant repeated Observations upon the same Hand.

There have been some other Objections made, that are scarce worth taking notice of.

'Tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, which *Kelly* could never say of the Bishop of *Rochester*.

Surely there is nothing in this;

'Tis an Expression that might be used of a Man of the gravest Character in a Letter of this sort, to the Author of such a Present.

Mrs. *Illington* is mentioned eleven Days after the Bishop's Lady was dead. This is the Instance where 'tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, but *his* Obligation is the same, which he desires may be made known.

That *Jones* is mentioned in other Cyphers for other Persons, as in one for the Duke of *Norfolk*, in *Plunkett*'s for a different Person.

But does it therefore follow that in *Kelly*'s he can't mean the Bishop of *Rochester?*

It certainly does not.

And they seem to be convinced that the Bishop is too well described in this Correspondence, under the Names of *Jones* and *Illington*, to doubt whether he is meant by them.

And therefore they endeavour to give it another Turn, by saying this may be a malicious contrivance of some Persons, who have inform'd themselves of his Lordship's Motions, and the Circumstances of himself and Family: And to make this the more probable, they say that *Jones* and *Illington* are the only Persons mentioned in this Correspondence of Mr. *Kelly*'s, with Circumstances of this Nature.

One would not imagine the Persons who made this Objection, had so often heard the Letters read.

E. 41. 'Tis said, Hore *is laid up with his old Distemper*, Hobbert *is pretty well recovered.*

E. 45. *Mr.* Hore *is laid up, and so is* Jemison, *with the Gout.*

E. 49. *Rep.* is said to be in the Country.

E. 59. *Ho.* and *Den.* are said to be gone into the Country.

E. 62. Nic. W. *is now in Town, he is well as to Health.*

E. 64. *Trotter* is said to be out of Town the next Morning.

E. 69. *Den.* is said to come to Town, *Rep.* and *Ho.* to be in the Country.

E. 73. C. Saunders *is well, and with a Friend in the Country.*

These are all Instances where the same Circumstances are mentioned of other Persons, that are mentioned of *Jones* and *Illington*.

If *Jones* and *Illington* are oftenest mentioned, it is because he was the principal Person in this Correspondence.

But this malicious Contrivance must be carry'd on by Mr. *Kelly*: for

It has been proved that the Letters were wrote in his Hand, that the Answers were addressed according to his Directions;

That he received the Letters so directed.

I believe your Lordships have no Suspicion that Mr. *Kelly* bore an Ill-Will towards the Bishop:

I am sure there has been no Proof of it, nor of any malicious Contrivance against him.

But, my Lords, this is the common trite Excuse of every petty Offender.

Your Lordships can scarce read a Trial, where the Defendant don't complain that it is all a malicious Contrivance of his Enemies.

I heard this very thing warmly insisted upon a few Terms ago, at another Bar, and with as much Proof, by a Person concern'd in a Part of this Conspiracy, who has since been attainted and own'd his Guilt.

But we have gone still further, we have shewn that *Kelly* was an Acquaintance of the Bishop of *Rochester*'s.

Which is indeed acknowledged, without any satisfactory account given for what purpose his Lordship should contract an Acquaintance with a young Fellow that has deserted his Orders, and is a professed Non-juror.

Your Lordships, I presume, from the Behaviour of Mr. *Kelly*, can hardly be persuaded that he had no other Employment under the Bishop than to furnish him with Beaver-Stockings, which the Bishop owns to have received from him as a Present.

But we have proved by the strongest Evidence that can be, by a Letter under his Lordship's Seal, and I may venture to say (from the Observations that have been made from the Letter itself) under his Hand, that *Johnson*, i. e. *Kelly*, is the Person in whose Hand the Bishop returns his Answers. No Account is given of this Letter, by whom it was wrote, nor to whom, nor how it came among his Lordship's Papers.

All that is said in answer to it is, that 'tis possible Seals may be counterfeited, or there may be several Impressions of the same Seals: but is there any Proof of it?

It appears that the Impreſſion on the firſt Letter was broke when ſeized; that it was in the Hands of the Committee of the Houſe of Commons before the ſecond Letter was taken; which makes it impoſſible to imagine an Impreſſion ſhould be taken off the firſt to put upon the ſecond.

But his Lordſhip is pleaſed to aſk, Is it agreeable to the Cunning with which he is charged, to keep ſuch a Letter by him on purpoſe, as it were, to furniſh his Adverſaries with Evidence?

No, my Lords, neither do I imagine his Lordſhip knew he had it by him. It was found amongſt his Papers, and, no doubt of it, was left there accidentally; and 'tis by ſuch little Accidents that the moſt cunning Men are detected; there is no Danger of their committing greater Overſights.

His Lordſhip is pleaſed to obſerve, That at firſt the Houſe of Commons repreſented this Letter as a Letter wrote to him; but now 'tis diſcovered to be wrote by him: It is ſo, and very plainly, and his Lordſhip may thank himſelf for the Diſcovery; and the not diſcovering it ſooner is ſurely no Objection to the Truth of it when diſcovered.

It may be urged, and has been inſinuated, that if Mr. *Johnſon* is the Perſon in whoſe hand the Biſhop returns his Anſwers, yet how does it appear that theſe particular Letters which are applied to the Biſhop, were wrote by his Directions?

If it appears that *Johnſon* is the Perſon in whoſe Hand he writes, and that theſe Letters are of the Hand-writing of *Johnſon*, ſigned by that Name, which denotes the Biſhop in the Correſpondence, this will be thought a reaſonable Proof that they were wrote with his Privity.

But they ſaid they ſhould prove it impoſſible that theſe three Letters ſhould be wrote with the Privity of the Biſhop; for they bear Date the 20th of *April*, whereas the Biſhop came to Town the 11th, went to *Bromley* the 12th, and within two or three Days after was taken ſo ill with the Gout, that he had neither the uſe of his Hands nor Feet, and had a Servant always attending him, who will prove that no Stranger came near him all that Time.

If this had been made out, it would not be a Proof that the Letters were not dictated by him; for both *Kelly* and the Biſhop were in Town upon the 11th and 12th, and the Biſhop was not confined at *Bromley* upon the 13th and 14th, when Mr. *Kelly* was out of Town, and probably at *Bromley*. And tho' the Letters bear Date upon the 20th of *April*, yet 'tis not to be imagined, that they were wrote upon that Day; for it requires a good deal of Time to reduce three Letters into Cyphers; and the Method generally uſed, where Letters are to be ſent in Cyphers, is to write them in common Hand firſt, and then reduce them to Cyphers after: ſo that 'tis probable the Subſtance of theſe Letters was dictated many Days before they were perfected and ſent.

But the Evidence given by the Biſhop's Servants is not to be regarded.

The firſt Servant, when he had ſworn what he thought was material for the Biſhop, being preſſed by a noble Lord with a Queſtion relating to the Letter directed to *Dubois*, refuſed to give any Anſwer, till the Biſhop publickly gave him Leave; tho' he was ſworn to ſpeak the whole Truth: which ſhews too great an Attachment to his Maſter's Intereſt to deſerve much Credit.

He and the ſecond Witneſs did admit, that the Apothecary, or the Miniſter of the Pariſh, might be with the Biſhop without their Knowledge; and if ſo, why not Mr. *Kelly*, whoſe Viſits required more Secrecy than either of the others?

And I muſt here obſerve, that what the Reverend Prelate inſiſted upon, to add Credit to the Evidence of theſe Witneſſes, is the greateſt Objection to their Teſtimony imaginable.

They tell your Lordſhips, that tho' they were with the Biſhop in the Tower, yet he never once ſpoke to them concerning the Matter they had given in Evidence, till they themſelves recollected it upon reading the Report; and finding that the Biſhop was charged with being the Author of three Letters, dated the 20th of *April*, they immediately recollect that the Biſhop was ill at that time, and they conſtantly about him. This ſeems to be a Story ſcarce credible,

That the Biſhop himſelf, who was ſo nearly concerned, ſhould not, upon reading the Report, recollect the Circumſtances he was under at the time when thoſe Letters bore Date, if the Truth was as they would repreſent it, but that the Servants ſhould firſt recollect this, and ſuggeſt it to their Maſter.

Or if the Biſhop did recollect it, 'tis ſtrange he ſhould not mention it to thoſe Servants, who were preſent with him in the Tower, and the only Perſons, who, as they ſay, were capable of clearing his Innocence.

This had been very natural, and proper under his Circumſtances: and his not ſpeaking to them firſt, could hardly proceed from an unreaſonable Scruple, leſt he ſhould be ſuſpected of laying a biaſs upon them; ſince his Lordſhip has, after he knew they were to be Witneſſes, given each of them a Place under him as Dean of *Weſtminſter*.

The reſt of the Servants that were called, tho' they contradict the firſt, by admitting that two other Gentlemen were at the Biſhop's at *Bromley*, during the Time in queſtion; yet they plainly ſhew a greater Regard for their Maſter's Intereſt, than for Truth: for though one of them was but the Helper in the Stable, and another the Nurſe that attended his Lady in her Illneſs, yet they take upon them to ſwear, that they verily believe no Stranger could be with their Maſter in private but they ſhould have known of it, and that they never knew of Mr. *Kelly*'s being there.

Every body's Obſervation muſt ſuggeſt to them that ſuch a Belief muſt be without Foundation.

The next Arguments uſed on behalf of the Reverend Prelate at the Bar, were raiſed from his unambitious, reſigned Temper of Mind, and from the Style of the Letters laid to his Charge, That 'tis not probable he ſhould uſe ſo indecent an Expreſſion of Perſons he was concerned with, as to call them *pretending, unſupported People*.

What Weight there is in theſe Arguments, I muſt ſubmit to your Lordſhips, who are much better acquainted with his Temper and Style than I can pretend to be.

The laſt thing preſſed by the Reverend Prelate, is a ſolemn Proteſtation, I cannot ſay of Innocence, becauſe it ſeems to me to be conceived in ſuch Terms as not to contradict any Part of the Charge inſiſted upon by the Counſel for the Bill:

It is chiefly calculated to anſwer ſome particular Circumſtances of Times, without any Denial of the general Charge, or the leaſt Declaration of Affection or Loyalty towards his preſent Majeſty.

But if his Proteſtations amounted to a direct and poſitive Denial of the Charge, they ought not to have any Weight with your Lordſhips, ſince this is a Defence equally in the power of the moſt guilty as well as the innocent: a little Proof is better than many Proteſtations.

And I can't help obſerving upon this Head, and I hope his Lordſhip won't impute this Obſervation to Ill-nature, but a Senſe of my Duty, which obliges me to make all proper Obſervations, That it appears his Lordſhip has not always that ſtrict Regard to Truth, which he ought to have, by the Papers taken upon his Servant at the Tower.

The Nature of the Puniſhment has been much talked of in the Courſe of theſe Proceedings, and great Lamentations made upon it, but ſurely without any Reaſon.

For this Argument ſuppoſes the Party guilty of the Charge, or elſe 'tis ridiculous to object to the Severity of the Puniſhment.

And I may venture to affirm, this is the mildeſt Puniſhment that ever was inflicted for ſuch an Offence.

His Life is not touched; his Liberty nor Property affected; he is only expelled the Society whoſe Government he diſapproves, and has endeavoured to ſubvert; and is deprived of the publick Employment which that Government had intruſted him with: The Enjoyment of his Life, his private Eſtate, and his Liberty, under any other Government that may be more agreeable, is allowed him.

This is ſcarce to be called a Puniſhment, being nothing more than what was abſolutely neceſſary for the publick Security.

The Commons of *Great-Britain* have done their Part towards providing this Security, and I don't doubt but it will meet with the Concurrence of your Lordſhips.

The Counſel having done, the Lords in a grand Committee went thro' the Bill, and about ten of the Clock at Night adjourned to *Wedneſday*, *May* 15.

Their Lordſhips being then ſate, the aforeſaid Bill was read the third time, and a Motion being made, that the Bill ſhould paſs, it occaſioned a long Debate, in which the Biſhop of *Salisbury* ſpoke as follows:

My Lords,

AS I have ſometimes troubled your Lordſhips with what I had to ſay in other Debates, I believe it will be expected that I ſhould ſay ſomething in a Caſe ſo extraordinary as this is; and wherein a Brother Biſhop is ſo nearly concerned. I beg leave to begin with taking Notice of ſome Things that were peculiarly addreſſed to this Bench, both by the Reverend Prelate, and his Counſel, from the Bar.

The firſt is, That we would conſider how agreeable it may be to the Canons and Diſcipline of the Church, in this extraordinary Manner to deprive a Biſhop of all his Preferments; and to prohibit him the Uſe and Exerciſe of his Function for his Life.

As to this Objection, whatever Influence it may have abroad among ignorant People, when the Speeches come to be printed; yet, as to your Lordſhips, who know our Conſtitution ſo well, I cannot imagine that it can have any Weight or Influence at all. And indeed when I conſider all the Acts of Parliament relating to the Supremacy, that have been made for near two hundred Years; when I conſider the Articles of our Church our Canons, and the Subſcriptions that the Biſhop himſelf muſt have made, and muſt have required from others, in the Exerciſe of his Function as a Biſhop; when, I ſay, I conſider all theſe things, it is matter of Wonder to me, that ſuch an Objection ſhould be made, either by a Biſhop of the Church of *England*, or by a Lawyer of the Kingdom of *England*.

I do not indeed recollect above one Inſtance of a particular Act of Parliament made to deprive a Biſhop; which is, that of *Fiſher*, Biſhop of *Rocheſter*; who was ſo deprived in the Time of *Henry* VIII. But, as to general Acts of Parliament, whereby both Biſhops and Presbyters have been deprived of their Preferments, we have a good Number. Thus, in the Beginning of Queen *Elizabeth*'s Reign, almoſt all the Biſhops of *England* were ſo deprived: And at the Revolution, many were ſo; and all might have been ſo, if they had not complied with the Terms of the Act of Parliament: And at the Reſtoration, many hundreds of Presbyters were deprived in the ſame manner. And I conceive that it cannot well be doubted, but that the ſame Authority which can make Laws by which the whole Bench may be deprived, may exert itſelf in a particular Caſe, if they have juſt Reaſons for it.

As to the Trial of Biſhops for any Crimes they ſhall be guilty of, we are to conſider the different Nature of the Crimes of which they are accuſed; and the Trial by Law muſt be accordingly. If the Crime be of an Eccleſiaſtical Nature, ſuch as Eccleſiaſtical Courts can take Cognizance of, as Simony, Hereſy, and the like; the Trial regularly muſt be by the Arch-Biſhop of the Province, taking to his Aſſiſtance ſome of his Suffragan Biſhops. But even in this Caſe, if either the Arch-Biſhop ſhall, upon Complaint, neglect to try him; or, if upon Trial he ſhall acquit and abſolve him, the Accuſer may appeal to the King in Chancery: Which Court may appoint a Commiſſion of Delegates, who may, by the Authority of the Crown, judge him, deprive him of his Biſhoprick, prohibit him the Uſe of his Function for his Life (if the Crime deſerve it), though he were before acquitted by the Arch-Biſhop. But if the Crime be of a Civil Nature, ſuch as Treaſon (which is the Caſe now before us), the Eccleſiaſtical Authority has nothing at all to do with it; and ſhould any Eccleſiaſtical Judge attempt to meddle with it, he would be judged to attempt againſt the King's Crown and Dignity, and quickly have his Proceedings ſtopp'd, by a Prohibition out of the Temporal Courts. And I would beg leave to obſerve further, that were this Biſhop to be tried in the common Courſe of Law for the Crimes whereof he is accuſed in this Bill, it muſt be either by your Lordſhips, as a Member of this Houſe; or by the Judges

and a Jury in *Westminster-Hall*. I would not at present say which, because it would lead me out of the way: But in this Case, if either your Lordships, or the Judges below, should pass Sentence upon him for the Treason of which he is here accused, that Sentence would, *ipso facto*, deprive him of the Bishoprick: It would also make him liable to lose his life; but it would not, *ipso facto*, take it away, as it would his Bishoprick: He might, notwithstanding that Sentence, live many Years; but from the Moment of it, would be no more Bishop of *Rochester*.

These Things, I humbly conceive, are abundantly sufficient to answer this first Difficulty; and therefore I shall add no more but this one Observation; That the way that is now taken to deprive him, is the only way that I know of, wherein the Bishops can have any Part in the Sentence of Deprivation.

The next Thing that was suggested from the Bar, particularly to this Bench, was, That we should consider well what we are doing, and have a care that we do not, by concurring in this Bill, make our Titles to our Bishopricks precarious.

As to this Admonition, the Answer is very easy, That it becomes us, as we have the Honour to have Seats in Parliament, to take care to do Justice; as, on the one side, to the Prisoner, so on the other side, to our King and Country; and to trust in God, that in so doing we shall neither hurt ourselves, nor our Successors. But, so far as just Judges may look to Events, the Argument seems to me tō lie the other way: For, if for want of doing Justice against Traitors to King *George*, the Pretender should happen to prevail, (which God avert) the Title of Protestant Bishops is like to be very precarious indeed.

As to the Power of Parliament to pass Bills of this kind, the Parliament always had it, has frequently exercis'd it, and always must have it; it being essential to the very Being of the Supreme Power. The Lives and Liberties of every Man in *England* are subject to it: and though the Exercise of this Power may be dangerous to Persons who will venture upon treasonable Practices, trusting to their Cunning and Artifice to skreen them from the Law; yet I have that Confidence in the Integrity and Justice of the Crown, and two Houses of Parliament, that, so long as this Example is followed, of giving a full and fair Hearing to the Persons accused, innocent Men cannot easily suffer; or, in all Events, that if Corruption or Faction should ever so far prevail, that there should be Danger to innocent Persons, it will be much easier to corrupt Witnesses or Juries, or to find other Methods to destroy them, than it will be to prevail upon a Parliament to do it: As I am persuaded that, in this particular Case, had there been any Corruption, some other Method would have been found out, more effectually to come at the Person concerned than this is like to do.

The last Particular that the Bishop peculiarly address'd to this Bench, was, That we would consider the Words of St. *Paul* to *Timothy*; *Against an Elder receive not an Accusation, but before two or three Witnesses*, 1 Tim. v 19. The Sense of which Words his Lordship understood to be, That an Accusation should not be so much as *received* against an Elder or Presbyter, and much less against a Bishop, but upon the Oaths of two or three Witnesses.

In answer to this, I beg leave to observe, that our Translation renders the Words, not, *upon the Oaths*, but, *before* two or three Witnesses: which seems to import a very different Sense from that his Lordship puts upon them. But, not to enter into any critical Examination of the Truth of our Translation, or what the real Sense of the Words is, I would only make these two short Observations: First, That the Sense the Bishop puts upon them, that an Accusation against a Presbyter or Bishop, must not be so much as receiv'd into Court, but upon the Oaths of two or more Witnesses, is not practised in the Church of *England*; and, I believe, never was practised in any Christian Church whatever.

The second Observation I would make, is, That whatever be the Sense of these Words, it regards only the Conduct of a Bishop towards his Presbyters; but certainly was never intended to give a Law to the Supreme Power of a Kingdom, in its Proceedings in Cases of High-Treason, against any Subject whatsoever.

But the Bishop urges further, that the *Jewish* Law did require at least two or more Witnesses in all Judicial Proceedings; and from thence infers, that it ought to be so amongst us.

In answer to this it may be reply'd, That this is a Part of the Judicial Law of the *Jews*, which was not given to us, and therefore doth not oblige us any more than the rest of that Law doth; except where the Reason of the thing lays an Obligation upon us. But, indeed, I am of Opinion, that that Law doth oblige us, so far as it was intended to oblige them, and so far as it can be adapted to the infinite Variety of Cases that must happen in Judicial Matters. That Law is very short, and therefore must leave many Questions that may be made about it undetermined: I shall at present take notice of these two only, which may be material to our present Dispute; the first is, Whether the Meaning of it be, that all Controversies and Accusations whatever must be determined by Witnesses, and no other way? or, Whether upon Supposition that the Matter be to be determined solely by Witnesses, and no light can be brought to it any other way, that then the Witnesses must be at least two? The second is, Whether those Witnesses must swear directly to the Fact; for Instance, that they saw such a Man murther another, or the like? or whether it may not be sufficient, that they swear to such Circumstances, as infer a strong and violent Presumption that such a Fact was committed by such a Person?

These things are left undetermined in that short Law of the *Jews*; but, I humbly conceive, are sufficiently determined by the Nature of the thing, and by the Laws of all Nations, and particularly of our own. It is true, indeed, that in Cases of High-Treason, we have from Political Considerations determined, that there must be two positive Witnesses to some one or more Overt-Acts of the same Treason: but, as to all other Crimes, that equally affect the Lives and Estates of all the Subjects of *England*, this is not the Case; and Men may by Law lose their Lives when there is not so much as one positive Witness to the Fact. I beg leave to explain this in the Words of my Lord Chief Justice *Coke*;

'*When a Trial is by Witnesses, * regularly the Affirmative ought to be proved by two or three Witnesses; but when the Trial is by Verdict of twelve Men, there the Judgment is not given upon Witnesses, or other kind of Evidences, but upon the Verdict; and upon such Evidence as is given to the Jury, they give their Verdict; and many times Juries, together with other matter, are much induced by Presumptions.*' And, indeed, if no Man could be convicted of Murder, or Robbery, or other Crimes of that Nature, but by two positive Witnesses that saw the Fact done; nothing would be easier or safer than the Commission of those Crimes; and no Man could have any Security, either for his Person or his Estate: And therefore, if in Cases of High-Treason our Law requires positive Witnesses, it is not from any moral Necessity, or point of Conscience; but from political Reasons, which must, and always will be, subject to the Judgment of Parliament.

* 1 Inst. fol. 6.

Having now done with what was from the Bar peculiarly applied to this Bench, and having, I hope, given a very plain Answer to it, I now beg your Lordships Leave to proceed more directly to the Bill itself. And here two things are necessary to be considered, in order to convince your Lordships, that it is a Bill fit to be passed: The first is, the Lawfulness of it; the second is, the Prudence or Expediency of it.

As to the Lawfulness of it, it will be necessary also to consider two things; first, Whether your manner of Proceeding in this Bill be lawful? secondly, Whether the Bishop be really Guilty of the Crimes charg'd upon him?

As to the manner of Proceeding, many things have been objected: That it is by way of Bill, and not a Trial in the Course of Law; That Evidence has been admitted, that would not have been admitted in any of our Courts; That these Things are contrary to the Liberty of the Subject; That every Subject has a Right to the Laws of his Country; and That he has an Injury done him, if he be denied the Benefit of them. This I take to be the Sum of what has been objected against the Justice of your Proceedings in this Bill.

In Answer to these Objections, I beg leave to consider, first, Wherein the Liberty of *England* consists; which is a Point commonly pretty much mistaken. Many People are apt to imagine, that the Difference betwixt us, and some of our neighbouring Countries, is, that they are under Absolute Power, and we are not; whereas, in truth, all Countries that are Supreme within themselves, have equally an Absolute Power; and in the Nature of the thing it cannot possibly be otherwise: No Government can subsist, if there be not a Power in it to change, to abrogate, to suspend, or dispense with its Laws, as Necessity or Conveniency shall require; which is what we call Absolute Power: and therefore, the Difference betwixt one Government and another does not lie in this, that one has such a Power and the other has not; but lies merely in the Difference of the Hands in which this Power is placed. Where this is placed in one Hand, in the King, we call that an Absolute Monarchy: Where this is not solely in the King, but only as he acts in conjunction with the States of the Kingdom, that we call a Limited Monarchy; and the People that live under such Government, are called a Free People; because they live under Set Laws, which could not at first be made, nor can afterwards be altered or dispensed with, but by their own Consent. However, there is still in such Countries, a Power equally above all their Laws, as there is in the most absolute Monarchy in the World.

What I have said upon this first Head, will in a great measure explain a second Question: What that Right is, which the Subjects of this Country have to its Laws? Which is, in short, a Right to claim the Benefit of them against the Crown, or any Court acting under the Crown, till the States of the Kingdom (which are virtually every Man in the Kingdom) think fit to consent to the Alteration of them. The King is indeed Supreme, but his Power is only according to the Laws in being: By them he is bound to act, and if any of his Officers act contrary to them, what they do is null and void; and they are punishable for it; and the Subjects have a Claim of Right against them. But if the King and his People think fit to come to a new Agreement to alter any such Law, there's an end of all Claim of Right in the Subject: the Claim is taken away by their own Consent; for, as I said before, every Man in the Kingdom virtually consents to what is done by an Act of Parliament.

And there is an absolute Necessity that there should be such a Power as this in every Country; for the State of human Affairs is so changeable, that it does not admit of any Set of unalterable Laws. What is good at one time, may be destructive at another; and what is generally good, may, under particular Circumstances, require a Dispensation by a proper Authority. And here give me leave to observe to your Lordships, the Difference there is betwixt the eternal Laws of Justice and Righteousness, and all positive Laws whatever. That as to the first, we are made for them, and the nearer we do in all things conform to them, the more noble, and lovely, and excellent Creatures we are: but as to positive Laws, they are all made for us; and the more they conform to us, the more they obviate all our Wants and Difficulties, the more they answer to all our Necessities, the better they are.

As to what is complain'd of, that your Lordships have admitted Evidence to be read that would not have been admitted in the Courts below: I conceive, that acting in the Capacity you now do, you have a full Power to do it, and have not broken any of the general Rules of Justice by it. You have let in all the light that you thought might be proper to give you a full Knowledge of the Matter; and in the Capacity you now act, I cannot but humbly be of Opinion, it was your Duty to do so: but in forming of your Judgments, I take for granted, that your Lordships will distinguish, and lay no more Weight upon any thing than it deserves.

As to the Rules of receiving Evidence in *Westminster-Hall*, I conceive, that they are no Part of natural Justice, but only artificial Rules fram'd for Conveniency; and bind no Courts, but as they have agreed to them, and so are become the Customs of the Court. That these Rules are no Part of natural Justice appears from hence, that even among ourselves they are different in different Courts: That those used in our Courts, are very

different from thoſe uſed in other Countries: That they differ here, according to the different Cauſes or Crimes that are to be tried. Nay, they are ſo far from being fundamental Parts of Juſtice, that they muſt require a good deal of Time and Art to form them. And I am perſuaded, that was a Perſon of good natural Senſe, who knows nothing of the Law, aſked his Opinion, he would be apt to think it to be a Part of natural Juſtice, that every Perſon that proſecuted a Cauſe in any Court, ſhould be at Liberty to produce before that Court whatever he thought material to his Cauſe. And there is no doubt, but that this was the original way of Proceeding: but that in proceſs of Time, when Courts came to have a good deal of Buſineſs, and they found by Experience, that this Way of laying every thing before 'em tended to lengthen Cauſes, (which was eſpecially inconvenient where Juries are concerned, who muſt end a Cauſe before they part) theſe Rules were gradually found out; which, tho' they may be, for the Reaſons above ſpecified, generally convenient, yet may ſometimes hinder Juſtice, by not ſuffering all the Light to come into Court, that may be material in the Cauſe.

Having ſaid thus much concerning the Juſtice of your Method of Proceeding, I now come to conſider the ſecond, and the main Point of Juſtice to be regarded in this Bill; which is, Whether the Biſhop be Guilty, or not, of the treaſonable Practices charged upon him in it. And in this I ſhall be the ſhorter, becauſe your Lordſhips have heard the Evidence on both Sides, and all that has been ſaid from the Bar by both Sides upon it; and becauſe there are many Noble Lords in the Houſe, much abler to lay things of this Nature diſtinctly and clearly before your Lordſhips than I am.

The Cauſe of *Kelly* is ſo connected with that of the Biſhop, that I muſt beg leave to ſpeak a few Words to the one before I proceed to the other. As to *Kelly*, I would obſerve in the firſt Place, that one ſtrong Preſumption of his Guilt is, that when he was firſt taken up, he reſiſted the Officers; that he ſeized his Sword and ſome Papers that had been taken away from him; and was reſolute to burn thoſe Papers, tho' with the apparent Hazard of his own Life, and being guilty of the Murder of one of the Officers that had ſeized him.

In the next Place, it is prov'd before your Lordſhips, that after he was taken up, the People at his Lodgings burn'd the reſt of his Papers; a plain Evidence, that they who knew his Manner of Life and Converſation, ſuſpected that he was Guilty. And this is agreeable to what *Neynoe* told the Chancellor of the *Exchequer*; that there was at that time a general burning of Papers.

Thirdly, Another Preſumption of his Guilt, is, that when he was taken up the ſecond time, he offered ſeveral Sums of Money to the People of the Houſe where he was in Cuſtody, to ſuffer him to eſcape, as appears from their Oaths at the Bar. Theſe things I mention, not as full Proofs of his Guilt, but as ſtrong Preſumptions, that make every thing elſe that is ſworn againſt him very credible.

The chief Evidences of his Guilt, are, a great Number of intercepted Letters, both from him, and to him, containing treaſonable Matters. Thoſe from him, are by ſeveral Witneſſes prov'd to be his Hand-writing, particularly by the Officers of the *Poſt-Office*, who took them and tranſcribed them. And as to thoſe to him, ſeveral Witneſſes have prov'd that he gave Orders at ſeveral Publick Houſes to take them in, when they came from the Poſt; that he himſelf received them from thence, opened, and read them: And it is alſo further proved, that Anſwers were returned to them in his own Hand-writing. Theſe things altogether, I take to be ſuch plain and ſtrong Evidences of his Guilt, that I ſhall trouble your Lordſhips no farther about him.

As to the Perſon concerned in this Bill, tho' it be a great Trouble to me, to think that any Biſhop of this Church ſhould be guilty of ſo foul a Crime as that objected to him; yet I cannot but be of Opinion, that if he be really guilty, the Intereſt of our Church, as well as Juſtice to our King and Country, do require, that he ſhould be convicted and puniſhed. And indeed, I cannot but be humbly of Opinion, that whoever believes *Kelly* to be guilty, muſt believe the Biſhop to be guilty too.

I ſhall not inſiſt upon what is commonly called Hear-ſay Evidence, tho' there be a great deal of it againſt the Biſhop; only muſt obſerve, that the Conduct of a Proteſtant Biſhop muſt have been very odd and unaccountable, if he be innocent, that ſo many Jacobites (as have done in this Caſe) ſhould declare, that they not only eſteemed him to be in the Plot, but to be the chief Conductor of it. It is, however, fit to ſay ſomething as to the Caſe of *Neynoe*; becauſe the Biſhop and his Counſel have taken up ſo much of your Lordſhips Time, and produced ſo many Witneſſes to prove him a Knave. I did indeed myſelf always think him to be a Knave, and that nothing that he ſaid was to be believed, merely upon his Authority: But on the other ſide, the Teſtimony of the greateſt Knave in the World may be taken againſt himſelf: and they themſelves have proved, that he was a Jacobite, and thoroughly in that Intereſt, even when he was making ſome Diſcoveries againſt them; and therefore, what he ſays, in that reſpect, bears ſome Weight, as being againſt Perſons whom he favoured, and would hurt as little as poſſible. Some other Things that he had ſaid are alſo confirmed by concurrent Circumſtances, and other Diſcoveries; and theſe may have their Weight, tho' he were never ſo great a Knave. One of the Things that he ſaid in his Confeſſion, was, that he frequently went with *Kelly* to the Biſhop of *Rocheſter*'s, and left him there (as *Kelly* told him) to write his Letters. This is confirmed by a credible Witneſs at your Bar, who ſwears, that *Neynoe* uſed to be frequently at his Houſe, and told him, at leaſt three or four times, that he waited there for a ſenſible, ingenious Gentleman that was gone about Buſineſs to the Biſhop of *Rocheſter*: He did not indeed tell him his Name; but the thing ſeems to me to look ſtronger than if he had; becauſe it would have looked more like a Piece of Art and Contrivance to have told the Name of a Man, whom he knew to be gone to the Biſhop about a Criminal Correſpondence. I would only beg leave to take notice to your Lordſhips of one thing more relating to *Neynoe*: the Biſhop's Witneſſes have fully proved, that *Neynoe* told them, that the Chancellor of the *Exchequer* had given him ſeveral Sums of Money, to endeavour to get out of *Kelly* the Explication of the Cant Names that were uſed in the Correſpondence; and that he had promis'd him much greater Sums, if he would go to *France*, and get it out of *Dillon* and the Jacobites there: the Inference from which I take to be very plain, that the Court did not then know, who the Perſons were that were deſign'd by thoſe Cant Names; and that they did believe that *Kelly* did know, and that *Dillon* and the *Jacobites* in *France* knew too: which effectually and fully confutes that Suggeſtion of the Biſhop, of which he did not bring the leaſt Proof, that the Plot was a Contrivance of Perſons in Power.

The next Thing I would beg leave to take notice of, relating to the Biſhop, is a Letter (taken among his Papers) from a Lady of great Quality; of which the Biſhop, tho' it was objected to him by the Counſel for the Bill, has taken no Notice; which I conceive he would and ought to have done, had it been poſſible to give any fair Account of it. The Lady * in that Letter tells him, *That ſhe ſent ſomething that ſhe had received, ſhe could not tell for whom; but let it be for whom it would, ſhe thought He might be truſted, and that it could not be put into better Hands.* A ſtrong Suſpicion this, conſidering all Circumſtances, that here was a Correſpondence by Cant Names, which the Lady did not certainly know, but believed the Biſhop might; or, however, that he was in all Events a Perſon to be truſted.

* *The Dutcheſs of* Ormond.

Another very ſuſpicious Circumſtance againſt the Biſhop, is, the Letters from Captain *Halſtead*, and what has been proved at your Bar that this ſame Captain *Halſtead*, a little before he went in his Ship to fetch over the Duke of *Ormond*, waited upon the Biſhop, and ſtay'd with him an Hour. This Thing indeed directly proves nothing; but all things conſidered, is very ſuſpicious: and the more ſo, becauſe the Biſhop has given no Account, either of his Acquaintance with him in general, or of the particular Reaſon of that Viſit, at a time that leaves ſo much ground to ſuſpect the worſt.

The next Particular that deſerves your Lordſhips Conſideration, is the Letter to *Dubois* found among the Biſhop's Papers when he was taken up, and found now to be ſealed with the ſame Seal with that Letter taken upon the Biſhop's Servant, which he confeſſeth to be his own Hand-writing. It is not indeed proved, that the Letter to *Dubois* is the Hand-writing of the Biſhop; but any body that reads it, will eaſily be perſuaded, that it is not the natural and ordinary Way of Writing of any Perſon, but a diſguiſed Hand like a Print; except only ſome few Letters which eſcaped the Care of the Writer, and are very like thoſe of the Biſhop. But after a long Examination, which has taken up a great deal of your Lordſhips Time, it appears plainly, that the Seals are the ſame, and that the one could not be counterfeited from the other; becauſe the firſt Letter was originally taken with the Seal broken, and was in the Poſſeſſion of the Houſe of Commons when the ſecond Letter was taken upon the Biſhop's Servant. It appears plainly by this Letter to *Dubois*, that the Perſon who wrote it was in a ſecret and dangerous Correſpondence; that he was an Acquaintance of Mr. *Johnſon*, or *Kelly*; that he received Letters by his Hand, and wrote an Anſwer in his Hand. How far all theſe Circumſtances, taken together, prove the Biſhop to be the Author of this Letter, I muſt ſubmit to your Lordſhips Judgment: for my Part, I think they do; eſpecially conſidering, that the Biſhop has given no Account of it, which he ought to do by Law, of a Letter of this Nature, plainly proved upon Oath to have been in his Poſſeſſion.

I now beg leave to proceed to that which is the principal Charge againſt the Biſhop, the dictating to Mr. *Kelly* the three Letters of the 20th of *April*; ſign'd, one, by the Name of *Jones*; another by the Name of *Illington*; the third by the Figures 1378; which the Decypherers explain by the Letter *R*. The firſt directed to Mr. *Chivers*, or *Dillon*; the ſecond to Mr. *Muſgrave*, or Lord *Marr*; the third, to Mr. *Jackſon*, or the *Pretender*.

It may be proper, before I take notice of the Proofs which ſhew that the Biſhop did realy dictate theſe Letters, to take notice of an Objection with reſpect to the Time: The Letters are dated the 20th of *April*, and the Biſhop has produced five or ſix of his Servants, who ſwear, that about that Time he was ſo very ill, that he could not write himſelf; and that he did not ſee any Perſon to whom he could dictate theſe Letters. Now, in anſwer to this, it may be replied: That it does not appear, that all the Servants which the Biſhop then had, were produced before your Lordſhips; and you cannot but be ſenſible, that treaſonable Practices are commonly carried on in a very ſecret Way: and it appears, that the Biſhop's Correſpondence with *Kelly* has been ſo carried on; for tho' there is plain Evidence, that they were frequently together, and that they were acquainted is confeſs'd, both by the Biſhop and *Kelly*; yet, ſcarce any one of the Servants produc'd would confeſs that ever they had ſeen *Kelly*, or ſo much as ever heard of the Name of *Johnſon*, which was the Name by which he went. In the next place, none of theſe Witneſſes prove, that the Biſhop was ſo bad that he could ſee no Company, till about the 16th or 17th of *April*; and 'tis very probable, that the Letters muſt have been dictated ſo long, if not longer, before the 20th, on which they are dated; becauſe *Kelly* was to tranſcribe and put them into Cypher, which is a Work of Time and Care; and perhaps, after all, they might be deſignedly poſt-dated, that the Biſhop finding himſelf going into a great Fit of the Gout, might have all that to plead which your Lordſhips have heard, if the Matter ſhould ever be called in queſtion.

Upon all theſe Conſiderations, I cannot but think it very clear, that the Biſhop might have dictated theſe Letters: We are now, therefore, to examine whether he did or no.

The firſt Thing that brought any Light into this Matter, was the ſmall Accident of a Dog being ſent from *France*, which, by the intercepted Letters appeared to be ſent to one that went by the Names of *Jones* and *Illington*. When Mrs. *Barnes* was examined before the Council upon *Kelly*'s being taken up, it appears plainly ſhe was upon the Reſerve, and would confeſs nothing that ſhe thought might tend any way to hurt *Kelly*: but being aſk'd about this little Dog, who it was for, ſhe readily anſwered, That *Kelly* had told her it was for the Biſhop of *Rocheſter*; which ſhe has ſince confirm'd by Oath at the Bar of this Houſe. This little Accident, not ſuſpected at the time of the Diſcovery to be of

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any Conſequence, has given Occaſion ſince, to look into ſo many Circumſtances, as plainly bring the matter home to the Biſhop. And indeed, if all the Particulars in the intercepted Letters be compared with thoſe things that are in Proof with reſpect to the Biſhop, I believe your Lordſhips will be of Opinion, that they cannot all belong to any one Perſon in the World beſides himſelf. In the firſt place, ſince 'tis proved that *Kelly* wrote theſe Letters, the Perſon who dictated 'em muſt have been an Acquaintance of *Kelly*'s; it is confeſſed on all hands that the Biſhop was ſo. In the next place, it is implied in one of the intercepted Letters, that the Perſon that went by the Name of *Jones* and *Illington* was a Clergyman; ſo far ſtill agrees to the Biſhop. Again further: this Perſon is mentioned in all the intercepted Letters as a Perſon of great Conſequence and Credit, upon whoſe Advice the Party very much depend; and indeed the very Air and Manner of writing the three Letters, plainly ſhew, that the Perſon that wrote 'em thought himſelf ſo; this alſo agrees with all the other Diſcoveries about the Biſhop. Were there no other Particulars but theſe, it will be hard to imagine that they could well belong to any other Perſon. But if we conſider further, that this *Jones* or *Illington* came to Town ſuch a Day of the Month, went out of Town ſuch another Day of the Month, came back again to Town ſuch another Day, was himſelf ſick at ſuch a time, that his Wife was ſick at ſuch another time, and that ſhe died at ſuch a time; all which are in Evidence with reſpect to the Biſhop; if we do, I ſay, conſider all theſe Circumſtances together, it will plainly appear, that they can belong to no other Man in the World but the Biſhop.

After this, I humbly apprehend nothing need be ſaid; however I beg leave juſt to mention ſomething relating to the Letter that was taken upon the Biſhop's Servant; by the whole Air of which Letter, it looks as coming from a Perſon who did not eſteem himſelf to be innocent, but who thought, that nothing could be legally proved againſt him: And therefore there is not one Word of his Innocence in it, which is the firſt Thought that muſt naturally have come into the Head of any one that really was ſo. He writes wholly with the air of a Man that had been uſed to Intrigues; ſpeaks of the Concern that his Friends ſhould have for him and the *Cauſe*; diſcourſes largely about the Kind of Evidence that was againſt him; takes notice in particular what cannot affect him: *If* (ſays he) *the Narrative* * *relates chiefly to* Neynoe's, Sample's, and Layer's *Affairs, ſo far it cannot affect me; for I never heard of the Names of either of the Three, till after this Plot broke out*, It is plain by theſe Words, that he did not then know what was in the Narrative againſt him; but he is very ſure, that neither *Neynoe*, nor *Sample*, nor *Layer* could affect him. Could an innocent Man have thus diſtinguiſhed, and could not they have affected him as much as any body elſe, if he really was innocent? Nothing can affect ſuch a Perſon but Forgery, and that may come from any Quarter: but in the whole Letter he does not expreſs the leaſt Suſpicion of Forgery; and yet, as I ſaid before, this is the firſt Thought that muſt naturally have come into the Head of an innocent Perſon, becauſe nothing but Forgery could do him any harm. I would only juſt beg leave to hint at this one thing more; That as he ſays, that theſe three Perſons could not affect him, becauſe he never knew 'em; ſo accordingly they have not affected him, or ſaid any thing of their own Knowledge about him; which is one good Evidence, that what is ſaid againſt him is not forged, but real.

* i. e. *Report.*

I am afraid that I have troubled your Lordſhips too long, tho' with a very imperfect Repreſentation of the Juſtice of this Bill; and therefore ſhall be ſhorter upon the next Head, which is the Expediency or Prudence of it.

Had there been what we call legal Evidence againſt the Party concerned, your Lordſhips, I take for granted, would not eaſily have gone to this extraordinary Method of Proceeding: For tho' it cannot be doubted but that the Parliament have this Power, whenever they think proper to make uſe of it; yet, I do agree with other noble Lords, that it is a Power not fit to be uſed, but where and when the Publick Good requires we ſhould uſe it, which I humbly conceive is the Caſe at preſent. A moſt dangerous Plot againſt the Government has been diſcovered: A great number of Letters and Papers relating to it have been laid before the two Houſes of Parliament: Theſe have been printed and publiſhed by Order of both Houſes: The Eyes, not only of our own Country, but of all *Europe*, are upon us, to ſee what we will do. Tho' the Evidence of a Plot in general, be as clear as the Light; and the Evidence againſt ſeveral particular Perſons very plain; yet as our Laws are, it is not what we call legal Evidence: The Parties concerned will make no Confeſſion, and we have not the Methods uſed in all other Countries, to extort Confeſſion from them. What then? Shall we ſee our *King* and *Country* in Danger, and do nothing for them? Shall Conſpirators go on with total Impunity, only becauſe they are obſtinate, and artificially ſcreen themſelves behind the Law? I doubt, my Lords, that if this prove the Caſe, we ſhall appear ridiculous in the Eyes of all the World: That our Friends and Enemies both at Home and Abroad will think, that we have no Zeal for the Preſervation of our King and Government; and if once they do think ſo, your Lordſhips cannot but be all ſenſible, how this muſt encourage our Enemies and diſcourage our Friends, and bring us into that contemptible State, in which no Government was ever long ſupported.

But a noble Lord has been pleaſed to obſerve, that the beſt way to ſerve the Government, is to do popular Things, and by that to procure the Love of the People. I perfectly agree in this with the noble Lord, and cannot but be humbly of Opinion, that This Government has done ſo, as far as it has been able: Our Religion has been preſerved; Juſtice has been equally adminiſtred to all ſorts of People; none of our Rights or Liberties have been invaded; we have lived at Peace at Home, while many other Countries have ſuffered all the Miſeries of War: theſe are, or I am ſure ſhould be eſteemed, popular Things; and if ſome other things, which might have been for the Good of the People, have not been done, it has been the Fault of thoſe that complain moſt, and not of the Government. And if there be Diſcontents now in the Kingdom, 'tis plain that the Foundation of 'em was laid long ago, by the Enemies to our preſent Happy Settlement: For I am perſuaded, that the Diſcontents were higher and greater within four Months after the King came to *England*, and ſhewed themſelves much more, in a number of rebellious Riots and Tumults, than any thing that appears at preſent; and yet nothing then could be objected to the Government, but that ſome Perſons were not preferred, who both before and ſince have made it too plain that they were not fit to be truſted.

But as it is the Duty of thoſe in Power to do all the popular Things they can; ſo I muſt beg leave to obſerve, that it is the Duty of all the Subjects (and the greater they are the more it is their Duty) to put the beſt Interpretation upon the Actions of the Government that Things will bear; not to miſrepreſent; not to put falſe Colours upon Things; and much, more not to invent Lyes and Slanders, and diſperſe 'em up and down the Kingdom, in order to alienate the Affections of the People. Theſe things have been done, and done with great Care and Diligence, and by ſome too, who would take it very ill to be called Jacobites. Theſe are the chief Cauſes of the Diſaffection among us, and indeed of all the real Grievances we labour under. Is the King forced to put the Nation to Charges, to keep up a greater Number of Forces than otherwiſe would be needful? It is intirely owing to this Cauſe. Are our Debts not paid? Is our Credit not ſo good as we would be glad to have it? Let this artificial Raiſing of Diſcontents once ceaſe, and theſe things will quickly mend of themſelves. Indeed, were this a time for it, I think it might plainly be proved, that the Debts we labour under had never been contracted, but for this abſurd, diſcontented Humour; Nay, it is to this, that we intirely owe the Danger we are in from this very Plot; for 'tis plain, from all the Intelligence we have about it, that it was carried on upon the Confidence, that all diſcontented Perſons were Jacobites: And tho' the Conſpirators did in this greatly deceive themſelves; yet 'tis certain that they built their Hopes upon this Foundation.

But 'tis further ſaid by the ſame noble Lord, that this extraordinary way of Proceedings will not procure Friends to the King; but will rather anger and provoke, and ſo hurt his Intereſt inſtead of helping it.

To this I anſwer, that I do indeed ſuſpect, that many People will be angry; as I hear that the Jacobites thro' the Kingdom are: A plain Evidence this, that they do not think that the Friends of King *George* are worrying one another; for they would not be angry at that. Thoſe that moſt deſire to deſtroy our Liberties, are become, upon this Occaſion, the great Patrons of Liberty; as indeed they have been in a great meaſure ever ſince the Revolution, when any thing has been propoſed for the Support of the Government. No ſooner were their Schemes of Arbitrary Power in the Time of King *James* overturned, and a new Government ſettled which they did not like; but they, in order to deſtroy it, ſet themſelves againſt every thing that was neceſſary for its Defence, under the Colour of Liberty; that is, they deſired to have their own Hands as looſe as poſſible, to hurt it; and the Hands of the Government as much tied up as poſſible, that it ſhould not be able, either to hurt them, or defend itſelf. Thus at preſent, they clamour againſt the additional Forces, tho' eſtabliſhed by Parliament; and againſt all Methods, either to diſcover or puniſh the Conſpiracy. And they judge right in this for their Cauſe; becauſe, if they could have carried theſe Points to their mind, they might then be more free in carrying on their Plots, and with leſs Danger put them in Execution. For theſe Reaſons I take it for granted, that all theſe people will be angry; but I cannot but humbly be of Opinion, that it is much better they ſhould be angry with us for defending ourſelves, than that they ſhould firſt ſneer at us, as Fools, for neglecting our Defence; and then be able more eaſily to undo us.

As to others, that poſſibly may be diſpleaſed at what we are now doing, I would hope, that a little Time and Conſideration will ſet them right, and convince them, that it is not only juſt, but (all things conſidered) neceſſary to be done; becauſe, if the Parliament do, upon this Occaſion, ſhew their Zeal in the Defence of the Government, it will animate and give Courage to the Friends of it both at Home and Abroad. Foreign Powers will be apt to court the Friendſhip of a Prince, at the Head of a mighty Kingdom; if they ſee, that he and his Poſterity are like to continue there: All the Affairs of the Kingdom, which reſpect them, will be managed with more Eaſe, with more Honour, and with leſs Expence; and they will be inclined, not to foment but to diſcover Plots, if they came to their Knowledge. But, on the contrary, if we give 'em any Reaſon to ſuſpect that we look another way, they will quickly do ſo too, and ſtrive which ſhall be forwardeſt to help the Pretender to involve us in Blood and Ruin. And as to the Subjects at home, I would only obſerve, that all Mankind are apt to ſhew moſt Zeal for a Government, when they think it ſafe, and like to ſtand, and be able to protect them: But to ſuſpect the contrary is a moſt dangerous Temptation to the Fidelity of Subjects as has been ſeen by the Experience of all Ages. And therefore I hope, that your Lordſhips will, by your Unanimity and Zeal in this matter, effectually convince the World, that the Danger does and ſhall lie in oppoſing, and not in defending the preſent Government.

I hope that what I have now been ſaying, has convinced your Lordſhips, both of the Juſtice and Prudence of this Bill; give me leave to obſerve, that your Moderation has been very great too, both in giving ſo full and fair a Hearing, and in making the Penalties ſo much leſs than the Crimes deſerve.

It is now above a Year ſince the Plot was firſt diſcovered: a Plot of a moſt deſperate Nature, to ſeize the Perſons of the King and Prince, and to bring in a Popiſh Pretender upon us. The Execution of which was to be begun by ſeizing the *Tower*, and attacking the City of *London* on all ſides; and was thence to ſpread itſelf into all Parts of the Kingdom. Lord! what Confuſion; what Murders; what Plundering; what burnings muſt this have cauſed? Whatever had been the Iſſue, the very Attempt muſt probably have occaſioned the Sacking and Burning of this great City: The utter loſs at once of all publik Credit: The Murder of infinite Numbers of People: The Aſtoniſhment, and Amazement, and undoing of almoſt all, but of thoſe vile Wretches who would have had the plundering of all ſides. If it had gone on, how many of the Noble Lords that I now ſee, would have been before this in their Graves?

Graves? But I forbear going any further in this Tragical Repreſentation, and deſire only to obſerve, That tho' it has been diſcovered above a Year, how very little of it we yet know: and I do appeal to your Lordſhips Conſideration, who know the State of the World very well, whether there be any Country in it, either Bond or Free, which, had they diſcovered but a fifth Part of what we know of a Plot of this Nature, would not in a Week's Time have found Means to get to the Bottom of it. However, my Lords, I ſtill commend your Moderation; and do hope, that we ſhall never find Reaſon to repent of it, and that this Little which is now doing, will be a Warning to Conſpirators, not to provoke further the Patience of an injured Nation.

I doubt not but upon this, and all other Occaſions, your Lordſhips will be ready to ſtand by a wiſe, a good, and a merciful Prince; and that you will, according to your Oaths, defend him againſt all Treaſons, and Traitorous Conſpiracies whatſoever.

And, in the laſt Place, give me Leave, as a Chriſtian and a Proteſtant Biſhop to hope, you will do your beſt, that a Popiſh Pretender may never be ſet at the Head of this Proteſtant Church: One, who muſt think himſelf bound in Conſcience to deſtroy it; and inſtead of that pure Religion which we now enjoy, bring in horrible Superſtition and Idolatry, Nonſenſe and Tyranny; attended with all the ſad Calamities which Popiſh Princes always have brought, and always muſt bring upon Proteſtant Countries.

After whom the Duke of *Wharton* ſpake as follows:

SOME Words which have fallen from the Reverend Prelate, who ſpoke laſt, have made it, in ſome Meaſure, neceſſary for me to trouble your Lordſhips with the Reaſons that induced me to differ with him in Opinion, and to give my Negative to the Bill now depending before us.

If I don't miſunderſtand his Lordſhip (and if I ſhould miſtake his Meaning, I hope he will ſet me right) he was pleaſed to ſay, That Perſons without Doors would be apt to caſt different Reflections on the particular Behaviour of every Lord this Day: That thoſe who were for the paſſing of this Bill, would be accuſed of Malice and Partiality; and thoſe who were of contrary Sentiments, would be branded with Diſaffection to the preſent Happy Eſtabliſhment.

For my Part, I am far from thinking, that Conſiderations of this Nature will have the leaſt Weight with any of your Lordſhips; and am very certain, that every one, who gives his Vote on this important Occaſion, has attended, with the greateſt Care, to the Evidence that hath been given at your Bar, which is the Foundation of this Day's Debate.

The Proofs that have been brought to ſupport the Charge, and the Biſhop's Defence, are to be thoroughly conſidered; and when your Lordſhips proceed according to the Rules of Juſtice, you will not fear, nor value any Conſequences which may attend the diſcharging of your Duty.

So far I will venture to affirm, That the beſt Way to ſhew our Zeal to his Majeſty, and the preſent Government, is, To act in all Caſes, both in our Judicial and Legiſlative Capacities, with that Honour and Impartiality, as ought to flouriſh in this great Council of the Nation.

I could have wiſhed the Noble Lords who have given their Reaſons for the paſſing this extraordinary Law, would have entered into the particular Circumſtances of this Caſe, and conſidered it ſingly on its own Merits: But inſtead of ſpeaking on that Head, I cannot but take Notice, That they have wandered from that (which ought to have been their only Conſideration) into learned Diſcourſes on Bills of this Nature in general.

I ſhall not trouble this Houſe with any Arguments againſt Attainders. Many Lords, of greater Weight and Abilities than myſelf, have already ſpoke fully to this Point in the preceding Debates.

I ſhall only ſo far agree with the Reverend Prelate, who ſpoke before me, That it is proper, that ſuch a Power of puniſhing by Bill, ſhould be veſted in the Legiſlature, to be exerciſed on extraordinary Emergencies: But then I muſt add, If ever that Power is abuſed: If ever it is employed to deſtroy innocent Perſons, it is evident, That the Lives, Liberties, and Fortunes of every Subject in *Britain* are in the utmoſt Danger, and liable to be ſacrificed to the Fury of a Party.

It has been admitted, That every Bill of Pains and Penalties is to ſtand upon its own Bottom; and that the paſſing of one Act of this Nature, is not to be brought as a Precedent for the ſupporting of another, unleſs there be convincing Evidence to enforce each Caſe. And therefore the proper Conſideration now before us, is, Whether the Evidence offered againſt the Unfortunate Prelate, is ſufficient to induce your Lordſhips to believe him Guilty of the heavy Crimes of which he ſtands accuſed?

My Lords, I ſhall take the Liberty of conſidering the whole Proofs that have been brought on this Occaſion, both by way of Charge, Defence, Reply, and Rejoinder; and tho' I own myſelf very unequal to this Taſk, yet, ſince no other Lord, who could do it much better, has undertaken it, I think it my Duty as a Peer, and as an *Engliſhman*, to lay it before your Lordſhips in the beſt Manner I am able.

The Method I ſhall obſerve, for the more clear Stating of the Caſe, ſhall be to lay every particular Branch of Evidence before you, and to diſtinguiſh the ſeveral Parts of the Accuſation, and conſider them ſeparately, to avoid confuſion, and to be the more exact in what I have to offer.

I hope, I ſhall have your Lordſhips Indulgence for taking up ſo much of your Time as this will require: But I aſſure you, I ſhall endeavour to be as brief as the Nature of the Thing will admit, and will intrude on your Patience as little as poſſible.

I muſt alſo deſire your Lordſhips will pardon me, if I repeat ſeveral Arguments that have been uſed by the Counſel at the Bar; and if I even mention ſome Things which fell from me in the Debate on Mr. *Kelly*'s Bill, whoſe Caſe is very much interwoven with the preſent; ſo that it is almoſt impoſſible to avoid it.

Before I go any further, I cannot but ſay, That were theſe Crimes plainly proved againſt the Biſhop of *Rocheſter*, his Sacred Function and Station in the Church would be Aggravations of his Guilt: But, as this is certain on the one hand, ſo on the other, your Lordſhips will require very clear Demonſtration, before you can think it poſſible for a Biſhop of the Proteſtant Church (who has ſignalized himſelf in Defence of the Reformation, and the only one of that Bench where he had lately the Honour of ſitting, that ever wrote in favour of *Martin Luther*) to engage in a Conſpiracy for introducing Popery and Arbitrary Power amongſt us.

My Lords, the Counſel for the Bill opened the Charge with acquainting the Houſe, That it was only to be ſupported by producing of decyphered Letters, full of fictitious Names and Cant Words; They were ſo very fair as to confeſs, they had not one living Witneſs that could charge the Biſhop with any Thing, nor even ſo much as a Letter under his own Hand; therefore, on the firſt View, this Manner of condemning, on ſuch Kind of Evidence, ought to require our utmoſt Caution, leſt we ſhould eſtabliſh a Method, which our Enemies may hereafter take to deſtroy the greateſt and moſt innocent Subject in the Kingdom.

Mr. *Wearg* cited two Caſes, which he would willingly have us receive as Precedents, to juſtify the admitting of circumſtantial Evidence: The one was, the Caſe of *Aſhton*, who was condemned on Circumſtances only. But, my Lords, this was before the Treaſon-Act was paſſed, which requires Two Poſitive Witneſſes; and nothing could induce the Legiſlature to paſs that Law, but a thorough Conviction of the Danger that might attend the admitting of any Proofs which were not poſitive or certain.

The ſecond Caſe he cited, was that of *Harriſon* for the Murder of Dr. *Clench*; and the learned Gentleman tells you, that it was the pulling out of a Handkerchief that led to the Diſcovery of that Murder. It is very certain, Circumſtances may lead to the Diſcovery of Evidence; but muſt be well ſupported before they can be converted into convincing Proofs.

The firſt Piece of Evidence that was offered at the Bar, was the Extracts of Letters from abroad, which this Houſe ſeems, in ſome meaſure, to have declared to be immaterial, when they did not ſo much as deſire to ſee Copies of the whole Letters, nor the Originals; and even admitted one to be read which was Anonymous. But it will not be improper to obſerve, that thro' this whole Correſpondence the Biſhop of *Rocheſter* is not named. And therefore I cannot ſee why they took up our Time with reading Papers quite foreign from this Caſe: eſpecially, ſince every Body allows there has been a Conſpiracy, which is the only Fact to be gathered from this Correſpondence.

The next Point which was attempted to be proved, was, That Captain *Halſtead* went to fetch the late Duke of *Ormond*, and was at the Deanery with the Biſhop before he embark'd. There are alſo two Letters found in the Biſhop's Cloſe-Stool, from this Gentleman to his Lordſhip, which were read, and are only Appointments for Viſits, but mention nothing of this Deſign; and, I think, there was a Coachman, that proved *Halſtead* was an Hour with him ſome Days before he left *London*.

This, my Lords, was opened as a Matter of great Importance: But your Lordſhips muſt remember, that the ſuppoſed Deſign of *Halſtead*'s bringing the late Duke of *Ormond* into *England*, is only proved by Hearſay. One of the Crew belonging to the Ship in which he went, has depoſed, That it was the Common Report at *Bilboa*, that *Halſtead* came there on that Errand.

How far common Fame is to prevail, I ſubmit: But if this Hearſay were true, is every Perſon who was an Hour with this Gentleman before his Departure, ſuppoſed to be privy to this Project? And what a ſtrain'd Conſtruction is it to inſinuate, the Biſhop of *Rocheſter* knew of his Intention, becauſe he received a Viſit from *Halſtead*, who was a Tenant under his Biſhoprick? And this is the more extraordinary, ſince it has not been ſo much as pretended that any Correſpondence has paſſed between the Reverend Prelate and the late Duke.

They then produced Letters directed to one *Dumvill* which were decyphered. And Mr. *Willis* was examined to prove, that they were rightly and juſtly explained.

My Lords, It very well deſerves your Lordſhips Conſideration, how far this Kind of Evidence is to be admitted: It has appeared to your Lordſhips by the Oath of Mr. *Willis* himſelf, that it is an Art which depends upon Conjecture; for this Gentleman has confeſſed, that every Man is liable to a Miſtake in this, as well as in other Sciences. He tells you, that he and his Brother Decypherer varied in One or Two Inſtances: He allows, that the *Chaſms*, which they were forced to leave in thoſe Letters, might alter the Senſe of them. And, therefore, I cannot but think, that an Accuſation grounded on ſuch Proofs, is uncertain and precarious.

The Perſon who is the Decypherer is not to be confuted, and what he ſays muſt be taken for granted, becauſe the Key cannot be produced with Safety to the Publick; and, conſequently (if his Conjectures be admitted to be Evidence), our Lives and Fortunes muſt depend on the Skill and Honeſty of Decypherers, who may with Safety impoſe on the Legiſlature, when there are not Means of contradicting them, for want of ſeeing their Key.

My Lords, in the Caſe of *Coleman*, the Key was printed, as has been well obſerved by the Counſel at the Bar; and I am very much ſurprized, that Gentlemen of ſuch Abilities and Integrity as the Members of the Secret Committee (who, in another Place, were ſo exact as to print the *French* Originals with the tranſlated Letters, that the World might ſee how juſt and candid the Proſecutors of the Plot were) did not, for the Satisfaction of the Publick, permit us to ſee the Key in Print, on the Truth of which depends ſuch a Chain of Conſequences.

I own myſelf intirely ignorant of this Art: But, as I ſhould be very far from condemning a Man on my own Conjecture, I ſhould much leſs do it on the Conjectures of others.

The greateſt Certainty Human Reaſon knows, is, a Mathematical Demonſtration; and were I brought to your Lordſhips Bar, to be try'd upon a Propoſition of Sir *Iſaac Newton*'s, which he upon Oath ſhould ſwear to be true, I would appeal to your Lordſhips, whether I ſhould not be unjuſtly condemned, unleſs he produced his Demonſtration, that I might have the Liberty of enquiring into the Truth of it, from Men of equal Skill?

I cannot think any Man will allow Evidence of this Nature to be good: But if in this Caſe, relating to the decyphered Letters to *Dumvill*, your Lordſhips ſhould admit it, there is nothing mentioned in them that can affect the Biſhop, neither is he at all nam'd in them, but they are only brought to prove the Conſpiracy in general.

The

The Examinations of Mr. *Neynoe* are the next Points that are laid before your Lordships: And, indeed, I must do the Gentlemen at the Bar the Justice of saying, That they forbore mentioning any thing of them when they open'd the Charge.

They were so sensible that such Proofs could not have the least weight to affect the Bishop, that tho' in the Case of Mr. *Kelly* they were produced against him, as very material to support that Bill, yet they did not think proper to name them against the Bishop; which, I am thorowly persuaded is owing to what appeared at your Bar by the Examination of Mr. *Bingley*, and the universal Opinion which every Person seemed to have of the Villainy of Mr. *Neynoe*'s Transactions.

My Lords, these Examinations were never signed by the Person, neither was he ever examin'd to them upon Oath: So that were they of Consequence, and he a Person of Credit, they could not be admitted to affect any Person whatsoever, in any Court of Justice or Equity. I don't mean, That they could not be read according to the strict Rules of *Westminster-Hall*; which is admitted on all Sides they could not: But I dare affirm, that no Credit can be given to 'em on any Account whatsoever.

The Person was closely confin'd, and consequently in the Hands of the Government; so that he was at that Time under the greatest Apprehensions, which might, in some measure, prevent him from speaking Truth, with that Sincerity and Candour of which every Person ought to be Master, when he is examin'd on Matters of such nice Nature.

Tho' these Papers were entirely given up by the Counsel for the Bill, yet the Extract of them was read, and they are the visible Foundation of this Charge; and if they are insignificant, the whole Accusation falls to the Ground: For the whole Proof of the Bishop's dictating to Mr. *Kelly*, depends on Mr. *Neynoe*'s bare Affirmation.

The whole of what *Neynoe* says, or is supposed to say, is, That Mr. *Kelly* told him he wrote the Bishop's Letters for him: Mr. *Kelly* denies it, and Mr. *Neynoe* was so conscious that he had been guilty of many Crimes, that he endeavoured to withdraw from Justice, and the Providence of God, it is said, intercepted him.

My Lords, if you will consider the Improbabilities of this Evidence, altho' it were upon Oath, and signed by him, it cannot be supported. He tells you, That he was intrusted to draw up Memorials to the Regent: Yet none of those have been produced: And yet it is apparent the Copies of them might, with Ease, have been obtained, if he had been as thorowly pressed to deliver them, as he was to declare he wrote them.

These Memorials, he says, were wrote by the Order of Mr. *Henry Watson*, whom he takes to be the late Earl *Marishall*: And I am certain your Lordships did not think that Fact material, when you came to a Resolution, That the Bishop of *Rochester* should not be at Liberty to ask, if Enquiry was made of the said *Neynoe*, or if he gave any Satisfaction to the Lords of the Council, touching that important Fact of *Watson*'s, whom he took to be Earl *Marishall*, lying with him several Nights.

It was very well observed by a learned Gentleman at the Bar, That nobody can believe the late Earl *Marishall* would have reposed so great a Confidence in a Person who was intirely a Stranger to him, and of such little Note; and the *Jacobite* Party must be in a low Condition, when they make use of such a Creature to write Papers of that Importance.

There is so much Improbability in this and other Points, and so much Contradiction in several Parts of his Examinations, that they appear to me, and must to all reasonable Men, as the Dictates of Fear, and not agreeable to Truth.

He mentions, That the Reverend Prelate (for such I still may call him) had some Favours offer'd him by the Court; but that cannot be true, and must be added to the rest of these Absurdities.

But, my Lords, what in my Opinion clears up all these Matters, and makes it impossible for me to give the least Credit to this, or any other Part of the Charge, are, The several Testimonies of *Bingley*, *Skeene*, and *Steward*.

I must observe to your Lordships, That the two first Persons, *Bingley*, and *Skeene*, are actually now in separate Custodies; and consequently could have no Communication one with another. The Third is at Liberty; but his Testimony is so thoroughly supported by Mr. *Gordon* and Mr. *Kynaston*, that no doubt can arise as to the Veracity of it.

These Gentlemen, who are in the Hands of the Government, are under Hopes and Fears; and therefore, it is certain, when they speak a Language, which, perhaps, may be disagreeable to those on whom they at present chiefly depend, it must be the Spirit of Truth that prevails.

Mr. *Bingley* was before us in the Case of *Kelly*, and was also examin'd at the Bar of the House of Commons, tho' not upon Oath; and tho' he has been more severely treated, as he told your Lordships, and more strictly confined since his first Examination, yet he has persisted in his Story: And tho' he was so long at your Bar, and so many Questions put to him, yet he never varied in any one Circumstance, but appeared consistent thro' the whole Course of his Behaviour.

I shall not detain your Lordships with recapitulating his whole Evidence, for I did it very fully on a former Occasion. But your Lordships will remember, he told you, *Neynoe* abounded in Money, which *Neynoe* said (after he was apprehended at *Deal*) *an Honourable Person* (and on this Occasion, I hope, I may name him), Mr. *Walpole*, *gave him*: And more particularly, he mentions 50 *l.* which *Neynoe* said he received the Night before he went to *France*.

Bingley told your Lordships, *That* Neynoe *had assured him, he used to meet this Honourable Person in the Stable-Yard, at* Chelsea: And, my Lords, the Errand on which he was going to *France*, was, to discover some Secrets relating to Cyphers, which he would have engaged *Bingley* to have done for him; and particularly, to get them, if possible, out of Mr. *Kelly*, *Which*, he said, *could he obtain, would be of great Advantage to him.*

That *Neynoe* had declared to him, *He would be even with Mr.* Kelly, *before he was aware of it*, or Words to that Effect: And that Mr. *Kelly* always seem'd averse to any Acquaintance with Mr. *Neynoe*, of whom he entertained a mean Opinion.

That *Neynoe*'s Father refused him Money; which makes it highly probable that his Poverty was the Occasion of his Villainy: And that when he was taken at *Deal*, he had declared to him, *Mr.* Walpole *expected to find the Plot about him; and since Mr.* Walpole *could not, he must make one for him.*

Neynoe told *Bingley*, *That this Honourable Person had vowed Destruction to the Bishop of* Rochester, *by saying, He would pull down the Pride of this Haughty Prelate*; which is sufficient to convince your Lordships how little Regard ought to be had to the Hearsay Evidence of so false a Wretch.

Mr. *Bingley* says, That Part of this Account he had given to the Lords of the Council: And I could have wished, that his Examination (as well as some others to the same purpose, which were taken about the same time) had been laid before the Parliament.

Mr. *Skeene*, who is also in Custody, has deposed, That he lay in the same House with *Neynoe*, and had some Conversations with him.

That *Neynoe* had told him, *What he had said of the Bishop of* Rochester *was intirely false.* And,

That Mr. Walpole *had offered him a considerable Annuity to turn Evidence; and had given him Instructions, before he was called in to the Lords, what Questions would be asked him, and what Answers he should make, and threaten'd him with* Newgate *if he would not comply.*

Skeene says further, That *Neynoe* swore (and I hope the Reverend Bench will, in such a Case, permit me to repeat the Words), *by God, there were two Plots; One of Mr.* Walpole's *against the protesting Lords, and one of his to bite Mr.* Walpole *of Money:* And this seems to be the only Time that ever Mr. *Neynoe* averr'd any thing upon Oath.

To convince the World, what a Creature this *Neynoe* was, he tells *Skeene* further, *That once at Lord* Townshend's *Office, he had a great Inclination to have stabb'd the Chancellor of the Exchequer.* He tells you, That *Neynoe* had wrote a Paper to declare, *That all he had said of Lord* Orrery *was false.*

My Lords, the next Witness was Mr. *Steward*, who was unfortunately in Custody when *Neynoe* was brought to Town from *Deal.*

Steward says, That he slept the second Night with *Neynoe:* That *Neynoe* had told him, *what he had said of the Bishop was false; and that Mr.* Walpole *had offered him a great Sum of Money, if he would swear to what he said, and turn Evidence, which he declared he could not do.*

That Mr. Walpole *had taken him into another Room before he was examined, and told him what Questions he would probably be asked, and what Answers he should give.*

He says, That *Neynoe* told him also, *That he had like to have kill'd Mr.* Walpole, *and so put an End to the Plot: And that Mr.* Walpole *had given him a Paper of Directions, which he was to answer, in order to be a Witness against the Protesting Lords.*

As a Confirmation of his Testimony, *Steward* says, He told this to Mr. *Gordon* before Mr. *Neynoe* was drowned, and to Mr. *Kynaston* before the Meeting of the Parliament.

Mr. *Gordon* confirms this Part of his Evidence, and assures your Lordships, that he had heard it from *Steward* before the Death of *Neynoe.* And Mr. *Kynaston*, a Gentleman of an undoubted Character, lately a Member of Parliament for *Shrewsbury*, has assured your Lordships, That he was acquainted with *Steward*'s Account of *Neynoe* before the Meeting of the Parliament: And adds this Circumstance, That when in the *Appendix* he saw those six Questions printed, he shewed them to *Steward*, who seem'd rejoyced, and said, *You see, Sir, what I told you is true.*

Such concurring Testimonies from Persons kept so separate, and who are speaking against their own private Interest, must have the greatest Weight, and must at least prevent any rational and impartial Person from giving the least Credit to the bare Hearsay of this *Philip Neynoe.*

If any Doubt could remain, as to the Validity of this Testimony, it is sufficiently confirm'd by the Persons brought to disprove it.

The Chancellor of the Exchequer himself does not pretend to deny that *Neynoe* told these Things, but only adds other Circumstances to convince you of *Neynoe*'s Villany, and assures you, That at the Time he was receiving Favours from him, he was thoroughly convinc'd he intended to cheat him, which was the Occasion of his being apprehended.

He own'd the Transactions between them before *Neynoe* went to *France*, and particularly the Money mentioned by *Bingley*; which are Proofs that *Neynoe* must have disclosed these Secrets, since they could not come from Mr. *Walpole*; and He and *Neynoe* only were privy to it.

Mr. *Walpole* has shewn your Lordships the foul Draught of the Questions mention'd by *Steward*; and when he denies that Part of *Neynoe*'s Declaration relating to the Instructions given him before the Examinations, he owns, he was twice alone with him; once the first Night of his being brought to Town, and the second time, when he gave him the Paper of Directions, which might be Foundation enough for *Neynoe* to frame so notorious a Falshood.

The Witnesses brought by the Counsel for the Bill, to the Character of Mr. *Bingley*, seem rather to confirm it than otherwise; and all agree, they never heard any thing against his Morality.—They indeed have said, he bore the Character of a *Jacobite*; and suffered for having dispersed a Libel: But Mr. Baron *Gilbert*, who was his Judge when that Punishment was inflicted on him, has told your Lordships, That his private Life was not vilified at his Trial, and that neither Perjury nor Forgery were ever laid to his Door.

Tho' the Punishment he suffered was the Pillory, yet it is the Crime, and not the Punishment, that makes the Ignominy; and for this I can appeal to the learned Judges.

In order to destroy the Evidence of Mr. *Skeene*, they produced one *Pancier*, who tells you, That *Skeene* had revealed many Secrets to him relating to the Plot; and particulary of a Military Chest, which was collected to carry on these supposed Designs, and support the *Jacobites.*—But I presume every body who heard the two Persons at the Bar, could not but remark the Steadiness with which Mr. *Skeene* denied these Asseverations, and the Confusion with which the other affirmed them.

Mr. *Pancier* seem'd to drop something which intirely destroys any Credit that could be given to him, by saying, That he had owned to Mr. *Skeene*, that he was a Friend to this Administration; and yet has sworn, That after such a Declaration, *Skeene* had still persisted in his Story, and revealed some Part of this Intelligence to him. How far this is probable, your Lordships are the best Judges.

Mr. *Pancier* goes further, and tells you, That Part of this Converſation happened in St. *James*'s *Park*, in the preſence of one *Dufour*. This *Dufour* was in the Hands of the Government; and I can't conceive why we have never ſeen him or his Depoſitions, when it would have been ſo eaſy to have brought this corroborating Witneſs to Mr. *Pancier*'s Teſtimony.

I can't but think, That the not producing this Man's Evidence, is a ſtrong Circumſtance to convince your Lordſhips he did not agree in the ſame Story with Mr. *Pancier*.

They alſo produced *Skeene*'s Attainder for the *Preſton Rebellion:* But there have been many Acts of Grace ſince, ſo that he is capable of being an Evidence: and there has nothing appeared to traduce his Character as a Man of Morals.

In order to ſhew your Lordſhips, that *Neynoe* could not poſſibly make theſe Confeſſions to Mr. *Skeene* and Mr. *Stewart*, the Counſel for the Bill maintain, That they will prove *Neynoe* and the Priſoners were not together after the firſt Night.

This, my Lords, would be very material; but I think it appears, by the Proofs brought to ſupport this Aſſertion, that they frequently have converſed one with another.

The firſt Witneſs they call'd, was Mr. *Crawford* the Meſſenger, in whoſe Houſe the Priſoners were in Cuſtody; and, my Lords, I can't but ſay, it ſeems very odd, they ſhould bring a Man to ſwear he had done his Duty: He has told your Lordſhips, that Lord *Townſhend* had given him Orders, that *Neynoe* ſhould be cloſe confined; and if, after that, it ſhould appear, that he had neglected ſuch Directions, there is no queſtion, but that he inſtantly, and deſervedly, would have been removed out of his Employment.

This Meſſenger, in this Situation, tells you, That after the firſt Night they never convers'd, to the beſt of his Knowledge: That Mr. *Skeene* call'd *Neynoe* a Rogue of an Informer; and ſpoke in very hard Terms of him; which I indeed think it appears the Fellow well deſerv'd.

Crawford ſays, That Mr. *Neynoe* had ſome Paper, two Sheets of which he found miſſing. He likewiſe ſwears, That Mr. *Stewart* lay upon the Stairs; and owns, he had at that time two Servant-maids.

Mrs. *Crawford*, his Mother, ſwears, That, to the beſt of her Knowledge, the Priſoners were never together: That ſhe kept the Keys of the Rooms herſelf, but uſed to ſend up the Maid, *Hannah Wright*, with the Dinner.—Your Lordſhips will obſerve, that both this Woman and her Son ſwear to the beſt of their Knowledge only, and are far from poſitive Witneſſes.

Hannah Wright, when ſhe was firſt call'd, ſpoke in the ſame Language with them, tho' ſhe afterwards recollected herſelf better.

When the Biſhop came to rejoin, *Francis Wood*, *Thomas Wood*, and Mr. *Ruſſel* ſeverally ſay, That this *Hannah Wright* had declared to them, That ſhe uſed to let the Priſoners converſe together whenever ſhe had an Opportunity, which was when Mr. *Crawford* and his Mother were out of the way; and that ſhe uſed to ſtand upon the Stairs and give Notice when any Perſon came, that they might retire into their ſeveral Rooms. And the other Maid, whoſe Name is *Chriſtian*, has depoſed, That *Hannah* gave the Key of *Neynoe*'s Room to *Stewart*, and ſeveral times deſired *Stewart* to go up to him, and that they were together an Hour or more. And when *Hannah* was called a ſecond Time, ſhe own'd ſhe was turn'd away for Suſpicion of having help'd *Neynoe* in his Eſcape; That ſhe has left *Skeene*'s Door open, who lay near *Neynoe*; and that there was a large Hole in *Neynoe*'s Door, thro' which they might converſe.

She ſaid, That *Neynoe* gave her a Paper, which ſhe was to convey for him; but that it was taken out of her Boſom, and burnt by one of the Priſoners.

When Mr. *Stewart* ſaid, That he ſat upon *Neynoe*'s Bed the ſecond Night, and lay in the Garret where there was a Partition, but a Communication between 'em, *Hannah* ſaid, She could not be poſitive to that, but believes it true.

Mr. *Crawford*, when he was call'd to that Point, according to his uſual Cuſtom, denies it to the beſt of his Knowledge.

Your Lordſhips will now judge, whether the greateſt Credit is to be given to the Belief of a Meſſenger and his Mother, who are ſwearing that they did their Duty; or to the poſitive Oaths of *Skeene*, *Stewart*, *Gordon*, *Kynaſton*, *Francis Wood*, *Thomas Wood*, *Ruſſel* and *Chriſtian*, confirm'd by the Confeſſion of *Hannah Wright*, when ſhe came to be croſs-examined and confronted.

This, my Lords, concludes what has appear'd at the Bar, relating to Mr. *Neynoe* and his Tranſactions; and I am pretty certain, every impartial Body muſt agree with me, That ſo far from giving the leaſt Credit to what he ſays, there have appeared ſuch Circumſtances in the Tranſactions which are now come to light, that muſt make the greateſt Caution neceſſary, before we believe any other Part of the Charge.

Your Lordſhips will take notice, That Mr. *Crawford* confeſſes Mr. *Neynoe* had the Uſe of Paper, and found two Sheets miſſing; and *Hannah Wright* owns ſhe had a Paper from him, which was burnt by one of the Priſoners. This, my Lords, undoubtedly was the Paper relating to Lord *Orrery*, mentioned by *Skeene* in his Evidence.

My Lords, I am now coming to the great and only Foundation remaining to ſupport this Bill, *viz.* *Neynoe*'s Examination: for if his Hearſay is not to be believed, which is the Proof that was offered to ſhew that Mr. *Kelly* was the Biſhop's Secretary, and uſed to write for him: and particularly, That the Biſhop dictated Three Letters, which were wrote in *Kelly*'s Hand, and tranſmitted to *France* under Cover to Monſieur *Gordon le Fils*;

Then, as every Body muſt agree, the Biſhop ought to be acquitted; and when hereafter this great Affair comes to be canvaſs'd by Poſterity, it will ſtand or fall as this Fact ſhall be ſtrongly made appear.

They firſt read *Plunkett*'s Cypher, and Mr. *Vanradike* atteſts it to be his Hand-writing.

When this Piece of Evidence was offer'd, People were at a loſs to know what they intended to make of it, and little thought that they ſhould be drove to make uſe of *Jackſon*, ſtanding for the *Pretender* in that Cypher, to ſhew that the Letter directed to *Jackſon* (one of the three before-mention'd, affirm'd to be dictated by the Biſhop of *Rocheſter* to Mr. *Kelly*) was to the *Pretender*. I ſhall take notice of this extraordinary Proceeding when I come to conſider thoſe Letters: I ſhall only ſay now, That were Mr. *Plunkett*'s Correſpondence to be regarded, the Plot is of a very deep Nature; for he has had the Impudence to inſinuate the moſt ridiculous Aſperſions againſt the greateſt Men amongſt us.

Three of his Letters were read out of Cypher, in Two of which Mr. *Johnſon* is named, that is Mr. *Kelly*; but neither Mr. *Kelly*, nor the Biſhop of *Rocheſter* are allowed Places in his Cypher, and conſequently were not in an Aſſociation with him. *Johnſon* is only ſpoke of by *Plunkett*, when he is mentioning Domeſtick News, and in no other than might be in every News-Letter that went by the General Poſt.

My Lords, in order to ſhew that the Three Letters ſent under Cover to Mr. *Gordon le Fils*, were Mr. *Kelly*'s Hand-writing, which they very juſtly thought was neceſſary to be made appear before they proved that the Biſhop was concerned in them; they produced a Letter of the 20th of *Auguſt*, which a Clerk of the Poſt-Office ſwears was ſtopt at the General Poſt-Office.

To convince us this Letter is Mr. *Kelly*'s Writing, *Hutchins* the Meſſenger ſays, To the beſt of his Knowledge it is Mr. *Kelly*'s Hand; and at the ſame time owns, he never ſaw him write till after his Commitment, and then he ſtood by him while he wrote two Letters, one to Lord *Townſhend*, the other to Mr. *Delafaye:* Thoſe Letters were produced at the Bar, and therefore every Lord in the Houſe is as good a Judge of the Similitude as the Meſſenger, who has lately been reſtored into Favour; on what Account I cannot tell.

If Mr. *Kelly*, during his Confinement, counterfeited and diſguiſed his Hand, then the Meſſenger's Evidence can't be of any Weight; and if he wrote as uſual, then every Perſon is equally capable of framing an Opinion of it, who ſees the Three Letters.

The next Witneſs is *Malone*, who ſwears, he has ſeen him direct Letters, but can't tell how long ſince he ſaw him write, nor how often.

The perſons who contradict this Evidence are ſo poſitive, ſo clear, and ſo concurring in their Teſtimony, that no Doubt can riſe upon it.

Mr. *Bingley*, when he was ſhewn this Letter, ſwears it is not like his Hand-writing.

Mr. *Brown*, a Peruke-maker, well vers'd and acquainted with his Writing, when he was ſhewn the Letter of the 20th of *Auguſt*, and the Date of it hid, by the Counſel for the Bill (ſo that he could not know what Paper it was before him) ſwears, it is not his Hand-writing. When the Letter to *Delafaye* was produced, he declared, That was his Hand-writing: When another Paper was ſhewn, (I think it was the Marriage Articles) he ſaid, That was more like his Hand-writing than that of the 20th of *Auguſt*, but he did not believe it was wrote by him; and when they queſtion'd him upon the Letter to Lord *Townſhend*, he ſwore it was Mr. *Kelly*'s Hand-writing.

Mr. *Pickering*, who had Occaſion to know Mr. *Kelly*'s Hand, having lent him ſome Money, and received ſeveral Notes and Letters from him during that Tranſaction, does agree with Mr. *Brown* in every particular and moſt minute Circumſtance; which is a clear and evident Proof, that this Letter of the 20th of *Auguſt* was not wrote by Mr. *Kelly*.

The Difference which they tell your Lordſhips they obſerve, between the Cut of the Letters in that of the 20th of *Auguſt*, and the others, is, That one is longer and ſtraiter, the other wider and ſhorter: which is obvious to any body that will look on both, and is a Confirmation of their Veracity.

The Proſecutors of the Plot might have prov'd this better, and not have been driven to the Teſtimony of a Meſſenger to ſupport this great Foundation of their Charge. It is notorious what Search they have made for Evidence of all Kinds; and as Mr. *Kelly* was educated in a College, they might eaſily have found credible Witneſſes to that Point, if thoſe Letters had been wrote by him.

In the Caſe of Similitude of Hands, when it has been the moſt clearly and poſitively proved, as on the Trial of Colonel *Sidney*, it has been eſteemed to be cruel, that a Man ſhould be convicted on ſuch Kind of Evidence; and the Attainder of that unfortunate Gentleman was reverſed for that Reaſon.

In *Sidney*'s Trial, his Bankers ſwore, They uſed to pay Bills drawn by him in the Hand-writing they were ſhewn, and no Perſons could contradict them; and yet the Sentence againſt him was a great Blemiſh to that Reign. The Great Lord Chief Juſtice *Holt*, in the Caſe of *Croſby*, refus'd to admit it; and the Lord Chief Baron *Bury*, on *Francia*'s Trial, follow'd that Example.

At preſent, give me leave to ſay, There is no Evidence that it is Mr. *Kelly*'s Hand, and there is poſitive Proof that it is not.——Therefore, we who live under ſo equitable, juſt, and happy a Government, can never convict a Man, in theſe Days of Liberty, on ſuch inſufficient Conjectures.

They next produced the Three Letters, which, they would inſinuate, were wrote by *Kelly*, and dictated by the Biſhop, which were mentioned by me before, and which were ſworn by the Clerks of the Poſt-Office to have been ſtopt going to *France*.

The Biſhop deſired to examine them relating to theſe Letters being detain'd, and would fain have known who took them out of the Mail: this he thought was proper for him to demand, ſince he ſeem'd to inſinuate, That he queſtion'd their ever having been in the Poſt-Office. But your Lordſhips would not ſuffer any Enquiry to be made on this Head, and voted it inconſiſtent with the publick Safety, and unneceſſary for the Defence of the Priſoner, to permit any further Queſtions to be aſk'd in relation to this important Affair.

Theſe honeſt Gentlemen, the Clerks of the Poſt-Office, have depoſed further, That the Papers produced, are true Copies of the Originals detain'd by them; tho', at the ſame time, they confeſs, they never examin'd them after they had copied them.

They poſitively ſwore further, That the Originals were of the ſame Hand with the Letter of the 20th of *Auguſt*, tho' they affirm this barely upon Memory, never having mark'd any Letter in order to know it again: and one of them declared upon Oath, That he did not believe there could be ſuch an Imitation of *Kelly*'s Hand as could deceive him; tho' the whole Houſe agrees, That Hands may be counterfeited ſo as to deceive the Men that wrote them.

They own, they never compared two original Letters between the 20th of *April*, and 24th of *Auguſt*, tho' they might have ſtopt a Letter one Poſt, without Prejudice to the Government, in order to be more certain in their Evidence.

Thus, my Lords, ſhould this Bill paſs, this great Man muſt fall by the Dependance this Houſe muſt have on the Memory of theſe Clerks.

Mr. *Lewis*, who has long ſerv'd in the Secretary's Office, tells us, That frequently Letters and Seals uſed to be counterfeited: and, in a more particular manner, by one *Brocket*, who excelled ſo much in this Art, that he has cheated many Perſons, and has ſo far deceived them, that they have not known his Copy from their own Originals.

When theſe Letters, thus atteſted, came to be read, they are in Cypher; ſo that it muſt again depend on the Honeſty of a Decypherer, before they can poſſibly be made Treaſonable.

Mr. *Willes* declares, They were truly decyphered according to the beſt of his Judgment and Skill; and more particularly, that the Number 1378, which is ſubſcribed to the third Letter directed to *Jackſon*, ſtands for the letter *R*. But when ſome Lords aſk'd him a Queſtion, which, perhaps had he anſwer'd, might have proved him to be under a Miſtake; he refuſes to give an Anſwer, either in the Affirmative or Negative, for fear of revealing his Art; your Lordſhips thought proper to prevent any further Croſs-Examination of this Gentleman, by a Reſolution.

Mr. *Willes* ſays, He ſhew'd theſe Letters decyphered to my Lord *Townſhend*, before he communicated them to Mr. *Corbire*, who is a Clerk in the Secretary's Office, and then he ſays, That Mr. *Corbire* and he agreed.

Before theſe Letters can yet prejudice the Biſhop, the Cant Names in them muſt be explain'd, according to the Key which the Proſecutors of the Plot have made; and in order to it we muſt believe that *Jackſon* ſtands for the Pretender, becauſe Mr. *Plunkett* gave him that Title in his Cypher. Can there be a greater Abſurdity, than to imagine a Perſon of the Biſhop of *Rocheſter*'s Capacity, ſhould borrow a Name of that Conſequence, from ſo inſignificant a Wretch as *Plunkett*, who it does not appear ever ſaw him?

Indeed, the Counſel for the Bill did not read theſe Letters againſt the Biſhop, ſince they had no Proof of his dictating them, and they were only read on Account of the general Conſpiracy.

I muſt obſerve, It was a great Artifice of theſe learned Gentlemen, whenever there was a Piece of Evidence to which the Biſhop objected, they conſtantly pretended, they produc'd it to the Plot in General; for they knew it could not be admitted againſt the Reverend Prelate: But yet, when they came to ſum up, they applied them to this particular Caſe; which is not agreeable to that Candour that is neceſſary on ſuch Occaſions.

If your Lordſhips ſhould be of Opinion, that *Kelly* wrote them; that they were ſtopp'd at the Poſt-Office; that they were duly copied; that they were truly decyphered, and the Cant Names explain'd; yet ſtill this cannot affect the Biſhop, unleſs it be fix'd upon him that he dictated them: Two of them were ſign'd *Jones* and *Illington*, and to induce your Lordſhips to believe the Biſhop was Guilty, as they affirm'd, they endeavour to prove thoſe Names muſt denote him. And, in Order to it, they read ſome Letters, affirm'd in the ſame manner, (as before-mention'd) by the Clerks of the Poſt-Office, to be his Hand-Writing: But firſt they read a Cypher taken upon Mr. *Dennis Kelly*, and ſworn by the Meſſenger, *Hutchins*, to be wrote by *George Kelly*.

I can obſerve nothing upon this Cypher, but that the Biſhop of *Rocheſter* is not mention'd in it; which ſeems very extraordinary, and is not a Proof of the Reverend Prelate's being in a Conſpiracy.

The Letters they read of Mr. *Kelly* are of no Moment, and are only calculated to fix the Names of *Jones* and *Illington* upon the Biſhop.

They give an Account of his Lady's Death, the Biſhop's own Illneſs, his going to and from *Bromley*; and, in ſome of them, the Dog *Harlequin* is mentioned.

It ſeems repugnant to Reaſon, that in a Treaſonable Correſpondence of this Importance, a Gentleman ſhould venture his Life to give an Account of the State of one Perſon's private Affair, and entertain his Friends abroad with no other Buſineſs in ſuch a Tract of Time.

In the Lettersdirected to Mr. *Andrews*, at the *Dog and Duck*, which are proved to have been received by Mr. *Kelly*, *Jones* and *Illington* are not named; and thoſe in which we find them, were ſuch as paſs'd thro' the Poſt-Office, and were atteſted like thoſe under Cover to *Gordon le Fils*.

It is not likely, that, in a Tranſaction of ſo ſecret a Nature, Mr. *Kelly* ſhould take ſuch Pains to give ſuch a Deſcription as might give the leaſt Room for a Suſpicion that the Biſhop was concerned; much leſs to have mention'd ſo many Particulars, as it may be ſuggeſted he has done, if there could be any Poſſibility of wreſting the Meaning of *Jones* and *Illington*, and interpreting of them to mean the Biſhop.

William Wood, the Biſhop's Coachman, is brought to prove the particular Times of the Biſhop's being in or out of Town, in order to ſhew that they agree with the Times mentioned of *Jones* and *Illington* in the intercepted Correſpondence; and he refreſhes his Memory by a Book of *Memorandums*, which might have been deſtroyed, if it had been apprehended, by the Biſhop's Friends, that ſuch Evidence could affect him.

What they next attempt, was to ſhew, That the Dog brought over by Mr. *Kelly* from *France*, and which Mrs. *Barnes* ſwears, that he once told her was for the Biſhop of *Rocheſter*, was a ſtrong Circumſtance to fix the Name of *Illington* on the Biſhop.

My Lords, Mrs. *Barnes*, who is under the Cuſtody of a Meſſenger, is the only Witneſs to this Point; and what ſhe ſays, is only Hearſay from *Kelly*: She owns that *Kelly* never told her ſo but once, and that was when ſhe thought to have kept it for herſelf: And, indeed, it might be barely an Excuſe to prevent his parting with it, for he had promiſed to bring her ſuch a Preſent before he went to *France*.

She owns, that to her Knowledge, the Biſhop never ſaw the Dog, nor ſent any Meſſage about it; which ſeems to be very extraordinary, that if this Preſent was of ſuch great Conſequence, he ſhould not have had Curioſity enough, at leaſt, to ſee it: An Affidavit was read from *Birmingham*, a Surgeon in *Paris*, which ſays, That he gave this Dog to Mr. *Kell*, for Mrs. *Barnes*.

Before I leave this Circumſtance of the Dog, it is proper to obſerve another great Improbability, which is, in a Letter wrote a few Days after the Death of the Biſhop's Lady, it is ſaid, Mrs. *Illington* was in great Tribulation for the Loſs of poor *Harlequin*; and can it be ſuppoſed, that at a Time when the Biſhop was in Affliction for the Death of his Wife, he ſhould indecently diſcover ſo much Grief for ſuch a Trifle?

I think this is ſufficient to convince any Perſon whatſoever, that this Correſpondence is of a very extraordinary Nature.

Mrs. *Barnes* has told your Lordſhips, That Mr. *Kelly* came from *France* the 11th of *April*.

My Lords, I am now come to the only Piece of Evidence that ſeems particularly levelled at the Biſhop; which is, The Proof that has been given of the dictating thoſe Letters: and unleſs this be clearly and plainly made appear, I cannot conceive that any thing can be laid to this Prelate's Charge.

Unleſs it is evident, that the Biſhop did dictate as alledged, I cannot think any of your Lordſhips can vote him Guilty according to the Rules of Juſtice; for no Man is ſafe either in his Life, Liberty, or Fortune, if he may be deprived of either, on account of a Correſpondence in which it does not appear he was concerned. Tho' Your Lordſhips ſhould ſo far credit the precarious Evidence at your Bar, as to believe that *Jones* and *Illington* ſtood for the Biſhop of *Rocheſter*; yet unleſs it is plain that it was with his Privity, it is certainly impoſſible this Bill ſhould paſs: And if it ſhould, it will hereafter be in the Power of any two Men, one at Home, and one Abroad, to ruin the moſt innocent Perſon, by entering, without his Knowledge, into a Correſpondence of this Nature.

If the being named in Treaſonable Letters be a Crime, tho' it does not appear it was with the Privity of ſuch Perſons, I will ſubmit to your Lordſhips, how far Men of the greateſt Zeal to the preſent Eſtabliſhment, are to be affected by Mr. *Plunkett*'s Inſinuations.

No Man ought to ſuffer for the Suggeſtions of another Perſon, unleſs it appears he has given great Foundation for them. And, in this Caſe, would it not be moſt extraordinary and moſt unjuſt, to puniſh this Reverend Prelate, for a Crime which there is no Proof he ever committed? I mean, the dictating of theſe Letters. And if, on the other Hand, the unfortunate Circumſtances of his Affairs have furniſhed him with Means of ſhewing, beyond Contradiction, that he could not be concern'd in the Letters of the 20th of *April*; that for a conſiderable time he could not ſee Mr. *Kelly*; and that there never was an Intimacy between them: Then, my Lords, I hope, every Man who gives his Vote for the rejecting this Bill, has the ſtrongeſt Evidence of his Side to ſupport his Opinion; and need not be afraid or aſhamed to own it here, or any where elſe.

This Part of the Evidence being of great Conſequence, I muſt beg your Lordſhips Attention, whilſt I recapitulate the Heads of it, as clearly and diſtinctly as poſſibly I can.

The firſt Witneſs they call'd, was *Flower*, a Chairman, who ſwears, That he carried *Kelly* twice or thrice to the Deanery; but that the Biſhop was never at Home, and conſequently did not ſee him. His Partner ſwore, he had carried him, with *Flower*, one of thoſe Times.

The next Perſon produced, was a Porter, one *Vanlear*, who depoſed, That he went about *Chriſtmas* was Twelve-Months, twice, with Meſſages from *Kelly* to the Biſhop; the laſt of which Times, he carried ſome *Beaver* Stockings; that the Biſhop ſent for him up Stairs, gave his Service to Mr. *Johnſon*, and thank'd him for his Preſent.

Mrs. *Kilburne*, at whoſe Houſe Mr. *Kelly* lodged, ſays, That once a Servant came from the Biſhop, to know how Mr. *Johnſon* did, and was ſorry he could not have his Company at Dinner.

William Wood, the Biſhop's Coachman, ſays, He once ſtopp'd in *Bury-Street*; but does not know for what; and that the Biſhop ſent a Servant ſome where, who preſently returned. And,

Lloyd, who keeps the *Star and Garter* in *Palace-Yard*, has told us, That *Neynoe* once came to his Houſe, and told him, he ſtaid for an ingenious Gentleman, who was gone to the Biſhop of *Rocheſter*'s Houſe.

This, my Lords, is all the Proof they offered of this Intimacy; from which they would infer, that the Biſhop dictated theſe Letters, and is conſequently Guilty of the Crimes laid to his Charge.

If your Lordſhips conſider what was produced on the other ſide, I am ſure you muſt agree there is no Foundation for this Aſſertion.

Mrs. *Kilburne* denies, to the beſt of her Knowledge, that the Biſhop ever came to her Houſe, or that his Coach ever ſtopp'd there, or ever was ſent for *Kelly*.

That *Kelly* did not go out of Town, from the time he came from *France*, till he was taken up, the 19th of *May*, and never lay out of her Houſe one Night.

This, my Lords, was confirmed by her Maid *Anne Ellis*.

Mrs. *Barnes* ſays, She never heard of any Meſſage from the Biſhop to *Kelly*, nor ever had any Converſation with him about the Biſhop.

William Wood the Coachman, who liv'd with the Biſhop four Years, has declared, that the Biſhop of *Rocheſter* never ſent him with his Coach to *Bury-Street* to fetch any Perſon from thence, that there was no Stranger at *Bromley* for a Fortnight before his Lady died, which was the 26th of *April*; that Nobody could come in a Coach or on Horſeback, but he muſt know it; that he never ſaw ſuch a Perſon as Mr. *Kelly*, till he was ſhewed him at the *Tower*; and that the Biſhop went ill of the Gout to *Bromley* the 12th of *April*, and did not return to *London* till the 7th of *May*.

Malone, Mrs. *Barnes*'s Servant, ſays, That ſhe never ſaw the Biſhop, or any of his Servants, with Mr. *Kelly*.

Thomas Grant, who has been the Biſhop's Servant nine Years, has declared, That the Biſhop went to *Bromley* the 12th of *April* very ill of the Gout, and that no Stranger could come to him, from the time he went to *Bromley*, till after his Wife's Death; that one or other of the Servants always ſat up with him; and that no Perſon could viſit him, but they muſt know it; for they were either in the ſame Room, or the next Room to him: and that no Stranger, except Dr. *Aldridge* and the Apothecary, came near him. *Grant* ſays, That he was forc'd to go to Town to attend at the *Weſtminſter* Election of Scholars on the 21ſt of *April*, but left *Beauchamp* there, who came down for that purpoſe on the 18th.

Beauchamp and *Steen*, who were the two Servants that attended with *Grant*, ſwear the ſame Thing.

Suſannah Harvey, *Sarah Jones*, *Thomas Farnden*, *Elizabeth Higginſon*, and all the Servants agree, that they never heard of any Perſon by the Name of *Kelly* or *Johnſon*'s being with the Biſhop. And,

Mrs. *Engliſh*, who took the Names of the Biſhop's Viſitors for many Years, does not remember, that ſhe ever heard of ſuch a Perſon as *Kelly*, or

or *Johnſon*. And I doubt not, but that every Lord muſt allow, that it is not poſſible to have a more clear, a more ſtrong, or legal Proof to a Negative, than this is.

I muſt obſerve to your Lordſhips, that moſt of theſe Servants have been in ſtrict Cuſtody, and ſeverely uſed, particularly *Farnden*, and yet your Lordſhips ſee how unanimous they are in their Evidence: and their Teſtimony is ſo poſitive, that I cannot conceive any Perſon can ſuggeſt there was the leaſt Intimacy between this Reverend Prelate and Mr. *Kelly*; and much leſs, that he could be with him to write the Letters that are dated the 20th of *April*.

Mr. *Reeves* did, indeed, ſo far agree, as to be of Opinion, that they might have been wrote the 11th of *April*, which was the Day *Kelly* came from *France*: But, my Lords, Mrs. *Barnes* has depoſed, he went to Bed the Minute he came home, and lay there for a conſiderable time; beſides it is improbable that Letters wrote the 11th, ſhould not be ſent till the 19th But if any further Argument was neceſſary to confute this abſurd Suppoſition, the Earl of *Sunderland*'s Death is mentioned in the Letter to *Chivers*, and that Noble Lord died the 19th; at which Time it hath been proved Mr. *Kelly* was not with the Biſhop.

The Biſhop of St. *Aſaph* did at firſt peremptorily contradict one Part of Mr. *Grant*'s Evidence, by ſaying, he had received a Letter from the Biſhop of *Rocheſter*, at the Time which *Grant* has ſworn he was ſo ill of the Gout that he could not write.

His Lordſhip poſitively affirmed, That he received this Letter on *Saturday* the 21ſt of *April* in the Morning, and ſaw *Grant* in *London* between Twelve and Two: But when it was proved that *Grant* did not leave *Bromley* till the Evening of that Day, and that another Perſon officiated for him as Butler in the Deanery, by Reaſon of his Abſence, then the Biſhop ſeemed to think himſelf under a Miſtake, and allowed it might have been ſome time before.

His Lordſhip owned, He never received a Letter from the Biſhop of *Rocheſter* before nor ſince, and therefore was a Stranger to his Hand.

I could have wiſhed this Reverend Prelate had recollected himſelf more fully, before he had given his Teſtimony in a Matter of this great Importance to one of his Brethren.

There was another Witneſs examined, which was *Croſton* the Shoemaker, to prove, that *Talbot* (who was ſaid to have received the three Letters directed to *Gordon le Fils)* was at that Time in *London*, when he was ſuppoſed to have been in *Boulogne*. *Croſton* ſwears he ſaw him in Town the 29th of *April*, and proved it by his Book.

There was another Perſon called, whoſe name was *Donner*, that depoſed, *Gordon* owned to him the receiving of this Packet; but an Affidavit was produced from *Gordon*, in which he denies it. *Donner*'s Evidence is only Hearſay, the other is poſitive.

My Lords, the Counſel for the Bill produced ſome Papers which were taken in the Biſhop's Cuſtody when he was apprehended, and endeavour to draw very ill-natured and forced Conſtructions from them.

The Firſt was a Letter from the Dutcheſs of *Ormond*, in which ſhe acquaints him, *That ſhe had ſomething to ſend him, which ſhe could not truſt to a better Hand*; or Words to that effect. And this they would pretend to inſinuate, were ſome treaſonable Papers.

I appeal to all Mankind, whether it is not very extraordinary to ſuppoſe, that the Biſhop ſhould be preſumed to convey a Traitorous Correſpondence thro' that Channel. Every Body knows the Friendſhip which was between the Reverend Prelate and that Family; and it is not ſurprizing that this unfortunate Lady ſhould think him a proper Perſon to conſult, and intruſt with her own Affairs. Therefore I can't think, that theſe general Expreſſions can at all affect him.

The next they read, is a Paper found, or pretended to be found, at the Deanery, ſubſcribed to *Dubois*, but without Date: In this the Perſon who writes it, ſays, He received a Letter by Mr. *Johnſon*, to which he returned an Anſwer in his Hand.

The Secret Committee, at firſt, apprehended that this was received by the Biſhop; and thus it paſſed, till upon ſeizing a Letter wrote in the *Tower* by his Lordſhip, they found a Similitude in the Seals, which immediately enlightened them, and then it was preſently ſaid to have been wrote by the Biſhop.

They then wanted to fix this to be the Biſhop's own Hand-writing, and they could find no other Way of doing it, but pretending there was a Similitude between the E's in this Letter, and thoſe which the Biſhop generally uſed. I believe it is the firſt time that ever ſuch an argument was brought to prove that the whole Letter has been wrote by a Perſon: much leſs was it ever pretended to be offered to a Court of Juſtice againſt any Priſoner whatſoever: But I believe, there is no Man acquainted with the Biſhop's Hand, but ſees it is not wrote by him.

They would alſo affirm, that when in this Letter the Biſhop is ſuppoſed to ſay, That he returned an Anſwer in Mr. *Johnſon*'s *Hand*, it muſt be underſtood to be his *Hand-writing:* which, I muſt confeſs, does not at all appear to be a neceſſary Concluſion; for he might deliver his Anſwer into Mr. *Johnſon*'s Hand, which, I think, is more natural to ſuppoſe than the other.

Your Lordſhips muſt judge, how improbable it is, that the Biſhop ſhould keep ſuch a Letter by him, which he wrote himſelf; or that when ſuch Care is taken, as the Proſecutors of the Plot themſelves ſay, for preventing any Perſon's diſcovering the Intimacy between Mr. *Kelly* and him, ſuch a Secret ſhould be truſted in Writing, and even without a Cypher.—The Two Seals which gave this Turn, are *Cicero*'s Heads, which are very common. And are to be found every where. They are one broke, the other whole, which muſt make it very difficult to judge of them: and it is allowed, that, at beſt, it is but precarious Evidence.

If Mr. *Neynoe* ſpeaks Truth, when he ſaid, The Biſhop had Notice of the Storm that threatened him, I am certain, that this Paper, if it could have been apprehended of Conſequence, would have been deſtroyed: But, I believe, it was impoſſible for him, or any body elſe, to think it ſhould meet with ſuch an Explanation.

The next Letter they produced, which they ſeemed to think material, was that which was ſeized on his Servant going to Mr. *Morrice:* In this he ſays, That the Evidence of *Plunkett*, and thoſe people, could not affect him; but as he does not mention Mr. *Kelly*, they would have it preſumed, that this is a Proof, that *Kelly* could have ſaid ſomething of him. But, I think, this muſt appear to be a very ill-natured Aſſertion.

Your Lordſhips will conſider, he was then writing to his Son-in-law; and therefore no great Accuracy was neceſſary.

In another place, he ſays, That if they impeached him, he ſhould remain in Priſon for ſome time; and this they would decypher to be an Implication of his Guilt.—But, in my poor Opinion, it is the Reverſe: He ſeems to ſay, That if the Commons ſhould be induced to ſend up an Impeachment againſt him, he was ſo ſatisfied of his own Innocence, and your Lordſhips Juſtice, that he thought the Confinement till his Trial would be the only Misfortune that could attend him. The Example of the Earl of *Oxford* was recent in his Memory, and might juſtly create in him a Fear of undergoing a long Impriſonment.

It is objected, That he, in this Letter, makes no Proteſtations of his Innocence: But if you will conſider he writes to Mr. *Morrice*, I believe every body will agree, that ſuch Declarations were not neceſſary.

Mr. *Layer*'s Attainder was read; but it does not appear, That the Biſhop had any Correſpondence with him; therefore I can't conceive why we were troubled with it.

My Lords, I have now gone thro' the whole Evidence that is brought to juſtify this extraordinary Proceeding, and muſt obſerve the Steps that have been taken to procure all the poſſible Means to work the Deſtruction of this Great Man.

You have ſeen his very Servants confined, who, it does not appear, were guilty of the leaſt Glimpſe of Treaſon.

Lawſon, a Baker of *Bromley*, who appeared at your Bar, has been employed to examine the Perſons in the Biſhop's Neighbourhood, in order to find the leaſt Particular that could amount to the Shadow of a Proof; and went ſo far, as to offer *Wood* the Coachman the wages that were due to him, if he would have gone the Lengths that were required.

Mr. *Bingley* told us in the Caſe of *Kelly* (and as it has not been diſproved, it is to be taken for granted), that a Warrant was ſhewn by the Meſſenger, ſigned by a Secretary of State, to carry him to *Newgate*, which he was told was unavoidable, unleſs he would own the Letter of the 20th of *Auguſt* to be Mr. *Kelly*'s Hand-writing: But it appeared the next Day, to be nothing but in order to terrify him.

Mr. *Kelly* himſelf has told your Lordſhips, That Mr. *Delafaye* offered him his own Terms if he would have turned Evidence: And this was done to deſtroy the Biſhop of *Rocheſter*; or, to ſpeak in the Language mentioned at your Bar, *To pull down the Pride of this haughty Prelate.*

Your Lordſhips may remember, That Mr. *Wearg* objects to the Biſhop's Servants, becauſe two of them had Employments, as appears by his Lordſhip's own Letter: but, my Lords, when they were examined, they acquainted the Houſe, that it was upon reading of the *Report*, that they recollected the Biſhop's Circumſtances before the Death of his Wife. And if every Man who has a Place under the Biſhop, is not to be eſteemed a free Agent, when he is upon Oath, I hope it will be allowed, on the other hand, that thoſe who have Employments under the Government, ought not to be admitted; then all the Witneſſes that have been brought to ſupport the Bill, from the Decypherer to the Meſſenger, will be diſcredited, and the whole Proſecution muſt fall to the Ground.

My Lords, it has been a Hardſhip that has attended the Biſhop, that he has been forced to prove a Negative; and the Difficulty has been the ſtronger upon him, that your Lordſhips have not permitted Mr. *Kelly* to be examined, as was moved by a Learned Lord, in my Eye; and if the Gentleman had ſworn what he ſo ſolemnly affirmed at your Bar, relating to this Affair, I can't conceive we could have had the leaſt Debate.

The Noble Lords who appeared the moſt zealous in this Proſecution, were thoſe who oppoſed the Examination of Mr. *Kelly*; which, in my poor Opinion, is a ſtrong Argument, That, if he had been brought before us, he would have perſiſted in his Declarations of the Biſhop's Innocence.

The Reverend Prelate has deſired of any Lord in the Adminiſtration, and even the Honourable Perſon who appeared at your Bar, to declare, whether any one ſingle Perſon had charged him (on their own Knowledge) of being guilty of any treaſonable Practice. And it has appeared to the contrary: Therefore this whole Charge is founded upon the ſlight Circumſtances and improbable *Innuendos* before-mentioned.

Another Objection, which has been raiſed, is, that Mr. *Kelly* made Reſiſtance, when he was ſeized, till he had burnt ſome of his Papers: But, my Lords, I don't ſee any Reaſon to lay this to the Charge of the Biſhop.

Kelly is to anſwer for his own Actions, and is unfortunately like to ſuffer for 'em: A Perſon of his Age might have many Letters in his Cuſtody, which he did not care ſhould be ſeen, and yet of a different Nature from a Traitorous Correſpondence.

After this Evidence is conſidered, I cannot think your Lordſhips will eſtabliſh ſuch a Precedent, which hereafter may be employed to ruin the greateſt amongſt you. And if ever hereafter, Pains and Penalties are unjuſtly inflicted on any Perſon, Poſterity will derive the Original of ſuch Bills from the Proceedings of this Parliament; and what Opinion will be framed of us, ſhould this be paſſed into a Law, I ſubmit to every impartial Perſon.

It muſt be left to your Lordſhips Conſideration, which will be of moſt fatal Conſequence to the Publick, The leaving this Precedent (of Condemning on ſuch kind of Evidence) like a Sword which your Enemies may take up when they pleaſe, or the baniſhing the Biſhop of *Rocheſter*, in the Evening of his Days, who alone could do, in his ſingle Perſon, no Prejudice to the Conſtitution. If he were inclined to overturn it, as his Enemies ſuggeſt, he is in a better Situation Abroad than at Home, to execute that Deſign, and direct the Counſels of the Diſaffected. The Ruin of one Man will not heal the Wound, that the paſſing of this Bill ſeems to make in the Government of this Kingdom.

It has been ſaid in the Debate, That the Biſhop ought to have made Proteſtations of his Zeal for his Majeſty and his Family: But, I think, he took the moſt ready Way of performing his Duty, when he ſhew'd himſelf Innocent of the Crimes laid to his Charge.

If he had made uſe of any Expreſſions, which thoſe Lords blame him for omitting, the ſame *Good-nature* would have call'd it *Hypocriſy*; and thoſe who are diſpleaſed with his *Silence*, would have accuſed him of *Inſincerity*.

My Lords, this Bill seems as irregular in the Punishments it inflicts, as it is in its Foundation, and carries with it an unnatural Degree of hardship.

It is Felony for his Children to correspond with him: And in this Circumstance, it is different from the only Bill that carries with it the least Resemblance of this; I mean, That for the banishment of the Earl of *Clarendon*.

The Earl had flown from the Prosecution, and retired beyond Sea. The Charges against him were, principally, *for advising a Standard Army*; and another Article exhibited was, *That he had advised and procured divers of his Majesty's Subjects to be imprison'd against Law, in remote Islands, Garrisons, and other Places, thereby to prevent them of the Benefit of the Law, and to produce Precedents for the Imprisoning any other of his Majesty's Subjects in like Manner.*

The 7th Article against him was, *That he had, in a short Time, gain'd to himself a greater Estate than can be imagin'd to be gain'd lawfully in so short a Time: And, contrary to his Oath, he had procured several Grants under the Great Seal from his Majesty, for himself, and his Relations, of several of his Majesty's Lands, Hereditaments and Leases, to the Disprofit of his Majesty.*

There need not have been any Witnesses of these Crimes, for they were apparent; and every body knew that he was *Prime Minister:* Yet Sir *Francis Goodier*, upon that Debate in the House of Commons, declared the Sentiments which I express'd at the Beginning, *That he was not against Proceeding, but unsatisfied to do it without Witness, it being like swearing* in verba Magistri.

Another great Man, upon the same Question, and an Ancestor to a Noble Lord near me, said, *That if the Parliament set aside Law in this Case, we should be happy to see Law declaring the Power of Parliaments.*

The Punishment for Corresponding with the Earl was High-Treason, and then Two positive Witnesses were necessary to convict: But, in this Case, one corrupt, terrified, and perjur'd Person may take away the Life of the most innocent Man.

There is another great Misfortune which this Bill brings upon the Bishop, which is, That he is incapable of receiving his Majesty's Pardon. This, my Lords, is an Entrenchment upon the Prerogative. And what must make it the more severe in this Case, is, That his Majesty's Inclinations to Mercy (which are the distinguishing Characters of his Life) are stopp'd by this Law, which the unfortunate Prelate might have Hopes of receiving when he had merited it, by a dutiful behaviour to the Country that had sent him to wander abroad in Exile, and by his future Conduct have confirm'd, if possible, the Evidence he has given of his Innocence.

My Lords, in the Case of the Earl of *Danby*, your Lordships have declared, That his Banishment should be no Precedent, nor drawn into Example for the Time to come, and have so enter'd it in your Journals.

It has been prov'd, That this Reverend Prelate was at the time that he was suspected to be acting in Treason, engaged in Studies of the most high Nature, which is a Circumstance that ought to have some Weight.

If this Bill pass into a Law, such Evidence is establish'd, and such a Method of Proceeding introduc'd, as must effectually render all that is dear to us precarious; and if ever, hereafter, we should see a wicked Administration, supported by a corrupt Majority in Parliament, this Step taken in these Times of Liberty, will be a sufficient Precedent to give a Colour of Justice to the Actions of those who should be wanton in Tyranny.

The Reverend Prelate, who spoke before me, mentions some Cases relating to Bills of Attainder, which, in my poor Opinion, differ very much from our present Question.

The Attainder of Sir *John Fenwick* was only to supply the want of a Witness who had deposed against him upon Oath before the Grand-Jury, and who was spirited away by the Prisoner's Friends: But at present, your Lordships are to supply the Defect of Evidence, by condemning on improbable Conjecture. There was a Noble Lord in this House the other Day, I don't see him now, who made the greatest Figure in Opposition to that Bill, I wish we could have his Assistance on this Occasion.

My Lords, since that Reverend Prelate has quoted some Cases, he will permit me to remind him what has been formerly said upon Acts of Attainder; That such Bills, like *Sisyphus*'s Stone, have frequently roll'd back upon those that were the chief Promoters of them.

This prudential Argument should restrain us from being too forward with them at this Time of Day.

The Act for the Attainder of the Earl of *March* pass'd, because he had been instrumental in procuring the Attainder of another Lord, under pretence of a Letter, which the Record says was no Evidence.

The Lord *Cromwell* is another known Instance of this Observation: He was the first who advised this violent Proceeding in *Henry* the VIIIth's Time; And it is remarkable, that the Advice he gave to the Ruin of others, prov'd, not long after, fatal to himself.

I have now given your Lordships the Reasons why I am against the Bill. I fear I have tired your Patience, and shall therefore conclude with the Words of the Great Man I before mentioned; I mean, Sir *Heneage Finch*, in the Case of the Earl of *Clarendon*—'We have an Accusation 'upon Hearsay, and if it is not made good, the blackest Scandal Hell 'can invent lies at our Doors.'

The Result of this Debate was, that the Bill, pass'd the House; it afterwards obtain'd the Royal Assent, and was as follows:

An Act to inflict Pains and Penalties on Francis *Lord Bishop of* Rochester.

WHEREAS in the Years One thousand seven hundred and twenty-one, and One thousand seven hundred and twenty-two, a detestabe and horrid Conspiracy was formed and carried on by divers Traitors for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the *Tower* and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness the Prince of *Wales*, in order to subvert our present happy Establishment in Church and State, by placing a Popish Pretender on your Throne: And whereas, for the better concealing and effecting the said Conspiracy, divers treasonable Correspondences were, within the time aforesaid, carried on by Letters written in Cyphers, cant Words, and fictitious Names; which Conspiracy, had it not been disappointed by the Goodness of Almighty God, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and subjected your People to the Bondage and Oppression of *Romish* Superstition and Arbitrary Power: For which execrable Treason *Christopher Layer* hath been indicted, tried, convicted, and attainted. And whereas *Francis* Lord Bishop of *Rochester*, notwithstanding the many solemn Assurances by him given of his Faith and Allegiance to your Majesty, by taking the Oaths by Law appointed to be taken, instead of the Oaths of Allegiance and Supremacy; which Oaths he had likewise taken at sundry Times, during the respective Reigns of their late Majesties King *William* and Queen *Mary*, and of her late Majesty Queen *Anne*; and notwithstanding he had frequently abjured the Pretender, hath, in direct Violation of his said repeated Oaths and Obligations, and to the great Scandal of Religion, and his Holy Function, been deeply concerned in forming, directing, and carrying on the said wicked and detestable Conspiracy, and hath been a principal Actor therein, by traitorously consulting and corresponding with divers Persons to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and to procure a foreign Force to invade the same, in order to depose your Majesty, and place the Pretender on your Throne; and by traitorously corresponding with the said Pretender, and Persons employed by him, knowing them to be so employed: Therefore, to manifest our just Abhorrence of so wicked and abominable a Conspiracy, and our Zeal and tender Regard for the Preservation of your Majesty's Person and Government, and of the Protestant Succession in your Majesty's Royal Family, the solid Foundations of our present Happiness and future Hopes; and to the end that no Conspirator may, by any subtle Contrivance or Practice whatsoever, escape Punishment, and that all others may by the Justice of Parliament be for ever hereafter deterred from engaging in any traitorous Conspiracies or Attempts, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said *Francis* Lord Bishop of *Rochester*, from and after the first Day of *June*, in the Year of our Lord One thousand seven hundred and twenty-three, shall be, and is hereby, to all Intents and Purposes, deprived of all and singular his Offices, Dignities, Promotions, and Benefices Ecclesiastical whatsoever, and that the same, and every of them, shall from thenceforth be actually void, as if he were naturally dead; and that the said *Francis* Lord Bishop of *Rochester* shall from thenceforth for ever be disabled, and rendered incapable of and from taking, holding, or enjoying any Office, Dignity, Promotion, Benefice, or Employment within this Realm, or any other his Majesty's Dominions, and also of and from using or exercising any Office, Function, Authority, or Power Ecclesiastical or Spiritual whatsoever; and shall and do suffer perpetual Exile, and be for ever banished this Realm, and all other his Majesty's Dominions, and shall depart out of the same on or before the Five-and-twentieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty-three: And that if the said *Francis* Lord Bishop of *Rochester* shall return into, or be found within this Realm, or any other his Majesty's Dominions at any time after the said Five-and-twentieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty-three, he the said *Francis* Lord Bishop of *Rochester*, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer, and forfeit as in Cases of Felony without Benefit of Clergy, and shall be utterly incapable of any Pardon from his Majesty, his Heirs or Successors.

And be it further enacted by the Authority aforesaid, That all and every Person and Persons who shall, from and after the said Five-and-twentieth Day of *June*, in the Year of our Lord One thousand seven hundred twenty-three, be aiding or assisting to the Return of the said *Francis* Lord Bishop of *Rochester* into this Realm, or any other his Majesty's Dominions, or shall harbour or conceal him within the same, or any of them, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without benefit of Clergy.

And be it further enacted by the Authority aforesaid, That if any of the Subjects of his Majesty, his Heirs or Successors, except such Persons as shall be licensed for that Purpose by his Majesty, his Heirs or Successors, under his or their Sign Manual, shall, from and after the said Five-and-twentieth Day of *June*, in the Year of our Lord One thousand seven hundred and twenty-three, within this Realm or without, hold, entertain, or keep any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said *Francis* Lord Bishop of *Rochester*, or with any Person or Persons employed by him, knowing such Person or Persons to be so employed, such Person so offending, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without benefit of Clergy.

And be it further enacted, That if any Offence against this Act shall be committed out of this Realm, the same shall or may be alledged, laid, enquired of, and tried in any County within *Great Britain*.

In pursuance of this, on *Tuesday* the 18th of *June*, the deprived Bishop of *Rochester*, accompanied by his Son-in-Law Mr. *Morrice* and his Wife, embark'd on board the *Adborough*, one of his Majesty's Ships of War, and on *Friday* the 21st, landed at *Calais*.

CXCV. *The Trial of* Thomas *Earl of* Macclesfield, *Lord High Chancellor of* Great Britain, *before the* Houſe of Lords, *for* High Crimes *and* Miſdemeanors *in the Execution of his Office*, May 6, 1725. 10 Geo. I.

The First Day.

ABOUT Eleven of the Clock, the Lords being ſeated in their Houſe, the Managers for the Houſe of Commons being in the Conveniencies made for them at their Lordſhips Bar, Thomas *Earl of* Macclesfield, *having a Stool plac'd for him within the Bar, and his Counſel*, viz. *Mr. Serjeant* Probyn, *Doctor* Sayer, *Mr.* Lingard, *Common-Serjeant of the City of* London, *Mr.* Robins, *and Mr.* Strange, *ſtanding near him at the Bar, the Serjeant at Arms made Proclamation as follows:*

Serj. at Arms. Oyez! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Impriſonment.

Then the *Serjeant at Arms* again made Proclamation as follows:

Serj. at Arms. Oyez! Whereas a Charge of High Crimes and Miſdemeanors has been exhibited by the Houſe of Commons, in the Name of Themſelves, and of all the Commons of *Great Britain*, againſt *Thomas* Earl of *Macclesfield*; all Perſons concern'd are to take Notice, that he now ſtands upon his Trial, and they may come forth in order to make good the ſaid Charge.

Then the *Clerk-Aſſiſtant*, by Direction of the *Lord-Chief-Juſtice* King, Speaker of the Houſe of Lords, read the Articles of Impeachment, the Earl of *Macclesfield*'s Anſwer, and the Replication of the Houſe of Commons, as follows:

ARTICLES

Exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of Themſelves, and of all the Commons of Great Britain, *againſt* Thomas *Earl of* Macclesfield, *in Maintenance of their Impeachment againſt him for High Crimes and Miſdemeanors.*

WHereas the Office of Lord Chancellor of *Great Britain* is an Office of the higheſt Dignity and Truſt, upon the impartial and uncorrupt Execution whereof the Honour of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend: And whereas *Thomas* Earl of *Macclesfield*, in or about the Month of *May*, in the Year of our Lord One thouſand ſeven hundred and eighteen, by the great Grace and Favour of his moſt Excellent Majeſty, was conſtituted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the uſual Oath for the due Execution of that High Office; whereby he did ſwear well and truly to ſerve our Sovereign Lord the King, and his People, poor and rich, after the Laws and Uſages of this Realm, and ſuch other Oaths as have been accuſtomed; and the ſaid Earl continued in this great Office until about the Month of *January*, in the Year of our Lord One thouſand ſeven hundred and twenty-four, and in Right thereof was intruſted with the Nomination and Admiſſion to the Offices of Maſters of the Court of Chancery, which Maſters of the ſaid Court are Officers of great Truſt ſworn to ſerve the King and his People, and aſſociated to the Lord Chancellor for his Aſſiſtance in the due Adminiſtration and Execution of Juſtice in the ſaid Court: And whereas his Majeſty, upon the ſaid Earl's being appointed to the Office of Lord Chancellor, did, of his Grace and Bounty, beſtow upon the ſaid Earl the Sum of Fourteen thouſand Pounds, or ſome other great Sum, and did likewiſe grant unto *George Parker*, Eſq. now commonly called Lord *Parker*, Eldeſt Son and Heir Apparent of the ſaid Earl, a Yearly Penſion of Twelve Hundred Pounds, payable out of his Majeſty's Receipt of the Exchequer, during the joint Lives of his Majeſty and the ſaid Lord *Parker*, determinable upon his Majeſty's making a Grant to the ſaid Lord *Parker*, in Poſſeſſion of the Office of one of the Tellers of his Majeſty's Exchequer, for the Term of his natural Life, which Office being of the yearly Value of Fifteen hundred Pounds, or upwards, has been ſince granted by his Majeſty unto the ſaid Lord *Parker* for his Life, who in or about the Month of *July*, in the Year of our Lord One thouſand ſeven hundred and nineteen, was duly admitted to, and doth ſtill enjoy the ſame; and the ſaid Earl during the Time of his continuing Lord Chancellor of *Great Britain*, did not only enjoy the uſual Salary, Fees, and Profits belonging to his Office, of a very great annual Value, but alſo did continue to receive an annual Penſion of Twelve hundred Pounds, which his Majeſty in or about the Month of *June*, in the Year of our Lord One thouſand ſeven hundred and ſixteen, had granted to him and his Aſſigns, during his Majeſty's Life; and did likewiſe receive from the Crown a further annual Allowance of Four thouſand Pounds, and many other Advantages: Yet the ſaid *Thomas* Earl of *Macclesfield*, not being ſatisfied with this large and ample Revenue, nor regarding the Obligation of his Oath, or the Duty of his high and important Office, but entertaining wicked and corrupt Deſigns and Views, to raiſe and procure to himſelf exceſſive and exorbitant Gain and Profit, by divers unjuſt and oppreſſive Practices and Methods herein after-mentioned, whilſt he continued in the ſaid Office of Lord Chancellor, did Illegally, Corruptly, and Extorſively take and receive to his own private Uſe the following, or ſome other great Sums of Money.

ARTICLE I.

That *Richard Godfrey*, Eſq. having Contracted with Sir *Thomas Gery*, One of the Maſters of the Court of Chancery, for the Purchaſe and Surrender of his Office, at the Price of Five thouſand Pounds, or ſome other great Sum of Money; The ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of the ſaid *Richard Godfrey* into the Office of One of the Maſters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively Inſiſt upon, Take and Receive of and from the ſaid *Richard Godfrey* the Sum of Eight hundred and forty Pounds, or ſome other Sum of Money, for the admitting him into ſuch Office of a Maſter of the Court of Chancery, and to the Intent that the ſaid *Richard Godfrey* ſhould Have, Exerciſe and Enjoy the ſame, which ſaid Office Touches and Concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame Infamous and Corrupt Nature, did admit and ſwear the ſaid *Richard Godfrey* into the Office of one of the Maſters of the ſaid Court of Chancery, upon the Surrender of the ſaid Sir *Thomas Gery*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the Good and Wholeſome Laws and Statutes of this Realm.

ART. II.

That the Office of One of the Maſters of the ſaid Court of Chancery becoming vacant by the Death of *Samuel Browning*, Eſq. one of the late Maſters of the ſaid Court; the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of *James Lightboun*, Eſq. into the ſaid Office of One of the Maſters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively Inſiſt upon, Take and Receive of and from the ſaid *James Lightboun* the Sum of Six thouſand Pounds, or ſome other great Sum of Money, in Conſideration of, and for the Admitting him into ſuch Office, and to the Intent that the ſaid *James Lightboun* ſhould Have, Exerciſe and Enjoy the ſame, which ſaid Office touches and concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame Infamous and Corrupt Nature, did admit and ſwear the ſaid *James Lightboun* into the Office of One of the Maſters of the ſaid Court of Chancery, in Breach and Violation of his Oath as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. III.

That *John Borret*, Eſq. having contracted with *John Meller*, Eſq. One of the Maſters of the Court of Chancery, for the Purchaſe and Surrender of his ſaid Office, at the Price of Nine thouſand Pounds, or ſome other great Sum of Money; the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of the ſaid *John Borret* into the Office of one of the Maſters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorſively inſiſt upon, take and receive of and from the ſaid *John Borret* the Sum of fifteen hundred and ſeventy-five Pounds, or ſome other Sum of Money, for the admitting him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *John Borret* ſhould have, exerciſe and enjoy the ſame, which ſaid Office touches and concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *John Borret* into the Office of one of the Maſters of the ſaid Court of Chancery, upon the Surrender of the ſaid *John Meller*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. IV.

That *Edward Conway*, Eſq. having contracted with *John Orlebar*, Eſq. one of the late Maſters of the Court of Chancery, for the Purchaſe and Surrender of his ſaid Office, at the Price of Six thouſand Pounds, or ſome other great Sum of Money, the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, and before the Admiſſion of the ſaid *Edward Conway* into the Office of one of the Maſters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, illegally, corruptly, and extorſively inſiſt upon, take, and receive of and from the ſaid *Edward Conway*, the Sum of fifteen hundred Pounds, or ſome other Sum of Money, for the admitting of him into ſuch Office of a Maſter of the ſaid Court of Chancery, and to the Intent that the ſaid *Edward Conway* ſhould have, exerciſe, and enjoy the ſame, which ſaid Office touches and concerns the Adminiſtration and Execution of Juſtice in the ſaid Court; and the ſaid *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Purſuance and Execution of the ſaid wicked and corrupt Bargain, or in Purſuance of ſome other Bargain or Agreement of the ſame infamous and corrupt Nature, did admit and ſwear the ſaid *Edward Conway* into the Office of one of the Maſters of the ſaid Court of Chancery, upon the Surrender of the ſaid *John Orlebar*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Truſt in him repoſed, contrary to the Duty of his Office, and againſt the good and wholſome Laws and Statutes of this Realm.

ART. V.

That *William Kynaſton*, Eſq. having contracted with *William Rogers*, Eſq. one of the Maſters of the Court of Chancery, for the Purchaſe and Surrender of his ſaid Office, at the Price of ſix thouſand Pounds, or ſome other great Sum of Money, the ſaid *Thomas* Earl of *Macclesfield*, whilſt he

continued Lord Chancellor of *Great Britain*, and before the Admission of the said *William Kynaston* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take, and receive of and from the said *William Kynaston*, the Sum of Fifteen hundred and seventy-five Pounds, or some other Sum of Money, for the admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *William Kynaston* should have, exercise, and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *William Kynaston* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *William Rogers*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. VI.

That *Thomas Bennet*, Esq. having Contracted with *John Hiccocks*, Esq. one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Seven thousand five hundred Pounds, or some other great Sum of Money, the said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Thomas Bennet* into the Office of One of the Masters of the said Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Thomas Bennet*, the Sum of Fifteen hundred and seventy-five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Thomas Bennet* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Thomas Bennet* into the Office of One of the Masters of the said Court of Chancery, upon the Surrender of the said *John Hiccocks*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. VII.

That the Office of one of the Masters of the said Court of Chancery, becoming vacant by the Death of *William Fellows*, Esq. one of the late Masters of the said Court, the said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *Francis Elde*, Esq. into the said Office of One of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Francis Elde*, the Sum of Five thousand two hundred and fifty Pounds, or some other great Sum of Money, in Consideration of, and for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Francis Elde* should Have, Exercise, and Enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Francis Elde* into the Office of one of the Masters of the said Court of Chancery, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. VIII.

That the Office of One of the Masters of the said Court of Chancery becoming vacant by the Death of *John Berret*, Esq. One of the late Masters of the said Court, who died insolvent, greatly indebted to the Suitors of the said Court, the said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, without securing a just Satisfaction to the said Suitors, for their Debts, and before the Admission of *Mark Thurston*, Esq. into the said Office of One of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively, Insist upon, Take, and Receive, of and from the said *Mark Thurston*, the Sum of Five thousand two hundred and fifty Pounds, or some other great Sum of Money, in Consideration of, and for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Mark Thurston* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas* Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Mark Thurston* into the Office of one of the Masters of the said Court of Chancery, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. IX.

That whereas *Thomas Bennet*, Esq. in or about the Month of *August*, in the tenth Year of his Majesty's Reign, was possess'd of an Office in the Court of Chancery, called the Office of Clerk of the Custodies, for the Term of his Life, by Virtue of his Majesty's Letters Patents under the Great Seal of *Great Britain*, which Office is an Office of Trust in the said Court, in the Gift and Disposal of the Crown by Grant under the Great Seal, and concerns the writing and making Commissions to inquire of Ideots and Lunaticks, and the Process thereupon, and Letters Patents for the Custody of the Bodies of Ideots and Lunaticks, and the keeping, entering, and transcribing Orders, Reports, and Accounts made and declared touching Ideots and Lunaticks, and their Estates in the said Court of Chancery; and the said *Thomas Bennet* having agreed with *Hugh Hamersley*, Esq. to resign the said Office, in order to obtain his Majesty's Royal Grant of the said Office to the said *Hugh Hamersley*, the said *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, did refuse to permit or accept of such Resignation, until the said *Thomas Bennet* had agreed to pay unto the said *Thomas* Earl of *Macclesfield*, or unto his Use, One hundred and five Pounds, or some other Sum of Money, as a Consideration for the same, and, by colour of his Office of Lord Chancellor, did Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive, of and from the said *Thomas Bennet*, the said One hundred and five Pounds, or some other Sum for and in Consideration of the permitting and accepting such Surrender of the said Office, in order to and for the obtaining and procuring a New Grant of the said Office to the said *Hugh Hamersley*; and in pursuance thereof, the said *Thomas* Earl of *Macclesfield*, then being Lord Chancellor, and One of the Lords Justices of this Kingdom, during his Majesty's Absence, did accept, or cause to be duly accepted, the Resignation of the said *Thomas Bennet* of the said Office, and by his Interest and Recommendation did obtain and procure his Majesty's Royal Warrant for preparing and passing his Majesty's Grant of the said Office, under the Great Seal, to the said *Hugh Hamersley* for the Term of his Life; which Grant afterwards, in or about the Month of *September*, in the Tenth Year of his Majesty's Reign, did accordingly pass the Great Seal, then in the Custody of the said Earl, for which all the usual and accustomed Fees were paid, over and besides the said One hundred and five Pounds, in great Deceit of the Crown, in Breach and Violation of his Oath as Lord Chancellor, and of the several great Trusts then in him reposed, contrary to the Duty of his Office, and against the good and wholsome Laws and Statutes of this Realm.

ART. X.

That the said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, did Illegally and Corruptly Ordain, Name and Make divers other Officers and Ministers of his Majesty, for Gift and Brocage, and did likewise illegally and corruptly sell divers other Offices, touching and concerning the Administration and Execution of Justice in the Court of Chancery, to several Persons, for divers great Sums of Money, which the said Earl did receive from the said Persons for their respective Admissions into such Offices, and before they were admitted thereunto, and in order that the said Persons should have, exercise, and enjoy the same, in great Breach of the Trust in him reposed, and of his Oath as Lord Chancellor, contrary to the Duty of his Office, and against the Laws and Statutes of this Realm.

ART. XI.

That the said *Thomas* Earl of *Macclesfield*, whilst he continued in the Office of Lord Chancellor of *Great Britain*, in order to advance and increase the illegal and corrupt Gain arising to himself from the Sale and Disposal of the Offices of Masters of the Court of Chancery, in Violation of the great Trust reposed in him for the Care and Protection of the Suitors of the said Court, whose Money and Effects were, by Orders of the said Court, lodged in the Hands of the Masters of the said Court of Chancery, did admit several Persons to the said Offices of Masters of the said Court of Chancery, who, at the Time of such their Admissions, were of small Substance and Ability, very unfit to be trusted with the great Sums of Money and other Effects of the Suitors of the said Court, lodged in their Hands by the Orders of the said Court; and did publickly, in open Court, when he sat there as Lord Chancellor, falsly represent the said Persons, so by him admitted to the Offices of Masters of the said Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors of the said Court.

ART. XII.

That whilst the said *Thomas* Earl of *Macclesfield* executed the said Office of Lord Chancellor, an unjust and fraudulent Method was practised in the Court of Chancery upon the Sale of the Offices of Masters of the said Court, and upon the Admissions of new Masters, that the Prices or Sums of Money agreed to be paid for the Purchase of the said Offices, and for the Admissions thereinto, were satisfied and paid out of the Monies and Effects of the Suitors of the Court deposited in the Hands of the respective Masters, surrendering their Offices, or dying, either by way of Retainer of the Purchase-Money in the Hands of the Master resigning, or of replacing the Money disbursed for such Purchase or Admission by the succeeding Master, out of the Money and Effects of the Suitors coming into his Hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions thereinto, during the time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to contract for the said Offices, upon a Prospect of the easy method of paying for the Purchase of the same, by means whereof great Deficiencies have incurred in the Offices of several Masters of the said Court, admitted by the said *Thomas* Earl of *Macclesfield*, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well informed thereof, and fully acquainted therewith, yet the said *Thomas* Earl of *Macclesfield*, in order to increase his own unjust and corrupt Profit in the selling the said Offices, and the Admissions thereto (which in consequence of this evil Practice was raised and received by him out of the Effects of the Suitors, for whom he was intrusted) did not at any Time, whilst he continued in his Office of Lord Chancellor, use or take any measures to reform the said Abuse, or to prevent the same, either by causing proper Schedules to be taken of the Money and Effects of the Suitors delivered over and transferred, or by appointing any Person, in his Behalf, to inspect or supervise the Transfers or Deliveries thereof, or in any other manner; but on the contrary, the said *Thomas* Earl of *Macclesfield*, unjustly, corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Masters

and

and of their Accounts did appeartain) did ſuffer the ſaid fraudulent Practice to proceed and be exerciſed without any Controul or Check, whereby great Embezzlements have been made of the Suitors Money and Effects, to their great Loſs, in the Offices of ſeveral of the Maſters of the ſaid Court, who have not been able to anſwer and pay their reſpective Balances owing upon their Accounts, in breach of the Truſt repoſed in him for the Preſervation of the Eſtates and Effects of the Suitors, to the Diſhonour and Diſcredit of the ſaid Court, and to the great Injury and Defrauding of the ſaid Suitors, in a Court of Equity, eſtabliſhed for their Relief and Protection.

ART. XIII.

That *Fleetwood Dormer*, Eſq. one of the Maſters of the Court of Chancery, having embezzled great Part of the Money and Effects belonging to the Suitors of the ſaid Court, with which he was intruſted by the ſaid Court, and diſpoſed of the ſame for his own private Advantage, by Means whereof there became, and ſtill continues a great Deficiency in that Office, to the amount of twenty-five thouſand Pounds, or ſome other great Sum; and the ſaid *Fleetwood Dormer*, having abſconded, and for ſome time abſented himſelf, Application was made to the ſaid Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, to ſecure the Perſon of the ſaid *Fleetwood Dormer*, and to take proper Methods for compelling the ſaid *Fleetwood Dormer* to make Satisfaction to the Suitors for the Money and Effects which he had ſo embezzled, yet the ſaid Earl, from an Apprehenſion that a public Diſcovery of the ſaid Deficiency might leſſen the unjuſt Gain he propoſed to make to himſelf, by ſelling and diſpoſing of the ſaid Offices of Maſters of the ſaid Court, neglected and declined either to ſecure the Perſon of the ſaid *Fleetwood Dormer*, and his Eſtate and Effects, or to make a proper Enquiry into the ſaid Deficiency: But, on the contrary, the ſaid Earl, whilſt he continued Lord Chancellor of *Great Britain*, did endeavour, by many indirect Practices, to conceal from the Suitors of the Court the true State and Condition of the ſaid Office, as well with reſpect to the Effects of the ſaid *Fleetwood Dormer*, as to the Debt due from him to the Suitors of the Court; and upon Motion made in the ſaid Court of Chancery (after the ſaid Earl knew that the ſaid *Fleetwood Dormer* had ſo abſconded) on behalf of ſome of the Suitors of the Court, to have their Effects transferred from the ſaid *Fleetwood Dormer* to ſome other Maſter, for the better ſecuring thereof, the ſaid Earl of *Macclesfield*, (in order to delude the Suitors of the ſaid Court into a Belief that their Effects were ſafe, and thereby to prevent a publick Enquiry) then ſitting as Lord Chancellor in open Court, did ſay, That the ſaid Parties need not be in haſte; and did at the ſame time falſely and deceitfully declare, that the ſaid *Fleetwood Dormer* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

ART. XIV.

That the ſaid *Fleetwood Dormer*, having towards Satisfaction of the Suitors of the ſaid Court, aſſigned to *Henry Edwards*, Eſq. (who ſucceeded him in his Office of Maſter of the ſaid Court of Chancery) a Debt of Twenty-four thouſand and forty ſix Pounds four Shillings, or ſome other great Sum, due from *William Wilſon*, a Banker, to the ſaid *Fleetwood Dormer*, to the intent that the Money received on Account thereof ſhould be applied and diſpoſed of as the ſaid Court of Chancery ſhould order and direct, the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, for the unlawful Purpoſes aforeſaid, without Regard to the Intereſt of the ſaid Suitors, by colour of his Office, did, in an unwarrantable, clandeſtine, and unuſual manner, authorize, direct, and eſtabliſh a precarious and trifling Compoſition with the ſaid *William Wilſon*, upon the Terms of the ſaid *William Wilſon*'s paying the Sum of Fourteen hundred ſixty three Pounds, two Shillings and a Penny, and aſſigning Ten thouſand Pounds, Part of a Debt of Twenty-two thouſand and ſixty Pounds, twelve Shillings and five Pence, pretended to be due to the ſaid *William Wilſon* from *Edward Poulter*, or to that effect, in Diſcharge of the ſaid Debt; and to that End, upon the Report of *John Hiccocks*, Eſq. then one of the Maſters of the ſaid Court, without any Attendance order'd or had thereupon, and without Notice to the ſaid Suitors, did, by a private Order not made in open Court, order the ſaid *Henry Edwards* to accept of the ſaid Compoſition, in full Diſcharge of the ſaid Debt, which ſaid *Edward Poulter* was a Perſon inſolvent, and has ſince abſconded for Debt, and none, or but a very ſmall Part of the ſaid Ten thouſand Pounds has been, or is ever likely to be received.

ART. XV.

That the ſaid *Thomas* Earl of *Macclesfield*, whilſt he continued Lord Chancellor of *Great Britain*, to carry on his corrupt and unjuſt Purpoſes, and to conceal the Deficiency that was in the Office of the ſaid *Fleetwood Dormer*, did, in or about the Month of *February*, in the Year of our Lord, One thouſand ſeven hundred and twenty, order the ſeveral Maſters of the ſaid Court of Chancery to bring in their Accounts of the Caſh, Effects, and Securities in their Hands belonging to the Suitors of the Court, not with a Deſign of examining their Accounts, or ſecuring the Eſtate and Effects of the Suitors, but with an intent to terrify the ſaid Maſters, and thereby oblige them to contribute great Sums of Money towards anſwering the Demands that ſhould from time to time be made upon the ſaid Office; for which Purpoſe he the ſaid Earl did at ſeveral Times repreſent, or cauſe to be repreſented to the ſaid Maſters, that if they refuſed ſo to do, the Money and Effects of the Suitors would be taken out of their Hands, and the ſaid Maſters deprived of making any Profit of the ſame; by which Practices the ſaid Earl, oeing then Lord Chancellor of *Great Britain*, by colour of his Authority, did perſuade and induce nine of the Maſters of the ſaid Court of Chancery, to pay Five hundred Pounds each for the purpoſes aforeſaid, ſeveral of whom paid the ſame out of the Money or Effects of the Suitors in their Hands; but after ſuch Payments, the ſaid *Thomas* Earl of *Macclesfield*, did not oblige the ſaid Maſters to deliver in their Accounts in purſuance of ſuch his ſaid Order.

ART. XVI.

That *Elizabeth Chitty*, Widow, having obtained an Order of the Court of Chancery, on or about the ſeventeenth Day of *March*, in the tenth Year of His preſent Majeſty's Reign, made by the ſaid *Thomas* Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards*, Eſq. one of the Maſters of the ſaid Court of Chancery, who ſucceeded *Fleetwood Dormer*, Eſq. in the ſaid Office, was ordered to pay her the Sum of one thouſand Pounds, Part of the Sum of ten thouſand Pounds, or other great Sum of Money, formerly paid into the Hands of the ſaid *Fleetwood Dormer*, as a Maſter of the ſaid Court, and by the ſaid Order mentioned to be then in the Hands of the ſaid *Henry Edwards*; and the ſaid *Henry Edwards* complaining to the ſaid Earl, that the making Orders upon him to pay Money which had been received by the ſaid *Fleetwood Dormer*, was a very great Hardſhip upon him the ſaid *Henry Edwards*, in regard he had not any Money or Effects in his Hands to anſwer ſuch Demands; the ſaid Earl of *Macclesfield*, being then Lord Chancellor, in further proſecution of his unjuſt and corrupt Purpoſes, did, by colour of his Authority, endeavour to prevail with the Maſters of the ſaid Court of Chancery, to raiſe the ſaid Sum of one thouſand Pounds out of their Effects, by repreſenting to them, that a Diſcovery of the Deficiency in the ſaid Office might occaſion a Parliamentary or Publick Enquiry into the Nature and Condition of their Offices, and hazard the Forfeiture of the ſame, by reaſon of their having bought the ſaid Offices, contrary to Law, which the ſaid Earl then declared would affect him, but themſelves much more, or to that effect; but the ſaid Maſters refuſing to raiſe the ſaid Sum of one thouſand Pounds, the ſaid Earl of *Macclesfield* did order his Secretary, *Peter Cottingham*, Eſq. to pay the ſaid one thouſand Pounds; who, in purſuance of the ſaid Earl's Directions, in or about the Month of *July*, one thouſand ſeven hundred and twenty-four, did pay the ſame to *Aſcan Chriſtopher Lochman*, for the Uſe of the ſaid *Elizabeth Chitty*; and the ſaid Earl of *Macclesfield*, upon Application made to him by the ſaid *Aſcan Chriſtopher Lochman* for Payment of the ſaid Money, did acquaint him, that he, the ſaid Earl, had given Directions to his Secretary for Payment of that Sum; but at the ſame time declared to the ſaid *Aſcan Chriſtopher Lochman*, that he, the ſaid Earl, believed this would be the laſt Payment ſhe was like to receive out of the ſaid Money paid into the Hands of the ſaid *Fleetwood Dormer*, for the Reſidue thereof was in great Danger of being loſt, by reaſon of the Deficiency in the Effects of the ſaid *Fleetwood Dormer*, or to that Effect. Notwithſtanding all which Proceedings, in this and ſeveral other Articles mentioned, upon a Motion made in the Court of Chancery before the ſaid *Thomas* Earl of *Macclesfield*, then Lord Chancellor, on or about the fifth Day of *December* laſt, in a Cauſe there depending between *Jane Harper*, Plaintiff, and *Thomas Caſe*, and others, Defendants, relating to the Sums of two hundred and ſixty Pounds, or ſome other Sum, depoſited in the Hands of the ſaid *Fleetwood Dormer*, before his abſconding, and which was then apprehended in great Danger of being loſt, the ſaid *Thomas* Earl of *Macclesfield*, then ſitting in Court as Lord Chancellor, did publickly, falſely, and deceitfully declare, that he had heard there was a Deficiency in the Office of the ſaid *Fleetwood Dormer*, but that he, the ſaid Earl, knew nothing of it, only as publick News, or to that Effect; and thereupon did order, that the ſaid *Henry Edwards* ſhould examine in what Manner the ſaid two hundred and ſixty Pounds was depoſited with the ſaid *Fleetwood Dormer*, and whether there was likely to be a Loſs of any Money depoſited with the ſaid *Fleetwood Dormer*.

ART. XVII.

That notwithſtanding the ſaid Earl of *Macclesfield* well knew that there was a very great Deficiency and Loſs by the Failure of the ſaid *Fleetwood Dormer*, and that the ſaid *Henry Edwards*, his Succeſſor, had not ſufficient in his Hands to pay the whole Money due to the Suitors of the Court, that had been received by the ſaid *Fleetwood Dormer* on their Account; yet the ſaid Earl of *Macclesfield*, being Lord Chancellor, in order to carry on his unjuſt Deſigns of concealing the ſaid Deficiency, and to prevent any publick Enquiry that might ariſe from the juſt Complaints of the Suitors of the ſaid Court, did, from Time to Time, in manifeſt and wilful Violation of the Truſt repoſed in him, make Orders on the ſaid *Henry Edwards* for Payment of the Money belonging to ſeveral particular Suitors, which had been lodged in the Hands of the ſaid *Fleetwood Dormer*; in Obedience to which Orders ſeveral Sums were paid, withoutr egardto, or Conſideration of, the Proportion which the reſt of the Suitors were intituled to out of the Effects of the ſaid *Fleetwood Dormer*, whereby many of the ſaid Suitors loſt the Benefit of their proportionable Share, to which in Juſtice they were entitled.

ART. XVIII.

That the ſaid *Thomas* Earl of *Macclesfield*, notwithſtanding that he very well knew, and was informed that the Maſters of the ſaid Court did, or that it was in their Power, from Time to Time, and at their Pleaſure to diſpoſe of and employ the Money and Effects belonging to the Suitors of the ſaid Court, which were intruſted with them reſpectively; and more particularly, that the Deficiency appearing in the Office of *Fleetwood Dormer*, Eſq. one of the Maſters of the Court of Chancery, was chiefly occaſioned by his, the ſaid *Fleetwood Dormer*'s having taken upon himſelf unduely to diſpoſe of and employ the Money and Effects belonging to the Suitors of the ſaid Court, which were intruſted in his Hands; and notwithſtanding that, ſoon after the ſaid *Fleetwood Dormer* became inſolvent, it was repreſented and propoſed to the ſaid *Thomas* Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, in order to prevent for the future any Loſſes that might happen to the Suitors of the ſaid Court, that the ſeveral Effects and Securities belonging to the Suitors ſhould be placed out in ſuch Manner, as that the Power of diſpoſing, imploying, or in any manner trading with the ſame, might be totally taken away from the ſaid Maſters, for the effecting of which juſt Deſign, a particular Method was laid before the ſaid Earl; and it was alſo further propoſed, that the ſaid Maſters ſhould give ſome reaſonable Security to anſwer the Balance of ſuch Caſh as ſhould, from Time to Time, be in their Hands; and notwithſtanding the ſaid Earl was credibly informed, that the Sufficiency of ſome other of the ſaid Maſters was very much ſuſpected, yet the ſaid *Thomas* Earl of *Macclesfield*, whilſt he was Lord Chancellor of *Great Britain*, contrary to the Duty of his Office, and thereby propoſing to make unlawful Gain

himself by the Disposal and Sale of the Offices of Masters of the said Court of Chancery; and in order to induce Persons to give him, the said Earl, a greater Price or Reward for their being admitted to the same, did not require or demand any Security whatsoever to be given by any of the said Masters, upon their being admitted to their Offices, or at any other Time; and the said Earl with the same corrupt View and Intention, and to keep up the Price of the said Offices, totally neglected to enquire into the Accounts of the said Masters, and did fraudulently, unjustly, and in breach of the Trust reposed in him, permit and encourage the Masters of the said Court, to employ and traffick with large Sums of Money belonging to the Suitors of the said Court, and to make Interest thereof for their own unjust Gain and Profit; and the said Earl, after such Proposal made to him, as aforesaid, or at any other Time, during his Continuance in the said Office did not take any Care that the Effects of the said Suitors should be placed out in such Manner, as to prevent the Masters from trafficking therewith, or that the said Masters should give such Security as was proposed; by Means whereof great Deficiencies, to the Amount of many thousand Pounds, have been, through such Default of the said Earl, occasioned in the Offices of several other of the Masters, to the great Loss and Injury of the Suitors of the said Court.

ART. XIX.

That whereas his most sacred Majesty, out of his fatherly Goodness to his People, did, in or about the Month of *November* last, direct an Enquiry to be made into the Accounts of the Masters of the said Court of Chancery, to the Intent that proper Methods might be taken for the Security of the Suitors of the said Court; the said *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his Majesty's most Honourable Privy Council, in order to obstruct the same, and to prevent a parliamentary Enquiry into the State and Condition of the Offices of the said Masters, in Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters to assist and supply each other with Money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient, and that, if they made a bold Stand now, it might prevent a parliamentary Enquiry, or to that Effect; and did persuade several of them to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their respective Accounts delivered to the said Earl, to be laid before his Majesty, to the Effect following, (*viz.*) That they were able to answer the Money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereunto; although the said Earl knew, or had good Reason to believe, that several of the Masters were not then able to answer the Balance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of their Suitors in their Hands, some of the said Masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a false shew and appearance of their Ability and Readiness to answer the Balance of their Accounts.

ART. XX.

That the said *Thomas* Earl of *Macclesfield*, whilst he continued in the Office of Lord Chancellor of *Great Britain*, in Breach of the Trust reposed in him, and contrary to the Duty of his Office, did, at several Times, borrow and receive of some of the Masters of the said Court, several great Sums of the Money belonging to the Suitors of the said Court, deposited in the Hands of such Masters, and did make use thereof for his own private Service and Advantage, so long as he had Occasion for the same.

ART. XXI.

That the said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, did, in an illegal and arbitrary Manner, extend the Power and Authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and just Bounds, and did arbitrarily and illegally assume to himself, as Lord Chancellor, and by Colour of Office, an unjust and unlimited Power of dispensing with, suspending and controuling the Statutes of this Realm, made for the Security and Preservation of the Estates and Properties of the Subjects of this Kingdom, to the great Oppression of the Suitors of the said Court, in Subversion of the Laws and Statutes of this Realm, in manifest Breach and Violation of the Rights and Liberties of his Majesty's good Subjects, and of his own most solemn Oath, as Lord Chancellor of *Great Britain*; and more especially, when *Francis Tyson*, Esq. deceased, being seized, and possessed of a real Estate of the Value of Three Thousand Pounds *per Annum*, or some other great annual Value, did, by his last Will and Testament in Writing, duly executed, in or about the Month of *October*, One thousand seven hundred and seventeen, give and devise all his said real Estate to the Child his Wife was at that Time *enseint* with (if such Child should be a Son) for his Life, without Impeachment of Waste, with Remainders to the first, and other Sons of the said Infant in Tail Male, and did likewise, by such Will, expressly nominate and appoint his said Testator's Wife, *Rachel Tyson*, to be the Guardain of all his Children during their respective Minorities, if she should so long continue a Widow; and the said *Francis Tyson* soon after died, leaving one Daughter, and the said *Rachel*, his Widow, with Child, after whose Decree the said *Rachel* was delivered of such Child, being a Son, afterwards named *Francis John Tyson*, in whose Right, by Virtue of the said Will, and of the Statute made in the twelfth Year of the Reign of King *Charles* the Second, intituled, *An Act for the taking away the Court of Wards and Liveries, and Tenures* in Capite, *and by Knights Service, and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof*; the said *Rachel Tyson* did lawfully take into her Care and Custody her said Infant Son, and the Estate so devised to him, or was willing, and endeavoured so to do, and to undertake the Management of his said Lands and Tenements for his best Advantage, and demeaned herself therein, without any Misbehaviour; yet the said *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, under Colour of his Office and Authority, did, by several Orders made by him in the Months of *January* and *February*, in the fifth Year of his Majesty's Reign, or in one of them, illegally and arbitrarily, and in direct Contravention of the Statute made in that Behalf, remove and exclude the said *Rachel Tyson*, the Guardian of the said Infant, and also *John Nicholas*, Esq. (a Person of good Substance and Ability, nominated by the said *Rachel Tyson*, to be Receiver of the Rents and Profits of the said Infant's Estate, and approved by *Robert Holford*, Esq. one of the Masters of the said Court, and for that Purpose, who had given sufficient Security for the due Execution of his said Trust) from the Management and Receivership of the said Infant's Estate; and did, by such Orders, unduly and injuriously nominate and appoint *Robert Doyley*, Esq. a Creature and Confidant of his own, and a Person altogether unfit and unqualified for so great a Trust, to be Receiver of the Rents and Profits of the said Infant's Estate, and to have a Salary for the same, with a Power to let such Part of the said Estate, as was or should become untenanted, with the Approbation of the said *Robert Holford*, although the said *Rachel Tyson* did expressly object unto, and oppose such Appointment of the said *Robert Doyley*, and did insist to have the Benefit and exercise of her Right in that Respect, as the Guardian appointed and intrusted by her late Husband; and the said *Robert Doyley*, after he was so admitted into the said Receivership, did for several Years receive the Rents and Profits of the said Infant's Estate, to the Amount of about Ten thousand Pounds, or other great Sum, and in his Life-time did embezzle and convert to his own Use great Part thereof; and in or about the Month of *November*, One thousand seven hundred and twenty-two, died insolvent and indebted to the said Infant and his Estate, in the Sum of two thousand six hundred Pounds, or other great Sum, upon the Balance of his Account, no Part whereof hath hitherto been satisfied or paid; and the said *Thomas* Earl of *Macclesfield*, in further Abuse of his Power, and in Contempt of the Laws and Statutes of this Realm, when upon Debate of the Matter in the said Court of Chancery, before the said Earl, being then Lord Chancellor, in the Month of *January* or *February*, in the fifth Year of his Majesty's Reign, or in one of them, it was insisted upon, in Behalf of the said *Rachel Tyson*, by her Counsel, of great Ability and Experience in the said Court, that such the Proceedings of the said Earl, as Lord Chancellor, were a reviving the Power of the Court of Wards, and were not supported or warranted by any Precedent in the Court of Chancery, he, the said *Thomas* Earl of *Macclesfield*, when sitting in the Court as Lord Chancellor, did not only persist in such his Appointment of the said *Robert Doyley*, but did also arbitrarily, and in Defiance of the said good and beneficial Statute, say and declare, in open Court, that then he would make a Precedent in that Instance, or he the said Earl, declared and expressed himself to that Effect; which Actings, Proceedings, and Declarations of the said Earl, have been and were not only very injurious and prejudicial to the Right and Interest of the said *Rachel Tyson*, as Guardian, and to the great Damage and Loss of the Infant, *Francis John Tyson*, and a notorious Violation of Property, but were also a dangerous Exercise of illegal and abitrary Power, to the Destruction of the Laws and Constitution of this Realm, in manifest Breach of his Oath as Lord Chancellor, and in great Abuse of his Authority.

And the said Knights, Citizens, and Burgesses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said *Thomas* Earl of *Macclesfield*, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, that the said *Thomas* Earl of *Macclesfield* may be put to answer the said Crimes and Misdemeanours, and that such Proceedings, Examinations, Trials, and Judgments, may be thereupon had and given, as are agreeable to Law and Justice.

The Answer of Thomas *Earl of* Macclesfield, *to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of* Great Britain, *in Maintenance of their Impeachment against him, for High Crimes and Misdemeanors, supposed to have been by him committed.*

THE said Earl, saving to himself all Advantage of Exception to the said Articles, and of not being prejudiced by any Words or Want of Form in this his Answer, and also saving to himself all Benefit and Advantage of the Act for the King's most gracious, general, and free Pardon herein after-mentioned, and all Rights and Privileges belonging to him as one of the Peers of this Realm, for Answer to the said Articles saith, That he, having for several Years executed the Office of Chief Justice in the Court of King's Bench, his Majesty, of his Royal Grace and Favour was pleased, the tenth Day of *March*, One thousand seven hundred and fifteen, to advance the said Earl to the Dignity of a Peer of this Realm, and created him Baron of *Macclesfield*; and, in regard to his Circumstances at that Time, was further pleased, for the better Support of that Honour, to grant to the said Earl the Pension of Twelve hundred Pounds *per Annum*, in the Articles mentioned, payable at the Receipt of the Exchequer; and his Majesty was then likewise pleased to declare his Royal Intentions of giving to the said Earl's only Son, *George Parker*, for his Life, an Office of considerable Profit, when a proper Opportunity should offer; that in the Beginning of *May*, in the Year One thousand seven hundred and eighteen, he the said Earl, was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was sworn before his Majesty in Council the fourteenth Day of that Month, when the following Oath, being the usual Oath of Lord Chancellor, was administred to him, (*viz.*)

'YOU shall swear, That you shall well and truly serve our Sovereign Lord the King, and his People, in the Office of Chancellor of *Great Britain*; and you shall do Right to all Manner of People, Poor and Rich, after the Laws and Usages of this Realm, and truly you shall counsel the King, and his Council you shall lain and keep; and you shall not know nor suffer the Hurt or Disheriting of the King, or that the Rights of the Crown be decreased by any Means, as far forth as you may lett, and if you may not lett it, you shall make it clearly and expresly known to the King, with your true Advice and Counsel; and that you shall do and purchase the King's Profit in all that you may; all which you shall do to the best of your Skill and Knowledge. *As God shall help you.*'

And the ſaid Earl at the ſame Time took the Oaths of Allegiance and Supremacy, but no Oath of Office beſides that above ſet forth; and the ſaid Earl doth admit, that, during his Continuance in the ſaid Office of Lord Chancellor, he did enjoy the uſual Salary, Fees, and Profits belonging to ſuch Office, which, he ſays, are of much leſs annual Value than they are generally (as he believes) eſteemed to be; and that his Majeſty was pleaſed to grant him the Salary or Allowance of Four thouſand Pounds *per Annum*, in the Articles mentioned, during ſuch Time as he ſhould continue to be Lord Chancellor; but the ſame is ſo far from being particular in the Caſe of the ſaid Earl (as the ſaid Articles would inſinuate), that it is no other than what hath been for many Years paſt conſtantly granted to, and enjoyed by his Predeceſſors in the ſaid Office; and the ſaid Earl doth likewiſe admit, that his Majeſty did, of his royal Grace and Bounty, ſign a Warrant for Payment of the Sum of Fourteen thouſand Pounds mentioned in the ſaid Articles, to the ſaid Earl, out of the Receipt of the Exchequer, whereof Two thouſand Pounds was the conſtant uſual Allowance from the Crown to the Lord Chancellor or Lord Keeper, for and towards the Expences in entering upon the ſaid Office; and the Reſidue of the ſaid Fourteen thouſand Pounds, over and above the uſual Fees and Deductions upon Payment thereof, was his Majeſty's royal Munificence to the ſaid Earl, and the ſame was received by him accordingly; and the ſaid Earl doth likewiſe, with the greateſt Gratitude, own, that about the ſame Time, his ſaid Son being then of a proper Age, and deſirous to go abroad to travel, his Majeſty was pleaſed to grant to the ſaid *George Parker* the yearly Penſion of Twelve hundred Pounds, payable out of the Receipt of the Exchequer, during the joint Lives of his Majeſty and the ſaid *George Parker*, determinable upon his Majeſty's granting to him, the ſaid *George Parker*, in Poſſeſſion or Reverſion, the Office of one of the Tellers of the Exchequer, for Life, and his coming into the actual Poſſeſſion thereof, and which the ſaid Earl likewiſe admits has been ſince granted to his ſaid Son, and that he came into the actual Poſſeſſion thereof in or about *July*, One thouſand ſeven hundred and nineteen, whereby the ſaid yearly Penſion is determined; and the ſaid Earl ſaith, That during his Continuance in the ſaid Office of Lord Chancellor, or at any other Time, he never once had a Deſign, or View, or Wiſh to raiſe to himſelf any exorbitant Gain or Profit, much leſs uſed, or ever thought of uſing, any Unjuſt or Oppreſſive Methods to Extort or Obtain any Sum whatſoever, as in the ſaid Articles is ſuggeſted, but ſuch Views and Practices are inconſiſtent with the whole Tenor of his Life and Actions; and in caſe it ſhall be thought proper for the ſaid Earl to lay before your Lordſhips an Account of his Eſtate and Fortune, and of the conſiderable Sums of Money he has diſtributed for the Relief and Support of others, it will appear that he is not ſuch a deſigning, avaritious, and oppreſſive Man, as in the ſaid Articles he is repreſented; and the ſaid Earl humbly hopes, that he ſhall be allowed, in this his Anſwer, to diſtinguiſh between Acts themſelves, and the Inferences drawn from them by the ſaid Articles; and that, whenever he admits any Fact, he may not be underſtood to admit that ſuch Fact was by him done or committed upon ſuch Motives, and with ſuch Deſigns, or in ſuch Manner, as is ſuggeſted in the ſaid Articles; and with this Reſervation he anſwereth, as followeth: By way of general Anſwer to ſuch of the ſaid Articles, as relate to the making any Preſent by Perſons admitted to the Office of Maſters in Chancery; the ſaid Earl doth ſay, That the ſame has been long uſed and practiſed in the Time of his Predeceſſors in the ſaid Office, and that ſuch Preſents have been reckoned amongſt the ancient and known Perquiſites of the Great Seal, and the making and accepting thereof has been notorious to all the World, and never before looked upon to be criminal, or complained of as ſuch; and the ſaid Earl humbly hopes, that the giving or receiving of a Preſent on ſuch Occaſion is not criminal in itſelf, or by the Common Law of this Realm, and that there is not any Act of Parliament whatſoever, by which the ſame is made criminal, or ſubject to any Puniſhment or Judgment, which can be prayed in this Proſecution; and the ſaid Earl thinks himſelf obliged humbly to lay this before your Lordſhips, not only in his own Defence, but in Vindication of the Honour of ſo many great and excellent Men, who have been his Predeceſſors in the ſaid Office, and have all along done the ſame, for which the ſaid Earl is now complained of, and of others having been Lords Chief Juſtices of the King's Bench and Common Pleas, Maſters of the Rolls and other Judges, who have likewiſe received Preſents in Money, upon the Admiſſion of the ſeveral and reſpective Officers under them, in ſeveral Courts of Juſtice, and who, the ſaid Earl is aſſured, never apprehended themſelves to be Guilty of any Crime againſt any the good and wholſome Laws or Statutes of this Realm.

I. *&c.* To the firſt, ſecond, third, fourth, fifth, ſixth, and ſeventh Articles, the ſaid Earl further ſaith, That long before the 24th of *July*, One thouſand ſeven hundred and twenty-one, he did admit and ſwear *Richard Godfrey*, *James Lightboun*, *John Borret*, and *Edward Conway*, Eſquires, into the Offices of Maſters of the Court of Chancery, and every one of them did freely and voluntarily, and of their own accord, as former Maſters had done to the Predeceſſors of the ſaid Earl, ſend to the ſaid Earl a Preſent upon Occaſion of their reſpective Admittances, which the ſaid Earl accepted; and that after the ſaid 24th of *July*, One thouſand ſeven hundred and twenty-one, he did admit and ſwear *William Kynaſton*, *Thomas Bennet*, and *Francis Elde* into the Offices of Maſters of the Court of Chancery; and ſaith, That every of the ſaid Perſons laſt named, did freely and voluntarily, and of their own Accord, in like Manner, ſend a Preſent to the ſaid Earl upon Occaſion of their reſpective Admittances; but ſaith, That, it being pretended by the ſaid *Kynaſton* and *Bennet*, that they were by ſuch Preſents diſabled from anſwering ſo much of the Money due from them to the Suitors of the Court, he the ſaid Earl did afterwards, and before the Impeachment, deliver the Preſent ſo ſent him by the ſaid *William Kynaſton*, being fifteen hundred ſeventy-five Pounds; and alſo the Preſent ſo ſent him by the ſaid *Thomas Bennet*, being the like Sum of Fifteen hundred ſeventy-five Pounds, into the Court of Chancery, in open Court, to be applied for the Benefit of the Suitors, as the Court ſhould Direct, and that the ſaid Earl retained of the Preſent ſo ſent him by the ſaid *Francis Elde*, no more than the Sum of One thouſand eight hundred and fifty Pounds.

VIII. To the eighth Article the ſaid Earl further ſaith, That in *July* laſt the Office of one of the Maſters of the ſaid Court became vacant by the Death of *John Borret*, Eſq. who died inteſtate, but whether ſolvent or not, he cannot ſay; but upon Notice of his Death, the ſaid Earl did at firſt deſire *Richard Godfrey*, Eſq. one of the Maſters of the ſaid Court, who had been very well acquainted with the ſaid Mr. *Borret*, and his Affairs, and afterwards the ſaid Mr. *Godfrey* and *John Bennet*, Eſquire, another of the Maſters of the ſaid Court, to inquire into his Effects, and to take what Care they could about the ſame; who, after ſome Inquiry, informed the ſaid Earl, that they believed there would be no Deficiency; and ſecured a conſiderable Part of the Effects of the ſaid Mr. *Borret*, and entered a proper Caveat in the Prerogative Court, to prevent Adminiſtration being granted to any Perſons who might embezzle the ſaid *Borret*'s Eſtate; and afterwards, at the Requeſt of the ſaid Earl, proceeded ſo far, as to obtain a Sentence in the ſaid Prerogative Court, for Adminiſtration to be granted for the Benefit of the Suitors of the Court, to them, the ſaid Mr. *Bennet* and Mr. *Godfrey*, which was afterwards, upon their waving thereof, granted to Mr. *Paxton*, as the ſaid Earl believes; but the ſaid Earl thought it proper and neceſſary to admit another Maſter in his Place, to carry on the Buſineſs of the Court, and to be intituled to demand the Effects of the Suitors from the Repreſentative of the ſaid Mr. *Borret*, when one ſhould be appointed; and therefore, about the fifth Day of *Auguſt* laſt, did admit and ſwear *Mark Thurſton*, Eſq. into the ſaid Office, vacant by the Death of the ſaid *Borret*, and the ſaid Earl admits the ſaid *Mark Thurſton* did upon that Occaſion freely and voluntarily, and of his own Accord, ſend a Preſent, whereof two thouſand Pounds, and no more, were retained.

IX. In Anſwer to the ninth Article the ſaid Earl ſaith, That he believes *Thomas Bennet*, Eſq. in this Article named, was poſſeſſed of the Office of Clerk of the Cuſtodies, in the Article deſcribed, and that ſuch Office is in the Gift and Diſpoſal of the Crown, by Grant under the Great Seal; but denies that he did at any Time inſiſt upon the Sum of one hundred and five Pounds, or any other Sum of Money, to permit or accept of the Reſignation of the ſaid *Thomas Bennet*, or did refuſe to permit or accept thereof until the ſaid *Thomas Bennet* had agreed to pay the ſame, or any other Sum on that Account; but ſaith, That although the ſaid Office be uſually granted by the Crown, yet it has always been looked upon to be the Right of the Lord Chancellors, or Lord Keepers, to recommend to that, and other Offices under the Great Seal, and to approve and allow of the Deputies to execute the ſame; and, upon ſuch Recommendations and approving of Deputies, have accepted Preſents, and looked upon the ſame as their Right; and further ſaith, That there have been two of ſuch Offices granted in his Time, one of which appearing to him to be a Caſe wherein the Party had ſuffered great Hardſhip, the ſaid Earl paſſed the ſame without any Preſent whatſoever, though the Office be of conſiderable Value; the other was the Caſe of Mr. *Hamerſley*, in the Articles mentioned, in which the ſaid Earl owns he did accept a Preſent.

X. In Anſwer to the tenth Article the ſaid Earl ſaith, The ſame is conceived in ſuch general Terms, that it is not to be expected he ſhould give any particular Anſwer thereto; however, he ſaith, That during the whole Time of his being Lord Chancellor, he never once took any Money, Preſent, or Gratuity whatſoever, for or upon Account of the naming, making, or admitting any Officer whatſoever, other than before particularly named, except in the Curſitor's Office, where he owns he has done, as was done by all his Predeceſſors before him.

XI. In Anſwer to the eleventh Article the ſaid Earl ſaith, That the ſame not containing any particular Charge, he apprehends himſelf not obliged to give any particular Anſwer thereto; but however, in general, does ſay, That he never did admit any Perſon into the Office of a Maſter of the Court of Chancery, but who was either known to be of Subſtance and Ability, and fit to be truſted in ſuch Office, or, upon a proper Enquiry, very well recommended to him as ſuch; and, whenever there have been ſeveral Candidates, the ſaid Earl has conſtantly given the Preference to him that he thought would beſt diſcharge the Office, and moſt for the Honour of the Court, and the Advantage of the Suitors; and believes that he may, upon ſome Occaſions, have declared, that he thought the then Body of Maſters as good, with reſpect both to their Eſtates, and Ability for Diſcharge of the Office, and their Integrity, as had been at any Time before, or to that Effect; and what he did ſay to that Purpoſe, he thought to be really true.

XII. To the twelfth Article the ſaid Earl ſaith, That if there was any ſuch Practice as is mentioned in the Article, of paying for the Places of the Maſters out of the Money and Effects belonging to the Suitors of the Court, he was totally ignorant of it; but admits, that he did not, nor did any of his Predeceſſors, that ever he heard or believes, give any particular Directions for Schedules to be made of the Money and Effects of the Suitors of the Court to be delivered over to the ſucceeding Maſters; but believes, that in virtue of the general Order of Transfer made of courſe upon every Admittance, ſuch Schedules were made between the new Maſters and their Predeceſſors, or the Repreſentatives of their Predeceſſors; and if the ill Conſequences, in the Articles alledged, had followed from ſuch Practice, or the not ordering ſuch Schedule, which he does not admit, he inſiſts that the ſame could not render him criminal.

XIII. In Anſwer to the thirteenth Article the ſaid Earl ſaith, That after *Chriſtmas*, in the Year One thouſand ſeven hundred and twenty, he was informed, That the ſaid *Fleetwood Dormer* had withdrawn himſelf to *Holland*, where he then was, and thereupon the ſaid Earl uſed all the propereſt Methods he could for ſecuring his Effects, and particularly directed Mr. *Hiccocks* and Mr. *Rogers*, the then two Senior Maſters of the Court, to make an Enquiry into his Affairs and Accounts, and to conſider what would be moſt proper to be done; and the ſaid Earl believes, that the ſaid two Maſters, in purſuance of the Directions from the ſaid Earl, did ſearch the Chambers of the ſaid *Fleetwood Dormer*, in *Lin-*

coln's-Inn, to ſee what Books, Accounts, or Effects could there be met with, but found no Account whatſoever, nor any Effects of Value, and did put a ſtop to the transferring of the Stock, then in the Name of the ſaid *Fleetwood Dormer*, in any of the Publick Companies; and the ſaid *Fleetwood Dormer*'s Perſon being thus out of Reach, and his Accounts and Effects wholly unknown, except the Stock, which could not be diſpoſed of without his Concurrence, a Propoſal was ſome time after made to the ſaid Earl, that the ſaid *Fleetwood Dormer* might have a Promiſe of his Liberty from the ſaid Earl, and upon that Condition he would come over, and aſſign all his Effects, and aſſiſt in getting them in, and ſettling and adjuſting his Accounts; and the ſaid Earl, ſeeing no other Way open to get any thing for the Suitors, and being made to believe, that if any Deficiency ſhould happen, the ſame would be made up by the other Maſters, did agree, That in caſe the ſaid *Fleetwood Dormer* would come over, and make a full Diſcovery of all his Effects, and aſſign the ſame for the Benefit of the Suitors, he, the ſaid Earl, would allow him his Liberty on that Condition, and not otherwiſe; and the ſaid Earl was ſoon after informed, That the ſaid *Fleetwood Dormer* ſubmitted to thoſe Terms, and would very ſoon come over, and diſcover and deliver up his Effects; and the ſaid Earl did not doubt, but the whole Debt upon the ſaid *Fleetwood Dormer* would be paid. And the ſaid Earl ſaith, That he does not remember that any Application was ever made to him, by the ſaid Maſters of the ſaid Court, for any Aſſiſtance of the Court, touching the Perſon or Effects of the ſaid *Fleetwood Dormer*, but what he granted, ſo far as he thought it tended to the Benefit of the Suitors, and believes that no Application was ever made to him by the Suitors, or any of them, or any other, to ſecure the Perſon of the ſaid *Fleetwood Dormer*, or for compelling him to make Satisfaction to the Suitors; and the ſaid Earl ſaith, That he never endeavoured to conceal the true State and Condition of the ſaid Office from the Suitors of the Court, nor did any of them apply, till very lately, to the ſaid Earl to look into the ſame; and further ſaith, That he remembers nothing of his ever uſing any ſuch Expreſſion, as is charged in the ſaid Article, at any time before or after he knew that the ſaid *Fleetwood Dormer* abſconded.

XIV. To the Fourteenth Article the Earl ſaith, That *Henry Edwards*, Eſq. in this Article mentioned, ſucceeded to the Office of Mr. *Dormer*, about the eighteenth Day of *May*, One thouſand ſeven hundred and twenty-one; but, by reaſon of the Diſorder the ſaid Office was then under, and the great Danger of a Loſs therein, the Earl had given up and quitted all the Advantage which might accrue to him upon the Diſpoſal thereof, and left it entirely to the other Maſters to raiſe what Money they could thereby, which was agreed to be all applied towards making good any Deficiency or Loſs which might happen to the Suitors of the Court concerned in that Office; and thereupon the Sum of five thouſand Pounds was raiſed, by the Diſpoſal of the ſaid Office to Mr. *Edwards*, and was applied accordingly; and the ſaid Earl believes the Debt from *William Wilſon*, in this Article mentioned, was aſſigned by the ſaid Mr. *Dormer* to the ſaid Mr. *Edwards* in Truſt, and to the Intent, that he ſhould pay, apply, and diſpoſe of the ſaid Debt, or ſuch Part thereof, as ſhould be, from time time, by him got in, and received of and from the ſaid *William Wilſon*, in ſuch manner as the Court ſhould order and direct, or to that Effect: after which ſaid Aſſignment ſo made, the Earl believes that the ſaid Mr. *Edwards* uſed great Endeavours to obtain Payment and Satisfaction of the ſaid Debt from Mr. *Wilſon*; but finding all his Endeavours fruitleſs, and that the ſaid *Wilſon* had long before ſtopt Payment, and was in no Condition of paying his Creditors the whole of their Debts, but that he was willing, and had offered to come to a Compoſition, and to pay them in Proportion the utmoſt he was able; the ſaid Mr. *Edwards* thereupon, about the thirtieth Day of *June*, in the Year of our Lord One thouſand ſeven hundred and twenty-two, preferred his Petition to the ſaid Earl, as Lord Chancellor, ſetting forth in Subſtance the State of the Caſe, as before-mentioned, and praying that it might be referred to one of the Maſters of the Court, to ſee if ſuch Compoſition, ſo propoſed by the ſaid *William Wilſon*, were for the Benefit of the Perſons intituled to receive the ſame; and the ſame was accordingly, by Order of the ſaid Earl, referred to Mr. *Hiccocks*, the then ſenior Maſter of the Court, to enquire into, and make his Report therein; and about the ſix-and-twentieth Day of *July*, then next following, the ſaid Mr. *Hiccocks* made his Report, that the ſaid *William Wilſon* had, under his Hand in Writing, propoſed to aſſign over to the ſaid Mr. *Edwards*, as a Compoſition for, and in full Diſcharge of, the Sum of twenty-four thouſand forty-ſix Pounds and four Shillings, therein mentioned to be due and owing from him to the ſaid Mr. *Edwards*, as Aſſignee of the ſaid Mr. *Dormer*, the Sum of ten thouſand Pounds, Part of a large Sum due to the ſaid *William Wilſon*, from *Edward Poulter* of *Hackney*, Gentleman, in this Article mentioned, and to pay the ſaid Mr. *Edwards* in Specie, the Sum of one thouſand four hundred ſixty-three Pounds, two Shillings and one Penny, over and above the Sum of five hundred and ſixty Pounds, then already paid to the ſaid Mr. *Dormer*, in part of the ſaid Compoſition: and that upon Conſideration had of the Circumſtances of the ſaid *William Wilſon*, and the ſaid ſeveral Matters, he was of Opinion, that the accepting the ſaid Compoſition would be for the Benefit of the Perſon or Perſons intitled to receive the ſame; upon which ſaid Report the ſaid Mr. *Edwards*, about the third of *Auguſt* then next, preferred another Petition to the ſaid Earl, with the ſaid Report annexed, and thereby expreſly prayed the ſaid Earl to order him, the ſaid Mr. *Edwards*, to accept of the ſaid Compoſition, whereupon the ſaid Earl, in a proper and uſual manner, ordered the ſame as prayed; and the ſaid Earl ſaith, That he was informed, and believes, that the ſaid Compoſition was made and agreed to, upon a Conſultation of all or moſt of the Maſters of the ſaid Court, who, the ſaid Earl did believe, would uſe their beſt Endeavours to get as much as they could; and the ſaid Earl ſaith, He hath heard, and believes it to be true, that beſides the one thouſand four hundred ſixty-three Pounds, two Shillings and one Penny, then paid down, there hath been ſince got in by Mr. *Edwards*, on account of the ſaid Debt from *Edward Poulter*, the Sum of one thouſand Pounds, or thereabouts; and that at the time of the ſaid Aſſignment, the ſaid Debt, claimed by *Wilſon* from *Poulter*, was a juſt Debt; and Judgment at Law has been ſince obtained for eighteen thouſand Pounds, Part thereof; and the ſaid *Poulter* was looked upon to be a ſubſtantial Perſon, though, to avoid Payment of the ſaid *Wilſon*'s Debt, which aroſe on account of their Dealings in *South-Sea* Stock, and Subſcriptions in the Year One thouſand ſeven hundred and twenty, the ſaid *Poulter* not only brought his Bill in Chancery but, after the ſame was diſmiſſed, and that he was taken in Execution at *Wilſon*'s Suit at Common Law, he found means to make his Eſcape out of the Cuſtody of the Marſhal of the Court of King's Bench, and to get over to *France* or *Holland*, where he ſtill continues, as the Earl is informed; but he is likewiſe informed, that, after the ſaid Eſcape, a Commiſſion of Bankruptcy was taken out againſt him by the ſaid *Wilſon*, upon which ſome Effects were recovered, and likewiſe an Action at Law brought, and a Verdict and Judgment for eighteen thouſand Pounds and upwards obtained by the ſaid *William Wilſon* againſt the Marſhal, on account of the ſaid Eſcape; and ſaith, he hath likewiſe been informed, That the ſaid *Edward Poulter* and the Marſhal have each of them offered conſiderable Sums of Money by way of Compoſition for the ſaid Debt; but the ſaid *Wilſon*, from a Perſuaſion of the Abilities of the ſaid *Edward Poulter* to pay the Whole, did at firſt refuſe any Compoſition with the ſaid *Poulter*, and ſince hath been afraid to make any Compoſition, either with *Poulter* or the Marſhall; and what may be the Conſequence thereof, with regard to the Suitors of the Court, or what further Sums of Money may be recovered upon account of the ſaid Debt, towards making them Satisfaction, the Earl ſaith, he cannot with any Certainty take upon him to anſwer.

XV. To the fifteenth Article the Earl ſaith, That about the Month of *February*, in the Year of our Lord One thouſand ſeven hundred and twenty, he gave Orders to his Secretary to write to the ſeveral Maſters of the Court of Chancery, to bring in their Accounts of the Caſh, Effects, and Securities in their Hands, belonging to the Suitors of the Court, and believes he did ſo; but denies that the ſame was done with any unjuſt Purpoſe, or with any Thought to terrify the ſaid Maſters to make any Contribution, towards ſatisfying the Demands upon the ſaid Office of *Fleetwood Dormer*, but believes what they did contribute, they paid freely and voluntarily, and out of their own Money, and therein, as the ſaid Earl believes, did no more than follow a Precedent of the like Nature, on the Failure of Dr. *Eddisbury*, formerly a Maſter of the ſaid Court; and the ſaid Earl ſaith, That his real and whole Intention in calling for the ſaid Accounts, was to inform himſelf, in the beſt manner he was able, of the State and Condition of the ſeveral Offices, and thereby to be the better able to make proper Regulations concerning the ſame; and therefore, though the ſaid Article ſeems to inſinuate, as if the calling for the ſaid Accounts was dropped, as ſoon as the Maſters were prevailed on to contribute, the ſaid Earl ſaith, That afterwards, and without any Regard thereto, he ſtill continued to call for the ſaid Maſter's Accounts; and not finding them brought in, as he expected, he did, about the Beginning of *November* following, cauſe another Letter to be ſent to them, requiring them to bring in their Accounts; and, by both the Letters ſent to them on that Occaſion, he directed the particular Method in which he would have their Accounts made up; but the ſaid Earl, being afterwards convinced how difficult and tedious a Work it would be, and what Obſtruction it would give to the Buſineſs of the Court, and that at laſt it could not be depended upon with any Certainty, was forced to lay aſide that Deſign, and to content himſelf with going on in the ſame Road which his Predeceſſors had done; and humbly begs leave to obſerve, That what has been lately done, with reſpect to the Accounts of the ſaid Maſters, plainly ſhews the inſuperable Difficulties of ſuch an Undertaking.

XVI. To the ſixteenth Article the Earl ſaith, That he believes that, on or about the ſeventeenth of *March*, One thouſand ſeven hundred and twenty-three, ſuch Order was made, as in the ſaid Article is mentioned, for *Henry Edwards*, Eſq. to pay *Elizabeth Chitty* one thouſand Pounds, Part of the Money brought before Mr. *Dormer*, but does not remember that the ſaid *Henry Edwards* made any Complaint thereof to the ſaid Earl, but believes Mr. *Edwards*, not having then ſufficient Effects of Mr. *Dormer*'s in his Hands, refuſed Payment thereof; and that in *July* following, Mr. *Lochman*, in the Articles named, applied himſelf to the ſaid Earl ſeveral times, and in a very earneſt manner, to help the ſaid Mrs. *Chitty* to the ſaid one thouſand Pounds, alledging that he, the ſaid Mr. *Lochman*, was to marry her, and that he had made a Compoſition with his Creditors, upon which one thouſand Pounds was to be paid in a very ſhort time, which he then mentioned; and that he, the ſaid Mr. *Lochman*, was to have the ſaid one thouſand Pounds for that Purpoſe; and that, if he had it not by the Time, the Compoſition would be void, and he ſhould be utterly ruined; and at length the ſaid Earl, being greatly moved by the preſſing Importunities of the ſaid Mr. *Lochman*, and by Compaſſion for the very great Diſtreſs in which he then appeared to be, did promiſe to ſupply him with the ſaid one thouſand Pounds out of his own Pocket; and accordingly directed Mr. *Cottingham*, then his Secretary, to pay it, taking from the ſaid Mrs. *Chitty* an Aſſignment of the Benefit of the ſaid Order, and believes the ſame was done accordingly: and that, upon Mr. *Lochman*'s preſſing for a further Sum for the ſaid Mrs. *Chitty*, for her own Uſe, the ſaid Earl might tell him, that the ſaid one thouſand Pounds was all that he muſt expect from the ſaid Earl; and the ſaid Earl does not believe that he had any Diſcourſe with the ſaid Maſters, to perſuade them to pay the ſaid one thouſand Pounds to Mr. *Lochman*.

And as to the laſt Branch of the ſaid Article the ſaid Earl ſaith, That the Fact was, that one *Jackman* having, in the Cauſe in the Article mentioned, been confirmed the beſt Purchaſer of Part of the Eſtate of *T. Harper* at the Price of two hundred and ſixty Pounds, ſo long ago as the nineteenth of *December*, One thouſand ſeven hundred and ſeventeen, and it being at the ſame time ordered, That the Writings belonging to ſuch Eſtate, ſhould be delivered to his Counſel, and that the Tenants ſhould attorn to him, on his bringing his Purchaſe Money before Mr. *Dormer*,

Dormer, then one of the Maſters, and the ſaid Money having been brought before the ſaid Maſter the twenty-fourth Day of *December*, One thouſand ſeven hundred and ſeventeen, and the Tenants, having attorned to *Jackman*; but the Conveyances not being then executed, though long before approved, a Motion was made in the Court of Chancery before the ſaid Earl, on the fifth Day of *December* laſt, that all Parties might execute the Conveyances, and the two hundred and ſixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand ſhe had out of the Eſtate of the ſaid *Harper*; and thoſe that were to have the *Reſiduum* of the ſaid *T. Harper*'s Eſtate, inſiſted, that they were always ready to join in the Conveyances, if the Purchaſe-Money were applied to diſcharge the reſt of the Eſtate, that they were apprehenſive of a Deficiency of Mr. *Dormer*'s Eſtate, and therefore neither they nor the Plaintiff ought to be Sufferers by ſuch Deficiency, the Delay having been occaſioned by the Purchaſer, and not by the Plaintiff, and therefore ſcrupled executing the Deeds, unleſs upon Payment of the Money to the Plaintiff, and diſcharging the reſt of the Eſtate therefrom; and this being the firſt Time that any Queſtion relating to Mr. *Dormer*'s Deficiency had been laid before the Court, by any of the Suitors, the ſaid Earl took notice of its being ſo, and believes he might expreſs himſelf to this Effect, That he had indeed heard of the ſaid *Dormer*'s Deficiency, but that it had never yet come judicially before him, upon Complaint of any of the Suitors of the Court; and further declared, That if there ſhould be any Deficiency in his Office, ſeveral Circumſtances had concurred thereto, as *Wilſon* the Banker's ſtopping Payment, greatly indebted to him, *Poulter*'s going away in *Wilſon*'s Debt eighteen thouſand Pounds, and upwards, after a Verdict and Judgment at Law, and *Poulter* in actual Execution for it; and that, as he had heard, *Wilſon* had then lately brought an Action of Eſcape againſt the Marſhal, and recovered a Verdict againſt him for the like Sum; and how all theſe Matters would at laſt come out, the ſaid Earl ſaid he did not know, or he expreſſed himſelf to that Effect, and no other; and thereupon ordered, that it ſhould be referred to Mr. *Edwards*, to examine whether the ſaid two hundred and ſixty Pounds was depoſited with Mr. *Dormer* for the Benefit of any particular Perſon, and whom, and what was the Occaſion of the Delay, that the ſaid Conveyances were not executed, and the ſaid two hundred and ſixty Pounds, Purchaſe Money, paid out before the Year one thouſand ſeven hundred and twenty; and whether there was likely to be a Loſs of any Money depoſited with the ſaid Mr. *Dormer*, and that upon the Maſter's Report ſuch further Order ſhould be made, as ſhould be juſt; and the ſaid Earl hopes the ſaid Order was very proper and neceſſary, and takes the Liberty of repreſenting to your Lordſhips, That this was after the Accounts of the Maſters had been laid by the ſaid Earl before the Lords of the Council, and had been for ſome Time under the Conſideration of the Judges and others, appointed by His Majeſty to inſpect the ſame.

XVII. To the ſeventeenth Article the Earl ſaith, That he never endeavoured to conceal the Deficiency occaſioned by Mr. *Dormer*'s Failure, but as the ſaid Earl was under a full Perſuaſion, that the ſame would all in due time be made good, and as Mr. *Dormer*'s Effects were coming in by degrees, and no Application was made to him by any of the Perſons concerned, to put a ſtop to, or any Reſtraint upon, the Payments, he did not think it incumbent upon him, *ex Officio*, to make a Declaration of an Average. And the ſaid Earl ſaith, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Dormer*, except the Order aforementioned, in the Caſe of *Chitty*, but believes ſeveral Orders have been made by the Court for that Purpoſe, and that the ſaid Mr. *Edwards*, under a firm Perſuaſion that the whole Deficiency would be made good, paid out the whole Sums ſo ordered, ſo far as the Money then in his Hands would extend.

XVIII. To the eighteenth Article the ſaid Earl ſaith, he never knew how the Maſters kept or diſpoſed of the Money and Effects belonging to the Suitors of the Court; and as he believes, that after Dr. *Eddiſbury*'s Failure, the then Lord Chancellor, ſo he knows that after Mr. *Dormer*'s misfortune, the Earl thought of ſeveral methods to prevent any Inconvenience upon the like Accident for the future; but they had both the ſame misfortune, not to bring any of them to ſuch perfection, as to venture to put them in practice.

That ſeveral Propoſals were made to him by the Perſons he conſulted upon that Occaſion, but none that he believes, it will be held criminal not to have then eſtabliſhed; ſome things were propoſed that he thought impracticable, ſome inſufficient, ſome inconſiſtent with that compleat Regulation he hoped to make; the Objects he propoſed to himſelf, were to provide for whatever Deficiency might happen in the Office, late Mr. *Dormer*'s, to ſecure the Suitors from any future Loſs, and to make ſeveral Regulations relating to the Offices of the Maſters, and he thought theſe would be beſt done together, nor had he perfected the Scheme of any one of them to his own Satisfaction; he remembers no Propoſal, that he thought would take it totally out of the Power of the Maſters, to diſpoſe of the Securities or Effects, or effectually ſecure the Caſh. The ſaid Earl admits, that he did not demand any Security to be given by any of the ſaid Maſters at the time of their Admittance, becauſe it had not been done by his Predeceſſors, who were much wiſer Men than himſelf, nor was he ſo much as aſked by any of the Parties intereſted ſo to do; as to what the ſaid Earl did with relation to the Accounts of the ſaid Maſters, he hath already ſet forth, and ſaith, That he gave no Permiſſion nor Encouragement to the Maſters of the Court, to employ or traffick with the Suitors Money for their own Gain or Profit; he owns, that with reſpect to the Securities in the Hands of the Maſters, he made no general Order, and thinks it the leſs material, becauſe, notwithſtanding what is alledged in the Cloſe of this Article, he believes all the preſent Maſters did, in *December* laſt, produce all the Securities in their Hands, and the Court of Chancery hath ſince ſecured the ſame for the Benefit of the Suitors.

XIX. To the nineteenth Article the ſaid Earl ſaith, That upon great Conſideration of Mr. *Dormer*'s Deficiency, and of the Danger there might be of further Inconveniences, with relation to the Money and Effects in the Hands of the Maſters, and of ſeveral Diſputes and Differences that had ariſen in the Court of Chancery, and of ſome Applications of the ſaid Maſters, for eſtabliſhing them in their juſt Rights, and of ſome Practices of the Maſters, which the ſaid Earl thought ought to be reformed; he was convinced, that the ſame was a work of too great Conſequence for him ſingly to attempt, and being highly ſenſible of his moſt ſacred Majeſty's paternal Goodneſs to his People, did preſume humbly to beſeech his Majeſty, as the Fountain of Juſtice, to depute ſome of his moſt Honourable Privy Council, to take the Matters aforeſaid into Conſideration, in order to the eſtabliſhing ſuch Regulations, as might tend to the Honour of that High Court, and to the Advantage of his Majeſty's Subjects being Suitors there; which Requeſt, His Majeſty, out of His wonted Goodneſs, was pleaſed to receive very graciouſly, and named ſeveral Lords, and other Honourable Perſons of His Privy Council, to be a Committee, to take the ſame into Conſideration; and purſuant to His Majeſty's Command, the ſaid Committee met, and began with the Accounts of the ſaid Maſters, wherein the ſaid Earl begs leave to appeal to ſuch of your Lordſhips, who attended in that Committee, whether he did not contribute, to the utmoſt of his Power, to have every thing done which the ſaid Committee thought expedient: And the ſaid Earl ſaith, That he made all ſuch Orders as were by them judged requiſite, and ſo preſſed the Execution thereof, that not only the Accounts of all the Maſters then in being were brought in, but all the Securities in all their Hands, and the Caſh of moſt of them were actually lodged in the Bank of *England*, and therefore the ſaid Earl is greatly ſurprized, to find himſelf charged with obſtructing the taking thoſe Accounts, which he had thus deſired might be taken, and contributed to the taking of them with all his Power. And the ſaid Earl ſaith, That he never thought of preventing a parliamentary Enquiry, any otherwiſe, than by making it unneceſſary, and procuring to the Suitors a full Redreſs of all their Grievances, and rectifying whatever he found amiſs, and that he looked upon to be his Duty, and begs leave to ſay it here once for all, in anſwer to all the ſeveral Inſinuations of that kind contained in the Articles.

And the ſaid Earl further ſaith, That while the ſaid Accounts were taking, every one of the ſaid Maſters declared, over and over, that they had Effects ſufficient to anſwer their whole Accounts, and the ſaid Earl firmly believed the ſame to be true, and as all of them, that he ſaw (which he believes were all, or at leaſt all but Mr. *Kynaſton*) had told the ſaid Earl, that they were able to anſwer their Accounts; and when they brought their Accounts to the ſaid Earl, for him to lay before the ſaid Committee, Mr. *Holford* had wrote under his Account ſome Declaration to that Effect, and ſome others of them, as he remembers, had made uſe of ſome other Expreſſions, which he thought not ſo proper; and ſome, as he believes, had wrote nothing (but he cannot diſtinguiſh the Perſons) and the ſaid Earl thinking, that when the ſaid Accounts came to be laid before the Committee of Council by him, it would be proper that the ſame Thing ſhould be declared to the Committee, which had been ſaid to him ſingly, he adviſed them all to write the ſame Words under their Accounts, and did tell them, in great Sincerity and Friendſhip, that at a Time when ſo many Men's Mouths were open againſt them as Inſolvent, it would be for their Honour and Intereſt to make it appear, that they were able and ſufficient, as he then believed them to be, but never thought of a Contrivance to have them Deceitfully appear, or ſeem what they really were not; and he ſays they did then withdraw to make the Subſcription, or at leaſt ſo many of them whoſe Accounts were then ready; and ſoon after delivered them to the ſaid Earl, who carried them with him to the Committee of Council, whither he was then going, without looking upon them; but upon reading them at the Council, it was obſerved that they had not all uſed the ſame Words, having varied conſiderably, but what any of the Subſcriptions were, he cannot take upon him to ſet forth.

And the ſaid Earl further ſaith, That a ſubſequent Order being made by the ſaid Earl, for the ſaid Maſters to produce their Securities, and their Caſh, before the Perſons appointed to inſpect their Accounts, they made great Complaint, that ſo many hundred thouſand Pounds ſhould be required at ſo ſhort a Warning, and ſome of them ſaying, that though they had Effects ſufficient, and could raiſe the Whole if they had a little Time, deſired the ſaid Earl to allow them further Time for that Purpoſe; but the ſaid Earl ſaith, That he required them to beſtir themſelves, and raiſe it immediately, telling them, that ſince they had Effects to give Security, they might find Friends to furniſh the Money; and believes he did ſay, that ſome of their own Brethren might perhaps be able to let them have Money till they could raiſe it another Way.

But if any of them did ſupply others with Caſh or Effects to produce, only to make a falſe Shew and Appearance of their Ability, and Readineſs to anſwer the Balance of their Accounts, the ſaid Earl knows nothing of it, and is ſure they had not the leaſt Encouragement from him ſo to do.

XX. To the twentieth Article the ſaid Earl ſaith, That it never entered into his Thoughts, to make uſe of, nor did he ever make uſe of any of the Money belonging to the Suitors of the Court for his own private Advantage; but believes, that in *December* One thouſand ſeven hundred and twenty, having Occaſion for the Sum of One thouſand five hundred Pounds, and aſking his Secretary, Mr. *Cottingham*, whether he could lend him the ſame, he ſaid he could not, but would procure it for him; and accordingly borrowed the ſame from Mr. *Godfrey*, one of the Maſters of the ſaid Court, and the ſaid Earl gave his own Note for Payment thereof to the ſaid Mr. *Godfrey*, and in *February* following repaid One thouſand Pounds, Part of the ſaid principal Sum; but in the ſame Month of *February*, One thouſand ſeven hundred and twenty, upon a freſh Occaſion, borrowed again Part of the ſaid One thouſand Pounds ſo paid back, and a Note or Notes were given for the Payment thereof; and ſome Time after the Earl ordered the whole Money borrowed of the ſaid Mr. *Godfrey* to be paid, with all the Intereſt due for the ſame; and the ſaid *Godfrey* received the Principal, but would not be prevailed upon to take the Intereſt, or any Part thereof: and the ſaid Earl ſaith, That all the ſaid Money was repaid within the Compaſs of a Year after it was borrowed; and the ſaid Earl declares, That he never received or borrowed any Sums of Money whatſoever of any of the Maſters of the ſaid Court, except as above ſet forth.

XXI. To the One-and-twentieth Article the said Earl saith, That upon the strictest Review of his own Behaviour, during the Time he had the Honour of serving his most sacred Majesty in the Office of Lord Chancellor, he is not conscious to himself that he ever did, in any illegal or arbitrary Manner, extend his Power, or the Power of the Court, beyond their lawful and just Bounds, or that he did arbitrarily or illegally assume to himself, as Lord Chancellor, or by Colour of his Office, any unjust and unlimited Power of dispensing with, suspending, or controuling the Laws or Statutes of this Realm, or that he any ways oppressed the Suitors of the Court, or was guilty of any Breach or Violation of the Rights or Liberties of the Subject, or of his own Oath, as Lord Chancellor: And with regard to the particular Complaint against him in this Article, the said Earl saith, That *Rachel Tyson*, in the Article named, as the Earl is informed, caused a Bill to be exhibited in the Court of Chancery, in the Name of her Son and Daughter, in the said Article likewise mentioned, by their *Prochien Amy*, against herself, and the said *John Tyson* and others, to have the Trusts in the Will of her late Husband duly performed; and the same was brought to Hearing at the Rolls the seventh Day of *July*, One thousand seven hundred and eighteen, and by the Decree then made, it was amongst other Things ordered, upon the Prayer (as the said Earl hath heard and believes) of the Counsel employed by the said *Rachel Tyson*, that a Receiver should be appointed of the Rents and Profits of the real Estate, who was to have a Salary allowed him, and Power to let and set the said Estate, as there should be Occasion, with the Approbation of the Master, to whom the Cause was referred: And the said Earl saith, That an Execution of that Part of the Decree, which directed a Receiver to be appointed, the Master having certified, that he had appointed *John Nicholas*, Esq. to be the Receiver of the Rents and Profits of the said Estate, the said *John Tyson*, thinking himself aggrieved thereby, did, in the usual Course of Proceedings in the said Court, cause Exceptions to be filed against the same, and upon the arguing thereof before the said Earl, by Counsel of both Sides, Affidavits were read, to shew that the said *John Nicholas* was an improper Person; that the said Testator had declared in his Life-time, that the said *John Nicholas* by Name should not have any Thing to do with the Management of his Estate; and that a considerable Part thereof consisted in old Houses and Water-works: And the said Earl, upon a full Hearing of both Parties, was of Opinion, that the said *John Nicholas* ought not to be appointed the Receiver; and upon the Proposal of the said *John Tyson*, then in Court, ordered *Robert Doyley*, Esq. to be Receiver, he giving Security to be approved of by the said Master; which Order was made, as he believes, on the fifteenth of *January*, in the Year One thousand seven hundred and eighteen; and affirmed upon the Re-arguing the said Exceptions on the sixth of *March*, in the Year One thousand seven hundred and eighteen; since which Time the Parties interested have never thought fit to complain thereof to your Lordships by Appeal, in order to have it reversed, as mistaken or unjust, though now the making thereof is complained of as a Crime; and the said Earl is not ashamed to own, that he was very well acquainted with the said *Robert Doyley* for some Years before the said Order, and believed him to be a Person of great Honour and Integrity, Application and Exactness, and believes there are several Persons of Distinction to whom he had the Honour to be known, who had the same Opinion of him; but the said Earl did not appoint him Receiver because of his own Respect for him, but because he was named by the said *John Tyson*, who was Uncle of the said Infant, and Executor of his Father's Will in Trust for him, and by the same Will appointed his Guardian in case of his Mother's Death or Marriage; and to whom the said Testator had devised the said Estate, in case of the Death of the said Infant without Issue Male, and whose Interest it therefore was to take Care of the Infant's Interest in that Particular; and the said *John Tyson* and Sir *Cæsar Child* (whose Daughter the said *John Tyson* had married) had such Confidence in him, the said *Robert Doyley*, that upon the eighteenth Day of *March*, One thousand seven hundred and eighteen, they entered into a Recognizance, together with him, in the Penalty of seven thousand Pounds, for the said *Robert Doyley*'s duly accounting for, and paying the Money he should receive out of the said Infant's Estate; and the said Earl saith, That no Complaint was ever made to the said Earl against the said *Robert Doyley* to the Time of his Death; but he owns that he hath heard, that upon the Master's stating the Accounts since *Christmas* last, there does appear due from the said *Robert Doyley* about Two thousand and five or six hundred Pounds; but believes there is not any Fear or Doubt but that the same is very well secured by the said Recognizance.

And the said Earl saith, That he does not remember the particular Expressions used by the Counsel or himself, upon arguing or re-arguing the said Exceptions, but he cannot believe that any Counsel, of great Ability and Experience in the said Court, would have thought what the said Earl did extraordinary, much less would have used such an Expression to the said Earl as in the Articles, which is an indecent Censure of his Proceedings; and here being a Decree in this Case, approved of by all Parties, that a Receiver should be appointed to receive the Rents and Profits of the Infant's Estate, the said Earl is at a Loss to understand, how the fixing on the Person to be the Receiver, upon good Security, to account for and pay the same for the Infant's Use, is reviving the Court of Wards, whose Business it was to take the Rents and Profits of the Infant's Estate for the King's Use, without accounting for any of them to the Infant, but barely providing a Maintenance for him, at the Discretion, perhaps, of some Grantee of the Custody.

Thus the said Earl has laid his Case before your Lordships, and doth further, for Answer to all the said Articles, say, That he is not guilty of all or any of the Matters contained in the said Articles, or any of them, in Manner and Form as they are therein charged against him; and the said Earl doth further insist upon the Benefit of his Majesty's most gracious and general free Pardon, granted to all his Subjects (not therein excepted), in and by an Act of Parliament for that Purpose made in the seventh Year of his Majesty's Reign, in Bar of, and in his Defence against the said Impeachment, and the said Articles exhibited in Maintenance thereof, and all and every the Proceedings thereupon, so far as the same extend to any Neglect, Offence, or Misdemeanor, or supposed Neglect, Offence, or Misdemeanor, or any other Act, Matter, or Thing, suffered, done, or committed, or omitted by him the said Earl, before the four-and-twentieth Day of *July*, in the Year One thousand seven hundred and twenty-one, and doth humbly insist, that no Evidence ought to be given against him for or concerning any of the Matters or Things aforesaid, in and by the said Act pardoned, or any of them; and doth aver, that he is not within any of the Exceptions in the said Act contained.

MACCLESFIELD.

The COMMONS REPLICATION *to the Answer of* Thomas *Earl of* Macclesfield.

THE Commons have considered the Answer of *Thomas* Earl of *Macclesfield*, to the Articles exhibited against him by the Knights, Citizens, and Burgesses in Parliament assembled, and observe, that the said Earl hath industriously avoided giving a direct and particular Answer to several Matters positively and certainly alledged against him in the said Articles, which, from the Nature of the Facts themselves, must necessarily lie in his own Knowledge, and hath attempted to disguise and cover the real Crimes laid to his Charge, by immaterial and evasive Insinuations of Facts of a different Nature; and that many Parts of the said Answer are contradictory to, and inconsistent with each other, upon which they might demand your Lordships immediate Judgment: Yet the Commons being able to maintain the Truth and Justice of their Accusation, are willing to enter into the due Examination thereof: And do aver their Charge of High Crimes and Misdemeanors against the said *Thomas* Earl of *Macclesfield* to be true, and that the said Earl is Guilty in such Manner as he stands impeached; and that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.

Lord C. J. *King*. Gentlemen of the House of Commons, you may proceed as you please.

Sir *G. Oxenden*. My Lords, the Commons of *Great Britain* in Parliament assembled, have, out of their indispensible Duty to his sacred Majesty, and Zeal for the Security of the Estates and Properties of their Fellow-Subjects, exhibited a Charge of High Crimes and Misdemeanors against the Earl of *Macclesfield*, late Lord Chancellor of *Great Britain*, complaining of many dangerous and corrupt Practices, many grievous and heinous Offences committed against the good and wholesome Laws and Statutes of this Realm.

The first and principal Accusation of the Commons is, That the Earl at the Bar, whilst he continued in the Office of Chancellor, did illegally and corruptly insist upon, and take of divers Persons, several great and exorbitant Sums of Money, in order to, and before their Admission into their Offices of Masters in Chancery; and that those Offices concern the Administration of Justice in that Court.

This, my Lords, is a Charge of the deepest Dye; the Crime alledged strikes at the very Root of Government itself; it is the Essence and Stability of Society, that Justice should be administered with Clearness and Impartiality, that the People may sit easy under the Wings and Protection of the Laws, and their Properties be guarded from unjust Invasions. In the Progress of the Charge, your Lordships will observe, That almost all the other Crimes and Misdemeanors, of which this noble Person stands accused, are subservient to this chief Design of amassing together vast and immense Sums of Money, and that they have a Tendency to advance the Price of these Offices: Whether they be Acts of unjust Oppression; of wilful Neglect; or of partial and unequal Administration of Justice; whether they be Acts of open Violation of Duty, or of secret and private Intrigue to elude the publick Justice of the Kingdom, your Lordships will find these Arrows drawn all from the same Quiver, dipt in the same deadly Poison, and directed to the same Mark.

In order to set this in the clearest Light, I must go on and observe, That the Commons charge in the next Place, That insufficient Persons were found out and pitched upon, to be admitted Masters of the Court; Men of small Substance and Ability, no ways fit to be entrusted with the great Sums of Money and Effects lodged in their respective Hands.

My Lords, the natural Qualities and Endowments requisite to recommend Men to so great a Trust, ought to have been Honesty and Probity; the acquired ones, those of Knowledge and Experience; without a due Mixture of these, it was very hazardous to admit any into Trust: But no doubt Credit and Competency of Fortune were Ingredients perfectly necessary; because whatever Loss or Misfortune might attend the Management of a Master so accomplished, in the ordering the Suitors Money, here might be some Provision coming out of his Estate to make Reparation. Your Lordships will, no question, at the first View, think it carries an odd Appearance, when this unfortunate Earl had resolved within himself, at all Hazards, to raise exorbitant and immense Treasures out of the Sale and Disposal of the Masters Places, how it should answer his corrupt Designs to admit into them Persons of small Substance, and some of almost desperate Fortunes, utterly unable to lay down the vast Prices those Offices were sold for at public Auction: But, my Lords, the Vastness of the Price was no Objection or Discouragement to a Person already undone, provided he might be made easy in the Manner of Payment, and run no Hazards. Men of Substance might very well be afraid to *Present*, as his Lordship's Phrase is, a whole Estate at once for an uncertain and precarious Prospect, either of Success in the Office, or of Life or Health to enjoy it; so that the fittest Engines and Instruments to effect the noble Lord's Purposes, were Men of small and shattered Circumstances. And therefore the Commons go on and charge, that there was a fraudulent and unwarrantable Method made use of in paying for the Masters Offices out of the very Money belonging to the innocent Suitors of the Court; that this Practice was notorious and publick, and the Person at the Bar well acquainted therewith. Your Lordships now observe, That the greatest Difficulty of all to an indigent Person, *viz.* the Payment of the Money, was, by this dangerous and unjustifiable Contrivance, totally removed, and when a Man was neither to be out of Pocket himself, nor thrown into any Fears and Apprehensions of being questioned for misapplying the Suitors Money, is it at all to be wondered at, that the Price of these Offices should swell to that Bigness, as long to be the Topick of Conversation in the World about us, and at last become the Subject of a

national Enquiry? This ſcandalous Method of Payment is of the moſt malignant Kind, and a Suitor is, contrary to the Law of Nature, made the Inſtrument of his own Deſtruction; his Subſtance, which ought to be his Support and Relief, is turned to his Oppreſſion, or if Part only be taken from him, it is in order to arm another to diſpoſſeſs him of the Reſt. The great Perſon, whoſe Duty it is to protect his Property, is the Promoter of his Loſs, and is the more unpardonable in it, as he turns that Loſs to his own Advantage. If it be a Thing univerſally condemn'd, for a Perſon in the Earl's late high Station, to borrow a Suitor's Money without his Knowledge, notwithſtanding he offers a moderate Intereſt for it, becauſe it is encouraging the Maſters, by his own Example, to lend out Sums with as much Juſtice to other People, How infinitely greater is this Offence? If it be a Crime to put Men's Properties to hazard, how much blacker is it to take them to one's ſelf, and incorporate the Widow's Mite with one's own Heap! But, my Lords, when ſuch prodigious Sums were extorted from the Maſters, could it be any Myſtery how they were to re-imburſe themſelves? For although they paid no Money of their own, yet they made themſelves accountable for what they uſed of the Suitors: was it not an obvious Conſideration, That if they dared pay for their Employments with Part of the Truſt-Money, they meant to traffick and game with the Remainder too? They came in Maſters upon ſuch Terms, for no other Purpoſe but to pillage and fleece thoſe under their Care. What muſt be the natural and unavoidable Conſequence of lodging in their Hands ſuch uncontroulable and licentious Power over their Caſh, but that the firſt ill Run would cruſh them at once, and pave the Way to great Deficiencies? But leſt the Proſpect of ſo calamitous a Caſe ſhould deter the moſt greedy from contracting for a Maſter's Place on Terms the moſt inviting, you will ſee, in the Series of this Affair, what Shifts, what Artifices were employed, to hide ſuch a miſerable Scene from the Eyes of the World. For the Commons, in the next Place, charge, That *Fleetwood Dormer*, Eſq. having embezzled great Part of the Effects belonging to the Suitors of the Court, died indebted to them in divers Sums of Money, amounting in the whole to 25,000 *l.* and upwards; that the noble Lord at the Bar has not made any proper Inquiry into *Dormer*'s Deficiency, taking no Care about his Effects, but has endeavoured to hide and conceal, from the Suitors, the State and Condition of the Office, and that this Concealment was, leſt a publick Diſcovery of the Deficiency might leſſen the unjuſt Gains he propoſed to himſelf from the Sale of the Maſters Places. Your Lordſhips obſerve here, That one Accuſation is, a great and manifeſt Neglect in the Execution and Diſcharge of his Duty; a wilful and deliberate Neglect; not ariſing from the Infirmity of human Nature, but growing out of the Corruption of it; mitigated by no one Shadow of Excuſe, but aggravated by the Attendance of many foreſeen ill Conſequences. If an Office abuſed in the moſt fatal Manner, on the Brink and Precipice of utter Deſtruction, was not a proper Object of his immediate Inſpection, no wonder the moſt proſperous Offices did not deſerve his Care; what Maſter, who was an Eye-Witneſs of this, would be under that decent and neceſſary Awe of the preſiding Perſon, and keep himſelf within the juſt Bounds and Limits of his Office? This, my Lords, is indeed a wilful Neglect: But if you look on it in another Light, in order to conceal the Deficiency, that the Value of the Maſters Places might not be run down, it will appear, in its worſt Colours, an Artifice to ſupport and carry on a Fraud, a Contempt of Duty for the ſake of Corruption. The Series of the Accuſation will evidently ſhew, that the Earl's Heart was ſet upon this Concealment: for we ſhall now find him beginning to diſplay his utmoſt Ingenuity; here was an Accident, which, unleſs great Care were taken, would entirely fruſtrate and blow up his Deſigns; were *Dormer*'s Deficiency divulged abroad, and the whole Body of the Suitors (who had ſure a Right, even from Compaſſion, to be taken care of) made acquainted with the ruinous Condition of his Office, who would anſwer that the Government itſelf might not have been alarmed, and a publick Inſpection made four Years ago into the other Maſters Accounts too? The dread of a publick Examination now overbalanced all other Conſiderations; and as ſome of the Suitors (whoſe Intelligence and Sagacity were better than the reſt) were daily preſſing and ſolliciting for their Due, the Office-money embezzled, no Care taken to ſecure *Dormer*'s Effects, all Supplies and Demands on *Wilſon* cut off by the wretched and unwarrantable Compoſition made for the Suitors without their Conſent or Knowledge: Theſe Diſtreſſes and Difficulties preſſing and ſurrounding this unfortunate Earl, it was neceſſary ſome Meaſures ſhould be immediately concerted to prop and ſupport this tottering Office; and therefore, my Lords, you will now find him arming himſelf with the Weapons of Authority and uncontroulable Power, and playing the Tyrant under the ſpecious Pretence and Colour of Duty. For the Commons go on and charge, that the Perſon at the Bar, during the Time he was Lord Chancellor, made an Order for the Maſters to bring in their reſpective Accounts of the Caſh and Securities in their Hands; (a very proper Inſpection, no doubt, had it been well deſigned) but your Lordſhips will obſerve the Charge is, That this was done to terrify and induce the Maſters to contribute Money towards *Dormer*'s Deficiency; to conceal the true State of the Deficiency from the Knowledge of the World: and they further alledge, That in purſuance of this intimidating Order, Money was contributed for that Purpoſe, Part of which we ſhall prove to be paid ſince the Act of Grace on the 11th of *Auguſt*, 1721, and that thoſe Accounts were not inſiſted upon after that. My Lords, This Propoſal met with its deſerved Oppoſition from the Maſters; however, the Apprehenſion of loſing the Caſh and Effects prevailed at laſt, the Point was carried, and the Sum accordingly contributed. When your Lordſhips have but juſt now ſeen that there was a very viſible and deſigned Neglect in forbearing to inquire into *Dormer*'s Effects, and to go to the Bottom of his Deficiency; is it to be imagined, that this calling for the State of their Accounts cou'd be done out of Vigilance and Duty? No man can think ſo; Were they ever inſiſted upon after the Contribution? His Lordſhip knows they never were; if the real Deſign was to ſearch and examine them, it was as proper a Time to do it after the 11th of *Auguſt* as before; nobody believes they were in a better Condition, the Maſters had the ſame free power of their Caſh, and the Perſon at the Bar had as deep a Senſe of his Duty after that Day, ſure, as before. If the Miſbehaviour of *Dormer* gave Occaſion to this deſigned Inſpection into the general Condition of the other Offices, how came it about the Deſign was never carried into Practice, till his Majeſty, out of Compaſſion and paternal Goodneſs to his oppreſſed People, gave Directions for that End? The Deficiency of *Dormer* continues ſtill, and yet the Earl impeached has made no Regulations in the Offices, examined no Accounts during the Time he remained in that high Poſt, nor ſet up any Lights, or Land-marks, whereby the preſent deficient Maſters might have cleared the Rocks on which they have ſplit. No, my Lords, this was only a Pretence of regulating; a Diſſimulation of Duty, for the better concealment of *Dormer*'s Frauds. Beſides, the Propoſal that the Maſters ſhould contribute to the patching up a Deficiency in another's Office, is unjuſt in itſelf, and fatal in its Conſequence. Can any Thing be more repugnant to Juſtice than to oblige one Perſon to repair the Loſſes of another, incurred without his Knowledge or Fault? Or where is the Advantage to the Offices in general, allowing it to be juſt? If *Dormer*'s Deficiency be ſupplied out of other Offices, will not thoſe Offices miſs thoſe Supplies, and be as much impoveriſhed in the general, as *Dormer*'s is mended in particular? Surely, my Lords, there needs no reaſoning about this, the Thing ſpeaks itſelf. The Commons take Notice of an Alternative in this Article offered to the Maſters, either to conſent to a Contribution, or to be immediately ſtripp'd of the Caſh and Effects; ſo that upon paying down the Sum demanded, a Maſter was confirmed afreſh in the ill Conduct of his Affairs, he pays his Fine, and renews his Leaſe of Knavery and Impunity; his Books may be kept as cloſe from Inſpection as the Books of the Sybils, they contain alike the Deſtiny of Mankind, and he may go on with Authority to prey upon the Properties of the Fatherleſs and Widow; and no doubt the Maſter argues upon as good Grounds as the noble Earl; and concludes, that if, for the Advantage of his unjuſt Schemes, the impeached Lord thinks it highly reaſonable to extort Money from him belonging to the Suitors, which is never to be reſtored, it may, with Parity of Juſtice, be as decent for him to take the ſame Liberty with their Caſh too, for the Service of his own. But the Commons deteſt the corrupt Practices of both, and expect exemplary Juſtice on the great Offender at the Bar.

Thus far I have touched in a general Manner on the Management and Artifices uſed in the Concealment of *Dormer*'s Deficiency, and, no doubt, it muſt create an univerſal Aſtoniſhment in your Lordſhips, how it could ever enter into the inmoſt Receſſes of his thoughts, that ſo great a Calamity as this could poſſibly be for ever hid in Darkneſs; that ſo torn and ghaſtly a Wound could ever heal of itſelf; or rather, that it ſhould not by long Neglect become quite incurable.

Your Lordſhips will obſerve in the enſuing Charge, That Mrs. *Elizabeth Chitty*, an unfortunate Widow, having obtained an Order from the Earl at the Bar, by virtue of which Mr. *Edwards*, *Dormer*'s Succeſſor, was to pay her 1000 *l.* Part of a much larger Sum depoſited in the Hands of Mr. *Dormer*, and *Edwards* refuſing to pay the ſame, not having ſufficient in his Hands, out of *Dormer*'s Effects, to anſwer the ſaid Demand. The impeach'd Lord did again make Uſe of the ſame Artifices and Stratagems to compel the ſeveral Maſters to contribute this further Sum of 1000 *l.* to ſtop the Complaints, and ſtifle the Murmurings of Mrs. *Chitty*; and did alſo intimidate them, by repreſenting, That if the Deficiency were known, a parliamentary Enquiry would probably enſue, and the Maſters be deprived of their Offices, having bought them contrary to Law: This not taking Effect, the Commons charge, That in order to accompliſh his wicked and corrupt Purpoſes, he did himſelf pay the 1000 *l.* into *Lockman*'s Hands, for the Uſe of Mrs. *Chitty*, ſaying, this was the laſt Money ſhe was ever likely to receive, by Reaſon of a Deficiency in *Dormer*'s Office. My Lords, you ſee here is a ſecond Attempt, a freſh Endeavour to conceal the Deficiency by the Aid and Aſſiſtance of the ſame Meaſures made uſe of before, but backed by the Terrors of a national Inſpection. The Continuation of theſe Arts is no ſmall Preſumption, that the End deſigned was unjuſt in the Earl's own Judgment. His Condemnation, in this Inſtance, ariſes and ſprings out of his own Arguments and Conduct. If a publick Diſcovery of this Deficiency would lay the Foundation of a publick and national Examination; what ſafer, what more expedient Meaſures could be concerted and taken, than immediately to ſatisfy Mrs. *Chitty*'s Demands; by the Refuſal of which, this publick Diſcovery, ſo much, and ſo juſtly apprehended, might come out? And what ſtronger Inducement could he lay before the Maſters, why the Burden of this Payment ſhould fall upon them, than by ſhewing in how fatal a Manner that national Examination would affect themſelves? He repreſents to them their having purchaſed their Offices (and many of them of himſelf too) in direct Defiance of the Law, and that it was their near Concern to avoid the Pit, in which they were likely to be ſwallowed up. My Lords, I take this to be a plain Confeſſion of his Crime: Our Accuſation is, That the Sale of theſe Offices is repugnant to Law and Juſtice; here is his own manifeſt Acknowledgment that it is ſo, but aggravated and heightened by this flagitious Circumſtance, That whilſt he is reminding the Maſters of that Guilt which he himſelf ſhared, he draws an Argument from that very Guilt, why they ſhould aſſiſt him in a freſh Offence; and ſince they had already offended againſt the Laws of the Land, if they would avoid Puniſhment, the beſt Way of doing it, was by a new Tranſgreſſion. You have his own Word for it, that he knowingly exceeded the ſtatutable Limits preſcribed by the Wiſdom of our Anceſtors, for the Safeguard and Protection of the Rights and Properties of the *Britiſh* Nation. If the Buyer is Criminal, how can the Seller be Innocent? And yet his Lordſhip, it ſeems, knows of no Statute now in being, on which Judgment can be prayed in this Proſecution. 'Tis this wilful and deliberate Tranſgreſſion of the Laws that has opened that Fountain of Iniquity which has drowned and laid waſte the Fortunes of our Fellow Subjects.

In ſtating the Charge thus far, it is evident, That neither a wilful Neglect of Duty has been wanting, nor a thorough Contempt of Juſtice; no Pains ſpared, no Artifices unemploy'd to plunge the Deficiency in *Dormer*'s Office in the deepeſt Obſcurity. You have found him forcing and wreſting a Contribution from the Maſters; not ſuch a one, my Lords, as would equally anſwer all Demands on the Office, but as a bare Sufficiency to ſatisfy the Importunities of Perſons for the preſent, and thereby lull others into a deſtructive and fatal Security; to make a falſe Shew and Appearance of Ability in this Office, which the Maſters were afterwards directed to do in theirs. Your Lordſhips ſhall ſoon find him acting another Part, and diſheartening *Lockman* from ingaging any further in the Marriage with Mrs. *Chitty*, (for the Sollicitations of a weak Woman to have her juſt Due might be eaſier dealt with) aſſuring him, that the Deficiency was ſuch as muſt infallibly root out all future Hopes and Expectations on her Account; and yet the Cloſe of this Article ſets forth, That ſo lately as

the fifth of *December* last, this Earl sitting then in open Court, did, in a Cause depending before him, protest and affirm, That, for his Part, he knew nothing of *Dormer*'s Deficiency, but as public News. My Lords, if Truth and Sincerity are not to be found in the Seat of Judgment, where must we look for them? Where shall we place our Confidence, if there is no Dependance on the Affirmation of a Judge? Where shall we seek Examples worthy our Imitation, if the uprightest Places afford them not? But to pass over this unpleasing Scene, your Lordships will be pleased to take Notice, That the unfortunate Person at your Bar, in Hopes still to cover the Deficiency, made divers Orders on Mr. *Edwards* for the discharging and paying the entire and full Dues to some of the Suitors, whilst others were put off with an inconsiderable Share. Is there any Thing more noble in the Mind of Man, than a Desire of distributing equal Justice? Without Equality Justice is destroyed, and sacrificed to the Passions and Infirmities of Men; and yet your Lordships will find there is no Virtue so lovely, no Principle so amiable, but must be abandoned and prostituted to the carrying on this wretched Scheme. Such is ever the miserable Fate of those who dip their Hands in Corruption; they engage originally in one Vice only, but are forced to adopt and cherish a Number of others to keep that one a Secret from the World. For it becomes, at last, *necessary* to do Injustice for the Sake of Security; People's Necessities, though they may be alike, yet are their Passions quite different, and a necessitous and starving Suitor of a broken and worn-out Spirit might be turned away from his Lordship's Presence with a tenth Part of his Right, whilst one of a more obstinate Make, and a bolder Constitution, would insist upon, and wrangle for the whole. This Difference of Tempers might facilitate, possibly, such unjust Dealings for a Time; but could this partial Preference of one Person to another, in manifest Contempt and Violation of the Rules of Equality, be any otherwise of Service to this Noble Lord, or make any Amends for diminishing Reputation, but by stopping the Mouths and Cries of the soliciting Suitors with such Proportions as would go down with them, prevent the Contagion from breaking out, and disappoint the Application of a public Remedy? You see plainly the miserable Consequences the Sale of the Masters Places has been attended with; the fraudulent Method of Payment; the unjust and uncontrouled Abuses of the Masters; the great Neglect of *Dormer*'s Deficiency; the unjustifiable Concealment of it; the Stretches of Art and Injustice in the Manner of doing it; 'tis one continued Series and Succession of Male-administration, calculated for the Advancing the Profit and Gain of the Person at your Bar. Your Lordships would, no doubt, wonder else, why so great a Trust as upwards of a Million of Money should be reposed in the Masters, without some reasonable Security on their Part, or some proper Restraint laid upon them for their due and fair Discharge of it, especially, since *Dormer* had broke, and brought upon the Sufferers so fatal a Misfortune: And this it is, my Lords, that raises the Resentment and Amazement of the Commons, who farther charge, That, notwithstanding the Earl well knew that *Dormer*'s Deficiency was chiefly occasioned by the Liberty he assumed to himself of Trafficking and Gaming with the Suitors Effects, and that the other Masters did, or had it in their Power so to dispose of, or otherwise misemploy the Money and Securities in their Hands; and, notwithstanding a reasonable and proper Scheme was laid before him, whereby the like Misfortune might be prevented for the future, yet the Earl never required any Security, or laid any Restraints on the Masters, but left them to the wide and boundless Liberty of abusing their Trust as Avarice and Ambition suggested Occasions. I will not enter into the Consideration how far it may have been the Practice not to require Security; I take it for granted, if none has been formerly demanded it was because the presiding Persons were vigilantly executing the Duty of their Offices, and by frequent Inspections into the Masters Accounts, restraining them from the Exercise of unwarrantable Power. But were that otherwise, bad Precedents, my Lords, will not justify Omissions; no, nor extenuate them; though I believe not any Instance can be produced, not so much as the Appearance of any, where it was so indispensibly and absolutely necessary as in this Case; there was no Need or Use of any Example to remind him of it; common Prudence teaches us the Necessity of providing against Disorders or Losses for the Time to come, which our past Negligence has once brought upon ourselves or others: 'tis the only Attonement a Man can make for his former Faults; and if the Person at the Bar had had at Heart the least Intention of repairing the Breaches made in the Justice of that Court where he governed, here was the most fortunate Opportunity of doing it; for your Lordships shall find the very Masters themselves, in a Manner, importuning and soliciting him to tie up their Hands by such proper and equitable Restrictions, as would put the fluctuating Fortunes of their Fellow-subjects on the firmest Establishment. Had the Noble Lord listened to this Proposal (which will come more properly within the Province of another Gentleman to open to your Lordships), the unhappy Deficiencies in the present Masters Offices had been fortunately prevented, the Clamours of the World about us had been stopt, and the Nation easy. Did not Necessity demand it? The deplorable Havock committed since shews it did. Did not the national Voice call aloud for it? the Prosecution of this Day is sufficient Testimony. Was it not his Duty? Sure I am, it would have been his Happiness. And shall not the Ruin of Widows and Orphans plead for Punishment and Reparation? The Commons rely upon your Lordships Justice that they shall.

But, my Lords, there is a Charge behind, which contains Matter worthy your Observation; it sets forth, That his most sacred Majesty, out of his fatherly Goodness to his People, having directed an Enquiry to be made into the Accounts of the Masters in Chancery, in the Month of *November* last, the Earl impeached did, by his Advice and Authority, persuade and induce them to make false Representations of their Accounts and Circumstances to his Majesty in Council, and to assist one another with Cash and Effects to make a false Shew and Appearance of their Ability, that a parliamentary Enquiry might be prevented; and did oblige them to declare in Writing, at the Foot of their Accounts, That they were able and willing to pay the Balance, although the Earl well knew many of them were not. Your Lordships, sure, cannot but be astonished at the Boldness of this Attempt, to defeat and frustrate the gracious Intentions of his most sacred Majesty, to take from his unfortunate Subjects that Redress and Satisfaction, which their Duty and Loyalty, their Wrongs and Sufferings had claimed in his Royal Mind; to deceive his Majesty at the very Council-Table, where he had the Honour himself to sit; and to deprive the Commons in Parliament of that Inquisition for Justice which the Nation expected at their Hands. The Dread and Apprehension of parliamentary Justice is a strong Presumption of his Guilt. Why, my Lords, should public Enquiries terrify and dismay an innocent Person? National Acquittals are eternal Monuments of Renown; they are more glorious and lasting than Pillars of Marble, or triumphal Arches; they remain upon Record to all Posterity, never to be defaced by the Malice or Teeth of Time. But, my Lords, as there are Monuments of Praise, so there are Columns of Infamy; there are national Condemnations as well as national Acquittals; and the Noble Lord must now take his Fate in the Judgment of your Lordships, which he so much dreaded. It is an Evidence of a Man's Crime, if he flies for it; it betrays a Self-Conviction in the Party accused, in that he dares not abide a legal Trial; it is another Circumstance against a Man, to be found tampering with a Witness, and carries with it some Presumption of his Guilt; because no innocent Person wants the Aid and Assistance of a false Evidence. Your Lordships have seen him, as it were, flying from his Trial, and you will now find him tampering and intriguing with the Masters in the most dangerous and artful Manner; and that the Masters are Evidence, and close ones too, will fully appear at your Bar. You shall find him colouring and glossing over the Masters Accounts, with Touches and Strokes of his own, hoping to shelter his own Male-Administration, by putting the Vizor of Integrity on theirs; *this* is the glorious Exit *he* makes; *thus* he finishes his *impartial and just Administration*.

My Lords, the Evidence to support this Charge will be opened to you by the learned Gentlemen to whom the particular Proofs are assigned; I shall not, therefore, take up your Time in entering upon that which exceeds my Province; I only beg Leave to hope for your further Indulgence, while I make a general Observation or two on the Nature of the Charge.

The Ground-work and Basis of this Noble Person's Crimes is Corruption, a Thing in private Life the most detested, and in public Persons of the most malignant Influence to the State. It deprives the Crown of that solid Strength and Grandeur, that shining Lustre and Beauty, which a just Execution of the Laws reflects upon it; it disarms the People of that Security and Safety which naturally flows upon them from an impartial and uninterrupted Administration of Justice. The Consequence of which will ever be, the Crown will lose that proper Reverence and Veneration from the People which are its due; and the Subjects, restless and uneasy for Want of Justice, will lay Hold on the first Opportunity of throwing off Allegiance itself. It brings a national Reproach upon us; and, by sowing the Seeds of Discontent at Home, exposes us to the Incursions and Depredations of our Enemies: But, my Lords, when it protects itself under the Shadow of Justice, and puts on the Smiles of Innocence, 'tis high Time to rise up in Defence of our violated Laws, and set a publick Mark of Infamy upon it. To what Purpose are Judges and Ministers restrained, by the Provision of Acts of Parliament, from selling Offices under their Protection and Care, if Men shall hide themselves under Example in Bar of the Laws? Will Example plead for him? Surely, my Lords, there are none such: Or, if there were, what would that be but to defend Crimes by their own Blackness and Malignity? As if a Distemper were not to admit of any Remedy, because it is general and contagious. But supposing, for Argument's Sake, there have been great Persons, his Predecessors, who have ventured upon small Presents and Gifts on such Occasions, does it follow, with any Colour or Pretence of Reasoning, because those have been confined within the Bounds of Moderation, therefore the Extortion of exorbitant Sums, to connive at outrageous Measures and Oppressions, exceeding almost the Fears of the Oppressed themselves, should take shelter under the poor Pretence of Precedent and Example? Alas! my Lords, I am afraid Example only operates according to Men's Appetites and Passions; else whence comes it about, that Example should have all the Beauty of an Angel in this Instance, and all the Deformity and Horror of a Fiend in another? His great * Predecessor made no Attempts to conceal a deficient Office in his Time. No, my Lords, he had no corrupt Purposes to feed. The same noble Person never ordered some Suitors their entire Demands, and left others groaning and starving under the Pressure of an unequal Distribution; he did the direct contrary. Happy had it been for this unfortunate Person, happy for the Widows and Fatherless, had he copied after the Example of his renowned Predecessors, in their wise and upright Distribution of Justice, as well as flown to their eminent Names for Protection, in the illegal Practices wherewith he is charged! To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences; if Bribery shall receive a Patronage from great Examples, and the basest Actions be adorned with the same Lustre and Honour, that are only due to the most virtuous? But, my Lords, the Commons have found him bargaining and bartering an † Office, in the Gift of the Crown, for the poor and sordid Advantage of an hundred Guineas. This is an Instance wherein the very Person of the King is insulted in the most flagrant Manner; 'tis a Prostitution of the regal Honour and Dignity, by one who had the Trust reposed in him, as one of the joint Guardians of the Realm during his Master's Absence: As if, too, there was no Access to the Throne for Grace and Favour, no tasting the refreshing Streams of that Fountain of Goodness, which rises in his Majesty's Breast, for the universal Comfort of a dutiful and happy People, but by the Assistance of the most abandoned Measures. Can your Lordships any longer wonder the People's Properties were employed to ill Purposes, when his Majesty's Prerogative is trafficked with and sold? Could it be expected a poor Suitor's Right should remain secure under his Protection, as Chancellor, when the King's were precarious in the Hands of his own Trustee? And yet, my Lords, how often, and how gloriously has this Nation vindicated and asserted its own Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers! It was the Loss and Forfeiture of all the Lands and Estate of Sir *William Thorpe*, Justice of the King's Bench, who was sentenced for Bribery in the Reign of *Edw.* III. Nay, the Sentence extended even to Loss of Life itself, though that Part has been thought not sufficiently warranted, and should have ended in Imprisonment only. Every one knows the Vengeance hurled on the Earl of *Middlesex*, which is to be

* *Lord* Cowper. † *Clerk of the Custodies.*

found

found in the Rolls of Parliament. This unfortunate Earl, having delayed Juſtice to the Farmers of the Cuſtoms, in a Matter referred to him by King *James* I. and having polluted his Hands with exorbitant Bribes, was ſentenced in Parliament to loſe all his Offices which he held in the Kingdom; to be for ever uncapable of any Office Place, or Employment in the State; to be impriſoned in the *Tower* of *London* during the King's Pleaſure; to be fined 50,000 *l.* never to ſit in Parliament any more, nor to come within the Verge of the King's Court. The Caſe of my Lord *Bacon* is another Inſtance of the Virtue and Integrity of your Anceſtors, in the Abhorrence they ſhewed, and the Puniſhment they inflicted on that Great Man's Crimes.

My Lords, if the Offences committed by the Earl, and thoſe of the great Perſons juſt mentioned were compared, and the Conſequences naturally flowing from them, it would be found how much greater Guilt is comprehended in the Charge of this Day. I will not ſpend your Lordſhips Time, in enlarging on a Diſtinction between Bribery *In* an Office, and Bribery *by Colour* of an Office; between Bribery in a Judicial Way, on Account of Judgment in Cauſes, and Bribery in the Diſpoſal of Offices, that concern the Adminiſtration of Juſtice; but only obſerve, that the Sale of the Maſters Places, accompanied with the Circumſtances I have already explained, is attended with more miſchievous and oppreſſive Conſequences to the Subject, than a Judge's accepting a Bribe in Cauſes depending before him. By means of the latter a Perſon is put to an extraordinary Expence indeed to come at his Right; or, if he is deprived of it by a corrupt Determination, yet ſtill there is another Reſource; and his Happineſs is, that he may appeal to Parliament for Redreſs. But the Conſequence of the other Caſe is, he can come at no Right at all; his Money is embezzled and loſt, the Maſter runs away, the Chancellor is in the Secret, and there is no Remedy left. Is it any Excuſe to ſay, that the Maſter is liable to anſwer for his own Frauds, and not the impeached Lord? I beg only to put the following Caſe: If a Keeper, who has undertaken the Care and Management of a Madman, wilfully neglects his Duty, ſees the diſordered Perſon going to do Miſchief, and does not interpoſe, is not the Keeper reſponſible? Surely, my Lords, by the Law of Reaſon he ought. But what if the Noble Lord did not foreſee the Miſchief, and yet be the Occaſion of it, from the Exerciſe of an unlawful Act; there is no Queſtion but he would be anſwerable. A Perſon intends to rob the King's Foreſt, and ſhooting at a Deer, kills the Keeper, Is not he Guilty of Murder? No doubt he is: Becauſe though he did not intend Murder, yet the Act he was about, was an unlawful Act. But, my Lords, the Perſon at your Bar has not this Excuſe; he foreſaw the Conſequence, and his Intention was bad.

When the Commons conſider the high Station in which this noble Lord was placed, the many ſignal marks of his Majeſty's Favour and Munificence beſtowed upon him; the notorious Breach and Violation of his Oath, and of the ſeveral great Truſts repoſed in him: when they have found him proſtituting and abuſing the Authority and Dignity of the Crown, trampling upon the Laws and Statutes of the Realm, deſtroying and confounding the Properties and Rights of divers of his Majeſty's Subjects; the Commons could not ſit ſtill, and ſee this great Offender triumph in the Luxury of unpuniſhed Crimes, without uſing their beſt and moſt effectual Endeavours to bring him to Puniſhment, and to make him an Example of the Juſtice of the preſent Age, a Warning and a Terror to Times to come.

Sir *Clement Wearg*, *Sollicitor General*. My Lords, I have likewiſe received the Commands of the Commons, to lay before your Lordſhips the Evidence, in maintenance of the Charge of High Crimes and Miſdemeanors againſt *Thomas* Earl of *Macclesfield*.

The Nature of the Charge conſiſts,

In illegally and corruptly ſelling and diſpoſing of Offices, which concern the Adminiſtration of Juſtice; in uſing and practiſing many indirect and unjuſtifiable methods for the keeping up the Price of ſuch Offices, in order to advance his own unjuſt Gain.

My Lords, the Honour of every Government, and the Happineſs of every Nation, depend upon nothing more than a ſtrict impartial Adminiſtration of Juſtice; and the Juſtice of every Court depends not only upon the Uprightneſs of the Judge that pronounces the Decree, but likewiſe upon the Honeſty and Uncorruptneſs of the leſſer Officers, who are Aſſiſtants to him, and upon whoſe Reports and Repreſentations his Decrees are founded.

It was doubtleſs from a juſt Senſe of this, that the Legiſlature, in the fifth Year of *Edward* VI. in order to prevent ſuch a corrupt Bartering for Offices, which was before that Statute, againſt Law, wiſely provided, that where any Office, which concerned the Adminiſtration of Juſtice, not excepted in that Statute, was procured for Money, the Office ſhould become void, and the Parties concerned in the corrupt Bargain diſabled from holding it.

The Court of Chancery, in which the Earl preſided, muſt be allowed, with regard to the Number and great Value of Suits inſtituted there, to be by far the moſt conſiderable Court of Juſtice within this Kingdom.

The Maſters of Chancery are (next to the Perſon that has the Cuſtody of the Great Seal, and the Maſter of the Rolls) the great Officers of that Court.

They are, by Commiſſion under the Great Seal, aſſociated with the Judges in hearing Cauſes, and claim a Right to interpoſe their Opinions in the making of Orders and Decrees under that Commiſſion.

They are intruſted by the Court to ſtate and report Matters of Fact, upon the Truth and Fairneſs of which Reports the Juſtice of the Decree of the Court muſt depend. They are ſworn to adviſe the Chancellor himſelf.

And of late Years they have been intruſted with the Effects and Eſtates of the Suitors of the Court, to an immenſe and incredible Sum.

My Lords, great Part of the Charge againſt the Earl conſiſts in ſetting up thoſe Places to Sale, in uſing unwarrantable Methods to incourage Purchaſers, and increaſe the Price.

It is matter of great Surpize, to find in his Lordſhip's Anſwer an Inſinuation, that it is not illegal, or againſt any Statute, to ſell thoſe Offices.

Surely, my Lords, there are no Places, that concern the Adminiſtration of Juſtice, more improper to be ſold from the Nature of them, or the Selling of which is more evidently againſt the Statute of *Edward* VI. than the Maſters in Chancery, unleſs it be Judges themſelves.

But it muſt be owned, the Expreſſions made uſe of by his Lordſhip, are conceived in ſuch doubtful Terms, that it is difficult to know whether he intends to repreſent the Lawfulneſs of ſelling thoſe Places for a Price, or only of taking a Preſent which the Party gives freely, voluntarily, and of his own Accord, and which his Lordſhip ſays his Predeceſſors uſed to take.

There poſſibly may be a Difference between a Preſent and a Price; if there is, it is the latter his Lordſhip is charged with taking; a Price fixed by his Lordſhip, inſiſted upon, haggled for, and with Unwillingneſs paid by the Purchaſer.

But, my Lords, even this may be ſaid to be nothing more than an Offence againſt the Statute of *Edward* VI. which, as it creates the Offence, ſo it preſcribes the Puniſhment.

Where the Perſon admitted to the Office is in all Reſpects equal to the great Truſt repoſed in him;

Where the Price given bears a Proportion to the lawful Gain ariſing from ſuch Office, there may be ſome Pretence to ſay, it is only an Offence againſt that Statute.

But if Perſons are admitted to an Office, by which they are intruſted with near 100,000 *l.* and give as much, or more, for that Office, than their whole Subſtance amounts to;

If the Price they give is greater than can poſſibly be given, by one who would be contented with the honeſt Profits of the Office; if that Price is paid for out of the Money of the Suitors of the Court; if, to make the Officers amends for giving ſuch extravagant Prices, they are connived at, indulged, incouraged to traffick with the Money and Effects of the Suitors of the Court, lodged with them for ſafe Cuſtody only;

This is ſomething more than barely an Offence againſt the Statute of *Edward* VI.

'Tis ſelling a Licence to abuſe and defraud the Suitors of the Court, and making the Suitors themſelves pay the Price of that Licence.

It is this the Commons have charged the Earl of *Macclesfield* withal. And this ſurely is illegal, and againſt ſome Law or Statute in being.

My Lords, the ill Conſequences of this Practice are very obvious; the leaſt of them is a Delay of Juſtice, from the Maſters uſing Shifts and Excuſes to continue that Money in their Hands, which they are allowed to make a Gain by, and which, probably, when called for, may be locked up by ſome hazardous Contract.

But the moſt fatal Conſequence is, what cannot be mentioned or thought of, without feeling the greateſt Compaſſion for the unhappy People concerned in it, the Loſs which the Suitors of the Court are likely to ſuſtain by it. The Hazard was all theirs; but the Gain belonged to others.

My Lords, whatever Excuſes might be made for his Lordſhip, from the great Variety of Buſineſs his high Office engaged him in, which might prevent his Attending to thoſe Things; an Accident happened in his Lordſhip's Time, ſufficient to awaken the moſt engaged Attention.

When *Dormer* withdrew from his Office, the Maſters themſelves were alarmed at it.

When it appeared his Misfortunes were brought upon him by trafficking with the Money of the Court, and lending it to Goldſmiths at 10 *l. per Cent.* they expreſſed a Concern for the Suitors of the Court.

And to prevent the like Miſchief for the future, a Propoſal was made to his Lordſhip by one of them, that the Maſters might give ſome Security for the Money in their Hands; that the Effects might be put in the Name of more than one Maſter, to prevent their being trafficked with.

This might have prevented the Miſchief for the future, at leaſt in ſome Degree.

But who then would have given 6000 *l.* for the Purchaſe of a vacant Place? Who would have given 1500 *Guineas* to procure an Admiſſion?

For theſe Reaſons the Commons charge, the Propoſal was not liſtened to, was not put in Execution.

My Lords, another Accuſation againſt the Earl conſiſts in his amuſing the Suitors of the Court, with a falſe Repreſentation of the Maſters Subſtance, by declaring from the Bench, That they were Men of as good Fortunes as ever filled thoſe places.

Such an Encomium from a Chancellor would have been a great Honour, had all the Perſons really deſerved it.

But it ſurely reflects Diſhonour, if ſpoke at a Time when ſcarce any one Perſon, who heard it, could give Credit to it.

When it was the Subject of common Converſation, that one-third of the Maſters had given as much, ſome of them more, for the Purchaſe of their Places, and to procure their Admiſſion, than they were worth in the World at the Time of their Purchaſe. And the Perſon, for whoſe ſake the Compliment was made, leaſt deſerved it of any; having but lately been a Receiver of a County, nominally diſcharged by ſubſtituting his Brother into his Place, and having paid off a large Arrear, ſoon after he got the Money of the Suitors into his Hands, out of that Money.

But there was then a Maſter's Place vacant.

His Lordſhip is further charged with endeavouring to conceal the Deficiency in *Dormer*'s Office;

With making a trifling, precarious Compoſition, for a large Debt aſſigned for the Benefit of the Suitor, in a very unwarrantable manner;

With making Orders for the Payment of Money out of that deficient Office, without regard to the other Suitors, who were entituled to a Proportion of what was left.

His Lordſhip ſeems to intimate, That he never thought there would be any Deficiency in that Office, but is under a full Perſuaſion that all would be made good.

How that is conſiſtent with his quitting 1500 *Guineas* from the Danger of a great Loſs in that Office, I ſhall ſubmit to your Lordſhips; but ſurely the manner in which *Dormer* withdrew was a ſtrong ſymptom of a Deficiency, when the Maſters intruſted to ſecure his Effects found little more than the Debt from *Wilſon* to anſwer a Balance of near 40,000 *l.*

When that Fund was reduced to nothing by a Compoſition made for half that Sum upon a Beggar, who has ſince eſcaped out of Gaol, and abſconds for Debt.

From whence thoſe full Aſſurances could ariſe, we muſt wait to hear from his Lordſhip.

That his Lordſhip did endeavour to conceal this Deficiency, needs no other Proof than his not doing any one Act in publick relating to it.

Had Mr. *Dormer*'s Perſon been rendered ſacred, by that extraordinary

promise of Security, mentioned in his Lordship's Answer, yet he might have been examined upon Interrogatories to disclose his Effects.

The Suitors might have had some Warning to have used their Diligence in discovering his Estate, and preventing any Concealment of it.

Nothing of this done, but on the contrary, upon an Application by one of the Suitors to have his Money transferred to another Master, from an Apprehension of Loss, after *Dormer* had absented himself from the Office, he was informed from the Bench, that his Fears were rash, the Master only gone to take the Air, and that all would be well.

From this Time every thing was carried on with the greatest Privacy between his Lordship and the Masters.

Orders were made for the Payment of Money out of that Office, as if it had been clear from all Suspicions of Loss, contrary to that Rule of Equality, which is a fundamental Principle of a Court of Equity, That where several Persons have Demands out of a Fund like to prove deficient, they must bate in proportion.

And altho', where that Fund is in the Hands of private Persons to be paid by them, it may be intelligible to talk of judicial Knowledge, and an *ex Officio* Declaration of an Average,

Yet where the Fund is in the Hands of the Court, the Payment is to be made by the Court, and the Loss sustained while the Court was possessed of that Fund.

Every Knowledge of such Loss is judicial, and the Court ought in Justice, by what means soever the Knowledge of that Loss comes before the Court, to direct the Payment in proportion only.

There is but one Article more that I shall take particular notice of, whereby his Lordship is charged with endeavouring to disappoint his Majesty's gracious Intent of having the Accounts of the Masters, and the State of their Office enquired into.

His Lordship, to put a stop to such Enquiry, persuaded several of the Masters to make a false Appearance of Substance, and a Shew of Readiness to pay over the Money and Effects of the Suitors of the Court in their Hands.

This was not only a Breach of his Duty as Chancellor, but a great Violation of that high Trust reposed in him as he was a Privy-Counsellor; and if his Lordship did at the same time in Council seem to promote every Step taken there, that is a very great Aggravation of his Crime.

Such, my Lords, is the Nature of the Charge which the Commons have exhibited against the Earl of *Macclesfield*; which they are able to make good by plain and clear Proof.

Sir *William Strickland*. My Lords, The Gentlemen who have spoke before me, having fully opened to your Lordships the general Charge against the Earl of *Macclesfield*, it is my Province, and that of the Gentleman who is to speak after me, to open the Evidence we shall produce to make good the several Facts contained in the *5th*, *6th*, *7th*, *8th*, and *9th Articles*; but as the ninth differs very much in its Circumstances from the other four, I shall say nothing to that Article, but leave that to the Gentleman to whom the opening of these Articles is likewise allotted.

My Lords, We shall shew you, that notwithstanding the many *great and beneficial Favours* bestowed upon this *Earl* by the bountiful Hand of his Majesty; and all those *Honours* conferr'd upon Himself and his Family; the *Dignity* of his high Office, and the great *Trust* reposed in him, have been *prostituted*, in order to satiate a *boundless Appetite* for *unlawful Gain*.

This I shall now particularly proceed to shew, by mentioning to your Lordships, in the first Place, the several *Grants* which the *Earl*, in his Answer, has *own'd* to have *receiv'd*; and, afterwards, by opening the Evidence the Commons will produce, to make good their Charge contain'd in the *5th*, *6th*, *7th*, and *8th* Articles abovementioned, which relate to the *illegal* and *corrupt* Admission of four Masters in Chancery.

The first beneficial Grant the Earl, in his Answer, *owns* to have receiv'd from his Majesty, before the Honour of Peerage was conferr'd upon him, was 1200 *l. a Year* granted to him and his Assigns, during the Life of his Majesty, in or about *June* 1716; in the next Place, that in the Year 1718 he was created *Lord High Chancellor* of *Great Britain*; and that at the same time, his Majesty, out of his Royal Bounty, did bestow upon him 14000 *l.* and likewise granted to his eldest Son, now Lord *Parker*, an annual Pension of 1200 *l.* payable during the joint Lives of his Majesty and the said Lord *Parker*, but determinable whenever he should be put into Possession of one of the Offices of a *Teller* in the *Exchequer for Life*, and which Office he has since obtained; and over and above all these *great* and *beneficial Grants*, the usual *Salary* of 1500 *l.* a Year out of the *Hanaper* Office; the other great *Profits* and *legal Perquisites* of his high Office, the Earl owns to have had an Allowance of 4000 *l. a Year*. As these were all Marks of the greatest *Honour*, *Esteem*, and *Confidence* from his great and munificent Benefactor, so surely they ought to have produced in him all suitable Returns of Gratitude, by a *just* and *impartial* Execution of the *Trust* reposed in him, to the Honour of his Majesty, and the Good and Welfare of his Subjects.

But, my Lords, The Thirst of Gain was predominant; and in pursuance of that, he did, in a manner highly *derogatory* to the *Dignity* of the Office he then bore, *illegally*, *corruptly* and *extorsively*, by *Himself* and *Servants*, *treat* and *barter* for the *Sale* of Offices of Masters in Chancery, which Offices concern the Administration of Justice; and, in the *same* manner, did take very great Sums of Money for their *Admissions* into the said Offices.

I must take notice that his Lordship, in his Answer, does not *deny* to have taken all the several Sums laid to his Charge by the Commons, on the Admission of the Masters, mentioned in the Articles of Impeachment, to their respective Offices; but alledges that he took them as *Presents* only, *freely* and *voluntarily* given, and such as had been *usual* on such Occasions. But, my Lords, we shall shew you, that the Sums of Money taken by him were taken in the *Manner* alledged in the Articles; and, by the Evidence I shall now open, your Lordships will see how very *different* this Matter will appear from that which the Earl would insinuate in his Answer; I shall begin by opening the Evidence to the *5th* Article, which relates to the *illegal* and *corrupt* Admission of Mr. *William Kynaston* to the Office of a Master in Chancery, in *August*, 1721. We will shew you, that before Mr. *Kynaston* was admitted to be a Master, he was advised by Mr. *Rogers* (with whom he had then contracted for the Sale of his Office for 6000 *l.*) that the Lord *Chancellor* would expect 6 or 700 *l.* for his Admission; upon this he applied to my Lord's Secretary, Mr. *Cottingham*, (who appears to have been the *Broker* on all these Occasions) and desired to be recommended to the *Chancellor* for that Office, and told Mr. *Cottingham*, that if it was necessary, he could obtain my Lord *Bradford*'s Recommendation; the Secretary only answer'd, That another Master had given 1500 *Guineas* on the same Occasion; Mr. *Kynaston* then offered 1000 *l.*; *Cottingham* reply'd, He could mention nothing *less* to the *Lord Chancellor* than 1500 *l.*; but being afterwards asked by the Person who was to pay the *Money*, what Sum would be *insisted on*; answered, It must be 1500 *Guineas*; nothing, it seems, was to be abated, for this (Mr. *Cottingham* told Mr. *Kynaston*) was one of the *best* Offices, being the fullest of *Money* and *Securities*—*Money* and *Securities*, my Lords, the Property of the Suitors of the Court; and how *fatal* the Masters making *Use* of such Money for their *own Profits* has been, in order to *reimburse* themselves for the very great *Sums* paid for their Offices, is now too severely felt by Numbers of helpless *Orphans* and *injured Suitors*. Mr. *Kynaston*, however, seeing no *Possibility* of Admission without Paying the *whole Sum* of 1500 *Guineas*, comply'd at last, sent *the Guineas* to Mr. *Cottingham*, who afterwards paid them to the *Chancellor*; and the next Day Mr. *Kynaston* was admitted and sworn a Master.

I come now to open to your Lordships, the Evidence which we shall produce to make good the *6th* Article, which relates to the *illegal* and *corrupt* Admission of Mr. *Thomas Bennet* to the Office of a Master in Chancery.

Mr. *Thomas Bennet*, about *May*, 1723, bargain'd with Mr. *Hiccocks*, then a Master in Chancery, for the Sale of his Office, at the Price of 7500 *l.* The next Thing to be done, was to apply to Mr. *Cottingham*, which he did, desiring to be recommended to my Lord *Chancellor* for that Office; Mr. *Cottingham* did recommend him, and told him, that the Lord *Chancellor* had no Objection to him, that he knew his Father, and should be glad to *oblige* him; the Compliment, however, ended with a Proposition of a Present, as he *call'd* it, and said, he indeed would name no Sum, but that his Brother, then a Master in Chancery, and Mr. *Godfrey* would easily chalk out out a *Method* for him. Mr. *Bennet*, my Lords, after consulting these Gentlemen, offer'd 1000 *Guineas*; Mr. *Cottingham shook his Head*, and said, he did not care to go to the *Chancellor* with an Offer of *that* Sum, that *more* had been given, and he hoped Mr. *Bennet* would not lower the *Price*. Mr. *Bennet* gave some Reasons why he hoped *Lord Macclesfield* would accept the 1000 *Guineas*, and said he did not care to give more; Mr. *Cottingham* again told him, he did not care to go with *that* Message; upon which Mr. *Bennet* asked him what had been given by other Masters; *Cottingham* told him 1500 *Guineas*.

However, Mr. *Bennet* again desired he would go to the *Chancellor*, and said that if the *Sum* he had offered would not do, he would give 1500 *l.*; *Cottingham* desired to be excused from going on *that* Message, and said my *Lord* did not love Haggling; and that if Mr. *Bennet* would give no *more*, he might *lose* the Office, for that if the *Chancellor* should refuse *that* Sum, he would not go with any other *Offer*. Upon this, my Lords, Mr. *Bennet*, at *last*, consented to give the 1500 *Guineas*; and this will appear to have been what the Lord *Macclesfield* calls Mr. *Thomas Bennet*'s *free Gift*. The *Guineas* were paid to Mr. *Cottingham*, who paid them to the *Chancellor*, for *which* Mr. *Bennet* was admitted into his Office, which appears to have cost him 9075 *l.* and that very Sum, upon the making up of his Accounts, appeared to have been wanting in his Office, for the making up of his *Balance* due to the Suitors of the Court. I must take Notice to your Lordships, that the Lord *Macclesfield*, in his Answer, alledges, that the said *Kynaston* and *Bennet* pretending they were disabled from answering to the Suitors of the Court, so much Money as he had taken from them at their respective Admissions, the said Earl did, *before* the Impeachment, pay into the Court of Chancery, for the Use of the Suitors of that Court, the two several Sums received by him from Mr. *Kynaston* and Mr. *Bennet*; but, my Lords, that we shall shew to be a *gross Mistake* in the *Answer*, for we shall prove the said Sums were not repaid by him till *after* the Impeachment, and after they had, by Affidavit, charged the Payment of these Sums as one *Cause* of the *Deficiency* in their Offices.

I come next to shew the *Manner* in which Mr. *Francis Elde* was admitted to his Office of a Master in Chancery, which happened in *February*, 1723, upon the Death of Mr. *Fellows*; we shall shew your Lordships, that Mr. *Elde* applied personally to the *Chancellor*, who told him he would *treat* with him in a *different* manner from any Man living; in two or three Days after this he applied again to the Earl for the Office, and then did mention a Sum of 4 or 5000 *l.* my Lord told him, Mr. *Elde* and I must not make Bargains. So, my Lords, Mr. *Elde* after this went to Mr. *Cottingham*, and told him of his Intention to give the Chancellor 5000 *l.* Mr. *Cottingham* advised him to make it *Guineas*. And, in pursuance of this Advice, Mr. *Elde* did, on or about the first of *Febr.* 1723, carry to the said Lord *Macclesfield*'s House 3000 *Guineas* and 2100 *l.* in *Bank-Notes*, *muffled* up in *Dutch-Basket*, which he sent up to my *Lord* by Mr. *Cottingham*, who left it with his *Lordship*, brought down word all was well, and within a Day or two after Mr. *Elde* was sworn into his Office.

I would observe upon this, That a Present, which might have been *innocently* made, and as *innocently* received, had needed no such *secret* Conveyance. But, my Lords, the Suitors of the Court now began to be awakened by the Apprehensions of their *Losses*, and the Voice of the People to exclaim against that *infamous manner* of admitting Masters in Chancery; and therefore, I presume, my Lords, *Privacy* was now come to be thought so necessary, that the *Secretary* himself, tho' concern'd in the Transaction, was kept ignorant of the Contents of the *Basket*.

I come next to open the Evidence we will produce, to prove the *illegal* and *corrupt* Admission of Mr. *Mark Thurston* to be a Master in Chancery, as it is laid in the VIIIth Article. He succeeded Mr. *Barret* about the 5th of *August* last past: And, my Lords, notwithstanding what the Earl of *Macclesfield* alledges in his Answer, That he was informed by Mr. *Godfrey* and Mr. *John Bennet*, that there was like to be *no Deficiency* in that Office, we will shew your Lordships, That *before* Mr. *Thurston*'s Admission there was a great *Confusion* in it; and that his *Lordship* must have *forgot himself*, when he says he *ever* was acquainted by those two Masters, that there was like to be no Deficiency in that Office.

This, my Lords, the Commons will produce to shew, That, notwithstanding

withſtanding the very great Loſſes already ſuſtained by the Suitors of the Court of Chancery, from the great *Prices* given by the Maſters for their Offices, the great *Confuſion* then in that Office, and in which there is a *Deficiency* of more than 10,000 *l.* yet, in the ſame *unlawful Purſuit* of *Gain*, he did admit Mr. *Mark Thurſton* to the Office of a Maſter in Chancery for the Sum of 5000 *Guineas*. The manner of it was thus, my Lords.

Mr. *Thurſton*, upon Mr. *Borrett*'s Death, applied to Mr. *Cottingham* about that Office, and the *Price* agreed upon betwixt them was 5000 *Guineas*; with this Agreement Lord *Macclesfield* was acquainted, and ſeemed to *agree* to it: But afterwards, upon a Report's being ſpread, that Lord *Macclesfield* deſigned to give the Office to Dr. *Sayer*, Mr. *Thurſton (well adviſed no doubt)* applied to Lady *Macclesfield*; and, after many Arguments uſed to perſuade her to write to my Lord in his Favour, produced at laſt 5000 *Guineas* in *Bank-Notes*, which had their deſired Effect; my Lady wrote, and Mr. *Thurſton* in two or three Days was admitted to his Office.

My Lords, I will make this Remark upon this Tranſaction; That the taking ſuch an extravagant Sum of Money for an Office, in which there was like to prove a great Deficiency, was ſo far from being thought *blameleſs* even by the *Earl himſelf*, that it looks as if *this Way* was neceſſary to be found out, to hide *this* Tranſaction too from the *Secretary*, who had had the firſt Hand in it: And, to take all cauſe of Suſpicion away from him, he was *ordered* to be ſure to take no *Money* from Mr. *Thurſton* on account of his Admiſſion; which he obſerved ſo religiouſly, that I think he ſcrupled even his own Fees.

Before I conclude, my Lords, I muſt take Notice of an Expreſſion in the *Earl*'s Anſwer to the two laſt Articles I have mentioned.

That, of the Money he received from Mr. *Elde*, he *retained* no more than 1850 *l.* and, of that received from Mr. *Thurſton*, no more than 2000 *l.* By this, I preſume, the World is to believe, the Earl made an *immediate* Reſtitution of the Remainder of the Money: But, my Lords, we will ſhew you, that no Money was returned to Mr. *Elde* till *November* laſt, a Time that he ſtood in need of it to *ſhew* and *produce* his *Balance*; nor to Mr. *Thurſton*, till *October* laſt, at which Time it was evident an *abſolute Stop* muſt be put to the *infamous* Practice of *Stock-Jobbing* with the Suitors Money; and which of Conſequence would put thoſe two Maſters out of a Poſſibility of *reimburſing* themſelves the great Sums ſo *lately* paid for their Offices.

My Lords, the next Thing we ſhall prove will be, That in all theſe Tranſactions Mr. *Cottingham* has acted by my Lord *Macclesfield*'s *immediate Directions*; and when we have proved that, and the ſeveral Facts I have now opened to your Lordſhips, I doubt not but you will be of Opinion, that we have fully made out the Allegations in the Vth, VIth, VIIth and VIIIth Articles, in their utmoſt Extent; and that the ſaid *Earl* has taken the ſeveral Sums laid to his Charge, *illegally*, *corruptly*, and *extorſively*, in *Breach* and *Violation* of his *Oath* as *Lord Chancellor*, and of the great *Truſt* in him repoſed, contrary to the *Duty* of his Office, and againſt the good and wholeſome Statutes of this Realm.

Mr. *Doddington*. My Lords, I am commanded by the Commons to aſſiſt the Gentleman who ſpoke before me, in making good the Vth, VIth, VIIth VIIIth and IXth Articles againſt the Earl of *Macclesfield*, which relate to his taking Money for Offices.

The Commons look upon this Part of their Charge as a neceſſary Foundation of the whole, becauſe from this inſatiate Deſire of Gain have ſprung all the Evils and Miſmanagements charged upon the Earl in the reſt of the Articles.

The Charge againſt the Earl in four of theſe Article is in ſhort this, That he took ſeveral great Sums for the Admiſſion of ſeveral Perſons into the Office of Maſters in Chancery; and that he took them illegally, extorſively, corruptly, in Breach and Violation of his Oath as Lord Chancellor, and of the Truſt in him repoſed.

My Lords, theſe Facts have been ſo clearly ſtated to your Lordſhips, and the extorſive and corrupt Manner in which they were committed, in Breach of his Oath as Lord Chancellor, ſo ſtrongly inforced by the Genman who ſpoke before me, that I ſhall not trouble your Lordſhips upon thoſe Heads.

As to the Illegality of ſuch Practices; that has been laid before your Lordſhips by the learned Gentleman who opened the general Charge; and, I do not doubt, will be further explained by other Gentlemen to your Lordſhips Satisfaction: But when the Earl is pleaſed to ſay, in his general Anſwer to all theſe Articles, "That he hopes receiving Preſents "on ſuch Occaſions is not criminal in itſelf, or by the Common Law of "this Realm, and that there is not any Act of Parliament by which the "ſame is made criminal," Though I have not had the Happineſs to have been bred to the Profeſſion, I muſt beg Leave to remind him of the Statutes of *Richard* II. and *Edward* VI. as to the Statute Law: And by all that I have ever heard, or can learn, the whole Tenor and Meaning of the Common Law does diſapprove and condemn ſuch Practices, (though poſſibly it has not been an adjudged Caſe). And the Statutes I have mentioned are one Proof of ſuch meaning of the Law, to me, at leaſt, who have always looked upon them to be Comments and Declarations, made from Time to Time to explain and inforce ſuch Conſtruction.

Putting up Offices of Juſtice to Auction, my Lords, is repugnant to the Dictates of plain Reaſon, and conſequently to the whole Senſe and Spirit of the Common Law of this Realm, which is founded upon Reaſon; and in this Repugnance to the Intent and Meaning of the Law of the Land, lies this Offence (in my poor Judgment) as to the Illegality of it.

We hope therefore, my Lords, (when we have given our Evidence) that it will fully appear to your Lordſhips, from what we have opened, That the Earl of *Macclesfield* has taken the Sums charged upon him; and that he has taken them as they are charged in the Articles, extorſively, corruptly, illegally, in Breach and Violation of his Oath as Lord Chancellor, and of the Truſt in him repoſed.

I am now come to the IXth Article, which I am commanded to open to your Lordſhips; and, indeed, it is a moſt extraordinary Inſtance of human Frailty; The Earl of *Macclesfield* here is not charged with taking Money of a Perſon who received an Office from him, but of one who quitted an Office; not for an Admiſſion, but for a Reſignation.

I believe this is the firſt Inſtance, my Lords, where any Perſon, on the other Side of this Bar, was ever accuſed of forgetting his own Dignity, the Dignity of the Auguſt Body he belonged to, and the Honour of his Sovereign, whoſe Counſellor he was, and whoſe Royal Authority was, at that Time, lodged in his Hands for an hundred and five Pounds. This is ſo amazing, that did I not know there was full Evidence to the moſt minute Parts of this Charge, I myſelf ſhould not believe it; and I am ſure your Lordſhips Hereditary Greatneſs of Mind muſt make it ſo inconceivable to you, that I ſhall need all your Patience and Indulgence in what it is my Duty to ſtate to your Lordſhips, till you hear the Evidence we ſhall produce.

The Caſe, my Lords, is this: Mr. *Thomas Bennet*, one of the Maſters mentioned in the VIth Article, ſoon after his Admiſſion was deſirous to part with his Office of Clerk of the Cuſtodies (which is in the Gift of the Crown) to Mr. *Hamerſley*; but being unwilling to do any Thing, without my Lord *Macclesfield*'s Approbation, he applied to Mr. *Cottingham*, his Secretary, to obtain it upon this Occaſion. Mr. *Cottingham* promiſed to acquaint his Lordſhip with this Requeſt. In a few Days Mr. *Cottingham* told Mr. *Bennet*, that he had acquainted my Lord with his Deſign, but ſaid, a Preſent was expected of him; and aſked him, what he would give? (Your Lordſhips will obſerve, that this was their conſtant Method, in driving all theſe Bargains; for they were conſcious that they were doing what was illegal) Mr. *Bennet* replied, That he did not apprehend that any Thing was due to my Lord on this Account; for that he ſucceeded his Brother, Mr. *John Bennet*, and neither himſelf, nor his Brother, made Lord *Cowper* any Preſent: And further added, That he hoped my Lord would not inſiſt upon any Thing, on ſo trifling an Occaſion, ſince he had ſo lately paid him ſo conſiderable a Sum. But ſtill *Cottingham* inſiſted that a Preſent was required. Upon which Mr. *Bennet*, ſeeing himſelf ſo hard driven, ſaid he would give my Lord 105 *l.* In a few Days *Cottingham* told him, That my Lord accepted the 105 *l.* but that he was to look upon it as a particular Favour, that he accepted ſo ſmall a Sum; and that if he would bring the Money to him, *Cottingham*, he need take no farther Trouble, for my Lord would apply to the King for Leave to reſign. Accordingly, on the 28th of *July*, 1723, Mr. *Bennet* carried a *Bank-Note* of 105 *l.* to *Cottingham*; and, in about three Weeks Time, (your Lordſhips will be pleaſed to remember that his Majeſty was then abroad) *Cottingham* told him, that the Sign Manual was come over, and chid him for not taking out the Patent; The Conſequence of which was, Mr. *Bennet* did take it out, and when it came to the Great Seal, no Conſideration was had of what he had given before, but it coſt him about 64 *l.* for the Seal.

We ſhall call Mr. *John Bennet* to inform your Lordſhips, that when he reſigned to his Brother, he aſked the Lord *Cowper* if any Thing was due to his Lordſhip, who told him nothing was due.

This, my Lords, is the naked State of the Caſe, and I ſhall make no Remarks upon it; I think nothing can be added to illuſtrate it, becauſe I am confident there never was any Thing like it.

But I think, out of Duty to the Commons, and Juſtice to the Earl of *Macclesfield*, I am obliged to take Notice of what he alledges in his own Defence againſt this Charge.

His Lordſhip is pleaſed to ſay, "That tho' this Office of Clerk of the "Cuſtodies has been uſually granted by the Crown; yet it has been al"ways look'd upon as the Right of the Lords Chancellors, or the Lords "Keepers, to recommend to that, and other Offices under the Great Seal, "and approve of the Deputy to execute the ſame; and upon ſuch Recom"mendations, and approving of Deputies, have accepted Preſents, and "look'd upon the ſame as their Right."

I ſhould not have taken Notice of his putting this Part of his Defence in the plural Number, and endeavouring to ſhelter himſelf under the pretended Practices of his Predeceſſors, if he had confined it to this Article; but in his general Anſwer to all the Articles we have opened to your Lordſhips, he ſays, "That he has done no more than his Predeceſſors, Great and Able "Men, have done before him, and therefore hopes that it ſhall not be im"puted as a Fault to him." And indeed this Reaſoning runs through almoſt his whole Defence.

My Lords, we could ſhew, That he has done more than any of his Predeceſſors; but your Lordſhips very well know, that is not now in Queſtion. I am ſure, how Great or Able ſoever a Man may be that commits a Fault, your Lordſhips will always be Great enough, and Able enough to puniſh him for it, when he comes before you. And I am ſurprized the Earl ſhould ſuppoſe, that you will connive at a corrupt Practice in him, (if this be one) becauſe you have not condemned it in others, who were never called to anſwer it before you, if any have been guilty of it. I hope your Lordſhips will look on it as a new Way of Reaſoning, firſt made uſe of by the Earl of *Macclesfield*, to juſtify his own Faults by the Faults of another, and extenuate the Danger and Malignity of a Diſtemper by the Extent and Inveteracy of it.

By the reſt of this Argument of his, your Lordſhips plainly ſee, that he himſelf thinks that the Acceptance of any Gratuity for adviſing the King, as a Counſellor, to grant this Office, had been highly Criminal, for he was, at that Time, one of the Lords Juſtices, and during this whole Charge a Miniſter of State; but he does not ſay that he obtain'd Leave for Mr. *Bennet* to reſign, and a new Grant of the Office as a Favour from the Crown; no, that he ſeems to admit would have been highly blameable; but he ſays, that as Lord Chancellor, he had a Right of Recommending to this Office; and his whole Conduct unhappily explains, that he looked upon a Right of Beſtowing or Recommending to be a Right of Selling; ſo that by his own Argument, he thinks himſelf juſtifiable in doing that as the chief Officer and Diſtributor of Juſtice, which he ſeems to own would be highly unjuſtifiable in a Miniſter or Servant of the Crown.

I ſhall take Notice of but one Part more of his general Anſwer to the Articles, which we have opened to your Lordſhips, and that is where he ſays, "That during his Continuance in the ſaid Office of Lord Chan"cellor, or at any other Time, he never once had a Deſign or View, or "Wiſh to raiſe to himſelf any exorbitant Gain or Profit, and appeals to "the whole Tenor of his Life and Actions for the Truth of his Aſſer"tion."

This, my Lords, is an Inſtance how little the greateſt Men are acquainted with themſelves, and how much they are liable to miſtake, when they talk of their own Actions; many of his Tranſactions, in Money matters, have been opened to your Lordſhips; more will be opened; and ſurely, my Lords, you muſt be of Opinion, that this inordinate Longing after Gain, this Impotence of Mind where Money was concerned, is a conſtitutional Weakneſs in the Earl of *Macclesfield*, which has given a

Tincture

Tincture to every Thing that passed thro' his Hands: Your Lordships have seen him taking great Sums, accepting small ones, taking 5000 *l.* accepting 105 *l.* taking for Offices in his own Gift, for Offices in the Gift of the Crown, taking for Admissions, taking for Resignations; in this, indeed, he has shewn an Impartiality that, on every other Account, were highly to be wished in a Judge.

My Lords, I would not trouble your Lordships again after our Evidence is examined, and therefore beg leave to say, that the Commons look upon these Practices so nearly to concern the Welfare of the People they represent, that, notwithstanding the great Part they bear in the Constitution of this Realm, they have thought it indispensibly necessary to appear themselves, and demand Justice of your Lordships; and we do it with the more Pleasure, because we are assured, that when the Commons are Prosecutors, and your Lordships Judges, the meanest Subject will have Justice, and the greatest will not find Favour.

And, my Lords, considering that the Earl of *Macclesfield* is to be judged by the most august Assembly in the World, of which he is himself a Member; it is but a suspicious Symptom of his Confidence in his own Integrity, when he lays hold of any Subterfuge to avoid your Judgment, or endeavours to secure himself against any Part of it, by any Plea but that of his Innocence, and the Justice of his Cause.

Sir *Thomas Pengelly, his Majesty's Serjeant.* My Lords, before the Managers lay before your Lordships any Evidence upon the particular Articles, there are some Things, we apprehend, necessary to be taken Notice of in the Introduction to the Articles, which are not sufficiently admitted by the Lord *Macclesfield*, in his Answer, and wherein we apprehend it will be necessary to give your Lordships some Satisfaction; and that is relating to his immediate Duty as Lord Chancellor, and the Obligation he is under of an Oath, which is administered to his Lordship, and is established by Act of Parliament. My Lords, we think it proper to lay this before your Lordships, because the noble Lord has forgot it, not only in his Answer, but in his Conduct. The Oath is establish'd by the Statute of the 12th of *Rich.* II. which enacts, *That the Chancellor*, &c. *shall not name or make any Officer, or Minister of the King, for any Gift, or Brocage, but make all such Officers and Ministers of the best and most lawful Men.*

My Lords, I beg leave to shew, that this Oath is establish'd by Act of Parliament, and afterwards shew your Lordships, that it has been administered to, and taken by the noble Lord within the Bar. It is the Statute of the 12th of *Rich.* II. *chap.* 2. which enjoins this Oath to be taken by his Lordship.

Mr. *Lutwyche.* My Lords, we are not willing to trouble your Lordships with more than is necessary, or to go about to prove those Things that are admitted by the Earl's Answer, but where they are not fully admitted in such a Manner as they are charged, and with all that Advantage that we think we can make of them, we must beg leave to trouble your Lordships with the Proof of them. My Lords, it is admitted by the Answer, that there was an Oath of Office taken; and it is likewise set forth in the Answer what that Oath was; but the Answer goes no farther, and doth not admit any Thing as to another Oath founded on the Statute of the 12th *Rich.* II. which hath frequently been taken by the noble Lord; we think it therefore necessary to have the Statute of *Rich.* II. first read, and the Oath that is there prescribed, and to shew you that the noble Lord within the Bar did take that Oath several times.

Then the Clerk read the Statute of 12 *Rich.* II. *chap.* 2. *viz.*

" *Item*, It is accorded that the Chancellor, Treasurer, Keeper of the " Privy-Seal, Steward of the King's House, the King's Chamberlain, " Clerk of the Rolls, the Justices of the one Bench and of the other, Ba- " rons of the Exchequer, and all other that shall be called to ordain, " name, or make Justices of Peace, Sheriffs, Escheators, Customers, " Comptrollors, or any other Officer or Minister of the King, shall be " firmly sworn, that they shall not ordain, name, or make Justices of " Peace, Sheriff, Escheator, Customer, Comptroller, nor other Officer, " nor Minister of the King, for any Gift or Brocage, Favour or Affec- " tion; nor that none which pursueth by him, or by other, privily or " openly to be in any manner of Office, shall be put in the same Office, " or in any other, but that they make all such Officers and Ministers of " the best and most lawful Men, and sufficient to their Estimation and " Knowledge."

Mr. Serj. *Pengelly.* We beg leave that Mr. *Eyre* may be produced and sworn, in order to prove the Administration of this Oath, and to prove the Noble Lord's taking it several Times.

[Mr. *Thomas Eyre* sworn.]

Mr. Serj. *Pengelly.* My Lords, we desire that Mr. *Eyre* may be asked, Whether he is an Officer of the Exchequer, and what that Book in his Hand is?

Mr. *Eyre.* My Lords, This Book I have had in my Custody ever since I have been in the Office. I have been there forty Years. This is the Book in which the Statute of 12 *Rich.* II. is enter'd; and, before the Privy Council name the Sheriffs, this Statute is read over to them, and then the Privy Councillors are all sworn.

Mr. *Lutwyche.* My Lords, we desire the Oath may be read.

Mr. *Eyre.* There is no Oath in the Book, 'tis only the Statute.

E. of *Mac.* Will your Lordships be pleased that he may speak aloud. He says there is no Oath in the Book.

Mr. *Eyre.* The Statute is read, and as soon as it is read the Book is presented to the Privy Councillors, and they are sworn.

Mr. Serj. *Pengelly.* My Lords, we desire he may be asked, Whether he was present at any Time when the Earl of *Macclesfield* has taken the Oath to perform this Statute in the Court of Exchequer?

Mr. *Eyre.* Yes, several Times.

E. of *Mac.* I beg leave to ask this Question in the first place, Is there any Oath there in that Book?

Mr. *Eyre.* No, nothing but the Statute of *Rich.* II.

E. of *Macclesfield.* Nothing but the Statute of *Rich.* II.! What is it you read, or do at that Time, when you say the Privy Councillors are sworn?

Mr. *Eyre.* As soon as this Statute is read, the Bible is presented to the privy Councillors, and they kiss the Book.

E. of *Mac.* Is there any one Word said to them, or by them?

Mr. *Eyre.* No; the Statute is read over, and the Privy Councillors kiss the Book.

Mr. Serj. *Pengelly.* My Lords, we desire he may read it.

E. of *Mac.* My Lords, I desire that he may read the very Words in the Book, as he reads them in the Exchequer.

[*Mr.* Eyre *reads the Statute.*]

Anno xii Richardi Secundi.

' ITEM, Accorde est & assentez' que le Chancellor & Treasurer Gardein du ' Privy Seal Seneschall' de Hosteil le Roy, Chamberleyn du Roy, Clerke du ' Rolls, Justices de lune Bank & de lautre, Barons de le Exchequer & toutz ' autres, que Serrount Appellés Dordoigner nomer ou fair Justices de la Peace, ' Viscounts Escheators, Customers Comptrollers, ou Ascune autre Officer du Roy, ' ou Ministre, feroit firmement Jurez, & Serementez, quils ne Ordeigne noient ' ne facent Justices de la Peas, Viscounts Escheators, Customers Comptrollers, ne ' null autre Officer ne Ministre du Roy, pur null' manner Don' ne Brocage favor ' n' affection, nique null que par sui par luy ou par autr' en priv' ou en Apert ' Destre en Ascune manner Office, soit mijs en mesme l' Office, ou en Ascune ' autr', unque que ils facient toutz tielz Officers & Ministers de le pluis Bon & ' Loyalz & les pluis sufficientz a lour effient & lour Conscience.'

E. of *Mac.* Those, you say, are the very Words you read at that Time when the Sheriffs are nominated in the Court of Exchequer?--Mr. *Eyre.* Yes.

E. of *Mac.* I suppose you read in that very Manner?—Mr. *Eyre.* Yes.

E. of *Mac.* Do you say any one Syllable more?—Mr. *Eyre.* No.

E. of *Mac.* In the next place, I desire he may tell your Lordships what it is that the Officer does at this time?—Mr. *Eyre.* He carries the Book to all the Privy Councillors, and they kiss it.

E. of *Mac.* Does he not carry it to the Judges too?

Mr. *Eyre.* Yes, every one present kisses the Book.

E. of *Mac.* Does he say any thing to them?—Mr. *Eyre.* No.

E. of *Mac.* You say he doth not say any thing to them?

Mr. *Eyre.* No, nothing at all.

Mr. Serj. *Pengelly.* My Lords, we desire that Mr. *Eyre* may be asked, whether, during his time, this hath not been the usual Method of Swearing the Lords of the Privy-Council?—Mr. *Eyre.* Yes, my Lords, it has.

Mr. *Lutwyche.* My Lords, it seems to be a Question whether this is swearing at all. Therefore the Question I desire may be ask'd this Witness, is, what Book it is they kiss?—Mr. *Eyre.* My Lords, it is the Bible.

Mr. *Lutwyche.* I desire he may be asked, whether this hath not been taken to be Swearing them to do what is commanded by this Statute?

Mr. Serj. *Probyn.* My Lords, we beg leave to object to that Question. We apprehend the Witness is only called to give Evidence as to the Fact and not to state his Reasons and Constructions of Fact.

Mr. *Lutwyche.* My Lords, I beg leave then to ask a Question that I hope they won't object to: Whether or no this is not the manner of Swearing the Lords, upon the Nomination of Sheriffs in the Court of Exchequer?

Mr. Serj. *Probyn.* My Lords, we humbly beg leave to object to that Question: We apprehend, That centers in the same thing with the former. The Witness has already given your Lordships an Account of all that is said and all that is done when this Act of Parliament is produced. He tells your Lordships the Act of Parliament is read; they kiss the Book; nothing is asked of them, nor is any thing answered: And yet the Gentleman is pleased to ask, whether this is called a Swearing? The Witness has given his Evidence, your Lordships will determine whether it be a Swearing or no.

Mr. *Lutwyche.* My Lords, I desire he may be asked, whether this Kissing the Bible upon the reading this Act, is not usually done at the time of appointing the Sheriffs?—Mr. *Eyre.* As soon as ever the Act is read over, the Privy-Councillors kiss the Bible.

Mr. Serj. *Pengelly.* My Lords, I desire it may be asked, whether they proceed to name or appoint any Sheriffs before they kiss the Book in this manner?—Mr. *Eyre.* No, they do not.

Mr. Serj. *Pengelly.* My Lords, we shall rest this matter here.

Lord *Lechmere.* My Lords, I would be glad if this Question might be asked the Witness; Whether there is any Entry or Memorandum made upon Record in the Court of Exchequer, of any Oath taken by the Privy-Councillors on this Occasion?—Mr. *Eyre.* No, there is not.

Mr. *West.* We submit this Matter to your Lordships: This Statute prescribes, that an Oath shall be particularly taken; the Fact has been stated by the Witness: And whether it does not amount to the Proof of an Oath, that they will comply with that Act of Parliament, we leave to your Lordships Judgment.

Mr. Serj. *Pengelly.* We shall leave this Evidence to your Lordships, and submit it to your Determination, whether this noble Earl can excuse himself from his Obligation to this Act of Parliament, as an Oath? It is very probable, by his future Conduct, he might be of Opinion, that there was no Obligation of any Act or Oath upon him: But upon the Evidence given, we shall submit this Fact: And shall next proceed to call some Witnesses to give an Account of the Nature of the Offices of the Masters in Chancery, who are admitted by the noble Lord within the Bar. We shall first produce the Oath which is administered to every Master in Chancery upon his Admission: Then we shall shew the Commissions from *Edw.* the VIth's time, and so from time to time, to this Day; wherein the Masters in Chancery are joined with my Lords the Judges, to hear and determine Causes in the Absence of my Lord Chancellor; to punish Contempts, to execute and administer a Jurisdiction in that Court. The particular Oath very little varies from the Oath administered to the Lord Chancellor, which, in his Lordship's Answer, is set out at large. However, we shall now beg leave to produce the Oath; and to that purpose, we desire Mr. *Pynsent*, the Deputy-Clerk of the Crown in Chancery, may be examined, and he will produce the Oath before your Lordships.

[Mr. *Pynsent* sworn.]

Mr. Serj. *Pengelly.* Sir, will you produce, before the Lords, the Oath administred to the Masters in Chancery, upon their Admission to their Offices?

Mr. Com. Serj. My Lords, we hope he shall give an Account, whether he hath seen the Oath taken, and hath administred it?—Mr. *Pynsent.* Yes, my Lords, I have seen the Oath taken, and have administered it myself.

Reads the Oath.

' *Sacrũm* } YE shall swear that well and trulie Ye shall serve the Kinge
' *Magistrorum* } Our Sovereign Lord, and his People, in the Office of one
' *Cancellarie* } of the Maisters of his Chauncerye, to the whiche Ye be called: Ye
' shall not assent, ne Procure the Disherytaunce, ne perpetual Damage of the
' Kinge, to Your Power, ne fraude; Ye shall doe or cause to be made wrongfullye to anye of his People, ne in any thinge that touchethe the Seale: And lawfullye Ye shall Counsail the thinges that touchethe the Kinge, when ye shall be

' thereunto

'thereunto required. And the Counſayll that Ye ſhall geve touching him, Ye 'ſhall not diſcloſe. And yf Ye know anye thinge of the Diſherytaunce or Da-'mage of the Kinge, or fraude to be made upon anye thinge that touchethe the 'keeping of the Seale: Ye ſhall put Your lawfull Power it to redreſſe and amende; 'And yf that Ye cannot do, Ye ſhall advyſe the Chauncellor, or Lorde Keper 'of the Seale, or other whiche may that amende, to Your Power. As God you 'helpe, and by the Content of this Boke.'

Mr. Serj. *Pengelly*. My Lords, there will be Directions given to lay a Copy of this Oath, as well as Copies of other Records, upon your Lordſhips Table.

The next Evidence we ſhall produce, are Commiſſions beginning in the Time of *Edw.* VI. to this time, granted to Maſters, appointing them to hear Cauſes, &c. The firſt Commiſſion we ſhall produce, is dated the 9th of *October*, the 4th of *Edw.* VI. My Lords, we deſire that Mr. *Paxton* may be ſworn, who has Copies of theſe Commiſſions, and has examined them with the Records.

[Mr. *Ralph Paxton* ſworn.]

Mr. Serj. *Pengelly*. My Lords, we deſire that he may be aſked, Whether the Copies in his hand are true Copies, and where they were examined?

L. C. J. *King*. Are they true Copies, and where did you examine them?

Mr. *R. Paxton*. My Lords, they are true Copies. I examined them in ſeveral Places. I muſt look upon each of them, and then I ſhall tell your Lordſhips where I examined them. I examined ſome at the Rolls, ſome at the Petty-Bag Office, and ſome at the Report-Office.

L. C. J. *King*. Did you examine them all there?—Mr. *R. Paxton*. I did.

Mr. Serj. *Pengelly*. Are they true Copies?—Mr. *R. Paxton*. I believe they are, I took a great deal of Care and Pains in examining of them.

Mr. Serj. *Pengelly*. My Lords, we deſire that theſe Copies may be read.

Mr. *Strange*. Are they upon Stamps?

Mr. *R. Paxton*. Yes, Sir, with a double Sixpenny Stamp.

Mr. Serj. *Pengelly*. My Lords, it ſeems they are Stampt; ſince they make an Objection of that Nature, we deſire they may be read.

[Clerk reads]

Sexta pars Pat' de Anno Regni Regis Edri Sexti quarto.

'Rex &c Dilcis & fidelibus Conſiliariis Suis Rbto Southwell Militi Cuſtodi 'ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Juſtic' nrorum ad 'Plita coram Nob' tenend' aſſign' Jacobo Hales Militi uni Juſtic' nrorum de Ban-'co Rico Reade Militi et Johi Tregonwell Aro Magris Cancellar' nre predce Ac 'Dilcis Sibi Johi Olyver Clico Willo Cooke Aro Johi Croke Aro et Anthonio 'Bellaſſis Clico Magris ejuſdem Cancellar' nre Saltm. Quia Predilcus et fidelis 'Conſiliarius nr' Ricus Riche Miles Dus Riche Cancellar' nr' Angl' adeo Cor-'poris invalitudine ad preſens laborat qd ad ea que in Cur' Cancellar' nre in 'cauſis et materiis int' diverſos ligeos & Subditos nros ibidem pendent' tractand' 'audiend' diſcuciend' et terminand' Sint & fieri debeant ad preſens pro tempore 'non Sufficiat Conſiderantes igitur ipm ad Saltm cicius poſſe reſtitui Si ab ardu-'is negociis nris et detminacoe cauſarum in Cur' Cancellar' nre penden' ad tem-'pus abſtineat Et Volentes nichilominus interim in ejuſdem Cancellarii nri ab-'ſencia omnibus & Singulis ligeis & Subditis nris quibuſcumq; matias ſuas in Cur' 'Cancellar' nre predce proſequentibus plenam & celerem Juſticiam exhiberi Ac 'de fidelitatibus & providis circumſpeccoibus vris plenius Confidentes Aſſigna-'vimus Vos octo Septem Sex quinq; quatuor & tres vrm quorum Vos prefat' 'Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Croke unu' eſſe 'Volumus Ac tenore preſenciu' Damus Vob' octo Septem ſex quinq; quatuor & 'tribus vrm quorum aliquem vrm Vos prefat' Robte Wille Porteman Jacobe 'Hales Johes Olyver & Johes Crooke unu' eſſe Volumus plenam poteſtatem & 'auctoritatem audiend' et examinand' quaſcumq; materias cauſas & peticoes co-'ram Nob' in Cancellar' nra int' quoſcumq; ligeos & Subditos nros tunc pen-'dent' et impoſterum ibidem exhibend' & penden' & eaſdem matias cauſas & pe-'ticoes juxta Sanas diſcrecoes vras finalit' tminand' & debit' execuoi demandand' 'parteſq; in matijs Sive cauſis vel peticoibus illis noitas & Specificatas ac teſtes '& alios quoſcunq; quos Vob' fore videbitur evocand' quociens expedire vide-'ritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum ali-'quem vrum vos prefate Robte Wille Portman Jacobe Hales Johes Olyver & Jo-'hes Croke unu' eſſe Volumus evocand' ac ipos & eorum quemlt debite examina-'ri compellend' dieſq; productorios imponend' & aſſignand' proceſſuſq; quoſ-'cumq; in ea parte neceſſarios concedend' et fieri faciend' contemptus etiam 'quoſcumq; ibidem comiſs' Sive perpetratos debite caſtigand' & puniend' cetaq; 'omia & Singula faciend' et exequend' que circa premiſſa neceſſaria fuerint Seu 'quomodolit oportuna Et ideo Vob' Mandamus qd circa premiſſa diligent' inten-'datis ac ea fac' & exequamini cum effcu Mandamus etiam tenore preſenciu' 'omibus & Singulis Officiariis & Miniſtris nris Cur' nre predce qd Vob' octo 'Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos prefate 'Robte Wille Porteman Jacobe Johes Oliver & Johes Croke Semper unu' eſſe 'Volumus in execucoe premiſſorum diligent' intendant prout decet Volumus eti-'am & per preſentes Concedimus quod omia & Singula judicia Sive finalia de-'creta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem 'vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Crooke 'unu' eſſe Volumus Semper hmoi cauſis Sive materijs reddend' Sive fiend' Sint '& eſſe debeant tanti & conſimilis valoris effcus efficacie roboris et virtutis ac ſi 'per Cancellariu' nrm Angl' et Cur' Cancellar' predce reddit' Sive reddend' fo-'rent Proviſo Semper qd omia & Singula hujuſmodi judicia Sive finalia Decreta 'per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm 'Vos prefate Robte Wille Porteman Jacobe Johes Olyver at Johes Croke unu' 'eſſe Volumus virtute preſenciu' reddend' Sive fiend' manibus vris octo Septem 'Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille 'Porteman Jacobe Johes Olyver & Johes Croke unu' eſſe Volumus Subſcriban-'tur & conſignentur & Superinde eadem judicia Sive decreta prefat' Cancellar' 'nro preſententur & libentur ut idem Cancellar' nr' antequam irrotulentur eadem 'Similit' manu ſua conſignet In cujns rei teſtimoniu' has Lras nras fieri fecimus 'Patentes uſq; ultimu' diem Novembr' proper' futur' duratur' Si non intrim per 'alias Lras nras Patentes huic Comiſſioni Superſederi decreverimus T. R. apud 'Weſtm' nono die Octobr'

'per ipm' Regem Concordat' cum Recordo et Examinat' per me

'WM. ROOKE.'

Mr. Serj. *Pengelly*. We have ſeveral others of the ſame Nature, which we have proved, and ſhall not trouble your Lordſhips to read them. We ſhall beg leave to lay them on your Lordſhips Table. We ſhall now deſire to read ſome later Commiſſions; ſome granted when the noble Lord within the Bar had the Cuſtody of the Seals himſelf.

E. of *Mac*. If your Lordſhips pleaſe, the Date of that may be read.

[*Clerk reads.*]

'GEORGIUS Dei Gra' Magnæ Britanniæ Franciæ & Hibniæ Rex fidei de-'fenſor &c. Prædilecto & fideli Conſiliario nro Joſepho Jekyll Mil' Ma-'gro Rotlorum Cur' Canc' nre ac Dilcis' & fidelibus nris Littleton Powys Mil' 'un' Juſticiar' nrorum ad plita coram nobis tenend' aſſign' Johi Blencow Mil' un'

'Juſticiar' nrorum de Banco Robto Tracy Ar' al' Juſticiar' nrorum de Banco 'Robto Price Ar' un' Baron' Scecij. nri Johi Smith Ar' al' Baron' Scecij nri Robto 'Dormer Ar' un' Juſticiar' nrorum de Banco Robto Eyre Mil' un' Juſticiar' 'nrorum ad plita coram nobis tenend' aſſign' Johi Pratt Mil' al' Juſticiar' 'nrorum ad plita coram nobis tenend' aſſign' Jacobo Mountagu Mil' un' Baron' 'Scecij nri Johi Forteſcue Aland Mil' un' Baron' Scecij nri Thome Gery Mil' 'Willo Rogers Johi Hiccocks Willo Fellows Jacobo Meller Johi Orlebar Fleet-'wood Dormer Samueli Browning Robto Holford Henrico Lovibond & Johi Ben-'net Aris ſaltm Quia predilect' & fidel' Conſiliar' noſtr' Thomas Doms Parker 'Cancellar' noſtr' magne Britannie nris arduis negotiis ex Mandato nro continue 'attendens in eisdm adeo verſatur quod continue attendere non poteſt ea que in 'Cauſis & materiis interdiverſos ligeos & ſubditos nros ac alios in Cur' nra Can-'cellar' penden' agen' tractand' audiend' expediend' diſcutiend' & terminand' ſint '& fieri debent Nos premiſſa Conſiderantes volenteſq; eibus & ſingulis ligeis nris 'ac aliis quaſcunq; materias cas in eadm' Cur' Cancellar' proſequen' ſive proſe-'cutur' plenam & celerem Juſticiam exhiberi tam in abſentia quam in preſentia 'predict' Cancellar' noſtr' Magn' Britann' ac de fidelitate & providis circumſpe-'ciobus vris in hac parte plumu' confidente aſſignavimus vos ac tenore prentium 'Damus vob' & aliquibus tribus vel plur' vrm Quorum prefat' Joſephum Jekyll 'Littleton Powys Johem Elencoe Robtum Tracy Robtum Price Johem Smith 'Robtum Dormer Robtum Eyre Johem Prat Jacobum Mountagu & Johem For-'teſcue Aland unum eſſe volumus in abſentia dict' Cancellar' noſtr' Magnæ Bri-'tanniæ plen' prefat' & auctat' audiend' & examinand' quaſcunque materias Cau-'ſas & petitiones coram nobis in dca Cancellar' nra inter quoſcunque ligeos & 'ſubditos aut alios quoſcunque nunc penden' aut Impoſter' ibm exhibend' & pen-'den' materias Cauſas & peticones juxta ſanas diſcretiones vras vel trium vrm 'Quorum prefat' Joſephum Jekyll Littleton Powys Johem Blencowe Robtum 'Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt 'Jacobum Mountagu & Johem Forteſcue Aland unum eſſe volumus finaliter 'terminand' & debit' execution' demandand' Parteſq; in materiis cauſis ſeu peti-'tionibus illis nominat' & ſignificat' ac Teſtes & alios quoſcunq; quos vobis vel 'tribus vrm (ut pred' eſt) fore videbitur evocand' quoties expedire videritis coram 'vobis vel tribus vrm (ut pred' eſt) evocand' Ac ipſos & eorum quemlibet debite 'examinari dieſq; productiores imponend' & aſſignand' proceſſuſq; quoſcunq; in 'ea parte neceſſar' concedend' ac fieri faciend' Contemptus etiam quoſcunq; 'comiſs' ſive perpetrat' debite caſtigand' & puniend' ceteraq; oia & ſingla faci-'end' & exequend' que circa premiſſa neceſſar' fuerint ſeu quomodolibet oppor-'tuna Et ideo vobis mandamus qd circa premiſſa diligent' intendatis & ea fat' ex-'equamini cum effu Mandamus etiam tenore prentium Officiar' & Miniſtr' Cur' 'nre Canc' pred' qd vobis vel tribus vrm (ut pred' eſt) in exec'c' premiſſorum 'diligenter intendant prout decet Volumus etiam ac per prentes concedimus 'quod oia & ſingula Judicia ſive finalia decreta ac Ordines per vos aut tres vrum 'ut præd' eſt ſuper hum' cauſis ſive materijs ac peticioibus ut prefertur reddenu' 'ſive fiend' ſint & eſſe debeant tanti & conſilis valor' effect' efficatie roboris & 'virtute Ac ſi per præd' Cancellar' noſtr' Magnæ Britanniæ & Cur' Cancellar' 'nre præd' reddit' ſive reddend' forent Proviſo tamen quod oia & ſingula Judicia 'ſive finalia decreta per vos vel tres vrm ut præd' eſt virtute prentium modo & 'forma ut prædicitur reddend' ſive fiend' Manibus vris vel trium vrm Quorum 'prefat' Joſephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Rob-'tum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum 'Mountagu & Johem Forteſcue Aland unum eſſe volumus ſubſcribentur & con-'ſignentur & ſuperinde eadem Judicia ſive finalia decreta prefat' Cancellar' noſtr' 'Magn' Britan' preſententur & libentur Quodq; null' eorundem Judicior' ſive 'final' decretor' irrotulentur aut quoviſmodo execut' ſint antequam idem Can-'cellar' noſtr' Magn' Britann' ea manu ſua propria ſiliter conſignet Et quod he 'lre nre Patentes durabunt & permanebunt in pleno robore & effect' donec aliter 'per alias lras nrs Patentes huic Commiſſioni ſuperſederi mandat' foret aut præ-'dict' Cancellar' noſtr' Magn' Britann' in plena Cur' determinari decret' & irro-'tulat' erit In cujus rei Teſtimoniu' has lras nras fieri fecimus Patentes Teſte me-'ipſo apud Weſtm' duodecimo die Maij Anno Regni noſtri quarto

'per ipſum Regem *WRIGHTE.*'

Mr. Serj. *Pengelly*. We deſire that there may be another Commiſſion read, dated the 20th of *January*, the 8th of the King.

[*Clerk reads.*]

'GEORGIUS Dei Gratia Magnæ Britanniæ, Franciæ, & Hiberniæ Rex, 'fidei Defenſor, &c. Prædilecto & fidel' Conſiliar' nro Joſepho Jekyll Mil' 'Magro Rotulor' Cur' Cancellar' nre ac Dilcis & Fidelibus nris Littleton Powys 'Mil' un' Juſtic' nrorum' ad plita coram nobis tenend' aſſign' Johi Blencow Mil' 'un' Juſtic' nrorum de Banco Robto Tracey Ar' al' Juſtic' nrorum de Banco Robto 'Price Ar' un' Baron' Scecij nri Robto Dormer Ar' un' Juſtic' nrorum de Banco 'Robto Eyre Mil' un' Juſtic' nrorum ad plita coram nob' tenend' aſſign' Jacobo 'Montagu Mil' un' Baron' Scecij nri Johi Forteſcue Aland Mil' un' Juſtic' nrorum 'ad plita coram nob' tenend' aſſign' Franco Page Mil' un' Baron' Scecij nri Johi 'Hiccocks, Willo Fellowes, Robto Holford, Henco Lovibond, Johi Bennet, Ri-'co Godfrey, Jacobo Lightboun, Johi Borret, Edro Conway, Henco Edwards, '& Willo Kynaſton, Ar' ſalum. Quia Chariſſimus Conſanguineus & Conſiliar' 'noſter Thomas Comes de Macclesfield Cancellar' noſter Magnæ Britanniæ noſ-'tris arduis negotiis ex Mandato noſtro continue attendens in eiſdem adeo verſa-'tur quod continue attendere non poteſt ea que in Cauſis & Materiis inter diver-'ſos ligeos & ſubditos noſtros ac alios in Cur' noſtra Cancellar' penden' agen' 'tractand' audiend' expediend' diſcutiend' & terminand' ſint & fieri debent nos 'premiſſa conſiderantes volenteſq; omnibus & ſingulis ligeis noſtris ac aliis quaſ-'cunq; materias ſuas in eadem Cur' Cancellar' proſequend' ſive proſecutur' ple-'nam & celerem Juſticiam exhiberi tam in abſentia quam in præſentia præd' 'Cancellar' noſtri Magnæ Britanniæ ac de fidelitate providis Circumſpectionibus 'vris in hac parte plurimum Confidentes Aſſignavimus vos ac tenore preſent' Da-'mus vob' & aliquibus tribus vel plur' vrm' Quorum prefat' Joſephum Jekyl Lit-'tleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer 'Robtum Eyre Jacobum Montagu Johem Forteſcue Aland & Francum Page un-'um eſſe Volumus in abſentia dicti Cancellar' noſtri Magnæ Britanniæ plen' po-'teſtat' & Authoritat' audiend' & examinand' quaſcunq; materias cauſas & peti-'tiones coram nob' in dicta Cancellar' noſtra inter quoſcunq; ligeos & ſubditos 'aut alios quoſcunq; nunc penden' aut impoſter' ibidem exhibend' & penden' & 'eaſdem materias cauſas & petitiones juxta ſanas diſcretiones vras vel triu' vrm' 'Quorum prefat' Joſephum Jekyl Littleton Powys Johem Blencowe Robtum 'Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem 'Forteſcue Aland & Francum Page unum eſſe Volumus finalit' terminand' & 'debit' execution' demandand' parteſq; in materiis cauſis ſeu petitionibus illis 'noiat' & ſpecificat' ac teſtes & alios quoſcunq; quos vob' vel tribus vrm' (ut 'præd' eſt) fore videbitur evocand' quoties expedire videritis coram vob' vel tri-'bus vrm' (ut præd' eſt) evocand' ac ipſos & eorum quemlibet debite examinari 'compellend' dieſq; productiores imponend' & aſſignand' proceſſuſq; quoſcunq; 'in ea parte neceſſar' concedend' ac fieri faciend' contemptus etiam quoſcunq; 'comiſs' ſive perpet' debit' caſtigand' & puniend' ceteraq; oia & ſingula faciend' '& exequend' que circa præmiſſa neceſſar' fuerint ſeu quomodo libet opportuna. '*Et Ideo* vob' mandamus quod circa præmiſſa diligent' intendatis & ea fac' & ex-'equamini cum effectu. *Mandamus* etiam tenore preſentiu' officiar' & miniſtr' 'Cur' noſtre Cancellar' præd' quod vob' vel tribus vrm' (ut præd' eſt) in executi-

'one

one præmissorum diligent' intendant prout decet Volumus etiam & per presentes concedimus quod oia & singula judicia sive final' decreta ac ordines per vos & tres vrm' (ut præd' est) super hum' causis sive materiis, & petitionibus ut prefert' reddend' sive fiend' sint & esse debeant tanti & consilis valor' effectus efficacie roboris & virtutis ac si per præd' Cancellar' nostr' Magnæ Britanniæ & Cur' Cancellar' nostre præd' reddit' sive reddend' forent. *Proviso* tamen quod oia & singula judicia sive finalia decreta per vos vel tres vrm (ut præd' est) virtute present' modo & formatur predicitur reddend' sive fiend' manibus vris vel triu' vrm' Quorum prefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus subscribantur & consignentur & superinde eadem judicia sive final' decreta prefat' Cancellar' nostro Magnæ Britanniæ presententur & libentur Quodq; nulla eorundem judiciorum sive final' decretorum irrotulentur aut quovis modo execut' sint antequam idem Cancellar' noster Magnæ Britanniæ ea manu sua propria silit' consignet Et quod he litere nostre paten' durabunt & permanebunt in pleno robore & effectu donec alit' per al' literas nostras patentes huic Commission' superscderi mandat' foret aut per dictum Cancellar' nostrum Magnæ Britanniæ in plena Cur' determinari decret' & irrotulat' erit. *In cujus rei testimonium* has literas nostras fieri fecimus patentes Teste meipso apud Westm' Vicesimo die Januarij Anno rni' nri' Octovo. Per ipsum Regem *WRIGHTE.*

Mr. Serj. *Pengelly.* My Lords, we don't apprehend it necessary to read all the others over; we shall deliver them in; unless it be desired by the noble Lord. My Lords, we now beg leave to call Mr. *Meller*, who hath executed the Office of a Master in Chancery for several Years. He will give your Lordships some Account of the Nature and of the manner of Execution of that Office, in support of what the Commons have charged.

[Mr. *John Meller* sworn.]

Mr. *Lutwyche.* My Lords, we desire Mr. *Meller* may be asked, Whether he hath executed the Office of a Master in Chancery, and how long, and what is the nature of that Office?

L. C. J. *King.* Sir, you hear the Question.

Mr. *Meller.* My Lords, according to the best of my Remembrance, I was admitted a Master the latter End of the Year 1708, and continued so till *July* 1720. The general Nature of the Office is, to digest and sum up those matters which are ordered upon Hearing to be referred to us, by way of Report: That is the general Business. There is a further Business, when Bills of Costs are to be taxed, they are taxed and adjusted by us what is to be paid. I don't recollect any more particular Business.

Mr. *Lutwyche.* I desire he may be asked, for whose Service and Use those Reports are made?

Mr. *Meller.* Those Reports are made for the Use of the Suitors of the Court. 'Tis to state the Facts that the Lord Chancellor has referred to the Master, that are too tedious for the Court to look into.

Mr. *Lutwyche.* To whom are they returned and directed?

Mr. *Meller.* These Reports are made to the Court, to the Lord Chancellor, or the Master of the Rolls. They have these Reports, and make a final Order upon them.

E. of *Macclesfield.* I desire he may be asked, when Reports of the several Matters referred to the Master to consider of, which would take up too much Time of the Court to settle, are made, whether those Reports of the Master are at all conclusive? Or what is the method in case the Parties don't acquiesce?

Mr. *Meller.* My Lords, the Report is only to state the Facts to the Court; and till the Report is confirmed by the Court, what the Master hath reported has no Effect. So that I apprehend it is only to lay the State of the matter before the Court: If what the Master reports seems agreeable to the Court, then they confirm it; if not, they vary it, or sometimes send it back again to the Master for his further Consideration.

Mr. Com. Serj. My Lords, I desire that Mr. *Meller* may inform your Lordships, if any Person apprehends the Facts mistaken, whether they have not an Opportunity of rectifying this Report of the Master?

Mr. *Meller.* My Lords, so far as I apprehend, the Rule of the Court is this; when a Report is drawn up, the Parties on both Sides have Liberty to object to that Report before the Master; and whatever they put in by way of Objection before the Master, they may speak to those several Points when the Report comes before the Court.

Mr. Serj. *Probyn.* What are the matters that are generally referred to the Masters by the Court?

Mr. *Meller.* The Chief matters are the stating of Accounts.

Mr. *Strange.* My Lords, I beg leave to ask the Witness this Question: Whether any matters of Judgment are at any Time referred by the Court to the Master?

Mr. *Meller.* The Nature of Reports requires some Conclusion upon them, to be given by the Masters according to the best of their Opinion. But the Court gives a Sanction to those Reports.

Mr. *Strange.* Whether, in any one Instance, the Judgment of the Master is final to the Suitor?

Mr. *Meller.* I will recollect, and give your Lordships the best Account that I can remember as to that. I think, when a Master has taxed a Bill of Costs, there is a Subpœna taken out for the Costs upon the Master's Report, without going to the Court. I am not sure.

Mr. Com. Serj. When Exceptions are taken to a Master's Report, doth the Master or the Court pass a Judgment upon them?

Mr. *Meller.* The Method is this; when a Report is drawn up, a Copy is given to both Sides, and each Side puts in such Objections to it as they think proper; the Master goes through those Objections, and having gone through them, he forms an Opinion upon the whole. Then it goes to the Court, and the Parties have Liberty to go upon those Objections before the Court, who finally determine.

Mr. Com. Serj. I desire, my Lords, that Mr. *Meller* may acquaint your Lordships, who presided in the Court when he came in?

Mr. *Meller.* My Lord *Cowper*, I take it, was then Chancellor; it was in the Year 1708, or the Beginning of 1709.

Mr. Com. Serj. We desire to know, whether he gave any Money when he came into the Office, and to whom?

Mr. *Plummer.* We have called this Gentleman to give an Account of the Nature of the Office of a Master in Chancery, we are not come to that Matter of giving of Money; we submit, whether it is necessary to enter into that Question now?

Mr. Serj. *Probyn.* If this Gentleman is to be called again, we beg leave to reserve that Question till they come to that Part of the Charge.

Mr. *Plummer.* My Lords, I have another Question to ask: It has been asked, Whether the Determination of a Master in Chancery is final? I desire it may be asked, If the Master in Chancery makes a Report, to which there is no Exception, whether the Decree in Chancery is not according to that Report?

Mr. *Meller.* I take it, after the Master has made a Report; and there is no Exception to it, that Report is first confirmed *nisi*, and then it is confirmed absolutely upon a second Motion.

Mr. *Lutwyche.* My Lords, I desire he may be asked another Question: If there be a Reference concerning an Answer which is alledged insufficient, and the Master reports it insufficient, whether it is not final and conclusive, unless the Party takes Exception to such Report?

Mr. *Meller.* Unless the Party takes Exception, 'tis looked upon as final: For then he submits and puts in a farther Answer, and then the End of referring it to the Master is answered: But the Party may except if he pleases.

Mr. *Lutwyche.* As to the taxing of Costs; whether when the Costs are taxed to a particular Sum, that is not final and conclusive, unless the Party makes Application to the Court?

Mr. *Meller.* I apprehend I did answer that before. The Master, after he has taxed the Bill of Costs, the Clerk in Court, as I take it, makes out Subpœnas for Costs of course: But I cannot speak to that so well as the Clerks in Court; but I take that to be the Practice.

Earl of *Abingdon.* I would be glad to be informed in this Point: Supposing a Sum of Money to be laid out upon a Purchase or Mortgage, whether the Titles of those Estates are not commonly referred to a Master, and whether the Master does not judge of, or determine those Titles?

Mr. *Meller.* In that Case, I can only speak to what came before myself: When there was an Order to put Money out upon a Mortgage, the first Step I took was, I sent the Title-Deeds to some able Counsel; when I had his Opinion, I used the best of my Judgment to inform myself: If I found no Objection, then I thought I was obliged to allow the Security, and accordingly made my Report of Allowance; and then, as Master, set my Hand to the Side of the Deed.

Mr. *Lutwyche.* Another Question I would beg leave to ask, tho' it is well known, yet it is fit it should appear from the Witness, and that is, whether the Masters don't sit upon the Bench with my Lord Chancellor, in open Court in *Westminster-Hall*, every Term?

Mr. *Meller.* My Lords, in *Westminster-Hall* three Masters are required to attend the Chancellor; at his own House two; and the like at the *Rolls.*

Mr. Com. Serj. If the Gentlemen have done, we beg leave to ask one Question: Whether, even in the Case of Costs, if the Parties are dissatisfied, Application is not made to the Court (tho' not by way of Exception, yet by Motion) to refer it back again?

Mr. *Meller.* In the Case of Costs, it hath been a very rare thing to apply to the Court. Some Instances there have been, I believe, but few.

Mr. Com. Serj. I beg leave the Master would inform your Lordships, whether in the Case of Titles, if there happens any Difference in the Opinion of the Parties, they apply to the Court, or are concluded by the Opinion of the Master?

Mr. *Meller.* I never knew, during the Time that I was in the Office, that any Title was ever contested before the Court; I mean in my own Case.

Mr. Com. Serj. Whether or no he knows any Case where the Parties have differ'd in opinion about a Title, that the Master's Opinion has concluded the Parties?

Mr. *Meller.* I don't know, while I was in the Office, that there was ever any Objection before me in the Case of a Title.

Mr. *Robins.* Give me leave to ask one Question: You say three Masters sit with my Lord Chancellor at *Westminster*, two at his own House: I desire to know what they do there; whether they sit as Assistants?

Mr. *Meller.* My Lords, I don't know that ever their Advice was asked.

Dr. *Sayer.* My Lords, I would ask, whether they ever interposed by way of Judgment, or took upon them to act as Judges?

Mr. *Meller.* My Lords, I think not; I don't remember any Instance of it.

Mr. *Strange.* My Lords, I desire he may be asked, whether what the Master ever does is confirmed of course, or is there not a Motion for that purpose?

Mr. *Meller.* I thought I mentioned that before: I shall repeat it again. There is first a Motion to confirm *nisi Causa*; and upon the second Motion, unless there is Cause shewn, it is confirmed.

Mr. *Strange.* My Lords, I desire he may be asked, If there is not an Affidavit of Service of the first Order?

Mr. *Meller.* I believe there is; but that is the Business of the Sollicitor.

Mr. *Strange.* My Lords, I beg leave he may be asked one Question more, whether there is not a Certificate also from the Register that no Cause is shewn?

Mr. *Meller.* My Lords, I can't speak particularly as to that; it is a Business that does not lie before the Master in his Office; I believe in many Cases the Register certifies.

Dr. *Sayer.* We will trouble your Lordships with no more Questions except this one, that is, Whether we shall see Mr. *Meller* again? For if we are to take our leave of him now, we should offer some other Questions before he departs.

Mr. Serj. *Pengelly.* My Lords, I can't tell whether the Managers will have any Occasion to call him again; but he shall stay here to attend, in order to be called when he is wanted, either by the noble Lord, or any other Person. We don't think fit to trouble your Lordships with any other Evidence as to that Matter. Their Authority in Court appears by the Commissions that have been produced. It is not said in the Introduction to the Articles, that the Masters are to controul the Lord Chancellor, but to assist him in the Administration and Execution of Justice, of which we think we have produced the fullest Proof; and beg leave to proceed to another Part of our Evidence, that which relates to the Profits of the Office of Lord Chancellor. The ordinary Profits, not to mention the extraordinary ones, which have been made by the Noble Lord within the Bar, I think may be computed to amount to 8000*l.* a Year, or thereabouts; so that there is no Occasion to use other Means. But not to enter into them all, we shall only beg leave to call one Witness to prove one gross annual Sum of 1500*l.* a Year paid out of the *Hanaper-Office.* My

Lords, we desire Mr. *Pynsent* may be asked, for what annual Sum he accompted to the late Lord Chancellor out of the *Hanaper-Office*, during his Time of being in the said Office; how much he has paid him?

Mr. Com. Serj. My Lords, I beg leave to oppose that Question. I believe there is no Payment from the Crown but what is always upon Record; and therefore that being a Matter of a higher Nature, they ought to produce those Records, and not examine Witnesses *viva voce* to it.

E. of *Macclesfield.* I believe this Gentleman is right in his Objection in Point of Law. But, however, as this Person is the proper Officer, and I believe an honest Man, I will not insist upon the Nicety.

Mr. Serj. *Peng.* We desire to know how much a Year he has paid to the impeached Lord out of the *Hanaper-Office?*

Mr. *Pynsent.* I have no Voucher with me; but as far as I can charge my Memory, 'tis about 13 or 1400l. a Year.

E. of *Mac.* If he had had his memorandum with him, I was willing he should give your Lordships an Account of that matter; but if he speaks only by an uncertain memory of it, I hope I shall not be bound by it, especially when he himself assigns the Want of his Vouchers as a Reason why he cannot be certain.

Mr. Serj. *Peng.* My Lords, we desire he may be asked, How much he can take upon him to say he has paid? It is not material whether by Warrant or Special Direction: it is only a Question of Fact, whether he can be certain to a Sum, either 13 or 1400*l.* a Year, or other Sum?

Mr. *Pynsent.* I can say above 1000*l.* a Year. If I had my Vouchers here I could be more certain.

Mr. Com. Serj. The Noble Lord waved the Objection, upon a Supposition that he had a certain Account. As he has not, I must beg leave to insist upon the Objection that I made against the legality of the Proof.

Mr. *Lutwyche.* We only ask in this Case to a Fact, what he paid to him; and I will add this further, for what Time?

Mr. Serj. *Probyn.* My Lords, we must insist upon our Objection. The Witness says he is uncertain how much he has paid: He says he has Vouchers which will shew the particular Sums he has paid; and since it is in their Power to produce those Vouchers, we must submit it that they shall produce the best Evidence they have in their Power to give, and that the Receipts and Vouchers shall be produced.

Mr. Com. Serj. The Answer of the Honourable Managers to the Objection is no Answer. They say 'tis a matter of Fact; but that matter of Fact is matter of Record: it must be proved by the Record, because the Law expects the highest Proof to be made that can be, even in trifling Cases, and much more when the Honour of so great a Lord is in Question.

Mr. Serj. *Probyn.* I desire to know if there is not constantly a Receipt given upon every Payment?

Mr. *Pynsent.* Yes; and those Receipts are carried into the Auditors Office, and there they rest.

Mr. Serj. *Probyn.* Then they can be come at?

Mr. *Pynsent.* Yes, they are carried in yearly.

Mr. Sol. Gen. My Lords, I did not expect this Objection: But we must submit, it whether there is any Foundation for it. If the matter of Record be insisted on, only with respect to the Receipt given, there is no Need of it: better Evidence cannot be given to prove Payment, than the Man who paid it. The common Evidence to prove Payment of Money, is to produce a Man to swear that he paid that Money. No better Evidence can be given; and tho' a Receipt is given, yet when a Person proves he paid the Money, he need not produce the Receipt: it is better Evidence than the Receipt: A Receipt may be given without Payment. Therefore we apprehend that the Witness's Proof of the Payment is sufficient to prove this matter of Fact.

Mr. Com. Serj. I apprehend there is no Money either received or issued out by the Crown, but what appears by Record. It is not only those Receipts that is the Strength of the Objection; but when there are matters uncertain, and the Witness says he can't declare what it was, whether upon that Foundation your Lordships won't expect a certain Evidence, not only from the Nature of the Thing, but from the present Circumstances of this Case, when the Witness declares that he cannot remember it?

Mr. *Strange.* My Lords, I wonder to hear it said, that a Person who swears to the Payment of Money is the most certain Evidence. He may be mistaken, the Receipt cannot. Therefore we must submit it, as they have opened it, whether this is the best Evidence?

Mr. *Lutwyche.* My Lords, I wonder your Lordships should be troubled with any thing of this Kind, in order to prove a Salary of 1500*l.* a Year belonging to the Noble Lord's Office, when we ask only to the Quantum of the Sum which he did receive from Mr. *Pynsent:* The Question is, whether we shall be admitted to ask that Question? It is admitted that the Witness paid the Salary: All the Question is, What he paid?

E. of *Mac.* My Lords, I am sorry your Lordships Time should be taken up about a Thing of this Kind. When the Objection was first made by my Counsel, which I apprehend is right, I stood up to acquaint your Lordships, that I did not insist upon the Nicety of it. This Gentleman used to pay me Money, and I believe he is a very honest Gentleman; but when he comes to say he is not sure how much, and they were working him up to a higher Pitch, and these Gentlemen, for aught I know, or their Sollicitor, may have the Receipts in their Pockets, I thought it was then high Time to stop them. This Gentleman did say it was more than 1000*l.* My Lords, I admit it, I believe it to be 1100*l.* a Year, or thereabouts: if I knew exactly, I would tell it, I never intended to dispute the Matter.

Mr. *West.* I would not have your Lordships imagine that the Commons are capable of working up a Witness. It is unworthy of the Commons of *Great Britain*, of the Gentlemen appointed Managers in their Behalf; it is impossible that they should have any View but the Truth of the Fact, and the Justice of the Cause. The Question asked was only what it was he paid; it was not endeavouring to work him up to any Thing. If this was a Question relating to the Crimes charged upon his Lordship, I should not have been so much surprized; but this is only an Aggravation contained in the Preamble. I think the litigating the Point is as great an Aggravation, as the proving the Payment of the Money.

E. of *Mac.* My Lords, I did not intend any Reflection upon the Commons; nor did I say any thing which amounts to it. I did say the Sollicitor might have the Receipts; I don't know what they have in their Hands. The learned Gentleman that spoke last, says 'tis not a Charge, only an Aggravition: if it be an Aggravation, should it not be proved, and legally proved? But I have been ready to make this matter easy, for I agreed it to be as much as their own Witness can with any Certainty say it was, and I don't think it to be any Aggravation; and therefore told your Lordships I *believed* it might be 1100*l.* a Year, or thereabouts, not being willing to take up any more of your Lordships Time about it.

Mr. Serj. *Peng.* My Lords, the Managers for the House of Commons do not think it so material whether it be 11 or 1500*l.* a Year. We will take the Noble Lord's Admission: And we apprehend, as it is 1100*l.* a Year, it is a reasonable Addition to the Salary of his Office.

E. of *Mac.* I only would ask this Question, Do you remember what the Chancellor's Annual Salary is?

Mr. *Pynsent.* No, I do not.

E. of *Mac.* That is Part of the Particular that makes up the 1100*l. per Annum?*

Mr. *Pynsent.* I think it is so.

E. of *Mac.* Is it not 300*l. per Annum?*

Mr. *Pynsent.* I think it is thereabouts.

Mr. Com. Serj. My Lords, I desire he may be asked, whether or no this 1100*l.* a Year hath been usually allowed to the preceding Lords Chancellors?

Mr. *Pynsent.* I take it for granted that it was so.

Mr. Serj. *Peng.* My Lords, we shall now proceed to call our Witnesses in Support of the Ninth Article, that being a distinct Particular, relating to a Sum not at all involved in the Questions touching the Masters; and, as we apprehend, received by the Noble Earl under Circumstances of the greatest Aggravation that is possible; abusing the Royal Authority, or that Share of it which the Noble Lord enjoyed at that Time when he was one of the Lords Justices. Therefore we give Preference to that Article, and desire Mr. *Thomas Bennet*, whom I see in your Lordships House, may be sworn and examined.

[Mr. *Thomas Bennet* sworn.]

Mr. Serj. *Peng.* My Lords, Mr. *Bennet* was the Person who was possessed of the Office of the Clerk of the Custodies, at the Time of the Resignation of it for the Benefit of Mr. *Hamersley*, who has now a Patent. We have the Patent here; and if that be read, it will more fully acquaint your Lordships with the Nature of the Office, and then we shall acquaint your Lordships with the Nature of the Transaction.

[*The Patent begun to be read.*]

' Teste, *&c.* 5to Septemb' An. 10 *Georgii* Regis.

Mr. Serj. *Peng.* Tho' the Noble Lord's Name be not mentioned in the Patent, yet it is sufficiently known from the Date and Time of it, that it was when the Noble Lord was one of the Lords Justices, and had the Custody of the Seals, and that at that time he affixed the Seals to this Patent.

[*Then the Patent was begun again to be read.*]

E. of *Mac.* My Lords, I beg Pardon for interrupting; I don't know whether they think it of any particular Use to read it through; if not, for saving your Lordships time, I admit that a Grant was made of the Office to Mr. *Hamersley*, on the Surrender of Mr. *Bennet*.

Mr. Serj. *Peng.* My Lords, as it is necessary to shew the Resignation of Mr. *Thomas Bennet*, so likewise the Nature of the Office; and therefore, to the end that may be the better seen, we beg leave the Patent may be read.

(Clerk reads.)

' GEORGIUS Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, ' Fidei Defensor, &c. Omnibus ad quos presentes literæ nostræ pervenerint salutem. Cum nos per Literas nostras Patentes sub Magno Sigillo nostro ' Magnæ Britanniæ confectas geren' dat' apud Westm' vicesimo die Martii, Anno ' Regni nostri tertio pro nobis Heredibus & Successoribus nostris dederimus & ' Concesserimus Dilecto & fideli nostro Thomæ Bennet Armigero Officium Clerici ' ad Scribend' & Conficiend' omnia & singula Bria de diem clausit extremum, & ' Mandamus & Commissiones ad inquirend' post mortem & de Ideotis & Lunaticis ' & ad melius inquirend' inde & supersed' eorundem ac omnia al' Bria & Process' ' eorund' ac omnia al' Bria de Process' cujuscunque Generis Nominis Naturæ vel ' Speciei essent vel forent que ante tum de vel nuper in Cur' Wardor' & Libationum aliquor' Predecessor' nostror' antetunc Regum vel Reginar' Angl' per Warrant' ibidem dum eadm' Cur' stetit & fuit in Usu & Vigore fact' & Conces' assignat' vel appunctuat' fuerant, vel fieri concedi assignari vel appunctuari consuerant vel debuerant ac de vel in Cur' nostra Cancellar' vel aliquor' Predecessor' nostror' antetunc Regum vel Reginarum Angl' sub Magno Sigillo Angl' ' impetrat' & persecut' fuerant vel impetrari & prosequi consueverant vel debuerant ac oies & singul' Literas Paten' de Custod' Corporum omnium Wardor' ' Idiotor' & Lunaticor' nostror' Hered' & Successor' nostrorum & de Maritag' ' eorund' Wardor' sub Magno Sigillo Magnæ Britanniæ impetrand' & prosequend' ' necnon omnia al' Bria Commissiones & proces' cujuscunque Generis Nominis ' Naturæ vel Speciei essent vel forent de vel in Cur' nostra Cancellar' Hæred' ' & Successor' nostrorum sub magno Sigillo nro Magnæ Britanniæ Heredu' vel ' Successorum nostrorum premissa predicta seu eorum aliqua tangen' vel concernen' ' fiend' concedend' impetrand' seu prosequend' HABEND' tenend' gaudend' & ' exercend' predictum Officium & omnia & singula premissa predicta superius specificat' prefat' Thomæ Bennett per seipsum vel per sufficientem Deputat' suum ' sive Deputatos suos sufficientes a die dat' prerecitat' Literarum nostrarum Patentium ad Termin' & pro Termino vitæ naturalis ipsius Thomæ Bennett una cum ' omnibus predict' profic' & advantag' ad inde spectan' prout per easdem Literas ' Paten' (inter al') in eisdem content' relatione inde habita plenius liquet & ' apparet cumque præfat' Thomas Bennett per quoddam Scriptum suum sub Manu ' & Sigillo suis sigillat' geren' Dat' nono die Augusti, Anno Regni nostri decimo, ' ac in Cur' Cancellar' nostra debito modo Irrotlat' Officium & premissa predicta ' ac tot' statum jus Titulum & interesse sua in eisdem una cum dictis recitat' Literis nostris Patentibus Cancelland' in Manus nostras sursum reddiderit. *Quam* ' quidem sursum redditionem nos acceptavimus ac per presentes acceptamus *Sciatis* ' *modo* quod nos de Gratia nostra speciali ac ex certa Scientia & mero motu nostris ' *Dedimus* & concessimus ac per presentes pro nobis Heredibus & Successoribus ' nostris *Damus* & concedimus dilecto & fideli nostro Hugoni Hamersley de Interiori ' Templo Londin' Armigero dictum Officium Clerici ad scribend' & conficiend' ' omnia & singula Bria de diem clausit extremum & Mandamus & Commissiones ' ad inquirend' post mortem & de Idiotis & Lunaticis & ad melius inquirend' inde ' & supersed' eorund' ac omnia al' Bria & Process' corund' ac omnia al' Bria & Process' cujuscunque Generis Nominis Naturæ vel Speciei sint vel fuerint quæ antehac de vel nuper in Cur' Wardorum & Liberationum aliquorum Predecessorum ' nostrorum nuper Regum vel Reginarum Angl' per Warrant' ibidem dùm eadem ' Cur' stetit & fuit in Usu & Vigore fact' concess' assignat' vel appunctuat' fuerunt ' vel fieri concedi assignari vel appunctuari consueverunt vel debuerunt ac de vel in ' Cur' nostra Cancellar' vel aliquorum Predecessorum nostrorum nuper Regum vel ' Reginarum Angl' sub Magno Sigillo Angl' impetrat' & prosecut' fuerunt vel im-

' petrari

' petrari & prosequi consueverunt vel debuerunt ac omnes & singul' Literas Paten' ' de Custodia Corporum omnium Wardorum Idiotorum & Lunaticorum nostrorum ' Hæred' & Successor' nostrorum & de Maritag' eorund' Wardor' sub Magno ' Sigillo Magnæ Britanniæ impetrand' & prosequend' necnon omnia al' Bria ' Commissiones & process' cujuscunque Generis nomis Naturæ vel Speciei sint vel ' fuerint de vel in Cur' nostra Cancellar' Heredum & Successorum nostrorum sub ' Magno Sigillo nostro Magnæ Britanniæ Hered' vel Successorum nostrorum pre- ' missa predicta seu eorum aliqua tangen' vel concernen' fiend' concedend' im- ' petrand' seu prosequend' ac ipsum Hugonem Hamersley Clericum & Officia- ' rium nostrum Hered' & Successor' nostrorum ad scribend' & conficiend' omnia ' & singula predicta Bria Commissiones process' supersed' Literas Paten' ac omnia ' & singula cætera premissa superius specificat' de vel in dict' Cur' Cancellar' ' nostra ac Hered' & Successor' nostror' imposterum de tempore in tempus con- ' cedend' prosequend' seu quovismodo impetrand' *Ordinamus*, *Constituimus*, *Eri-* ' *gimus* & Stabilimus per presentes *Habend' Tenend' Utend' Gaudend' Exercend'* ' *Fungend'* & Administrand' predict' Offic' & omnia & singula premissa pre- ' dicta superius specificat' prefat' Hugoni Hamersley per seipsum vel per suffi- ' cientem Deputatum suum sive Deputatos suos sufficientes a confectione harum ' literarum nostrarum Patent' ad Terminum & pro Termino Vitæ naturalis ip- ' sius Hugonis Hamersley una cum omnibus & singulis Feod' profic' commodi- ' tat' emolument' juribus Privileg' & al' rebus quibuscunque modo vel antehac ' usitat' pro premissa vel eorum aliqua recept' seu eisdem vel eorum alicui pertinen' ' inciden' vel incumben' quovismodo adeo plene libere & integre ac in tam am- ' plis modo & forma prout prefat' Thomas Bennett, vel aliquis alius sive aliqui ' alii predictum Officium & cætera premissa seu eorum aliqu' antehac habentes ' vel exercentes habens seu exercens habuerunt exercuerunt perceperunt & gavisi ' fuerunt habuit exercuit percepit & gavisus fuit aut habere exercere percipere aut ' gaudere debuerunt aut debuit in & pro Exercitio ejusdem Officii & cæterorum ' premissorum. Et hoc absque computo seu aliquo alio proinde nobis Heredi- ' bus vel Successoribus nostris reddend' solvend' vel faciend' *Volumus* etiam ac ' per presentes pro nobis Heredibus & Successoribus nostris concedimus prefat' ' Hugoni Hamersley quod ipse custodiet intrabit & transcribet omnes & singulos ' Ordines Reportationes & comput' fact' declarat' & perfect' sive faciend' decla- ' rand' & perficiend' tangen' vel concernen' dict' Idiot' vel Lunatic' & stat' eor- ' rund' vel eorum aliquorum vel alicujus *Volumus* etiam quod nullus alius Cleri- ' cus Cancellariæ nostræ Hered' vel Successor' nostror' nec aliquis alius sive ali- ' qui alii cum Scriptur' Confectione seu Compositione predictorum Briorum Com- ' mission' process' Literarum Paten' vel cum Custodia Intracone & Transcrip- ' tione predict' Ordin' Reportation' & computorum aut al' premissorum aut ali- ' cujus eorundem ullo modo se intromittat seu intromittant sine assensu & con- ' sensu ipsius Hugonis Hamersley. Et quod idem Hugo Hamersley aut Deputat' ' suus sive Deputat' sui sufficien' in hac parte assignat' sive assignand' Omnia & ' singula predicta Bria Commissiones Literas Paten' Ordinationes Certification' ' Composition' & cætera premissa de vel in dict' Cur' Cancellar' nostra ac Here- ' dum & Successorum nostrorum prosequend' conficiend' impetrand' custodiend' ' intrand' vel transcribend' scribere conficere custodire intrare & transcribere pos- ' sint & quilibet eorum possit. *In cujus* rei Testimonium has Literas nostras fieri ' fecimus Patentes Testibus Willielmo Archiepiscopo Cantuar' & cæteris Custo- ' dibus & Justiciariis Regni nostri apud Westmonasterium quinto Die Septembris, ' Anno Regni nostri Decimo.

' Per bre' de privato Sigillo, *COCKS.*'

Mr. Serj. *Pengelly.* The Reading of these Letters Patents shews, that this Office is in the Gift of the Crown: It likewise shews, that the Resignation of Mr. *Tho. Bennet* was for the Benefit of Mr. *Hamersley*, for that is recited in the Letters Patents themselves. Now, my Lords, we shall shew your Lordships upon what Consideration or Bargain that Resignation and new Grant were made.

Mr. Com. Serj. I beg leave to make an Objection to that: The Foundation of this Article is a corrupt Agreement for the Resignation of an Office accepted by the Lord Chancellor. Now, in the Letters Patents in general, a Resignation is taken notice of; but they ought to make it appear, That his Lordship's Permission or Acceptance of it is necessary. The Resignation is not made to the Lord Chancellor: Therefore we hope it shall not, by way of Conclusion and Implication, be an Evidence to prove this Resignation to be accepted or procured by him. The Resignation was in fact made without his Privity; and the Resignation itself is of Record, and must be proved by Record.

Mr. Sol. Gen. My Lords, I can hardly think myself at your Lordships Bar, by the Objections which are made by the Counsel for the noble Lord. They object before they hear us: They object we cannot prove the Resignation to the Earl: When we have produced our Proof, then they will see whether it be sufficient: 'Tis time enough for them to make the Objection then. If we are to be objected to, upon every Witness we call, before we have asked them one Question, I am afraid a great deal more Trouble will be given your Lordships than we are willing to give. We are first to ask our Questions: If we ask an improper Question, they may object to the Question: Or, if the Answer don't prove our Charge, they may observe on it when it is given. I little expected this Method at your Lordships Bar.

Lords. Go on, go on.

Mr. Serj. *Pengelly.* We don't apprehend there is any Occasion to enter into this Objection. It is a Resignation to the Crown, but through the Hands of the Lord Chancellor: He is the Lord that puts the Seal to the Instrument: But if further Evidence be necessary, they must object to that when we have gone through the Proof. Therefore we beg leave to ask Mr. *Tho. Bennet.*

My *Lutwyche.* I thought they would have object ed to our asking Mr. *Bennet* any Questions at all.

Mr. *Onslow.* It is rather an Observation upon our Evidence, which will be more proper for them when they come to make the noble Lord's Defence.

Mr. Serj. *Pengelly.* We beg leave to ask Mr. *Bennet*, what Application he made for Liberty to resign this Office, and for Mr. *Hamersley* to be admitted?

Mr. *Tho. Bennet.* My Lords, as soon as I was admitted a Master of the Court of Chancery, which was the 3d of *June* 1723, I thought it inconsistent to hold this Office of Clerk of the Custodies, which I had before; and therefore I intended to surrender it to some Person that was proper: And after I had found Mr. *Hamersley*, and made an Agreement with him, I applied to Mr. *Cottingham*, then Secretary to my Lord Chancellor. I told him I was possessed of an Office in the Gift of the Crown, and was willing to surrender, and was going to apply to a Secretary of State, to get the King's Leave to Surrender, for the Benefit of Mr. *Hamersley*. I told him that the Office being in the Court of Chancery, the Secretary of State would naturally ask my Lord Chancellor, whether the Person I proposed was well-affected to the Government, and qualified for the Place: And therefore, for that Reason, I thought it my Duty to acquaint my Lord Chancellor with my Intenion, and who the Person was I intended to succeed me. I desired Mr. *Cottingham* to acquaint my Lord Chancellor that Mr. *Hamersley* was the Person. Mr. *Cottingham* replied, he would acquaint my Lord Chancellor, and I should have an Answer as soon as possible. He appointed me to meet him the next Day, when he told me he had acquainted my Lord Chancellor who the Person was, and that my Lord Chancellor said he had not any Knowledge of him. I told Mr. *Cottingham* he might have acquainted his Lordship that he knew him, for he lived the next Door to him: He is a Gentleman at the Bar well known; and I do assure you he is in the Interest of the Government. Says Mr. *Cottingham*, my Lord Chancellor don't know him, nor do I. I was surprized at that. But however, said he, Mr. *Bennet*, there is a Present expected by my Lord Chancellor, and if I made that Present, the thing might be made easy, and my Lord Chancellor would do what I desired; that is, to acquaint the Secretary of State, that Mr. *Hamersley* was a Person well-affected to the Government; and that I desired he might succeed me in my Place. Mr. *Cottingham* said, There must be a Present. On this, I told Mr. *Cottingham*, that it was not usual to give any Present upon this Occasion; that, in my own Case, when I came in, I gave none to my Lord *Cowper*; and my Brother told me that he gave none; and that at his coming in, he asked Lord *Cowper* if any thing was due to him, and my Lord *Cowper* denied that any thing was due, and absolutely refused any thing: Besides, said I, it is very hard for my Lord Chancellor to ask or accept any thing from me, because I so lately paid him so great Sum as fifteen hundred Guineas for my Master's Place; but if he will have it, I will give him one hundred Guineas. He said he would acquaint my Lord Chancellor with it; and the next day, or the day after, he told me that my Lord Chancellor would accept of that; but it was a very small Present, and it was a Favour my Lord accepted it; and my Lord would send over to *Hanover* for the King's Warrant, and I need have no further Trouble besides passing the Patent.

Mr. Serj. *Pengelly.* My Lords, I desire he may be asked, Whether he paid the one hundred Guineas to Mr. *Cottingham*, and in what manner?

Mr. *Tho. Bennet.* I did pay it; I think it was in a Bank Bill of 105*l.*

Mr. Serj. *Pengelly.* Do you remember at what time?

Mr. *Tho. Bennet.* It was long before the Resignation: For, some considerable Time after, Mr. *Cottingham* asked me, what I meant that I did not pass the Patent, for the Warrant was come over. I said I had employ'd Mr. *Tench* to do it; but however I would speak to him again; which accordingly I did, and Mr. *Tench* passed the Patent, and I paid him 64*l.* 17*s.* the Fees for passing the Patent.

Mr. Serj. *Pengelly.* Was that over and above the one hundred Guineas?

Mr. *Tho. Bennet.* Yes, my Lords.

Mr. Serj. *Pengelly.* Was there any Deduction upon the Payment of the one hundred Guineas?——Mr. *Tho. Bennet.* None at all.

Mr. *Lutwyche.* My Lords, I desire he may be asked, how long this was after he was admitted a Master in Chancery?

Mr. *Tho. Bennet.* I believe it was about six Weeks. I was admitted a Master in Chancery the Beginning of *June*, and the latter End of *July* following, I surrender'd my Office of the Clerk of the Custodies.

Mr. Serj. *Pengelly.* We have done with Mr. *Bennet.*

Mr. Serj. *Probyn.* If the Gentlemen have done with him, we beg that he may be asked a few Questions on behalf of my Lord *Macclesfield:* What was it you desired Mr. *Cottingham* to say in your Favour to my Lord *Macclesfield?*

Mr. *Tho. Bennet.* I desired Mr. *Cottingham* to acquaint my Lord Chancellor, that I intended to apply myself to the Secretary of State for Leave to surrender the Place of Clerk of the Custodies, and to beg the Favour, that if the Secretary of State should enquire of him after the Abilities and Circumstances of Mr. *Hamersley*, he might assure the Secretary of State that he was a man qualified for the Place, and well-affected to the Government.

Mr. Serj. *Probyn.* Was that all?---Mr. *Tho. Bennet.* I think that was all.

Mr. Serj. *Probyn.* Was that all that Mr. *Cottingham* told you he had asked?

Mr. *Tho. Bennet.* I don't remember any thing more, but only Mr. *Cottingham* returned for Answer, My Lord did not know Mr. *Hamersley*, and I must make a Present; and then what I desired would be complied with.

Mr. Serj. *Probyn.* I think you say you had some Treaty with Mr. *Hamersley* about the Surrender of your Office?—Mr. *Tho. Bennet.* Yes.

Mr. Serj. *Probyn.* Had you come to any Agreement with him for the Office, if you could procure a Surrender and Admittance?--Mr. *Tho. Bennet.* Yes.

Mr. Serj. *Probyn.* Then I desire to know what Sum of money he was to pay you for that Office, if you could procure him to be recommended?

Mr. Serj. *Pengelly.* We hope the Counsel will not ask such a Question.

Mr. Sol. Gen. It is not so proper for us to object: The Objection is to come from him: We may tell him that he is not bound to answer such a Question, unless he pleases.

Mr. *Tho. Bennet.* I desire to be excused answering a Question that is not material on one side or the other.

Mr. Serj. *Probyn.* I hope it will be thought reasonable, that he should inform your Lordships, what was the Consideration that induced him to surrender his Office, or what money he was to have?

Mr. *Tho. Bennet.* I might have surendered that Office without receiving any Money for it; whether I gave it away, or whether I sold it, is not material.

Mr. *Strange.* I desire to know whether he gave it away?

Mr. *West.* The Question is only to induce him to accuse himself of a Fact which may be prejudicial to him, and it hath no Influence on the Question before your Lordships; which is not, whether this Gentleman had a Right to give away or sell his Office, but whether the Earl of *Macclesfield* corruptly took Money?

Mr. Sol. Gen. It is our Duty that he should not be surprized into a Question that may subject him to Punishment. It is not properly an Objection from us; but we ought to let him know, that an Answer to the Question may subject him to a Prosecution. If he thinks fit to answer, we have nothing to say to it.

Mr. *Plummer.* I have another Objection to the putting of this Question. I perceive the Counsel intend to draw out this Trial to an excessive Length; I hope your Lordships, for your own Sakes, will not permit this Question to be answered. E. of *Ab.*

E. of *Abingdon.* If this Point be inſiſted on on both Sides, it cannot be avoided but they muſt withdraw: But I hope the Counſel for the noble Lord will conſider very well of it, before they give your Lordſhips or the Managers that Trouble: For if your Lordſhips ſhould judge the Queſtion unreaſonable, it would throw a Diſgrace upon themſelves, and be at leaſt of no Service to the noble Lord that is impeached.

E. of *Macclesfield.* I humbly apprehend this Queſtion to be extremely material, as that Circumſtance of his having made this Preſent of One hundred Guineas out of Two thouſand, perhaps, which he received for ſurrendering the Place, muſt ſet this Matter in a different Light than it would appear in, if nothing elſe had been done but the bare paying of the One hundred Guineas; but ſince I perceive it to be your Lordſhips Senſe that he ſhould not be aſked the Queſtion, I therefore decline inſiſting on it.

Dr. *Sayer.* My Lords, I beg Leave to aſk Mr. *Bennet* this Queſtion: He was pleaſed to ſay that he gave a Hundred Guineas; now I deſire it may be aſked of him, whether he gave it to permit him to reſign, or to give a Recommendation of Mr. *Hamerſley*, or what elſe; that he would pleaſe to explain it, what it was given for?

Mr. *Tho. Bennet.* I have ſaid it twice; but I will repeat it again. I ſaid, That it was that my Lord Chancellor might recommend the Perſon to the Secretary of State; for I apprehended it was not in my Lord's Power or Gift: He might have done it without taking any Money.

Dr. *Sayer.* With regard to the 64 *l.* odd Money, what was that paid for? Whether to the Great Seal only, or for the whole Fees in paſſing the Patent through all the Offices?

Mr. *Tho. Bennet.* It was paid to Mr. *Tench*, the Clerk of the Patents, who paſſed this Patent through all the Offices; and the Great Seal was included in it, as I apprehend.

Dr. *Sayer.* I aſk who this Mr. *Tench* is, whether he is an Officer belonging to the Great Seal, under the Lord Chancellor?

Mr. *Tho. Bennet.* He is Clerk of the Patents; I do not know who he belongs to.

Mr. *Robins.* My Lords, I deſire he may be aſked, Whether Mr. *Cottingham* told him, that the Lord *Macclesfield* inſiſted upon any particular Sum?

Mr. *Tho. Bennet.* Mr. *Cottingham* told me, that my Lord inſiſted upon One hundred Guineas; and I argued the Unreaſonableneſs and Hardſhip of it.

Mr. Com. Serj. My Lords, I deſire Mr. *Bennet* may acquaint your Lordſhips, whether ever he made any Application to the noble Lord for Permiſſion to reſign?

Mr. *Tho. Bennet.* I never ſpoke to my Lord myſelf.

Mr. Serj. *Pengelly*, If the Gentlemen have done with him, we beg Leave to explain this Matter, and to aſk him upon what Account it was that Mr. *Cottingham*, from my Lord *Macclesfield*, ſaid a Preſent was expected?

Mr. *Tho. Bennet.* I cannot ſay what was Mr. *Cottingham*'s Reaſon; but he ſaid my Lord Chancellor did not know Mr. *Hamerſley*; and then he went on, and ſaid, a Preſent was expected. I apprehended Mr. *Cottingham* took it, that I could not do it without my Lord Chancellor's Conſent.

Mr. Serj. *Pen.* I deſire he may be aſked, whether the Hundred Guineas was paid for a Recommendation of Mr. *Hamerſley*, or that the Whole of procuring the Warrant for the Patent was to be done for it?

Mr. *Tho. Bennet.* Mr. *Cottingham* aſſured me, I need have no farther Trouble about it, if I would pay the Hundred Guineas: He would get the King's Warrant; and I ſhould have no farther Trouble, but paſſing the Patent.

Mr. Serj. *Pen.* My Lords, I deſire he may be aſked, whether he depended upon theſe Aſſurances, or whether he made Application to any Body elſe?

Mr. *Tho. Bennet.* I never made any other Application; and I told Mr. *Cottingham*, if any Accident happened of Death, *&c.* before the Warrant came over, I hoped my Lord Chancellor would return the Hundred Guineas; and he ſaid, ſurely ſo.

Mr. Serj. *Pen.* I beg Leave to obſerve, that the Patent proves that this corrupt Bargain was executed.

Mr. *Lutwyche.* I deſire he may be aſked, whether Mr. *Cottingham* delivered to him the Sign-manual, or whether Mr. *Cottingham* got the Patent paſſed?

Mr. *Tho. Bennet.* I never ſaw the Sign-manual. He delivered it, as I believe, to Mr. *Tench.*

Mr. *Lut.* Did Mr. *Cottingham* give you Notice when the Sign-manual came over?

Mr. *Tho. Bennet.* Yes; he did give me Notice it was come over, and was very angry I did not go about it,

Mr. Com. Serj. I deſire Mr. *Bennet* may give your Lordſhips an Account what Time it was?

Mr. *Tho. Bennet.* About the latter End of *July.*

Mr. Com. Serj. I deſire he may be aſked, whether he had not made Application to the *Secretary's-Office?*

Mr. *Tho. Bennet.* No, I had not made any Application at all.

Mr. Serj. *Probyn.* Did you never make any Application to any other Perſon, either before or after?

Mr. *Tho. Bennet.* I am poſitive I did not.

Mr. Serj. *Probyn.* Did you ever ſay, about that time, that you had made Application to any other Perſon?

Mr. *Tho. Bennet.* No, I don't remember that I did.

Mr. Serj. *Probyn.* No! Did you never make Application to any Body elſe?

Mr. *Tho. Bennet.* I never told any Body, to the beſt of my Knowledge and Belief. I am very confident I never did.

Mr. Serj. *Pen.* My Lords, if they have done with this Witneſs, we beg Leave to call Mr. *Cottingham*, who was an Agent, and paid over this Money to my Lord *Macclesfield.*

(Mr. *Peter Cottingham* ſworn.)

Mr. Serj. *Pen.* My Lords, we only call Mr. *Cottingham*, to acquaint your Lordſhips when he paid over theſe Hundred Guineas to my Lord *Macclesfield.*

Mr. *Cottingham.* In *July*, I think it was.

Mr. Serj. *Pen.* How long after you received it from Mr. *Tho. Bennet?*

Mr. *Cot.* I believe I paid it over that Day, or the Day after.

Mr. Serj. *Pengelly.* I deſire he may be aſked, how long before the Patent was paſſed?

Mr. *Cottingham.* I can't tell, becauſe I can't certainly ſay when the Patent paſſed.

Mr. *Lutwyche.* We deſire to aſk him, whether it was that Year when the King was beyond Sea?

Mr. *Cot.* I think, my Lords, it was; it was in *July* 1723.

Mr. Com. Serj. If the Gentlemen of the Houſe of Commons have done with him, I beg that he would give your Lordſhips an Account what Diſcourſe he had with Mr. *Bennet?*

Ld. Ch. Juſt. *King.* You hear the Queſtion.

Mr. *Cot.* Mr. *Tho. Bennet* told me he had agreed with Mr. *Hamerſley* for the Place of Clerk of the Cuſtodies; and that he did not think it convenient to keep two ſuch conſiderable Places, which depended upon his own Life only; that is, the Maſter's Place, which he had before purchaſed, and this. He told me he had diſpoſed of this Place to Mr. *Hamerſley*, in order to reimburſe himſelf Part of the Money he had paid to Mr. *Hiccocks*, for his Maſter's Place that he had purchaſed of him, and for that Reaſon he did not care to keep both.

Mr. Com. Serj. Did he tell you how much he had diſpoſed of it for?

Mr. *Cot.* No, he did not.

Mr. Com. Serj. My Lords, I deſire Mr. *Cottingham* may be aſked, what it was Mr. *Bennet* deſired him to requeſt of my Lord *Macclesfield?*

Mr. *Cot.* To the beſt of my Remembrance, he ſaid, he hoped that his Lordſhip would accept of a Hundred Guineas, becauſe he had received from him ſo lately a Preſent for his Maſter's Place, and he deſired his Lordſhip to forward his Petition to his Majeſty.

Dr. *Sayer.* Was this on the firſt Applications?

Mr. *Cot.* Yes; he never made but one Application to me.

Dr. *Sayer.* It is of Conſequence; and therefore I deſire it may be aſked, whether, at the firſt time he applied, he made this Offer of One Hundred Guineas?

Mr. *Cot.* He did, and I paid it over to my Lord *Macclesfield.*

Dr. *Sayer.* I deſire Mr. *Cottingham* may be aſked, whether he knew Mr. *Hamerſley* before this Time?

Mr. *Cot.* I knew him very well, he was my next Door Neighbour both in Town and Country.

Dr. *Sayer.* Did you tell Mr. *Bennet* you did not know him?

Mr. *Cottingham.* No, I never told him ſo, it was impoſſible I ſhould; he was my next Door Neighbour both in *Bell-Yard*, and at *Hampſtead.*

Dr. *Sayer.* What Character had Mr. *Hamerſley?*

Mr. *Cot.* A very good one.

E. of *Mac.* When you firſt ſpoke to me of this Matter, what did you tell me?

Mr. *Cot.* I told your Lordſhip Mr. *Hamerſley* was my next Door Neighbour both in Town and Country; and that he was a Gentleman of as unqueſtionable a Character as any at the Bar; and your Lordſhip was pleaſed to depend upon me for his Character.

Mr. *Strange.* He is pleaſed to ſay Mr. *Bennet* did not inform him what Agreement was made between him and Mr. *Hamerſley*; but did not he ſay on what Account he reſigned?

Mr. *Cot.* He told me he ſurrendered the Office, to reimburſe himſelf the Money he had paid to Mr. *Hiccocks* for his Office.

Mr. *Strange.* What Office was that?—Mr. *Cot.* The Maſter's Office.

Mr. *Strange.* Did he mention that?—Mr. *Cot.* Yes, he did mention it.

Mr. Serj. *Pen.* If they have done, we beg Leave to aſk Mr. *Cottingham*, ſince he informed my Lord of the Circumſtances of Mr. *Hamerſley*, whether he acquainted my Lord of Mr. *Hamerſley*, before or after the Time he paid the 100 Guineas?

Mr. *Cot.* I acquainted his Lordſhip before.

Mr. Serj. *Pen.* I beg Leave to aſk another Queſtion: If this Gentleman can inform your Lordſhips upon what Account it was he received the 100 Guineas from Mr. *Bennet?*

Mr. *Cot.* I received the 100 Guineas upon Account of his Surrender of his Office.

Mr. Serj. *Pen.* We beg Leave to aſk another Queſtion: Whether before he agreed with Mr. *Bennet*, he had informed my Lord *Macclesfield* of any Propoſal, or what was to be expected?

Mr. *Cot.* No, I don't remember I did. All that paſſed on that Occaſion was, Mr. *Bennet* ſaid he was willing to give 100 Guineas, and he hoped his Lordſhip would not inſiſt upon more.

Mr. Serj. *Pen.* I beg he may be aſked another Queſtion: Whether, when he came back from my Lord *Macclesfield* to Mr. *Bennet*, with the Account of the Acceptance of the One hundred Guineas, he did not tell Mr. *Bennet*, he ought to take it as a Favour that his Lordſhip accepted ſo little?———Mr. *Cot.* I can't remember, but I think I did not.

Mr. Serj. *Pen.* Can you ſay you did, or you did not?

Mr. *Cot.* To the beſt of my Remembrance I did not.

Mr. Serj. *Pen.* We deſire he may inform your Lordſhips what Anſwer he brought to Mr. *Bennet* from my Lord *Macclesfield?*

Mr. *Cot.* The Anſwer my Lord *Macclesfield* ordered me to give Mr. *Bennet*, was, that he agreed to accept of the 100 Guineas according to his Propoſal.

Mr. Serj. *Pen.* Whether was this Offer of the 100 Guineas the firſt Time, or after Mr. *Cottingham* had ſpoken to my Lord *Macclesfield* about it?

Mr. *Cot.* Mr. *Bennet* propoſed to me to give the 100 Guineas before I ſpoke to my Lord about it.

Mr. Serj. *Pen.* Whether it was the firſt Time he offered the 100 Guineas, or ſome Time after?

Mr. *Cot.* He offered the 100 Guineas the firſt Time.

Mr. Serj. *Pen.* Whether Mr. *Cottingham* did not ſay the firſt Time, that ſomething was expected?

Mr. *Cot.* I believe he did ſay the Great Seal would expect ſomething.

Mr. *Lutwyche.* Mr. *Cottingham* ſays, he believes he did ſay ſomething was expected. Then I deſire to refreſh his Memory, and that he would acquaint your Lordſhips whether that was mentioned before the 100 Guineas were offered?

Mr. *Cot.* No, not as I remember.

Mr. *Lut.* What did you ſay on that Occaſion?

Mr. *Cottingham*. I said on that Occasion, as he offered 100 Guineas, I told him my Lord was willing to accept of it.

Mr. *Lutwyche*. I am speaking of the first Discourse he had with him, I think he does recollect that he said, my Lord expected something on the Account of this Office.

Mr. *Cottingham*. The first Discourse when that was mentioned, I told him my Lord expected something to be paid by way of Compliment.

Mr. *Lut*. Was that the first Discourse?

Mr. *Cot*. The first that I remember.

Mr. *Lut*. I beg another Question. If Mr. *Cottingham* told Mr. *Bennet* that My Lord expected something by way of Compliment, how came Mr. *Cottingham* to know that?

Mr. *Cot*. Mr. *Bennet* asked me if I believed his Lordship would not expect a Compliment? I told him I believed his Lordship would; and then he said he would give 100 Guineas.

Mr. *Lut*. Had you any Discourse with my Lord *Macclesfield* before?

Mr. *Cot*. No, none at all. I told him it was usual to make a Present; and then he told me he was willing to give 100 Guineas.

Mr. *Plummer*. I know Mr. *Cottingham* is a very honest Gentleman. I desire to ask him, If Mr. *Bennet* did not then tell him, that when his Brother was admitted, my Lord *Cowper* would take nothing?

Mr. *Cot*. He did not, upon the Oath I have taken; this is the first Word I heard of it: I did not know whether his Brother paid any thing, or nothing.

Mr. Serj. *Peng*. There is some little Variation, tho' not material, between Mr. *Bennet* and Mr. *Cottingham*; we beg that Mr. *Bennet* may come to the Bar again.

E. of *Macclesfield*. My Lords, I don't oppose Mr. *Bennet*'s coming to the Bar again; but I think it is very extraordinary for Persons to produce Witnesses to confront their own Witnesses.

Mr. *Lut*. We do it to confirm the Testimony of our Witness.

Mr. Serj. *Peng*. In an affair of this Nature it is impossible to produce direct Evidence, without producing the Agent employed. Mr. *Cottingham* was the Agent made use of by the Chancellor, and we beg leave to ask of Mr. *Bennet*, what Answer Mr. *Cottingham* brought, or said he brought, from my Lord Chancellor relating to this Affair.

Mr. *Tho. Bennet*. When Mr. *Cottingham* went from me to my Lord Chancellor, there was not a Word of Money mentioned the first Time. I would not so much as put it into his Head; and he returned to me the next Day, and told me my Lord Chancellor insisted upon a Present. Then I said it was very hard, and I would give my Lord 100 Guineas if it must be so.

Mr. Serj. *Peng*. Was it not at the second meeting that he insisted on a Present to my Lord?

Mr. *Tho. Bennet*. At the second meeting. At the first Time he did not, because there was no mention made of Money.

Mr. *Cot*. All that Mr. *Bennet* said to me on that Occasion was, that in regard a Compliment of 1500 Guineas had been so lately given to his Lordship, he hoped his Lordship would take no more of him than 100 Guineas.

E. of *Macclesfield*. These Gentlemen are pleased to differ in their Evidence. I would ask Mr. *Bennet* a second time, whether Mr. *Cottingham* told him that he did not know Mr. *Hamersley*?

Mr. *Tho. Bennet*. I am sure Mr. *Cottingham* told me that my Lord Chancellor did not know him, and I think he told me that he did not know him. That made me say, Why, Sir, that is strange you should not know him, when he lives the next Door to you!

E. of *Mac*. Before he said, Mr. *Cottingham* said he did not know Mr. *Hamersley*. I think he told your Lordships so, that he did not know him.

Mr. *Tho. Bennet*. It is impossible to swear to a Conversation at so great Distance.

E. of *Mac*. You are not positive?---Mr. *Tho. Ben*. I am not positive.

E. of *Mac*. Then, if he is not positive whether Mr. *Cottingham* told him so; I desire he may be asked whether he is positive that he answered Mr. *Cottingham*, Why, Sir, that is very strange that you should not know him, when he lives the next Door to you?

Mr. *Tho. Bennet*. I am as positive of the one as of the other. This Conversation passed between us, as near as I can remember.

Mr. *Cot*. It is very strange I should say so of my very next Door Neighbour, and a Gentleman at the Bar.

Mr. *Tho. Bennet*. Therefore I wondered at it.

Mr. *Lut*. There is but one Thing more relating to this Article. It is very well known that his Lordship was one of the Lords Justices.

Mr. *Cot*. It is very strange, sure, Mr. *Bennet*, that I should not know him. He is a Gentleman at the Bar; I see him every Day at *Westminster Hall*.

Mr. *Tho. Bennet*. That was the Wonder I made of it. I might mistake you; I am sure you said my Lord did not know him, and I believe you said you did not know him. Mr. *Cottingham* is very deaf, and he might mistake me.

Mr. Serj. *Peng*. My Lords, we apprehend, the noble Lord does not put us on the Proof of his acting as one of the Lords Justices.

E. of *Mac*. If Mr. *Delafaye* is there, I desire he may be called to give an Account of my acting.

Mr. Serj. *Peng*. What I call Mr. *Delafaye* for, is to give an Account of my Lord's acting as one of the Lords Justices. If they don't admit it we must call him.

Dr. *Sayer*. My Lords, we desire he may be called.

(*Mr.* Delafaye *called.*)

Mr. Serj. *Peng*. We desire Mr. *Delafaye* may be sworn.

(*Mr.* Delafaye *sworn.*)

Mr. Serj. *Peng*. Since that is insisted upon for Form-sake, which is notorious to the whole Kingdom, we only beg leave to ask Mr. *Delafaye*, whether my Lord Chancellor acted as one of the Lords Justices at the Time of this Patent? [Shewing him Mr. *Hamersley*'s Patent.] Look upon the Date of that Patent?---Mr. *Delfaye*. Yes, my Lords.

Mr. Serj. *Peng*. My Lords, we only ask this Witness whether my Lord Chancellor, who had then the Custody of the Great Seal, acted as one of the Lords Justices?---Mr. *Delafaye*. Yes, my Lords, he did.

Mr. Serj. *Probyn*. I beg leave to ask him, whether he knew any thing of Mr. *Bennet*'s Petition being transmitted to his Majesty abroad, and by whose Direction?

Mr. *Delafaye*. Mr. *Bennet*'s Petition was transmitted to his Majesty abroad, by the Direction of the Lords Justices.

Mr. Serj. *Probyn*. I desire this Witness would inform your Lordships, whether, in Mr. *Bennet*'s Petition, it was desired that a grant of his Office should be made to any, and what particular Person?

Mr. *Lut*. I think we may reasonably object to that Question. We are not for troubling your Lordships with unreasonable Objections; but when a Gentleman experienced in the Law shall ask Questions concerning written Evidence, we must oppose that, and submit it to your Lordships.

Then the Managers for the Commons acquainting the House, that they had gone through with their Evidence to the Ninth Article, did intend next to proceed to the Fifth, Sixth, Seventh, and Eighth Articles; and alledging it was requisite their Evidence should be given entire, submitted it to their Lordships whether they should now proceed; whereupon, they and all Parties were directed to withdraw, and the Lords resolved to proceed further in the Trial To-morrow at Ten of the Clock in the Forenoon, and adjourned to Nine a-Clock To-morrow Morning.

Friday, May 7. The Second Day.

The Lords being seated in their House, and the Managers being come, and the said Earl sitting on a Stool as before, and his Counsel at the Bar: Proclamation was made by the Serjeant at Arms as follows.

Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made as on the first Day, That all Persons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now stands upon his Trial, and they may come forth, in order to make good the Charge.

L. C. J. *King*. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr. Serj. *Peng*. The Managers will now proceed to the Fifth, Sixth, Seventh, and Eighth Articles, being all of the same Nature and Kind, relating to the corrupt taking of Money on the Disposal of the Offices of the Masters in Chancery. The Question between the Commons and the Lord impeached upon these several Articles is, the manner of taking this money. The Commons charge the taking of the money to be by Extortion, and Corruption, and to be drawn out of the Masters against their Consent; the Lord in his Answer insists, that it was freely and voluntarily given, as Presents, upon their respective Admittances. The Managers apprehend that they shall give your Lordships full Satisfaction, that the Charge of the Commons is true, and that the manner of taking these Sums charged on the Lord, will be supported by the Evidence that will be produced. The first Witness that we shall call is Mr. *William Kynaston* to to the Fifth Article.

(*Mr.* William Kynaston *sworn.*)

Mr. Serj. *Peng*. We desire that Mr. *Kynaston* may be asked, when he was admitted to be one of the Masters of the Court of Chancery?

Mr. *Kynaston*. On the 9th of *August*, 1721.

Mr. Serj. *Peng*. We desire that he may be asked, concerning the manner of his Admittance, what Transactions there were before-hand about it, with whom, and what he gave the Lord Chancellor for his Admission?

Mr. *Kynaston*. After I had agreed with Mr. *Rogers* for the Purchase of his Office, I desired one Mr. *Baily* to go to Mr. *Cottingham*, my Lord's Secretary, to know what my Lord Chancellor would expect for my Admission into the Office, and treat with him about it. Mr. *Baily* told me it was best for me to talk with Mr. *Cottingham* myself. So I went to him, and told him my Case. He mentioned to me that other Masters, particularly Mr. *Conway* and Mr. *Berret*, had given Fifteen hundred Guineas a-piece. I proposed to him One Thousand Pounds, or One Thousand Guineas; he said he could not mention it to my Lord Chancellor under Fifteen hundred. I agreed to give it; but I thought he meant Pounds, and made Preparations for it accordingly; but Mr. *Baily* afterwards telling me that he had seen Mr. *Cottingham*, and that he insisted upon Guineas, I sent them to him on the 8th by Mr. *Baily*, and the 9th I was admitted and sworn.

Mr. Serj. *Peng*. What Arguments were made use of by Mr. *Cottingham*, to raise the Price from One thousand to Fifteen hundred Guineas?

Mr. *Kynaston*. I don't particularly remember; but either Mr. *Rogers* or Mr. *Cottingham* said it was the oldest and the best Office.

Mr. Serj. *Peng*. Whether any thing was said that the Office was full of Cash?

Mr. Serj. *Probyn*. We apprehend that a Leading Question.

Mr. *Lut*. It is a proper Question. But however, if they do not like it in those Words, we will put it into another Form. Whether there was any Discourse about the Profits of the Office?

Mr. *Kynaston*. I don't remember it.

Mr. *Lut*. Was there any Discourse about your being recommended by any one?

Mr. *Kynaston*. I told him I had the Honour to be known to the late Lord *Bradford*, and desired to know whether his Recommendation might be necessary.

Mr. *West*. What Reason did they give you why it was the best Office?

Mr. *Kynaston*. Because it was the Senior Office, and had most Causes in it.

Sir *Wm. Strickland*. I desire to know what Answer Mr. *Cottingham* gave him, when he said he believed he might obtain that noble Lord's Recommendation?

Mr. *Kynaston*. I don't remember any he made.

Mr. *Plum*. Whether any Objection was made by him to the Price; upon his coming into the Office, by reason of any Deficiency in *Dormer*'s Office?

Mr. Serj. *Probyn*. That Question is liable to the same Objection that was made to the former; it is too leading.

Mr. Sol. Gen. It is a fair Question, whether any Objection was made by him, on Account of the Deficiency of *Dormer*'s Office?

Mr. *Kynaston*. I mentioned this to Mr. *Rogers*; he made little of it; I mentioned it afterwards to Mr. *Cottingham*; he too seemed to make light of it, and said it would be made up: So that I apprehended it would be of no great Consequence.

Mr. Serj. *Peng*. What Reason did he give, why he thought his Admission to the Office was not worth Fifteen hundred Pounds?

Mr. *Kynaston*. I don't know that I mentioned any thing.

Mr. *Lut*. In what manner was the money paid?

Mr. Serj. *Probyn.* I desire he may be asked, Whether he had any Discourse with Mr. *Rogers*, the former Master, about the Value of this Office, before he spoke with Mr. *Cottingham?*

Mr. *Kynaston.* Yes.

Mr. Serj. *Probyn.* How much did he say it was worth?

Mr. *Kyn.* He said, he usually made 1700 *l.* a Year of the Office, and sometimes 2000 *l.* a Year

Mr. Serj. *Probyn.* I desire he may be asked, what Sum of Money he gave Mr. *Rogers* for his Place?

Mr. *Kyn.* 6000 *l.*

Dr. *Sayer.* I desire this Gentleman may be asked, at what Time he Paid Mr. *Cottingham* this fifteen hundred Guineas; whether it was before or after his Admission?

Mr. *Kyn.* Before; I believe it was the 8th or 9th of *August*, in the Morning.

Mr. Serj. *Probyn.* I desire this further Question, whether he paid it out of the Suitors Money, or out of Effects of his own?

Mr. *Kyn.* It could not be paid out of the Suitors Money, for I was not then admitted.

Mr. Com. Serj. Whether Mr. *Baily*, or any body else concerned in Negociating this Affair, gave any Account of your Substance and Ability?

Mr. *Kyn.* No; I believe not.

Mr. *Lutwyche.* If the Gentlemen have done, I beg leave to ask him one Question, and it is in relation to what he was examined to first: He said there was a Discourse, that the Office was worth 1700 or 2000 *l.* a Year. Now, my Lords, I would ask him, How it was Mr. *Kynaston* apprehended these great annual Profits did arise? Whether by the ordinary Profits of the Office, or the making Use of the Suitors Money?

Mr. *Kyn.* I understood it of both together.

Mr. *Lut.* There hath been one Question asked, as if there was no Colour to say this Money was paid out of the Suitors Money: But I would beg Leave to ask another Question to explain that: I think Mr. *Kynaston* says, That the Money paid for him by Mr. *Baily*, was not out of the Suitors Money, because he was not then admitted; but I would ask, How it was repaid or replaced?

Mr. *Kyn.* I did not imagine, when I came to Town, that the Place would have come to so much: There was 1100 *l.* and 400 *l.* I borrow'd of a Gentleman, one Mr. *Rogers*, at *Temple-Bar*; and I afterwards accompted with him for that Money, for I kept an Account of the Money of the Court with him.

Mr. Serj. *Peng.* What Sum of Money was reported to be in your Office, and to go along with the Office as Cash?

Mr. *Kyn.* I was told there was about 20,000 *l.*

Mr. Com. Serj. I desire to know who told him so?

Mr. *Kyn.* Mr. *Rogers.*

Lord *Lechmere.* When the 1100 *l.* and the 400 *l.* was accompted for to the Person that first lent it, if I did understand him right, he says he accompted for it, and it was allow'd out of the Suitors Money.

Mr. *Kyn.* Yes, my Lords, the Money lent me to pay Mr. *Cottingham*, I did accompt for that Money out of the Money belonging to the Suitors of the Court: I understood it was usual to do so, and that others had done it.

Lord *Lechmere.* My Lords, I would ask him another Question: I think Mr. *Kynaston* talks of 6000 *l.* being paid by him to his Predecessor: I would be glad to know in what manner that was paid, and out of what Money or Effects?

Mr. *Kyn.* My Lords, when I treated with Mr. *Rogers*, he mentioned to me what Money he had in his Hands belonging to the Office; and we entered into Articles in relation to my paying him 6000 *l.* for his Place: And when I came up to Town, in order to take the Office, before I went to my Lord Chancellor's, I gave him a Bond for 6000 *l.* This was the 9th, and on the 12th he deliver'd me up the Bond, and paid me 9 *l.* in Money; and I gave him a Receipt for six thousand and nine Pounds.

E. of *Strafford.* I desire he would explain himself on that Part; where he says he gave him up his Bond; whether he reckoned the 6000 *l.* so much short of the Suitors Money?----Mr. *Kyn.* Yes, my Lords, I did.

E. of *Mac.* My Lords, I desire he may be asked this Question: He speaks of a Gentleman that paid him 1100 *l.* part of the 1500 Guineas; I desire he may be asked, Whether that Gentleman had any, and what Money of his in his Hands?

Mr. *Kynaston.* My Lords, I had Money in that Gentleman's Hands: When I lived in the Country, he used to receive Money for me in Town, on Government Securities, and other Occasions, and pay as I directed: There was an Accompt Current between us, and I did not then precisely know what Balance was then in his Hands; but I have cast it up since, and find that there was about 300 or 400 *l.* due to me at that time.

E. of *Mac.* If I apprehend him right, he says he had an Accompt Current with that Gentleman at that Time, and kept Cash with him.

Mr. *Kyn.* He used to receive and pay Money for me when I was in the Country.

E. of *Mac.* I beg Leave to ask one Question more, If Mr. *Kynaston* did not afterwards keep, with that Gentleman, the Cash of the Suitors, as well as his own Cash, promiscuously?-----Mr. *Kyn.* Yes.

Sir *Wm. Strickland.* When were the fifteen hundred Guineas paid?

Mr. *Kyn.* On the 8th the fifteen hundred Guineas were paid, and the 9th I was admitted.

Mr. Serj. *Peng.* We don't now proceed to examine relating to the manner of Payment for the Offices out of the Suitors Money, because there will be a distinct Examination as to that, upon another Article; the present Question being only about the Sum paid for the Admission, and not out of what Money, which we don't enter into at present.

Mr. *Lutwyche.* My Lords, we think it necessary to mention this, because otherwise it will take up a great deal of your Lordships time unnecessarily, and it will be proper to keep the Evidence entire; and therefore we hope the Counsel on the other Side shall be confined to ask such Questions only as are proper to the Article they are upon. My Lords, we desire Mr. *Charles Baily* may be called.

(*Mr.* Charles Baily *sworn.*)

Mr. Serj. *Peng.* My Lords, I desire he may be asked, Whether he paid any Money, and what Sum, to Mr. *Cottingham*, and when?

Mr. *Baily.* My Lords, a Day or two before Mr. *Kynaston* was admitted, I paid fifteen hundred Guineas, which was given for his Admission. I delivered it in a Bag to Mr. *Cottingham.*

Mr. Serj. *Peng.* For what Use was it paid?

Mr. *Baily.* I apprehend it was for the Use of my Lord Chancellor.

Mr. *Lutwyche.* Upon what Account?

Mr. *Baily.* For his Admission to the Office, on Mr. *Rogers*'s Surrender.

Mr. Serj. *Peng.* I think he says it was paid a day or two before he was admitted.

Sir *Wm. Strickland.* Before the Payment of this Money, what Discourse was there between you and Mr. *Cottingham?*

Mr. *Baily.* I was requested, by Mr. *Kynaston* to attend Mr. *Cottingham*, to know what was expected; and Mr. *Cottingham* told me fifteen hundred Guineas was expected to be paid, as a Sum for Mr. *Kynaston*'s Admission.

Mr. Serj. *Peng.* If the Counsel for the Noble Lord don't ask this Witness any thing, we beg Leave to call another Witness.

Mr. Com. Serj. There are several Matters we apprehend proper to be asked now, and yet may fall under the other Article. Whether it is your Lordship's Pleasure that we shall now ask Mr. *Baily* as to the Circumstances and Character of Mr. *Kynaston?*

Mr. *Lutw.* My Lords, there is an express Article to that Point; wherefore when we come to that, then is the time.

Mr. Serj. *Probyn.* One Question may be proper to be asked before this Gentleman goes, and that is, Whether, when Mr. *Cottingham* told him what was expected on his admission, he told Mr. *Kynaston* of it?

Mr. *Baily.* Yes, Sir; I told Mr. *Kynaston* that fifteen hundred Guineas was expected.

Mr. Serj. *Probyn.* Then I desire he may be asked, Whether Mr. *Kynaston* did not immediately consent to give it, or what did Mr. *Kynaston* say?

Mr. *Baily.* Mr. *Kynaston* said he must submit to it, and do as Mr. *Cottingham* had mention'd, or to that purpose.

Mr. Serj. *Peng.* Whether Mr. *Kynaston* informed him of offering him any less Sum, and what?

Mr. *Baily.* Mr. *Kynaston* mentioned to me that he thought it had been but 1500 *l.*

E. of *Mac.* How came Mr. *Baily* to know it was Guineas?

Mr. *Baily.* Because Mr. *Cottingham* told me so.

(*Mr.* Cottingham *called, but did not immediately appear.*)

Mr. Serj. *Peng.* My Lords, we are unwilling to give your Lordships Trouble, only beg leave to take Notice, that Mr. *Cottingham* was Secretary to the Lord impeach'd, during the whole course of his Administration; he is not immediately under the Power of the Managers, but he is under the Obligation of a Summons, and had Notice to attend.

(*Mr.* Cottingham *appears.*)

Mr. Serj. *Peng.* My Lords, we desire he may be sworn.

(*Mr.* Cottingham *sworn.*)

Mr. Serj. *Peng.* My Lords, we beg Leave to ask Mr. *Cottingham* this Question: The Money that he received from Mr. *Charles Baily*, whether he paid it over to the late Lord Chancellor, and when?

Mr. *Cot.* The Money which I received from Mr. *Charles Baily*, the fifteen hundred Guineas, I paid it to my Lord in a day or two I believe; I believe the next Day: it was very soon after I received it from Mr. *Baily.*

Mr. Serj. *Peng.* Whether he acquained the Earl of *Macclesfield* that he had received it upon Mr. *Kynaston*'s Admission?

Mr. *Cot.* Yes, my Lords, I told the Earl of *Macclesfield* that Mr. *Baily* had paid me the Money, by the Direction of Mr. *Kynaston.*

Mr. Serj. *Peng.* How long was that before Mr. *Kynaston* was admitted?

Mr. *Cot.* I can't say justly the Time, it might be two or three Days. There was a Day appointed for the Admission of Mr. *Kynaston*, but something happened that he could not be admitted that Day.

Sir *Wm. Strickland.* My Lords, I desire to ask this Witness one Question: At that Time, whether Mr. *Cottingham* can recollect himself, if Mr. *Kynaston* did not make an Objection of the great Deficiency that had happened in *Dormer*'s Office?

Mr. *Cot.* Upon the Oath that I have taken, he did not.

Sir *Wm. Strickland.* I desire another Question, Whether he did not tell Mr. *Kynaston* that this was one of the best Offices?

Dr. *Sayer.* My Lords, I ask your Pardons; I hope they shall be confined to the general Question, What was said, and not to Particulars.

Sir *Wm. Strickland.* What was said in relation to the goodness of the Office.

Mr. *Cot.* I did say before the Honourable Committee, that when he agreed to give the fifteen hundred Guineas, I told him that he had purchased a very good Office; and I did say, that there was a great deal of Business in it; but I never knew what Money was in the Office; nor do I know it to this Day. I own I did say before the Honourable Committee, that I told him he had purchased a good Office.

Mr. Serj. *Peng.* Whether was this before or after the Agreement made with Mr. *Kynaston?*

Mr. *Cot.* I think at the same Time; just after we had settled the Compliment to be paid to my Lord *Macclesfield*, I told him he had purchased an Office with very good Business in it.

Mr. Serj. *Probyn.* I desire one Question more; Whether he remembers that there was any mention made of 1000 *l.* or one thousand Guineas by Mr. *Kynaston?*

Mr. *Cot.* No, I remember nothing of it. He asked me what my Lord expected; I told him what my Lord had from the preceding Masters, he expected the same from him: I never heard a Word of 1000 *l.* or one thousand Guineas, nor knew nothing at all of it. I have given you the best Account I can as to the Fact that happened relating to the Agreement: Mr. *Baily* may remember more of it; the Fact is above four Years ago.

Mr. Serj. *Peng.* My Lords, we now beg Leave to proceed to the 6th Article, relating to Mr. *Thomas Bennet*, who was admitted the first of *June* 1723.

(*Mr.* Thomas Bennet *sworn before.*)

Mr. Serj. *Peng.* My Lords, we desire that Mr. *Bennet* may give an Account to your Lordships when he was admitted, and upon what Bargain? Give an account of the whole Treaty.

Mr. *Tho. Bennet.* I was admitted the 1st of *June* 1723; and before my Admission,

Admiſſion, and as ſoon as I had agreed with Mr. *Hiccocks* my Predeceſſor, I applied to Mr. *Cottingham*, and deſired him, that he would acquaint my Lord Chancellor I had agreed with Mr. *Hiccocks* to ſucceed him in his Office, and deſired him to let me know my Lord Chancellor's Thoughts, whether he approved of me to ſucceed Mr. *Hiccocks*. Soon after that, I believe the next Day, or a Day after, he met me, and told me he had acquainted my Lord with the Meſſage I ſent; he ſaid my Lord expreſſed himſelf with a great deal of Reſpect for my Father, Mr. Serjeant *Bennet*, and that he was glad of this Opportunity to do me a Favour and Kindneſs, and he had no Objection in the World to me: That was the Anſwer Mr. *Cottingham* returned; he then mentioned there was a Preſent expected, and he did not doubt but I knew that; I anſwered, I had heard there was, and I was willing to do what was uſual; I deſired to know what it was that was expected, and what would be expected; he ſaid he would name no Sum, and he had the leſs Reaſon to name a Sum to me, becauſe I had a Brother a Maſter, and I was well acquainted with Mr. *Godfrey* who had recommended me, and I might apply to them, and they would tell me what was proper for me to offer. I told him upon that Occaſion I would conſult my Brother and Mr. *Godfrey*; accordingly I did, and I returned to Mr. *Cottingham*, and told him I had talked with them about it, and their Opinion was a thouſand Pounds (but I believe I ſaid, I would not ſtand for Guineas) was ſufficient for me to offer. Upon this Mr. *Cottingham* ſhook his Head, and ſaid, That won't do, Mr. *Bennet*, you muſt be better adviſed: Why, ſaid I, won't that do, I think it is a noble Preſent: Says he, a great deal more has been given: Says I, I am ſure my Brother did not give ſo much, nor Mr. *Godfrey*; and thoſe Perſons, you adviſed me to conſult with, told me it was ſufficient, and I deſire you to acquaint my Lord with the Propoſal: Says he, I don't care to go with that Propoſal, you may find ſome body elſe to go: Says I, I don't know whom to apply to: Says he further, Sure, Mr. *Bennet*, you won't go to lower the Price, (theſe were his very Words, at leaſt I am ſure that was the meaning of them) I can aſſure you Mr. *Kynaſton* gave 1500 Guineas. I ſaid that was above three or four Years ago, and ſince that time there have been ſeveral Occaſions of lowering the Prices; the Fall of Stock hath lowered the Value of Money; and I think I mentioned *Dormer*'s Deficiency, and I did not know what the Conſequence of that might be; and therefore I thought, at this time of Day, when Stock and every thing was fallen, a thouſand Guineas was more now than 1500 when Mr. *Kynaſton* gave it. He ſtill inſiſted he did not care to go with that Meſſage. Says I, Only acquaint my Lord with it, and if my Lord inſiſts upon more, I will conſider of it: Says he, There is no haggling with my Lord, if you refuſe it, I don't know the Conſequence, he may reſent it ſo far, as not to admit you at all, and you may loſe the Office. Then I began to conſider, and was loth to loſe the Office, and told him I would give 1500*l.* he ſaid Mr. *Kynaſton* had given Guineas. Then I aſked whether it muſt be in Gold? He ſaid, in what you will, ſo it be Guineas. In a Day or two after he came and told me, that my Lord was pleaſed to accept of me, and he ſhould admit me as ſoon as Opportunity ſerved, and he would give me Notice. He accordingly gives me Notice about the latter end of *May*; he told me my Lord had fixed a Day for my Admiſſion, and my Father and I went to my Brother *Bennet*'s, and took him up by the Way, in order to pay our Reſpects to my Lord on that Occaſion. We had not been there long, but there was a Meſſage brought to my Houſe, to let me know that my Lord was very ill, and I could not be admitted; but I ſhould know in a little Time when I ſhould: Upon that I ſaw Mr. *Cottingham* afterwards, and I aſked him how my Lord did, and when I ſhould be admitted: Says he, I can't fix the Day; but be in a Readineſs, and I ſhall ſend for you. Accordingly, on the 1ſt of *June*, 1723, he ſent, and deſired me to come immediately, and to come alone, and bring nobody with me, for my Lord would ſwear me in that Morning. Accordingly I went, and the firſt Queſtion Mr. *Cottingham* aſk'd me was, If I had brought the money? I told him, to be ſure I ſhould not come without it. He aſked what it was in? I told him in Bank Bills, two Bank Bills, one of 1000*l.* and the other 575*l.* He took them up, and carried them to my Lord: He returned back, and told me my Lord was ready to admit me. I was carried up Stairs, and then ſworn in his Bed-chamber.

Mr. Serj. *Pengelly*. My Lords, I deſire, if he can remember, he may be aſked in what Name thoſe Notes were made payable, or in what manner they were made?

Mr. *Tho. Bennet*. I can't remember the Names the Notes were made payable to, they were ſent for from the Bank for this Purpoſe; but I believe they were feigned Names.

Mr. Serj. *Peng*. I deſire he may be aſked, why he thinks they were feigned Names, and for what Reaſon the Notes were taken in feigned Names?

Mr. *Tho. Bennet*. The Reaſon was, becauſe I did not think it proper to take them out in the noble Lord's Name, nor in my own Name.

Mr. Serj. *Peng*. My Lords, I deſire he may be aſked, of whom he received thoſe Bank Notes, whether they were his own, or whether he borrowed them?

Mr. *Tho. Bennet*. I borrowed a Draft upon the Bank of my Brother; he kept his Caſh at the Bank, and he gave me a Draft upon the Bank, and I ſent to the Bank, and ordered the Notes to be made out in feigned Names.

Mr. Serj. *Peng*. I deſire he may be aſked, whether by his Brother, he means his Brother, the Maſter?

Mr. *Tho. Bennet*. Yes, my Brother, the Maſter?

Mr. Serj. *Peng*. And where did he keep his Caſh?

Mr. *Tho. Bennet*. He kept his Caſh at the Bank.

Mr. Serj. *Peng*. I deſire Mr. *Bennet* may inform your Lordſhips, what Converſation he had with my Lord *Macclesfield* when he was admitted?

Mr. *Tho. Bennet*. I had no Converſation with him before I was ſworn. At that Time my Lord was in Bed, and as ſoon as I was ſworn in, my Lord called me to him, ſhook me by the Hand, and wiſh'd me Joy, and ſaid he had a Reſpect for my Father, Serjeant *Bennet*, his old Friend and Acquaintance, and the Family; and, ſaid he, You are ſworn in by a dying Chancellor. I told him, I hoped his Lordſhip would live a great many Years.

Mr. Serj. *Peng*. I deſire Mr. *Cottingham* may be called.

(*Mr.* Cottingham *called, and appeared.*)

Mr. Serj. *Peng*. My Lords, I deſire Mr. *Cottingham* may be aſked, to whom he paid the 1500 Guineas which he received from Mr. *Tho. Bennet*?

Mr. *Cot*. I paid it to the Earl of *Macclesfield*.

Mr. Serj. *Peng*. Whether he carried it immediately or not, or at what Time?

Mr. *Cot*. Mr. *Bennet* brought it to me, as I remember, in a Bank Note of 1500 Guineas, and I gave it to my Lord.

Mr. Serj. *Peng*. Whether this was done immediately after you received it?

Mr. *Cot*. Yes, my Lords, immediately.

Mr. Serj. *Peng*. That is all we aſk. My Lords, we only beg leave to obſerve one thing that ariſes from the Anſwer of the Lord impeached to theſe two Articles, which is, that afterwards, and before the Impeachment, he did deliver the Preſent ſo ſent to him by the ſaid *William Kynaſton*, being 1575*l.* and alſo the Preſent ſo ſent to him by the ſaid *Tho. Bennet*, being the like Sum of 1575*l.* into the Court of Chancery in open Court, *&c.*

Mr. Serj. *Probyn*. My Lords, we deſire that Mr. *Cottingham* may be aſked one Queſtion, What Converſation there was between him and Mr. *Bennet*, concerning the Payment of this 1500 Guineas?

Mr. *Cot*. Mr. *Bennet* told me, that he had agreed with Mr. *Hiccocks* for the Surrender of his Office. He told me he was a Perſon known to the Earl; but if he wanted a further Character, his Father, Sir *John Bennet*, and his Brother, would give him a further Character. I acquainted the Earl; his Lordſhip told me that he knew Mr. *Bennet*, that he had a good Character, and had married a good Fortune, and the Family was a wealthy Family, ſo that the Earl would oblige him, and admit him. A Day was appointed to admit Mr. *Bennet*; but the Earl falling ſick before the Time came that he was to be admitted; which was, I think, the laſt Day of *Eaſter* Term, 1723, it was then delayed; Mr. *Bennet* was prodigious preſſing to have it done, and ſaid that Mr. *Hiccocks* refuſed to go on with any Buſineſs in the Office: and he had been complimented upon it, the Family knew it, and he was loth to be diſappointed, and he teized me almoſt out of my Life; upon that, I promiſed to ſpeak to the Earl, and as ſoon as the Earl was able to do Buſineſs, it was done.

Mr. Serj. *Probyn*. If you pleaſe to recollect yourſelf, what was the particular Sum Mr. *Bennet* offered?

Mr. *Cot*. 1500 Guineas.

Mr. Serj. *Probyn*. Did he talk of any leſs Sum?

Mr. *Cot*. Not a Farthing leſs; he aſked me what was expected; I told him the Sum Mr. *Kynaſton* had paid, which was 1500 Guineas; and he never offered a Farthing leſs.

Mr. Serj. *Probyn*. We deſire, Mr. *Cottingham*, that you would recollect yourſelf, and tell us whether he offered 1000 or 1500 Guineas.

Mr. *Cot*. I have recollected, and what he offered to me was 1500 Guineas, and I never heard of a Farthing leſs; I never heard a Word of 1000 Guineas.

E. of *Mac*. If your Lordſhips pleaſe, I deſire Mr. *Cottingham* may be aſked, what Condition I was in, in reſpect to my Health, at that Time?

Mr. *Cot*. The Earl at that Time was very ill; Mr. *Bennet* having preſſed to be admitted the firſt Opportunity; I think your Lordſhip fell ill the laſt Day of *Eaſter* Term, 1723, and I meeting with Dr. *Mead*, the Doctor told me the Earl was in ſo dangerous a Condition, that if his Diſtemper had not a Turn, he thought he could not live 24 Hours. The Doctor and I went and ſupped together; he bid me to be at the Earl's next Morning; I met him there, and he told me the Earl's Diſtemper had a Turn, and he might get over it: I aſked the Doctor, telling him there was a Buſineſs that Mr. *Bennet* preſſed me to do, if it would be ſafe for the Earl to do it. He told me, if it did not admit much Thought and much Company it might be done. I told him it would not admit much Thought or Company; and he ſaid it might be done.

E. of *Mac*. What was the Occaſion that Mr. *Bennet* was deſired to come alone?

Mr. *Cot*. The Reaſon was upon the Account of your Lordſhip's Indiſpoſition; and for that Reaſon I ſent to Mr. *Hiccocks* for his Surrender, becauſe my Lord could not ſee much Company.

Mr. *Strange*. I deſire to aſk you, upon whoſe Importunity it was you aſked Dr. *Mead* this?

Mr. *Cot*. I aſked it myſelf; but it was, becauſe Mr. *Bennet* importuned me ſo: And I remember this Circumſtance, when I went to his Houſe, he had ſomething of the Jaundice, and looked ill. I aſked him, if he was fit to be admitted: I thought Mr. *Bennet* would not have been ſo eager, if he did not think the Earl had been dying, and that then he would have waited longer.

Mr. *Plummer*. My Lords, if the Gentlemen have done, I deſire to aſk one Queſtion; Whether, on Occaſion of theſe Maſters Places being vacant, he took Directions from my Lord Chancellor to ſet a Price, or did it of his own Head?

Mr. *Cot*. I had no Directions in this matter; but when any Vacancy or Alienation happened, and they aſked me what Compliment I thought would be acceptable, I told them the Compliment that had been before made. I ſpoke it as my own Opinion, and without any Directions from the Earl.

Mr. Serj. *Peng*. I deſire he may be aſked, whether ever he concluded any Bargain with any of theſe Maſters, without his Lord's Approbation?

Mr. *Cot*. No, I did not.

Mr. *Onſlow*. I would aſk Mr. *Cottingham* one Queſtion, which, I think, he hath not anſwered; I aſk whether he had not, in general, Directions from the Lord Chancellor, to inſiſt upon, or aſk any particular Prices for theſe Places?

E. of *Mac.* My Lords, I am ſorry the learned Gentlemen do not obſerve their own Rule, in confining their Examinations to ſuch Articles as they go upon, thoſe they have a Right to aſk to, and thoſe only; therefore with humble Submiſſion, it is more proper to each Article where they charge me to have inſiſted upon a Price, to aſk to that Price, than to aſk theſe general Queſtions, whether I did ever direct him to inſiſt upon any Price? It is not that I am afraid of the Queſtion that is put, but I am afraid of its being made a Precedent for giving your Lordſhips a great deal of unneceſſary Trouble.

Mr. *Onſlow.* This is proper to this Article, becauſe it charges the Earl with inſiſting upon Prices. Therefore I deſire to know, whether the Earl did ever give any Order to him to inſiſt upon any of theſe Prices? I hope the Gentleman ſhall anſwer the Queſtion.

Mr. *Lutwyche.* We apprehend we are upon a proper Queſtion; on the one Side we ſay theſe Sums were inſiſted upon, and that there was an Agreement made for them; on the other Side the noble Lord in his Anſwer ſays, they were Preſents, without any Regard to any Agreement, and voluntary, as if there had been no Bargain at all.

Mr. Serj. *Pengelly.* My Lords, we only propoſe a general Queſtion, which, we apprehend, ariſes from Mr. *Cottingham*'s Examination. When Money is expected, we apprehend it is the ſame as inſiſting upon it: Therefore we deſire Mr. *Cottingham* may inform your Lordſhips, whether he inſiſted upon any of theſe Prices without Direction from my Lord *Macclesfield?*

Mr. *Cottingham.* The Maſters propoſed thoſe Sums to me, to make ſuch a Compliment to my Lord, and I acquainted the Earl with it: I did nothing without the Earl's Approbation.

Mr. Serj. *Pengelly.* I deſire he may be aſked if he did not inſiſt on thoſe Prices?

Mr. Serj. *Probyn.* My Lords, I beg the Queſtion may be confined to ſome particular Article they are now upon; for as they are now upon two particular Articles, they cannot, according to the Rules they were pleaſed themſelves to lay down, aſk any Queſtion, but what relates to them: We therefore deſire they may confine themſelves to theſe two Articles. As to any Queſtion they propoſe to any of the Articles they have opened, let them be as general as they will; but we deſire they may confine themſelves to thoſe Articles: Otherwiſe one Queſtion may involve all Articles together.

Mr. Serj. *Pengelly.* Whether we ſhould now aſk to *Bennet* or *Kynaſton*, or to thoſe who came after, we are under your Lordſhips Direction: But we deſire he may be aſked, whether from the Direction he received from the Earl of *Macclesfield*, he did not inſiſt on thoſe Sums from *Kynaſton* and *Bennet?*

Mr. *Cot.* I have told you that they had both voluntarily agreed of their own Accord to give 1500 Guineas, and I told my Lord *Macclesfield* of it.

Mr. Serj. *Pengelly.* I deſire he may be aſked, whether he did not, by Direction of my Lord Chancellor, inſiſt upon thoſe Sums, and he would not receive under?

Mr. *Cot.* I did not. They aſked me what I thought the Earl expected, I told them 1500 Guineas, as I mentioned before; they agreed to give it, and my Lord ſaid he would take it.

Mr. Serj. *Pengelly.* At the Time when the Lord *Macclesfield* agreed to take thoſe Sums, whether he did not inſiſt upon the full of thoſe Sums to be paid?

Mr. *Cot.* Yes, he ſaid he would take them.

Mr. *Plummer.* My Lord *Macclesfield* does not diſown in his Anſwer the accepting of a Preſent in general; but avoids ſaying what Sum in particular he accepted. Therefore I am apt to think the Inſtructions the Secretary had, might be like the Anſwer: So that it is very proper to aſk whether he had not general Inſtructions, that when any Maſter's Place was vacant, or like to be vacant, he ſhould inſiſt upon ſuch a Price?

Mr. *Cot.* I had no ſuch Inſtructions: The Gentlemen came and talked to me, and propoſed to me the Sum they were willing to give, and I laid it before the Earl: I had no particular Inſtructions.

Mr. *Plummer.* With Submiſſion, Mr. *Cottingham* has not anſwered the Queſtion; therefore I beg leave to aſk him further, whether he hath not ſaid elſewhere, that he received particular Directions from my Lord *Macclesfield* to inſiſt upon ſuch a Sum?

Mr. *Cot.* I cannot ſay but I have, and if you name the Maſters, I can anſwer more particularly.

Sir *Wm. Strickland.* I would aſk him this Queſtion, whether he has not directly ſaid, that he tranſacted none of theſe Affairs without my Lord's Direction?

Mr. *Cot.* I own it I have ſaid ſo: I own it before your Lordſhips, that I ſaid that what I did he approved of.

E. of *Mac.* I deſire he may be aſked this Queſtion, to each diſtinctly, whether I ſo much as knew any Thing of the matter as to any Sum offered by Mr. *Kynaſton* or Mr. *Bennet*, till he told me the whole Sum?

Mr. *Cot.* No, never.

E. of *Mac.* Whether I had any Diſcourſe about Mr. *Kynaſton* or *Bennet*, being admitted, or the Money they ſhould give, till he told me they would give me 1500 Guineas?

Mr. *Cot.* No, not any Diſcourſe: I told the Earl what they offered, and he was pleaſed to accept it.

E. of *Mac.* I beg leave he may be aſked this other Queſtion, ſince theſe Gentlemen have gone now into that matter, whether he did not tell me, at the ſame Time that Mr. *Kynaſton* ſaid he would give me 1500 Guineas, that he likewiſe ſaid, if that was not ſufficient I might pleaſe myſelf?

Mr. Serj. *Pengelly.* I hope the Queſtion may be aſked in general, when they have taken Liberty to interrupt the Managers for aſking leading Queſtions; and hope his Lordſhip will aſk nothing that is leading.

E. of *Mac.* Then I deſire he may be aſked, when Mr. *Kynaſton* offered 1500 Guineas, whether he ſaid any Thing concerning any further Sum?

Mr. *Cot.* To the beſt of my Remembrance, I ſpeak it doubtfully, I am not certain Mr. *Kynaſton* told me, if the 1500 Guineas would not ſatisfy the Earl, he ſhould ſatisfy himſelf.

E. of *Mac.* I deſire to know certainly, whether he told me ſo?

Mr. *Cot.* I am ſure I did.

E. of *Mac.* What did I ſay thereon?

Mr. *Cot.* Your Lordſhip ſaid you would take 1500 Guineas, and you would take no more.

Mr. *Plummer.* I deſire to aſk this Queſtion, How Mr. *Kynaſton* came to offer more, or to think the Earl ſo inſatiable that the Earl expected more: I aſk Mr. *Cottingham* how he came to offer from Mr. *Kynaſton* more than was aſked?

Mr. *Cot.* I told you what my Lord *Macclesfield* put to me. I certainly told him ſo. But as to what Mr. *Kynaſton* told me, that I ſpeak doubtfully; it is a conſiderable Time ago; I cannot ſpeak it poſitively, I ſpeak doubtfully, to the beſt of my Remembrance it was ſo: I told your Lordſhips before.

Mr. Serj. *Pengelly.* My Lords, we ſhall not trouble your Lordſhips with calling any more Witneſſes on this Article, when it appears plainly, that he was intruſted to adjuſt the Prices, and whether they were given to him or my Lord is not material. As to this Article, and the Article relating to Mr. *Kynaſton*, we ſhall leave it with this Obſervation; He is pleaſed to ſay in his Anſwer, as to the few Preſents received from Mr. *Kynaſton* and Mr. *Bennet*, that he the ſaid Earl did afterwards, and before the Impeachment, deliver the ſame into the Court of Chancery, in open Court. All that we beg leave to put your Lordſhips in mind of, is, that from your own Journals it will appear, the Impeachment was brought up here the 13th of *February* 1724. When my Lord comes to ſhew at what Time he paid the money, we apprehend it will be ten Days after. The next Article relates to Mr. *Francis Elde.*

[Mr. *Elde* called.]

Mr. *Lutwyche.* My Lords, we deſire that Mr. *Elde* may be ſworn.

[Sworn accordingly.]

Mr. *Lutwyche.* My Lords, we deſire Mr. *Elde* may be aſked when it was he was admitted a Maſter in Chancery?—Mr. *Elde.* My Lords, I was admitted the firſt Day of *February* laſt was twelve-month.

Mr. *Lutwyche.* We deſire he may be aſked, whether he applied in Perſon to my Lord *Macclesfield* to be admitted into this Office, and whether it was upon Death or Reſignation?

Mr. *Elde.* Upon the Death of Mr. *William Fellowes* ſome of my Friends came to me, and put it into my Head that this Office might be a proper Office for me, and I took ſome Time to conſider of it. I had ſome Encouragement at the Bar, and was very unwilling to quit it, but after two Days Conſideration I went to my Lord himſelf; I told his Lordſhip an Office was fallen by the Death of Mr. *Fellowes*; if his Lordſhip thought me a proper Perſon; and I ſhould be glad to have it. I was come to wait upon him about it. His Lordſhip ſaid, he had no manner of Objection to me, he had known me a conſiderable Time, and he believed I ſhould make a good Officer.

Mr. *Lutwyche.* What further Diſcourſe was there?

Mr. *Elde.* My Lord at that Time deſired me further to conſider of it, and come to him again: And ſo I did. I went back from his Lordſhip, and I came again in a Day or two, I believe it was the ſecond after I came back from his Lordſhip, and told him I had conſidered of it, and deſired to know if his Lordſhip thought fit to admit me; and I would make him a Preſent of 4 or 5000 *l.* I cannot ſay which of the two I ſaid, but I believe it was 5000 *l.*

Mr. *Lutwyche.* What Anſwer did my Lord return, when you made him that Propoſal?

Mr. *Elde.* My Lord ſaid, Thee and I, or You and I, my Lord was pleaſed to treat me as a Friend, muſt not make Bargains.

Mr. *Lutwyche.* My Lords, we deſire he may be aſked, whether my Lord *Macclesfield* ſaid in what manner he would treat with him, whether in a more beneficial manner than any Body elſe?

Mr. *Elde.* My Lord *Macclesfield* did ſay, that if I was deſirous of having the Office, he would treat with me in a different manner than he would with any Man living; thoſe were the Words my Lord uſed, to the beſt of my Remembrance.

Mr. Serj. *Pengelly.* After this Anſwer of my Lord *Macclesfield*, That they muſt not make Bargains, what further Application did he make?

Mr. *Elde.* I made no further Application at all, but ſpoke to Mr. *Cottingham*, meeting him in *Weſtminſter-Hall*, and told him I had been at my Lord's, and my Lord was pleaſed to ſpeak very kindly to me, and I had propoſed to give him 5000 *l.* Mr. *Cottingham* anſwered, Guineas are handſomer.

Mr. *Lutwyche.* We deſire to know what he paid, and in what manner, and in what Specie?

Mr. *Elde.* My Lords, I paid my Lord,——I cannot ſay I paid it him, but I paid 5000 Guineas.

Mr. *Lutwyche.* In what Manner? Who did you pay it to?

Mr. Serj. *Pengelly.* After this Agreement with Mr. *Cottingham* to make it Guineas, as being handſomer; we deſire he may inform your Lordſhips what he did purſuant to this, and what he carried with him?

Mr. *Elde.* Upon this I immediately went to my Lord's: I was willing to get into the Office as ſoon as I could. I did carry with me 5000 Guineas in Gold and Bank Notes: I am not certain whether there was 3000 Guineas in Gold or two, but I think there was three, and the Reſidue of the money was in Bank Notes. This I brought to my Lord's Houſe.

Mr. Serj. *Pengelly.* My Lords, we deſire he may be aſked, what they were put into, or in what they were carried?

Mr. *Elde.* I had the money in my Chambers. I could not tell how to convey it: It was a great Burthen and Weight; but recollecting I had a Baſket in my Chamber, I put the Guineas into the Baſket, and the Notes with them; I went in a Chair and took with me the Baſket in my Chair. When I came to my Lord's Houſe I ſaw Mr. *Cottingham* there, and I gave him the Baſket, and deſired him to carry it up to my Lord.

Mr.

Mr. Serj. *Pengelly*: What Answer did he return?

Mr. *Elde*. I saw him go up Stairs with the Basket, and when he came down he intimated to me that he had delivered it.

Mr. *Lutwyche*. My Lords, we desire he may be asked, whether he acquainted Mr. *Cottingham* with what was in the Basket?

Mr. *Elde*. I did not.

Mr. Serj. *Peng*. After Mr. *Cottingham* came and acquainted you he had delivered the Basket, how long after that was it before you saw my Lord?

Mr. *Elde*. I did not see my Lord after that till I was sworn in.

Mr. Serj. *Peng*. How long was that after?

Mr. *Elde*. I cannot be positive; but it was within a Day, either the same Day, or if not, it was the next Day after.

Mr. Serj. *Peng*. I desire he may be asked, when Mr. *Cottingham* returned down Stairs, after the Delivery of the Basket, what he said to him about the Time of his being admitted?

Mr. *Elde*. I do not remember he said any thing to me about my being admitted: I took that for granted.

Mr. Serj. *Peng*. And when he was admitted, whether he was admitted in the Closet, or in what Room?

Mr. *Elde*. When I was to be admitted, my Lord invited me to Dinner, and some of my Friends with me; and he was pleased to treat me, and some Members of the House of Commons, in a very handsome manner: I was after Dinner sworn in before them.

Mr. Serj. *Peng*. I desire to ask, Whether he had the Basket again?

Mr. *Elde*. Some months after I spoke to my Lord's Gentleman, and desired him, if he saw such a Basket, that he would give it me back; and some time after he did so.

Mr. Serj. *Peng*. Was any Money returned in it?

Mr. *Elde*. No, my Lords, there was not.

Mr. *Lutwyche*. There is one Thing in the Earl's Answer, that he retained only Part of the Present so made him by Mr. *Elde*. I perceive the Gentlemen of the other Side do not ask any Questions about it; if they do not, we shall go on.

Sir *Wm. Strickland*. I desire to know what Mr. *Cottingham* did say, after he had carried up the Basket, and came down again?

Mr. *Elde*. To the best of my Remembrance, he said nothing to me, but as I repeated it before, he intimated to me that he had delivered it to my Lord *Macclesfield*. I cannot say as to any particular Discourse; but I understood that he had delivered it.

Mr. Serj. *Probyn*. My Lords, if they have done with Mr. *Elde*, I would beg Leave to ask him one Question, and that is in relation to what the impeached Earl said in his Answer, that he retained of the Present sent him by the said Mr. *Elde* no more than the Sum of 1850*l*. We desire therefore that he may be asked, how much was returned to him of the 5000 Guineas which he at first paid?

Mr. *Elde*. 3400.

Mr. *West*. When was that returned again to him?

Mr. *Elde*. In *November* last, to the best of my Remembrance.

Mr. *Onslow*. In what manner was that Money returned to him?

Mr. Ser. *Prob*. We have not yet done with him. I desire to know when you went out of Town; and when you returned; and how long after your Return was it repaid?

Mr. *Elde*. It was repaid to me, to the best of my Knowledge, within three, four, or five Days after my Return. As soon as I came from the Country, the Earl took notice of it, and said that he would repay me: For some Time in *May* before, or thereabouts, the noble Lord had taken notice, that he had received this Present from me, and he would make me exceedingly easy.

Mr. Serj. *Prob*. This was before you went out of Town?

Mr. *Elde*. Before I went out of Town.

Mr. Serj. *Prob*. When did you return to Town?

Mr. *Elde*. I returned the 19th, 20th, or 21st of *November*.

Mr. Serj. *Prob*. How soon after you came to Town did you see my Lord?

Mr. *Elde*. Very soon after I came to Town.

Mr. Serj. *Prob*. What Discourse had you with him about it?

Mr. *Elde*. My Lord told me he would return me my money again; he did not say all, but he would return me my money; and that he had done it before, had it been convenient.

Mr. Serj. *Prob*. How soon after this Discourse was it that the money was returned?——Mr. *Elde*. I believe two or three Days.

Mr. *Onslow*. If the Gentlemen have done, I desire he may be asked, In what manner this money was returned, and by whom?

Mr. *Elde*. After this Discourse, my Lord *Parker* sent for me, my Lord Chancellor was then at *Westminster-hall*, and told me my Lord Chancellor had desired him to pay to me 3400*l*. and he did pay it.

Mr. *Lutwyche*. My Lords, if I understand Mr. *Elde* right, he said there was something mentioned by my Lord of this Kindness before he went into the Country. I desire he may be asked, Upon what Occasion he was going into the Country at that time?

Mr. *Onslow*. I desire that he may first answer in what manner, by whom, and where, this money was repaid to him, whether in money, or notes, or how?

Mr. *Elde*. To the best of my Remembrance it was paid in this manner; there was 1400*l*. in Bank Notes, and 2000*l*. in *India* Bonds.

Mr. *Onslow*. Who was this paid by?

Mr. *Elde*. By my Lord *Parker*.

Mr. *Onslow*. Whether he gave any Receipt for the money, or any Part of it, and to what effect?

Mr. *Elde*. When my Lord paid me the money, he said my Lord *Macclesfield* had ordered me to be paid the money; but his Lordship not having so much by him, therefore he had ordered him to make it up, and to pay me two thousand Pounds out of his own money; and that as 2000*l*. of it was his own money, he desired me to give a Note of the Receipt of it.

Mr. Serj. *Peng*. Whether was that Note, a Note for Repayment of the money, or a Receipt?

Mr. *Elde*. It was not for Repayment, that I remember; but it was an Acknowledgment of the Receipt of the money, that I had received so much.

Mr. Serj. *Peng*. Whether it did not contain a further Acknowledgment for Repayment?

Mr. *Elde*. Not that I know of.

Mr. Serj. *Peng*. Was it said upon whose Account the money was paid?

Mr. *Elde*. Yes.

Mr. Serj. *Peng*. We desire he may be asked, How many Days before he was to produce the Balance of his Cash before the Commissioners that he received this money?

Mr. *Elde*. I cannot say how long before; it might be a Fortnight or three Weeks; I cannot say; it was not long before.

Mr. Serj. *Peng*. Whether it was not necessary for him to make use of this money, in order to make up this Balance?

Mr. *Elde*. I will answer that Question as well as I can: I did make use of it to that Purpose, as having it by me; but I was not so poor as to be put to a Necessity of so doing; I could have had the money any where of any body that knew me.

Mr. *Lut*. My Lords, I desire he may be asked, Whether he can remember the particular Time to a Day, when it was repaid him?

Mr. *Elde*. Upon my Oath, I cannot tell the particular Time.

Mr. *Onslow*. Was it after the Inquiry was directed to be made by the Lords of the Council?

Mr. *Elde*. Yes, my Lords, I was in the Country when the Inquiry was directed to be made, and a month after.

Mr. *Lutwyche*. I mentioned a Question before; Mr. *Elde* was mentioning that may Lord *Macclesfield* had said to him before he went out of Town, that he would make him exceeding easy: I desire he may be asked where he was then going, and upon what Occasion?

Mr. *Elde*. My Lords, I was going into *Staffordshire*, where the little Effects I have in the world lie.

Mr. *Lutwyche*. I would know upon what Occasion?

Mr. *Elde*. I never missed going into the Country the Beginning of *August*, for these ten Years past.

Mr. *Lut*. Whether there was any particular Occasion for his going down into the Country at that Time?

Mr. *Elde*. If your Lordships are of Opinion that this is a fair Question, I will as fairly answer it. I went down to my House, to look into what little Affairs I had there. I called at *Stafford* first, and there declared myself a Candidate for the Election that was to ensue.

Mr. *Lutwyche*. We desire he may be asked, when he returned?

Mr. *Elde*. I returned about the 19th or 20th of *November*.

Mr. *Plummer*. Mr. *Elde* says, when my Lord *Parker* paid him, he had a Note from him, acknowledging the Recept of the money: I desire to know, Whether that Note was taken up again, and when?

Mr. *Elde*. The Note I gave my Lord *Parker*?

Mr. *Plummer*. Yes.

Mr. *Elde*. My Lord *Parker* sent for me, and gave me the Note again. I do not know that I saw my Lord *Macclesfield* till after I had seen Lord *Parker*, and he had given me up the Note again.

Mr. *Plum*. I desire he may be asked, When the Note was delivered up to him?

Mr. *Elde*. That was asked before; I cannot tell the Day.

Mr. *Plum*. It was never asked here before: The Question I ask is, When the Note was delivered up?

Mr. *Elde*. I do not remember the Day.

Mr. *Plum*. As near as you can.

Mr. *Elde*. In the Beginning of *December*.

Mr. *Sandys*. I beg leave to ask one Question: He says that he applied this money, which he received of my Lord *Parker*, towards making good the Balance of his Accompt; Whether or no, he did not first refuse to swear to the Balance of that Account; and what was the Occasion of it?

Mr. *Elde*. When I had delivered in my Accompt, the Question I was asked, the first Time, was proposed to me, not by any of the Judges who were appointed to inspect our Accompts, but by Sir *Nathaniel Gould*, who proposed it in such a manner, that I could not by any means take it. He asked me, Whether I owed any thing? And I was to swear I owed nothing: I told him I could not swear any such thing. I had some Arguments with him about the Absurdity of such an Oath, and said, If I owe a million of money that is nothing to the purpose: There is the money due on the Balance of my Accompt; I deliver it to you: I laid the money upon the Table, and insisted upon leaving it with them.

Mr. *Sandys*. Whether that Note was delivered to him after he refused to take the Oath?

Mr. *Elde*. It was.

Mr. *Sandys*. Whether that Note was not the Occasion of his refusing to take the Oath?

Mr. *Elde*. I cannot say but it was an Ingredient in it.

Sir *George Oxenden*. I would be glad to know where this Note is?

Mr. *Elde*. When my Lord *Parker* delivered it to me, I lapt it up, and put it in my Pocket: My Lord asked me why I did so? I answered, I would keep it as a Memorandum of my Lord Chancellor's Favour to me; but when I came home, considering that it would be of no Service, and that it might me hazardous to keep it by me, I tore it.

Dr. *Sayer*. I desire he may be asked, Whether he did not look upon himself entirely discharged from any Demand on Account of that money, or did think himself bound to answer it.

Mr. *Elde*. I do not think myself bound to answer it?

Dr. *Sayer*. Whether he apprehends it to be a free and perfect Gift?

Mr. *Elde*. I do, my Lords.

[Mr. *Cottingham* called again.]

Mr. Serj. *Peng*. My Lords, we left the Basket in the Hands of Mr. *Cottingham*; therefore it is necessary that Mr. *Cottingham* inform your Lordships what became of it afterwards; what he did with the Basket after he had it from Mr. *Elde*?

Mr. *Cottingham*. My Lords, I carried it up to my Lord, and set it down in his Study.

Mr. Serj. *Peng*. What did you say to my Lord?

Mr. *Cottingham*. Nothing. Mr. *Elde* ordered me to carry up the Basket; I carried it up, and there I set it down: I never saw it afterwards.

Mr. Serj. *Pengelly.* Whether do you remember what Anſwer my Lord *Macclesfield* made at that Time?

Mr. *Cottingham.* None that I remember.

Mr. Serj. *Peng.* Whether did he open the Baſket?

Mr. *Cot.* No; The Baſket was covered up, and I ſet it down in my Lord's Cloſet.

Mr. Serj. *Peng.* Whether, after that Time, he appointed any Time for Mr. *Elde* to be admitted?

Mr. *Cot.* I think he was admitted that very ſame Day.

Mr. Serj. *Peng.* I deſire this Witneſs may be aſked, whether he received any Thing from Mr. *Elde*, beſides what was in the Baſket?

Mr. *Cot.* Not a Farthing, except my Fees: Nor no more of any of the Maſters than my uſual Fees.

Mr. Serj. *Prob.* We deſire Mr. *Cottingham* may be aſked. whether at this Time, when Mr. *Elde* deſired to be admitted into this Office, there was any other Perſon who deſired it, or made any Offer for it?

Mr. *Cot.* Mr. *Lucas*, a Gentleman of the *Temple*, was recommended to the Earl by Mr. *Bulſtrode*, who is ſince dead. He had been formerly a Commiſſioner of the Exciſe; his Name was *Whitlock Bulſtrode.* Mr. *Lucas* did tell me upon that Occaſion, if the Earl would admit him, he would give him 6000 *l.* for the Office. I took a Memorandum of it at that Time, and I had it in my Hands four or five Days ago.

Mr. Serj. *Prob.* When Mr. *Lucas* told you this, whether did you inform the then Lord Chancellor of it?

Mr. *Cot.* Yes, I am ſure I did; and the Anſwer he made me was, That Mr. *Elde* was of a Family which were his particular Friends and Acquaintance, for whom he had a great Friendſhip and Value, and that he ſhould have it 1000 *l.* cheaper, or leſſer than any Body elſe.

Mr. *Strange.* I deſire he may be aſked, whether, before Mr. *Elde* was admitted, he did not acquaint the noble Lord, that this Mr. *Lucas* would give 6000 *l.*?

Mr. *Cot.* Yes, I did.

Mr. Serj. *Peng.* I deſire to know whether I underſtand Mr. *Cottingham* right? He ſays, that my Lord would let Mr. *Elde* have it cheaper than any Body elſe: Whether he underſtood by that, that my Lord expected ſome Body elſe would give him more?

Mr. *Cot.* My Lord ſaid he would let Mr. *Elde* have it upon the Score of particular Friendſhip and Acquaintance.

Mr. Serj. *Peng.* If I heard him right, I ſubmit it to your Lordſhips, whether he did not ſay that Mr. *Elde* ſhould have it 1000 *l.* cheaper than any other Perſon? I aſk, whether he did not underſtand my Lord *Macclesfield* would have 1000 *l.* more from any other Perſon?

E. of *Macclesfield.* My Lords, I hope I am not to be charged with the Imaginations of this Gentleman; he is aſked about his Apprehenſion of my Intention in a Caſe that did not happen. I deſire he may be aſked, If he knew what Character Mr. *Elde* had?

Mr. *Cot.* A very good one.

E. of *Mac.* I deſire it may be aſked, whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Mr. *Cot.* He was one your Lordſhip had a great Opinion of, and that he was very deſerving. I never heard your Lordſhip expreſs a better Opinion of any Man than of Mr. *Elde.*

Mr. Serj. *Peng.* We have done with this Article: The next Article is the 8th. We deſire Mr. *Thurſton* may be ſworn.

(Mr. *Mark Thurſton* ſworn.)

Mr. Serj. *Peng.* My Lords, we deſire that Mr. *Thurſton* may give your Lordſhips an Account, When he was admitted into one of the Offices of the Maſters in *Chancery*, and upon whoſe Death?

Mr. *Thurſton.* My Lords, I was admitted into this Office upon the Death of Mr. *Borret*, and the Day of my Admiſſion was the 5th of *Auguſt* laſt.

Mr. Serj. *Peng.* I deſire he may be aſked, Whether, before his Admiſſion, he had made any Application either to my Lord *Macclesfield* or his Secretary, or any Perſon concerned for him?

Mr. *Thur.* My Lords, before my Admiſſion, I did make ſome Application to my Lord Chancellor's Secretary, Mr. *Cottingham*; and at that Time I made a Propoſal of making a Preſent of 5000 Guineas to be admitted into the Office. Mr. *Cottingham* aſked me ſeveral Queſtions about my Circumſtances, and what Perſons I could name that would recommend me to his Lordſhip: To which I gave the proper Anſwers, and mentioned ſeveral Gentlemen he knew. After that, I having the Honour of being acquainted with my Lord Commiſſioner *Gilbert*, before I took any other Steps, I waited on his Lordſhip, and acquainted him with my Reſolution, and begged the favour of him, that he would take the Trouble to recommend me to my Lord Chancellor, as his Friend, and a fit Perſon for the Office. His Lordſhip did take that Trouble, and waited upon my Lord at *Weſtminſter*, who was then ſitting upon the Bench; and after Notice was ſent him of that Gentleman's being in the little Room behind, his Lordſhip came off the Bench; and ſome Time being ſpent in Converſation between them, I was called in, and kindly recommended by that honourable Perſon; and my Lord *Macclesfield* ſeemed to approve of me upon his Recommendation. But I ſhould acquaint your Lordſhips, that as to that Part of the Tranſaction with Mr. *Cottingham*, he ſaid that he would report thoſe Things to my Lord *Macclesfield*, of my Character and Perſon, though he never reported any Thing back to me again upon it: But I took the next enſuing Steps, by the intervention of the honourable Gentleman, my Lord Commiſſioner *Gilbert.*

Sir *Will. Strickland.* Whether he did not underſtand, that my Lord *Macclesfield* agreed to his Propoſals?

Mr. *Thur.* Yes.

Sir *Wm. Strick.* After this Tranſaction with Mr. *Cottingham*, what further Application was made? And why he was not immediately admitted at that Time?

Mr. *Thur.* It was not expected by me to be immediately admitted at that Time: Becauſe my Lord Chancellor did not abſolutely determine me to be the Perſon; but ſaid he had ſo good a Character of me, that he believed I ſhould be the Man.

Sir *Wm. Strick.* Whether Mr. *Thurſton*, being uneaſy about the delaying of admitting him, did apply to any other Perſon afterwards?

Mr. *Thur.* After my being introduced to my Lord Chancellor, there was ſome Time for my Lord's Conſideration. Near a Week after, a Meſſage was ſent me by Mr. *Cottingham*, that my Lord would be ready to admit me ſuch a Day. Before the Day came I had a Meſſage contradicting it, upon my Lord Chancellor's being engaged to attend the Council on that Day. After that, I expected the Appointment of another Day for that Purpoſe; and in the mean Time this Affair had got into the publick News-Papers as every Thing does, and I was named by every Body to be the Perſon fixed upon; and People reſorted to me to tranſact the Buſineſs of the Office, which I could not do without being duly admitted. And ſhortly after that Time, there was a Report ſpread, that my Lord Chancellor had deſigned to make a Preſent of the Place to ſome Gentleman in the Country, which gave me an Uneaſineſs, and put me upon an Expedient, that ſince I could not have ready Acceſs to ſo great a Perſon as his Lordſhip, I went to *Kenſington* one Morning to wait upon the Counteſs of *Macclesfield*; and upon ſending up my Name, and that I deſired to ſpeak with her, in a ſhort Time I had the Honour of ſeeing her, and acquainted her that I was the Perſon that my Lord had promiſed the Office to, and that I could not proceed therein without being ſworn; therefore I deſired her Ladyſhip to intercede with my Lord, that I might be ſpeedily ſworn in. Her Ladyſhip ſaid, She never did meddle in any Affairs of a publick Nature. I uſed ſeveral Arguments with her, as that the Thing was now publick and in Print, that it might be a great Diſappointment to me, and might affect my Character, if my Lord did not think fit to admit me. I laid a good deal of Streſs upon theſe Arguments; and I acquainted her Ladyſhip that I did not expect or deſire to come in without the due Preſent that is always eſteemed the Perquiſite of the Great Seal. Then I repeated thoſe other Arguments again, that my Character might be affected by theſe Diſappointments; whereby her Ladyſhip was prevailed upon to promiſe ſhe would write a Letter, and acquaint my Lord Chancellor with it. Before I went away from the Room where I had the Honour to be with the Lady, I did leave upon the Table, Bank Notes to the Value of 5250 Pounds.

Mr. Serj. *Peng.* How were they directed?

Mr. *Thur.* I directed them to the Counteſs of *Macclesfield.*

Mr. Serj. *Peng.* I deſire he may be aſked, How ſoon after this he was admitted?

Mr. *Thur.* I believe it was within two or three Days after, at fartheſt, that I was admitted and ſworn into this Office.

Mr. Serj. *Peng.* We deſire he may give your Lordſhips an Account who was his Predeceſſor?

Mr. *Thur.* Mr. *Borret*, as I acquainted your Lordſhips before.

Mr. Serj. *Peng.* We deſire he may acquaint your Lordſhips of the State of the Office, as it came into his Hands. What was the Deficiency of the Office, due to the Suitors of the Court, not anſwered by the Effects of Mr. *Borret*, when it came into your Hands?

Mr. *Thur.* That is a Queſtion I can't poſſibly anſwer, becauſe I never had thoſe Accompts under my Inſpection; and I don't find the Gentlemen that have, can give an Account of it.

Mr. Serj. *Peng.* I do not aſk to a particular Sum; but whether there was a Deficiency, any Deficiency, and about what Sum?

Mr. *Thur.* I do not know any Thing at all about the Matter; I might as well gueſs what a Gentleman is worth that I know nothing of.

Mr. Serj. *Peng.* Whether there were Effects ſufficient to anſwer all the Suitors Demands?

Mr. *Thur.* I cannot tell; becauſe there was not any particular or exact Accompt taken of it, that is come to my Knowledge.

Mr. Serj. *Peng.* Whether the Suitors have been paid the Money left, or depoſited by them in the Hands of Mr. *Borret?*

E. of *Mac.* My Lords, if there be any Order of the Court for their being paid, it will appear, and they may produce thoſe Orders to your Lordſhips: How can they pay without any Order?

Mr. Serj. *Peng.* I do not ſpeak of Orders, I only aſk, Whether he knows that the Suitors have been paid?

Mr. *Thur.* It is impoſſible for me to have any Knowledge of it, for the Reaſons I gave you before; having had no Inſpection of thoſe Accounts.

Mr. *Lutwyche.* I deſire he may be aſked, Whether any Effects, or Money, or Caſh, and to what Value, have been transferred to him, as the Effects of Mr. *Borret?*

Mr. *Thur.* About 4200 *l.*

Mr. *Lutwyche.* Whether he knows what the Caſh was that was in Mr. *Borret*'s Hands?

Mr. *Thur.* No, my Lords, I do not know.

Mr. Serj. *Peng.* I deſire he may be aſked, Whether he has been applied to by any of the Suitors of the Court, upon the Account of Money depoſited in Mr. *Borret*'s Hands?

Mr. *Thur.* I cannot ſay Nobody has applied to me for Money due in Mr. *Borret*'s Office; ſeveral Suitors, or their Repreſentatives, have been enquiring after ſuch Things, who have been ſatisfied with having ſuch an Anſwer as the preſent Circumſtances would furniſh. There were ſome Sums of Money, before this broke out, paid to Suitors, that was Intereſt Money; and who were repreſented to me as People in Neceſſity, to the amount of 3 or 400 *l.* When this broke out, I then deſiſted Payment, upon the Advice of a great Friend.

Mr. *Lut.* I deſire he would explain himſelf, what he means by ſaying, before this broke out?

Mr. *Thur.* What I mean was, the Inquiry made into the Maſters Accompts, by his Majeſty's Direction in Council.

Mr. *Lut.* The Sum of Money he paid; I deſire he may be aſked, Who he received that Sum from?

Mr. *Thur.* I received it from Mr. *Godfrey*, the Maſter in *Chancery.*

Mr. *Lut.* I deſire he may be aſked, Whether he knew of any Adminiſtration taken out to Mr. *Borret*, and at what Time?

Mr. *Thur.* I believe Mr. *Godfrey* and Mr. *Bennet* were deſired to take that Trouble upon them, to look into Mr. *Borret*'s Affairs by the Lord Chancellor, which they proceeded and took ſome Steps in, till they were diſcouraged from it by the Enquiry that was ſet on foot. They tell me now, that Adminiſtration is granted to Mr. *Paxton.*

Mr.

Mr. Serj. *Peng.* I desire he may inform your Lordships, since he paid the Interest, why he did not pay the Principal?

E. of *Macclesfield.* I believe it would save your Lordships time, if Mr. *Serjeant* would ask his Questions in such a Manner, as not to imply something which was not admitted, or said by the Witness. The Question supposes a principal Sum demanded; the proper Question is, first to ask if any principal Sum was demanded; and whether it was, or was not cipaid?

Mr. Serj. *Peng.* I apprehend that Mr. *Thurston* says, That Creditors came to him, Suitors of the Court, and he could not pay any more than the Interest; therefore I apprehend they came to him for the Money lodged in the Hands of Mr. *Borret.* Therefore I desire he may be asked, whether any of those Persons that demanded their Money were paid?

E. of *Mac.* I desire he may be asked, Whether any demanded the prinpal Sum; and by what Order?

Mr. Serj. *Peng.* I desire to ask my own Questions; I apprehend I am not to be directed in the asking my Questions by the Lord impeached. I desire to ask what Suitors applied, and what Sums they demanded?

Mr. *Thurston.* The Names of the Suitors I can't recollect, I believe it is not necessary to trouble your Lordships with them. The Sums demanded were only Interest Money. The principal Sum for which I paid the Interest, to the best of my remembrance, was 700*l.* There was no Demand made of principal Money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was so very unfortunate, that I could not inform his Lordship of the State of what he enquired after.

Mr. *Plummer.* Mr. *Thurston* says, he desisted from paying any further Sums upon very good Advice; I desire to know why, or by whose Advice, he desisted paying?

Mr. *Thurston.* It was upon a prudential Reason I did desist; because, when a publick Inquiry was set on foot, I did not know how far I might be affected, in being made answerable myself for it.

Mr. *Plum.* Whether he had any Suspicion that there was a Deficiency in Mr. *Borret*'s Office?

Mr. *Thurston.* There was a Suspicion that there was not competent Money to satisfy all the Suitors Demands.

Mr. *Lutw.* I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. *Borret*'s Hands to him?

Mr. *Thurston.* Upon the Admission of every Master, there is an Order of Course signed by the Lord Chancellor, to transfer the Effects to the Successor.

Mr. *Lutw.* I ask if any such Order came to him?

Mr. *Thurston.* There did, my Lords.

Mr. *Lutw.* Was there any Transfer of the Effects according to that Order?

Mr. *Thurston.* No, there was not a compleat Transfer.

Mr. *Lutw.* Why was it not, as usual in the Case of other Masters, that either are removed, and are able to transfer; or in Case, upon Death, where their Representatives are able to do it?

Mr. *Thurston.* The Reason it was not done, I conceive, was, because it was impracticable, there being no Representative of my Predecessor, no Administration being taken out.

Mr. Serj. *Peng.* I desire he may inform your Lordships, whether he was not applied to, by a noble Peer of this House, concerning some Effects deposited in the Hands of Mr. *Borret*, and what account he then gave him of the State and Situation of the Office?

E. of *Mac.* I am really very sorry to trouble your Lordships so often. What is it to me what this Gentleman said? He is now upon his Oath, and to give to your Lorships an Account what he knows; but to ask him what he said at such a Time, to affect me, I hope they will not insist upon it.

Mr. Serj. *Peng.* When he has declared what he said, then there will be another Question, Whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of *Mac.* If Mr. Serjeant will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. *Peng.* We apprehend it is proper Evidence to be given, that he gave such an Account of the Office, in answer to the noble Lord: Therefore I desire to know what Account he gave to that noble Lord?

E. of *Mac.* My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. *Lutw.* I believe the same End may be obtained by asking a Question without Dispute, and to which there can be no Objection; that is, Whether or no he had any Reasons to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. *Strange.* My Lords, we beg leave to oppose that Question: What his private Opinion may be, is no Evidence; he and another may think variously of the same Matter. They are to ask him as to Fact, and not to his Opinion.

Mr. *Plum.* I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence; but surely, when your Lordships are examining a Person to the Deficiency of his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat Money of Mr. *Borret*'s transferred to him?

Mr. *Thurston.* The compleat Money of the Office hath not been transferred to me, and for the Reasons I have mentioned to your Lordships; for want of an Administration.

Sir *Wm. Strickland.* I would beg leave to ask Mr. *Thurston* one Question, and I hope a material one; Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. *Thurston.* I can't say that upon my Admssion into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Sir *Wm. Strick.* I desire he may be asked, Whether, if he had known the State of this Office, he would have given Five thousand Guineas for it?

Mr. *Thurston.* If I had known the State of the Office, and the Consequences of it, as appear at this Time before your Lordships, rather than have given 5000*l.* for it, I would have given 5000*l.* to have been without it.

Mr. Serj. *Probyn.* Of the Money he paid or left at the time he mentions, on my Lady *Macclesfield*'s Table, I desire to know if he received any of it back again?

Mr. *Thurston.* I received back again, from the Lady *Macclesfield*, the Sum of 3250*l.* in Bank Notes, the same as I enclosed, when I first left it.

Dr. *Sayer.* Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be returned? Give a full Account of that whole Transaction.

Mr. *Thur.* Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business stirring, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to *London*, and in a Day or two went myself to my Lord Chancellor's House, and I sent to know what the Occasion of those Messages was. They said, it was not from my Lord Chancellor, but it was a Message from my Lady *Macclesfield.* Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so large a Present with her, as she found it was: And declaring I should be used with Honour, she returned to me 3250*l.* and the other Part, she said, she would appropriate to her own Use.

Mr. Serj. *Prob.* We desire Mr. *Thurston* may be asked, if there was any notice taken of any Order or Directions from my Lord Chancellor about Re-payment of the Money? or whether it was only a Transaction between him and my Lady *Macclesfield?*

Mr. *Thur.* There was no Notice taken of any Orders from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. *Strange.* I would ask when this Money was restored?

Mr. *Thur.* The time when the Money was restored, was about the middle of *October.*

Mr. Com. Serj. I desire he may be asked, whether at the time he first applied to Lady *Macclesfield*, he laid down the Paper those Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. *Thur.* I laid down the Bank Bills on the Table, to the best of my Remembrance, at the time of my coming away, and taking leave.

Mr. Com. Serj. Whether they were inclosed in a Paper?

Mr. *Thur.* They were inclosed in a Paper, and also sealed up.

Mr. Com. Serj. Whether they were opened during the Time he was there?

Mr. *Thur.* No, they were not.

Mr. Com. Serj. Or taken up by my Lady during that Time?

Mr. *Thur.* No, my Lords, I don't remember they were.

Mr. Com. Serj. Whether he named the particular Sum to her Ladyship?

Mr. *Thur.* No, my Lords, not in the least. I did not give any Intimation what Sum was inclosed.

Mr. *Strange.* I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. *Thur.* To the best of my Remembrance it was not opened before I went out of the Room.

Mr. *Strange.* I desire he may be asked this further Question, Whether he apprehended that my Lady *Macclesfield* was acquainted with the Contents till after he was gone?

Mr. *Thur.* I did not apprehend that my Lady *Macclesfield* was acquainted with the Contents of it till afterwards.

Mr. *West.* Since that Gentleman hath been asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the money?

Mr. Serj. *Prob.* We submit it to your Lordships, whether that be a fair Question.

Mr. West. Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. *Thur.* I do not apprehend, that if I had come without the oney, I should have been admitted. But if the Notes had been return'd to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Sir *John Rushout.* I desire he may be ask'd, whether he had any particular Acquaintance with the Lady *Macclesfield* before?

Mr. *Thur.* I had not that Honour.

Sir *John Rush.* Whether he had ever seen her, or been in her Company before?——Mr. *Thur.* My Lords, I believe I never was.

Sir *John Rush.* My Lords, we desire he may be asked, what he apprehends was the Reason of 3250*l.* being returned to him?

Mr. *Thur.* I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. Serj. *Peng.* I desire he may be ask'd, when the 3250*l.* was returned, in what Month it was?——Mr. *Thur.* It was in *October.*

Mr. Serj. *Peng.* Whether he can recollect in what Time of the Month?

Mr. *Thur.* I believe it was about the Middle of *October*, to the best of my Remembrance.

Dr. *Sayer.* My Lords, we desire he may be ask'd, whether the return of this Money was before or after the then first Seal before *Michaelmas* Term?

Mr. *Thur.* To the best of my Remembrance, the first Seal was about the middle of *October*, and it was returned before the first Seal.

Mr. Serj. *Prob.* My Lords, I desire he may be ask'd, whether there was any message sent about the returning of the Money, before the Return was made?

Mr. *Thur.* I have acquainted your Lordships that several Messages past, while I was in the Country.

Mr. *Robins.* When he waited upon my Lady *Macclesfield*, after his Return out of the Country, I desire he may be asked, whether she mentioned any Thing to him of the Reason of those messages?

Mr. *Thurston.*

Mr. *Thurſton.* She mentioned the Reaſon, and ſaid, That it was to return the Money, which ſhe ſaid was too large a Preſent, and that ſhe was afraid my Lord Chancellor ſhould come to the knowledge of it.

Mr. Serj. *Probyn.* I deſire he would inform your Lordſhips, when he went to *Kenſington* to my Lady *Macclesfield*, where my Lord *Macclesfield* was?

Mr. *Thurſton.* When I went to *Kenſington* to my Lady *Macclesfield*, my Lord *Macclesfield* was then engaged in the Buſineſs of the Court of Chancery, at the latter end of the Sittings, or firſt Seal after *Michaelmas* Term.

Mr. Serj. *Probyn.* In what ſtate of Health was my Lord Chancellor at that time? Had he not continued ſome time before at *London*, and not at *Kenſington?*

Mr. *Thurſton.* My Lord Chancellor, by the enquiry I made, was at that time in *London.*

Mr. Serj. *Probyn.* How ſoon after your Admiſſion did the Lord Chancellor go into *Oxfordſhire?*

Mr. *Thurſton.* The very Day after my Admiſſion, my Lord Chancellor went into *Oxfordſhire*, as I was informed by one of my Lord's Officers, who came to me that Day upon ſome Buſineſs.

(*Mr.* Cottingham *again called.*)

Mr. Serj. *Peng.* My Lords, I deſire Mr. *Cottingham* may be asked, Whether, upon the Propoſal of 5000 Guineas made to him by Mr. *Thurſton*, he acquainted my Lord *Macclesfield* with it?

Mr. *Cot.* I acquainted my Lord Chancellor with the Propoſal made by Mr. *Thurſton* of 5000 Guineas.

Mr. Serj. *Peng.* Whether did he approve of it, or reject it?

Mr. *Cot.* I am not very certain, whether the Earl did not ſay he would take time to conſider of it. But in the main, according to my Apprehenſion, the Earl ſeem'd to approve of it.

Mr. Serj. *Peng.* I deſire he may be ask'd, Whether he receiv'd any thing for my Lord *Macclesfield*'s Uſe upon Mr. *Thurſton*'s Admiſſion?

Mr. *Cot.* No, my Lords, I received nothing but my own Fees.

Mr. Serj. *Peng.* If he received nothing, Whether he received any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. *Cot.* The Earl was pleaſed to tell me, he had a deſign to have given that Place to Dr. *Sayer*, but he was at that time in the Country, out of Town, at *Durham:* He proceeded ſo far as to order me to take no Money of Mr. *Thurſton.*

Mr. Serj. *Peng.* When was that?

Mr. *Cot.* Very ſoon before he was admitted.

Mr. Serj. *Peng.* My Lords, we ſubmit this as Evidence of the Lord's knowing of the Receipt of this Preſent of 5000 Guineas.

Mr. *Lutw.* My Lords, I deſire to know of Mr. *Cottingham*, Whether my Lord *Macclesfield* had any acquaintance with Mr. *Thurſton* before this Propoſal?

Mr. *Cot.* I can't ſay as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer.* I deſire he may be ask'd one Queſtion, Whether he made any Difficulty of accepting his Fees on Mr. *Thurſton's* Admiſſion?

Mr. *Cot.* Yes, I did.

Mr. *Plum.* And why?

Mr. *Cot.* The Earl ordered me to take no Money of him. Upon that general Order I made a little difficulty, and told him of it; the Anſwer he made me was, Why ſhould I make any Difficulty, when he had been thus generouſly dealt with by my Lord Chancellor?

Sir *Wm. Strickland.* Whether at that time, when he firſt mention'd the 5000 Guineas, it was not a Day or two before his Admiſſion?

Mr. *Cot.* I believe it was a Day or two before his Admiſſion.

Mr. Serj. *Peng.* My Lords, we have done with Mr. *Cottingham*; ſince the name of Dr. *Sayer* is mentioned on this Occaſion, whom the noble Earl declared he would compliment with the Place that fell vacant, I deſire this Witneſs may be asked, Whether that was a real Compliment to Dr. *Sayer*, or whether Dr. *Sayer* made any Application, or was to give any Thing for it?

Mr. *Cot.* I believe, if Dr. *Sayer* had been then in Town, my Lord would really have made him a Compliment of it without any Preſent. My Lord told me Dr. *Sayer* was his particular Friend, and he had a great Value and Reſpect for him.

Mr. *Plum.* My Lords, I beg Leave to ask a Queſtion upon that Queſtion. He ſays he thought my Lord *Macclesfield* would have given it him for nothing; I ask him, If he then thought he gave it Mr. *Thurſton* for nothing?

Mr. *Cot.* The Anſwer I can make to that Queſtion is, That I did not apprehend my Lord was ſo well acquainted with Mr. *Thurſton*, as to give it him for nothing.

Dr. *Sayer.* I deſire he may be ask'd, Whether he did not repreſent to the Earl of *Macclesfield*, that there was a neceſſity for the immediate putting Maſter into that Office for the diſpatch of Buſineſs?

Mr. *Cot.* I did repreſent it to the Earl, that it was neceſſary to put ſomebody into the Office, for ſeveral Practiſers had been with me about their affairs in that Office; and otherwiſe the Buſineſs might be transferred to another Office, which would have been a great prejudice. Upon that the Earl ſaid, Mr. *Thurſton* ſhould be admitted.

Mr. Serj. *Probyn.* Whether you had not application from the Suitors themſelves, and whether there was not a Clamour from them on Account of the ſtop it put to Buſineſs?

Mr. *Cot.* Yes, there was; it happened to be in the long Vacation; and ſomething, I told the Earl, muſt be done; there was an abſolute Neceſſity to come to ſome Reſolution or other in the matter.

Mr. Serj. *Peng.* In this Article, as an aggravation, it is alledg'd, that Mr. *Borret* died inſolvent: We beg Leave to call ſome Witneſſes to give an account of the State of the Office at his Admiſſion, and afterwards at the time of his Death.

(*Mr.* Meller *called.*)

Mr. Serj. *Peng.* My Lords, we deſire Mr. *Meller* may be ask'd, What Sums in Caſh and Effects he delivered over to Mr. *Borret*, at the time of his coming into the Office?

Mr. *Meller.* My Lords, I take it to be about 120,000 *l.* I refer myſelf to the Account given in to the Judges, and Directors of the Bank, and ſigned by my Hand.

Mr. Serj. *Probyn.* My Lords, we ſubmit it, whether this is regular, to examine to an Accompt *Viva Voce*, which Account hath been reduced into Writing?

Mr. Serj. *Peng.* Surely the Witneſs may make uſe of his own Paper to refreſh his Memory.

E. of *Mac.* I don't know what theſe Gentlemen intend. They are reading a Charge againſt Mr. *Borret*, to ſhew what was delivered over to him, at the time he came into the Office. Is it expected I ſhould be able to give an Account what was paid to him, or by him, while he was Maſter? That I ſhould give an account of his Eſtate and Effects, what it is, and if there was ſufficient to pay, in his Hands, or not? If theſe Gentlemen had any Order of the Court, in which this had been fixed and ſettled, that might have been ſomething. It is impoſſible for me to enter into it.-----It appears he died inteſtate, Adminiſtration was not granted till a great while after his Death; not till very lately: What Account hath been taken of his Effects I don't know, nor can any way ſhew. They are beginning with an Account, which I apprehend is not a proper Evidence to be given as againſt me, to prove that this Gentlemen had not Effects ſufficient to anſwer the Demands upon his Office.

Mr. Serj. *Peng.* My Lords, this Evidence relates to an Accompt delivered in by the approbation of the Lord impeached, on the Enquiry made before the Lords of the Council. As this Accompt was delivered in before them, we apprehend, ſo far it is a proper Evidence, and a Foundation for a farther Enquiry, how much of it remains in the Office: We ſhall ask other Perſons afterwards as to the Deficiency. All the Uſe we now make of it is, to ſhew the groſs Sum that was at firſt tranſferred over to him.

E. of *Mac.* My Lords, if they mean only to ſatisfy your Lordſhips Curioſity, by ſhewing how great a Sum there was in that Office, I think it is of no great importance.

Mr. *Lutw.* All that we endeavour to prove now, is, what was very notorious at the time of Mr. *Borret*'s Death; that there was a great Deficiency, and that he died inſolvent, and the Earl goes a great way in this Matter in his own Anſwer. He ſays in his Anſwer, That on the Death of Mr. *Borret*, he deſired Mr. *Godfrey* and Mr. *Bennet* to enquire into his Effects, and to enter a proper Caveat in the prerogative Court, to prevent Adminiſtration being granted to any Perſon who might embezzle the ſaid *Borret*'s Eſtate, and to obtain Adminiſtration to be granted to them for the Benefit of the Suitors of the Court. This goes a good way, I apprehend, to incline your Lordſhips to believe, that there were thoſe Steps uſed, which are unuſual in the Caſe of a Man's Solvency. Therefore what we would ask to is, that the Witneſs would give an Account of what he knows concerning the Deficiency in this Office, or give an Account of ſuch Circumſtances, as may induce your Lordſhips to believe there was ſuch a Deficiency.

Mr. Com. Serj. If the Gentlemen who appear on the behalf of the Houſe of Commons think fit to rely upon our Anſwer, they may do it.

Mr. Sol. Gen. I think Mr. *Meller* hath proved that he transferred 120,000 *l.* to Mr. *Borret*; we will now go on, and prove the Deficiency.

Mr. Com Serj. Mr. *Meller* hath ſpoke *Viva Voce*, in a Matter which we apprehend is capable of much better Proof; therefore we hope what he has ſaid ſhall not go for Evidence. There muſt have been a Schedule; and he has the counterpart of that Schedule, by which the Effects were deliver'd over.

Lord *Trevor.* Mr. *Meller* hath a Paper in his Hand; I deſire to know what that Paper is?

Mr. *Meller.* The Paper I have before me, is the very Account of the Money delivered to Mr. *Borret*, and the ſeveral Times when; it is made by way of Schedule. There is another Paper by way of Abſtract. I drew them together at the time I delivered it to the Judges. I had not time to draw out the full Account, and therefore I made an Abſtract; both which are ſigned.

E. of *Mac.* The noble Lord asked the Queſtion exceeding proper. The Queſtion asked is, What this Paper was? Perhaps it is the very Accompt Mr. *Borret* and he made up between them, and Signed. I ask, therefore, Whether it is the Accompt between them, or whether it is an Account of his own drawing up ſince?

Mr. *Meller.* This is the Account I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all theſe *Items*, and likewiſe proved the Payment of the Money by Goldſmiths and Bank Notes.

Mr. Sol. Gen. We apprehend that this is as full Evidence as can be laid before your Lordſhips.

Mr. Serj. *Probyn.* We ſubmit it, Whether your Lordſhips are of Opinion, that this is proper Evidence? Mr. *Meller* hath been propoſing a Paper, which is not the original Accompt delivered; it is not the Book, but a Copy of the Book taken out, and given in Evidence in another Place: Now he would by this Evidence, ſigned by himſelf, charge Mr. *Borret* with Money deliver'd over to him; but as it is an Accompt only Sign'd by Mr. *Meller*, we ſubmit it, Whether it can be a Charge upon the Repreſentative of *Borret*, and conſequently if it can be any Evidence at all?

Mr. Serj. *Peng.* We beg Leave to inſiſt upon it as proper Evidence. When a Perſon makes up an Accompt of his own Hand-writing, and draws it up, and ſwears that to be a true Accompt upon his own Knowledge, Whether this is not proper Evidence?

E. of *Mac.* This Gentleman has really given his Evidence, though it was objected to: It will be a proper enquiry hereafter, when we come to conſider the Evidence that hath been given, Whether it be good Proof of what it is brought for?

Dr. *Sayer.* We ſhall reſerve our Objection to the laſt.

Mr. Sol. Gen. They may reſerve what Obſervations they pleaſe; it is an Objection to be made now, or not at all.

Lord *Lechmere.* It would be of ſome Service to prevent miſpendeng your Lordſhips Time, if the noble Lord would diſtinguiſh between Objections and Obſervations; for a great deal of Time has been taken up in Obſervations on Evidence, which are proper afterwards on the Defence.

(*Mr.* William Thompſon *called.*)

Mr. Serj. *Peng.* Mr. *Thompſon* is one of the Gentlemen, who, by the conſent of the Lord within the Bar, as well as of the reſt of that Committee, did examine into the Accompts of the Maſters in Chancery; and we beg Leave to ask him, In the accompt delivered in before the noble Lord himſelf, what appeared to be the Deficiency upon Mr. *Borret*'s Accompt?

E. of *Macclesfield*. If it does appear by those accounts, those accounts may be produced before your Lordships, and your Lordships may be Judges; but I beg they may not insist upon this Gentleman giving his Opinion, in order to affect me with his Collections or Inferences upon them.

Mr. Sol. Gen. The original Accompts are here. They are on your Lordships Table. It will be proper to examine this Gentleman as to that.

Mr. *Plummer*. I beg leave to make one Observation, and I believe it may prevent mispending your Lordships time. They make an Objection to this Evidence, as if your Lordships were going to try how the Deficiency was made up; whereas your Lordships are only trying, whether there was or was not a Deficiency.

E. of *Mac*. If the accompts are before your Lordships, and lie upon your Lordships Table, and he only declares to your Lordships his Observations on those accompts, for your Lordships Ease, and to save you some Trouble, I have no Objection to it.

Mr. Serj. *Peng*. Upon the stating the accompt, which we apprehend is a matter of Evidence, when a Gentleman computes the Sum on one Side, and the Sum on the other Side, we desire to know what appears to Mr. *Thompson* to be the Deficiency?

Mr. *Thom*. I can't rely upon my Memory for the Sum, but I have in my Hand a Report made to the Committee of Counsel, that I signed with my Name; by which it appears, that Mr. *Meller*, at several times, paid to Mr. *Borret* 120,000*l*. That Mr. *Borret* paid out to the several Suitors 77,485*l*. and I find the Charge remaining on Mr. *Borret*'s Office unpaid to the Suitors, is 42,515*l*. These are the Sums that, upon Examination of the accompts, we find to be right.

Dr. *Sayer*. If the Gentlemen that are Managers for the House of Commons have done, we beg leave to ask Mr. *Thompson* this Question, Whether, on the making up of these accounts, any Executor or Administrator of Mr. *Borret* was present?

Mr. *Thom*. When we examined the accounts, we understood there was no Representative of Mr. *Borret*; and I think it is put in the *Report*, that we could get no account but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Masters in *Chancery*.

Mr. Com. Serj. What Books were they he formed those accounts from?

Mr. *Thom*. The first Charge, or the Charge from Mr. *Meller* on Mr. *Borret*, was taken from Mr. *Meller*'s account. The 77,485*l*. paid out, was an account from Mr. *Borret*'s Books, made up by his Clerk, under the Inspection of Mr. *Godfrey* and Mr. *Bennet*.

Mr. Com. Serj. I desire he may be asked, Whether he himself knew those to be Mr. *Borret*'s Books, or only by relation from other Persons?

Mr. *Thom*. Only by relation from his Clerk.

Mr. Com. Serj. Then, with Submission, they must go further before the Balance can be taken notice of. They must establish that these Books are Mr. *Borret*'s Books.

Mr. Sol. Gen. We have done with Mr. *Thompson*.

Mr. Serj. *Peng*. We hope the Counsel for the Earl impeached, will be pleased to read his own *Answer*, wherein he owns that Mr. *Godfrey* and Mr. *Bennet*, were employed by himself to take the Effects of Mr. *Borret* into their Custody.

E. of *Mac*. If I apprehend Mr. *Thompson*, he says, the Charge is taken from the account given by Mr. *Meller* himself. I desire to know, Whether Mr. *Meller* was not called upon to discharge himself of the money he had in his Hands, before he surrendered to Mr. *Borret*; and whether that was not the Occasion of his being there?

Mr. *Thom*. I apprehend Mr. *Meller* was sent for, in order to know the State of the Office at the time he left it.

E. of *Mac*. So he gave an account how it stood at the time of quitting the Office, and what he paid over to Mr. *Borret*?

Mr. *Thom*. I apprehend he did so.

Mr. Serj. *Probyn*. I desire Mr. *Thompson* may be ask'd, Whether the 77,485*l*. Discharge, was taken from the relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books themselves; or whether he did examine the Books himself?

Mr. *Thom*. I went through every Particular of Mr. *Meller*'s accompt; as to the other, my memory does not serve me to answer particularly.

E. of *Mac*. Whether they did not report at that time, they could not take the accompts perfectly, for want of an Administrator?

Mr. *Thom*. I believe, my Lords, we might do so; and I believe, if the Report is turn'd to, it will appear so. I don't mention these Sums as an exact accompt, they were the best accompts we could get.

Mr. *Sayer*. The Question I would trouble your Lordships with, because it is of great consequence, is, Whether the accompt of 120,000*l*. which lies as a Charge upon Mr. *Borret*'s Office, is not the accompt which Mr. *Meller* is to discharge himself by, and of those Effects for which he otherwise remains responsible?

Mr. *Thom*. How far Mr. *Meller* is to discharge himself, I am no competent Judge. This is the accompt that the Office, as I apprehend, stood charged with.

Dr. *Sayer*. To put the Question shorter, Whether it is the accompt of Mr. *Meller*, as Predecessor in the Office to Mr. *Borret*?

Mr. *Thom*. I apprehend it so.

Mr. *Plum*. Whether Mr. *Meller* did not produce Receipts for Mr. *Borret*, for this whole accompt?

Mr. *Thom*. To the best of my remembrance, Mr. *Meller* did produce Vouchers for every article set down in his accompt.

Mr. Serj. *Probyn*. I desire he may be ask'd, Whether there were any Proofs made of these Vouchers?

Mr. *Thom*. What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret*'s own Hand for the whole Sum.

Mr. Com. Serj. I desire he may be ask'd, Whether he is acquainted with Mr. *Borret*'s Hand-Writing; or whether there was any Proof made of it?

Mr. *Thom*. Mr. *Borret*'s Clerk was there, and affirm'd every Receipt to be Mr. *Borret*'s Hand-Writing.

Mr. Com. Serj. I would ask, if there was any Oath made, or if it was only upon his Word?

Mr. *Thom*. If your Lordships will give me leave to have recourse to the the Report, I will recollect myself. I can't say whether Mr. *Borret*'s Clerk was sworn or no, I think he was; I don't find it set down in the Report.

Mr. *Lutwyche*. I would beg leave to ask this Question; This Report, that is sign'd by him as one of the Committee, whether it was laid before the Council, and to whom delivered in, in order to be laid before the Council?

Mr. *Thom*. This very Report was delivered by Mr. *Baron Gilbert* to the Committee of Council.

E. of *Mac*. I hope it is the same that is before your Lordships, if it is not, I can't tell what to say to it.

Mr. Serj. *Peng*. This is the original Report, of which your Lordships have a Copy on your Lordships Table.

E. of *Mac*. I desire it may be delivered in, and lie upon the Table.

(Mr. *Godfrey* called.)

Mr. Sol. Gen. We desire Mr. *Godfrey* may be ask'd, Whether upon the Death of Mr. *Borret*, he was directed to take an account of the State of his Office?

Mr. *Godf*. Upon the Death of Mr. *Borret*, my Brother *Bennet* and I were desired by my Lord *Macclesfield* to look into the Affairs of Mr. *Borret*'s Office, and see how the accompt stood; and likewise to see what Securities were in the Bank, in the Exchequer, and *East-India* Company, and other Funds. Accordingly, I went to the Bank, and the *East-India* House, and took an Account of what I found stood in his Name there. I believe Mr. *Bennet* will satisfy your Lordships, he went to the Exchequer and other Places. I applied first to the Bank, to Mr. *Hanger*, who was then Deputy Governor, and he was so kind to send an Officer to search the several Books, and I had this Accompt: There was in Mr. *Borret*'s Name 1000*l*. in 5*l*. *per Cent* Annuities, 1000*l*. Bank Stock. And then I went to the *East-India* House, and there was 240*l*. *East-India* Stock in his Name. This was all the account I took.

Mr. Sol. Gen. In what State was the Office in general?

Mr. *Godf*. I did not look over the Office-Books. I believe Mr. *Bennet*, who was with me, took that Charge upon him: I believe he is capable of giving you an Account. I did not see the Office-Books at all: But upon my talking with Mr. *Bennet* about it, he found there was more Stock and Security in Mr. *Borret*'s Name in the several Funds, than he could find him charg'd with in the Books of the Office.

Mr. Serj. *Peng*. When Mr. *Thompson* and the other Gentleman enquired into the particular Effects, whether, when he appear'd there, the accompt he gave in was a true accompt?

Mr. *Godf*. To the best of my knowledge, in relation to Mr. *Borret*'s, it was.

Mr. Sol. Gen. I desire one Question more, Whether it is usual to enquire into the Effects of a Predecessor, unless there is reason to suspect a Deficiency?

Mr. *Godf*. I don't know whether it is usual, but it is extremely necessary. When this Gentleman was expiring in such an Office, having no Friends in Town, nor any intimate Acquaintance besides myself to take care of his Effects, I thought I ought to take some care, that his Office should not be plundered; and that was the only Reason that induced me to take care of his Effects, that they might not be embezzled.

Mr. Serj. *Peng*. Whether they did not find the Office in great Confusion?

Mr. *Godf*. In that Part of his Office which was at his Chambers in the Temple, we found his Papers in great Confusion, lying without any method or order. We collected them as well as we could, and what Things we found of Value, or belonging to the Suitors, as Goldsmiths Notes, Notes under Hand for money, we put them upon a File; and that File, together with other little moveables we found belonging to him, as rings, and a watch, were all put in a Bag, and sealed up by Mr. *Bennet* and myself, Mr. *Grant*, who was Mr. *Borret*'s Lady's Father, and Mr. *Grant* the the Clergyman, who was his Lady's Uncle; and we put them into a Trunk, and lock'd them up; and they are now at my House.

Sir *Wm. Strick*. I would ask him, Whether the next of Kin did not refuse to take out Administration, because of the Deficiency.

Mr. Com. Serj. Here can be no answer, but yes, or no; I hope, Gentlemen will not ask such Questions.

E. of *Mac*. I desire he may be ask'd, Whether any Advice was given concerning taking out, or not taking out Administration?

Mr. *Godf*. Mr. *Grant* the Uncle said, that he was a Creditor of Mr. *Borret*'s, by Bond, (which indeed I was surprized to hear, I did not think he owed any Man a Shilling) between 6 and 700*l*. And being so great a Creditor, he thought if he took out Administration he should be paid first. I told him, as Mr. *Borret* had been in an Office of great weight, and there was a great Trust, I could not tell how matters stood in the Office; and if there should prove a Deficiency, I believed he would involve himself, in taking out Administration, in much more trouble than he was aware of.

Sir *Wm. Strick*. I desire he may be ask'd, If he did not apprehend there would be such Deficiency?

Mr. *Godf*. I did not apprehend at that time there would be any Deficiency. He had been in the Office about four Years: he had had Opportunities of re-imbursing himself: He had a handsome Fortune of his own when he came in, and had with his Lady 3000*l*. therefore I was under no apprehension that there would be a Deficiency.

E. of *Mac*. I beg leave I may ask Mr. *Godfrey*, Whether he was acquainted very well with the Affairs of Mr. *Borret*, and knew his Circumstances?

Mr. *Godf*. I have had some Years acquaintance with Mr. *Borret*. As to his real Estate, I was not perfectly acquainted with it; I had it only by common relation, that he had an Estate of about 400*l*. a Year, or rather better; but I don't know it of my own knowledge.

E. of *Mac*. As to his real Estate, you say you don't know it of your own Knowledge; Whether are you particularly acquainted with his personal Estate?——Mr. *Godf*. No, my Lords.

E. of *Mac*. I desire Mr. *Godfrey* to inform your Lordships, what he said to me after Mr. *Borret*'s Death, Whether there would be a Loss, or not a Loss, in Mr. *Borret*'s Office?

Mr. *Godf*. I can't at present remember what Discourse passed between the noble Earl and myself, upon the death of Mr. *Borret*. I believe I might say, and it was my Opinion, that there would be no Deficiency: I have heard his Estate was such, and I knew very well that his Lady's Fortune

was ſo much, and that he diſpoſed of a Place, which was the Filazer of *Yorkſhire*, for which he had, as I have been inform'd, 4200 *l.* And theſe were the Reaſons that induced me to believe there wou'd be no Deficiency; and I knew very well that I could ſay of my own Knowledge, Mr. *Borret* liv'd at no extravagant rate; for I am ſure all the Time he was a Maſter, and in Town, he never ſpent 200 *l.* a Year.

Sir *Wm. Strick.* He ſays, he has heard he had 400 *l.* a-Year in Land: Does he not as well know that that Eſtate was ſettled upon his Family and Children?

Mr. *Godf.* I have heard that, upon his Marriage, ſome part of it was ſettled, but whether all be ſettled, or not, I can't tell.

E. of *Mac.* It ſeems this Gentleman ſays, he did not ſpend 200 *l.* a-Year. How came you to imagine that he ſhould ſpend no more than 200 *l.* a-Year?----Mr. *Godf.* He told me ſo.

E. of *Mac.* Where was his Family?----Mr. *Godf.* In the Country.

E. of *Mac.* With whom?

Mr. *Godf.* With his Lady's Father; and when he was in Town, he had private Chambers in the *Temple*, and only kept one Servant, and one Horſe.

E. of *Mac.* I deſire he may be asked, Whether he did not once intend and propoſe himſelf to take out Adminiſtration to Mr. *Borret*, and if he did not take ſome Steps towards it?

Mr. *Godf.* I had ſo great a concern for the Office, and the Securities not not being transferred to a proper Hand, that I was willing to take out Adminiſtration, rather than there ſhould be any clamours on account of the neglect of Buſineſs in the Office. But, my Lords, upon conſidering the Matter, I did not apprehend that I was ſo fit a Perſon for that purpoſe. I was not very young myſelf, I had two Children, and thoſe young: I apprehended that if I ſhould drop off before things were ſettled, the Caſe might be ſtill the ſame as I found them: Therefore, I deſired I might have ſomebody joined with me in this troubleſome Affair, for I did foreſee a good deal of Trouble in it. However, I ſaid I was willing to engage in it, if my Brother *John Bennet* were joined with me, rather than there ſhould be any clamour upon the Office; and I perſuaded him to do the ſame; and accordingly, I went down to the Commons, to ſee if Adminiſtration could be granted to us two. The Relations in the Country, and thoſe People concerned for them, were very willing that Adminiſtration ſhould be granted to Mr. *Bennet* and myſelf; and accordingly Proceſs was ſent to cite the Children; and that done, as I am inform'd, Sentence was given, that I and my Brother *Bennet* ſhould have the Adminiſtration. But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reaſon I declined it.

E. of *Mac.* Has Mr. *Borret* a Wife living, or is ſhe dead?

Mr. *Godf.* His Lady died a month before him.

E. of *Mac.* What Age are his Children?

Mr. *Godf.* The Eldeſt is about three Years old, and the Youngeſt about two, as I am informed; I never ſaw them.

(*Mr.* John Bennet *was called and ſworn.*)

Sir *Wm. Strick.* The Queſtion I deſire he may be asked is, Whether he did not, upon the enquiry into the Affairs of Mr. *Borret*'s Office, apprehend that there was a Deficiency?

Mr. *J. Bennet.* I did hear it Reported that there would be a great Deficiency in that Office, at the Time I was deſired by my Lord *Macclesfield* to look into it; and I was likewiſe informed ſoon after, that there was like to be no Deficiency.

Sir *Wm. Strick.* I deſire he may be asked, How he found it?

Mr. *J. Bennet.* I found his Papers and Accompts in the utmoſt Confuſion. His Accompts were moſtly in looſe Papers: There was one Book indeed, but that extended no farther than to the *Chriſtmas* before his Death, which was near three quarters of a Year before he died. Mr. *Godfrey* deſired I would join with him in taking out Adminiſtration; after a good deal of importunity I did conſent.

Sir *Wm. Strick.* I deſire one Queſtion more. He ſays he was informed ſoon after, there was like to be no Deficiency in the Office. I deſire to know, Whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

Mr. *J. Bennet.* No, I did not; but I did inform him, that there was not ſo great a Deficiency as was reported, which was 25 or 30,000 *l.* I could make no regular Computation, every Thing was in the utmoſt Confuſion, as I acquainted my Lord.

E. of *Mac.* I deſire he may be asked, Whether he did not inform me, that he found more Stock in *Borret*'s name, in the Books of the ſeveral Companies, than he could find charged upon him in the Office?

Mr. *J. Bennet.* Not to my Remembrance; for I did not look into the Stocks of the Companies; that was Mr. *Godfrey*'s Buſineſs.

E. of *Mac.* You then look'd into his Books?----Mr. *J. Bennet.* I did ſo.

E. of *Mac.* Then upon your looking into his Books, and Mr. *Godfrey*'s looking into the Companies Books, and comparing them together, I deſire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

Mr. *J. Bennet.* Upon Mr *Godfrey*'s Account there appeared, upon caſting it up, to be more Stock in his Name than the Securities he was anſwerable for to the Court.

E. of *Mac.* He has ſaid, he could not tell what the Deficiency would be, becauſe he could not make up a regular Accompt; I deſire he may be asked, Whether he did not tell me that he believed there would be no Deficiency?------Mr. *J. Bennet.* No, I did not.

E. of *Mac.* Did you not upon your Oath?

Mr. *J. Bennet.* After Mr. *Borret*'s Death, I did ſay to ſeveral People, when they were clamorous (but whether I ſaid ſo to my Lord *Macclesfield*, I can't tell), that upon the beſt Account I could make of his confuſed Affairs, there would be a Deficiency of 4 or 5000 *l.* and I believed not more.

Mr. Com. Serj. Tho' Mr. *Bennet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occaſion?------Mr. *J. Bennet.* Yes.

Mr. Com. Serj. I deſire he may be asked, Whether he did not tell Mr. *Godfrey* afterwards, that upon what appear'd, there would be no Deficiency?

Mr. *J. Bennet.* No.

Mr. *Plum.* Mr. *Bennet* has ſaid, upon comparing the Books, he found more Stock in Mr. *Borret*'s Name, than he was charged with to the Court. I deſire he may be asked, if he found more Stock than the Money and the Effects he was charged with to the Court?

Mr. *J. Bennet.* No, my Lords, the beſt Calculation I could make, was, that there was near 4 or 5000 *l.* deficient.

Mr. Serj. *Peng.* We ſhall leave this Article, with this Obſervation, that Mr. *Borret* died inſolvent, and a Debtor to the Suitors of the Court, of which we have given full Evidence; and that Mr. *Thurſton* was admitted into that Office by the Earl impeach'd, without procuring Satisfaction to the Suitors of the Court, or Security for their Debts: If that was done, it lies upon the noble Lord to prove it.

Mr. *Onſlow.* My Lords, the *Commons* having made good that Part of their *Impeachment*, by which the *Earl of Macclesfield* ſtands *charged* with *extorting* many great and extravagant Sums of Money, for the Admiſſion of ſeveral of the Maſters of the Court of Chancery into their reſpective Offices: We ſhall now proceed, my Lords, to ſupport the *Eleventh* and *Twelfth* Articles, which contain many *corrupt Practices*, uſed by the ſaid Earl, to advance and encreaſe the illegal Gain, ariſing to himſelf from the Sale and Diſpoſal of thoſe Employments.

The *Eleventh* Article charges him, *my Lords*, with admitting ſeveral Perſons to thoſe Offices, who, at the Time of their Admiſſion, were of *ſmall Subſtance and Ability*, and highly unfit for ſo *great* a Truſt, as by the nature of their Employments at that Time was to be placed in 'em.

The Maſters in Chancery, *my Lords*, have of late Years, been the *Treaſurers* of that Court; the *Repoſitory* of the Money and the Effects brought into the Court; brought there, *my Lords*, not by the *choice* and *conſent* of the Parties concerned, but by the *compulſion* of the Court, under the Faith of a better Security: But ſo, *my Lords*, has it fallen out, that this pretended Security, has ſerved only to *delude* the Suitors of the Court into a falſe Quiet, whilſt their Eſtates have been made a Prey to infamous *Stock-jobbers*, and wantonly *waſted*, by ſome of 'em, to ſupport the extravagancy of their Living.

The Fortunes, *my Lords*, of *Orphans* and *Lunaticks* are, from the Compaſſion of our Government, a part of the Care of the Court of Chancery; and have been lodged in the Hands of the Maſters, as a Place of *Sanctuary*, till the Owners ſhould become capable of managing their Eſtates themſelves: When they come, *my Lords*, to require their Fortunes, he, who was the *Supreme Judge* in a Court eſtabliſhed for their Relief; *He*, who was the Great *Guardian* of Infants and Lunaticks, will be found to have *ſuffer'd* an advantage to be taken of the *weakneſs of* the *One*, and the *miſery* of the *Other*, to render their *helpleſs Condition* a means of their *Ruin*, inſtead of their *Protection*.

This, *my Lords*, is the nature of the *Truſt* repoſed in the Maſters of the Court of Chancery, and this the *Uſe* they have been permitted to make of it. The *Greatneſs* of the Truſt will ſhew your Lordſhips, what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into theſe Employments; and the *Abuſe* of this Truſt, will demonſtrate how little His *care* has been, whoſe Duty it was to provide Perſons of Integrity, and reſponſible Men, for the execution of theſe Offices; but *who*, my Lords, unfortunately for the Suitors, and to the diſhonour of the publick Juſtice of the Kingdom, *preſided* ſeven Years in the Court of Chancery; in which Time, a *deficiency* of above *fourſcore thouſand Pounds*, has happened upon the Maſters *He* admitted; and, what perhaps may be worthy of *your Lordſhips* particular Notice, of the *ſix* Maſters on whom there appears to be a Deficiency, *Four* of them were admitted by *Him*. If our Evidence, *my Lords*, as to this Article, reſted only on the Proof of theſe Deficiencies, it would, we apprehend, be ſufficient to evince what the Commons have here alledged. That Perſons of ſmall Subſtance and Ability, have, by the *Earl* at the Bar, been preferred to be Maſters of the Court of Chancery. But, *my Lords*, to bring this Charge ſtill nearer to the *Earl*, we have it in Proof, and ſtrongly ſo, that little or no *inquiry* was ever made by him, into the *Characters* and *Circumſtances* of thoſe He admitted into theſe Offices. That in fact, my Lords, they were Men of very mean Fortunes. No Security ever required of them; which ſtill made it the more neceſſary, that their own Ability ſhould be thoroughly *looked into* and *well approved*. We ſhall ſhew your Lordſhips, That they were entruſted, ſome of 'em, with *forty*, *ſixty*, one of 'em, I think, to the amount of a *hundred thouſand Pounds* in Caſh and Securities: And yet, *my Lords*, no other Uſe was made of This, but to *enhance* the Price of the Office, when it was to be *Sold* and *Barter'd*, for the Benefit of the *Earl*. The Argument uſed, to bring up any Perſon to the *Rate* the Earl *inſiſted* on, was the largeneſs of the Sum to be transferr'd to the Purchaſer. The *Temptation* generally ſucceeded: The *Reaſon* your Lordſhips will eaſily imagine; and when the *Price* was thus agreed upon, no other Qualification was required, the Perſon ſtood right in the *Earl*'s Opinion, and was thought proper to be *Aſſociated* to him.----Were it only that, my Lords, the Commons would not have troubled your Lordſhips with this Article,-------but to be *Aſſociated* to him in the Adminiſtration and Execution of Juſtice, and to be *entruſted* with the Fortunes of whole Families, whoſe only ſupport, perhaps, depended on the Ability and Integrity of theſe Men: How well, *my Lords*, the *Earl* conſulted in the appointment of theſe Officers, the *Honour* of that publick Juſtice they were to *aſſiſt* him in; What *Regard* He has had for the *Intereſt* of Thoſe, whoſe Eſtates He thus flung into their Hands, the Evidence we ſhall produce to *your Lordſhips*, and your own Obſervations upon it, will abundantly ſhew, notwithſtanding his flat denial of this Part of the Charge.

I will trouble *your Lordſhips* but with one Particular more in this Article, and it is what the Article concludes with. A remarkable *Declaration* by the *Earl*, of the Ability, and other Qualifications of the Maſters, particularly thoſe promoted by him; and this happened, my Lords, upon as remarkable an *Occaſion*. A very honourable Perſon, then a *Judge* alſo in that Court, and now juſtly at the Head of it, having ſeen with Indignation, the *Havock* that was making of the Effects of the Suitors; out of compaſſion to them, and from a Zeal for Juſtice, endeavour'd to put ſome ſtop to it, in an Inſtance that came within his Cognizance. An Order was made by him, my Lords, on one of the Maſters, to allow ſome Profit to a Suitor ariſing from her own Money, which the Maſter deſigned, as it was thought, to have ſunk to his own Uſe. The Maſter thought himſelf aggrieved, and fled for Redreſs to his *Patron*,

tron, the then *Lord Chancellor*, the *Earl* now under your Lordships Consideration; and he was secure in so doing, for the Order was immediately discharged; and then it was, my Lords, to obviate the Clamours that were breaking out from all Sorts of People against the Masters, that the *Earl* did in open Court, then sitting as *Lord Chancellor*, in his *judicial Capacity*, declare, that the present Masters were Men of as great Probity, Fortunes, and Abilities, as any Sett of Masters that ever were in that Court; and that he had had the Satisfaction of putting in most of them himself. As this, my Lords, was spoken in general of them all, but with a peculiar Regard to those he had admitted; the Commons have laid it to be to the manifest *Deceit* and *Injury* of the Suitors of the Court, which they are justified in doing, by the Thing itself being *false*, by the Proof we have, *my Lords*, that the *Earl* must know it to be *false*, and by the Resemblance it bears to that Series of other mean *Artifices* he had long been practising to give a *counterfeit* Credit to these *corrupt* Officers. A Credit, *my Lords*, he was soon to receive some *Benefit* from: for the Witness will inform *your Lordships*, that a Vacancy of a Master in Chancery happened the Day before this *significant* and *memorable* Declaration was made.

My Lords, The Commons have made this Article a Part of their *Charge* against the *Earl of Macclesfield*, as being the great Source of the *Evil* that is likely to befal the unhappy *Sufferers* in the Court of Chancery; and as it was the *Means* he made use of to draw to himself those extravagrant Sums of Money we have proved him to have received: For Men of small Fortunes, *my Lords*, as they have more Temptations, so they run less hazard than others in preying upon Money that is entrusted with them; and it is this, *my Lords*, that encourages such Men to give exorbitant Rates for Employments which afford them those Opportunities.

Thus, *my Lords*, I have opened to *your Lordships* the Substance of the *Eleventh* Article, and the nature of our Proof upon it. The *Twelfth* Article will be opened and enforced to *your Lordships* by the Gentleman who is to come after me. I shall therefore detain *your Lordships* no longer than to make this one Observation, That as the Office of a Master in Chancery is of great *Trust* and *Importance*, that as these Officers are appointed to this Trust by the *sole Discretion* of the Lord Chancellor; and that the Effects of the Suitors of the Court are deposited in their Custody, by his *immediate* Orders, which he might have placed in *safer* Hands if he had thought fit; he becomes by all this in the nature of a *superior Trustee* for, and is therefore justly *answerable* to, the Suitors for the Behaviour of these *Men*. So, *my Lords*, in some Degree may the Publick be thought *answerable* for him; which makes his Guilt without Measure, who has thus brought a Disgrace upon his Country, by prostituting one of its highest Courts of Justice to his own *Avarice* and *Corruption*, to the *Rapine* and *Corruption* of his inferior Officers, and to the *Undoing* of those, who, by the Constitution of the Kingdom, have been forced into his Power.

Mr. *Palmer*. My Lords, The Gentleman that spoke last has fully opened the Evidence of the Eleventh Article, and has shewn to your Lordships, that for his own private and illegal Gain, the impeach'd Lord did commit the Money and Effects of the Suitors, to Men no way of Substance sufficient for so great a Trust. The Twelfth Article will lay before you a most corrupt Practice, used without Controul, while the Earl was Chancellor, by which this illegal Gain was immensely increased; and whereby those Masters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their Offices at extravagant Prices.

Your Lordships will see what Methods were used on the Admission of Masters in Chancery: Great Sums were paid for the Surrenders and Admissions, and those Sums were taken from the Money of the Suitors; sometimes the Purchase-Money was borrowed; but after Admission, repaid from the Cash of the Office; sometimes the Value of the Purchase was left in the surrendering Master's Hands: Whatever different Ways were taken at the Beginning, they all tended to this; the Suitors were to make the Purchaser easy, and the People were persuaded to bid high, by being told how easily the largest Sums could be raised.

It was a common Recommendation to a Purchaser, to tell him how much Cash was in the Office; and that he need not be afraid to make any Contract good; Money would be ready as soon as he was admitted: Your Lordships will see the Consequences of such Recommendations. Masters did offer, and give more than could be presumed they were worth, the Suitors Money was at Hand to make good the Bargain; and these are the Masters in whose Offices appear the greatest Deficiencies.

It will appear to your Lordships, that Mr. *Kynaston*, and Mr. *Thomas Bennet*, procured their Places in this manner. Mr. *Kynaston* discharged a Bond of six thousand Pounds to his Predecessor, by giving a Receipt of the same Value. Mr. *Bennet* gave a Receipt to his Predecessor for ten Thousand Pounds; both acknowledged a Transfer of so much of the Suitors Money, the one received but Nine Pounds, and the other Fifteen Hundred, the rest was kept back as Part of the Price of their Office; and is now a Part of their Deficiencies. How great their Deficiencies are, may be observed to your Lordships; Mr. *Bennet*'s is near Ten Thousand Pounds, and Mr. *Kynaston*'s above Twenty Thousand.

This is the Practice the impeached Lord, in his Answer, declares himself totally ignorant of, and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are satisfied will be fully maintained, this Article will be supported by Proofs, that the impeached Lord was well informed of what he now denies the Knowledge of; that it was the Subject of his Discourse, and that he feared, and endeavoured to prevent a Discovery.

And your Lordships will find him observing on the Accounts of some of the Masters, as they were given in on the late Enquiry, *That they were given in in the worst Manner*; *That they should convince the World that they paid for their Places out of the Suitors Money*; *and, That they would at last discover what he had always, when asked, taken care to deny.*

The impeached Lord admits, in his Answer, That he never caused any Schedules to be made of the Suitors Effects, to be transferred over to succeeding Masters: That it was what his Predecessors never did before him, and that if the Consequences alledged by the Commons, have arisen from this Practice, or the not ordering such Schedules, he thinks he is not Criminal.

My Lords the Charge of the Commons is general, that he knew the Abuse, and took no Care to reform it; if he had taken Care that the Effects of the Suitors should have been transferred by Schedule; if he had appointed any one to overlook the Transfer; if he had taken any Method at all to be assured that the Effects of the Suitors were duly made over according to this Order of Transfer, the Commons would not have charged as they have done, and perhaps he had not at this Time appeared so nigh your Lordships Bar.

But if the impeached Lord thinks he is justified by saying, it was not his Duty, and therefore the Omission no Offence: The Commons aver, in their Article, that it is the Duty of the Chancellor of *Great Britain*, to superintend the Masters and their Accounts; and it is submitted to your Lordships, whether he is not Criminal, if he suffers Money deposited by the Orders of his Court in the Hands of the Masters, to be, without Order, conveyed or left in private Hands.

I shall say no more to your Lordships on this Article, but leave the Proof of it to the Evidence.

Mr. Serj. *Pengelly*. My Lords, the Proof in support of these Articles, will go to them both promiscuously. In the first Place we beg leave to shew to your Lordships, the several Orders of Court, which state the Deficiencies of several Masters.

[Mr. *Ralph Paxton* sworn.]

Mr. Serj. *Peng*. We desire he may be asked, whether the Papers he produces, are true Copies of the Orders Examined by the Books in the Office.

Mr. *R. Paxton*. My Lords, they are true Copies, I examined them.

Lords Com. *Ordo Curiæ.*

Veneris 29. *Die Januarii*, 1724.

WHEREAS, by an Order made by the Rt. Hon. the late Lord High Chancellor of *Great Britain*, the *Seventeenth* Day of *December* last, it was (*inter al'*) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, Sir *Nath. Gould*, Mr. *Thomson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy-Governour of the Bank of *England*, by the several Masters of this Court, upon the Examination of their Accompts, for, or towards answering the Balance of Cash admitted by their said Accompts, to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up and left in the Custody of the Bank of *England*, in such manner as by the said Order is provided: And whereas, the Masters had, in their several Accompts, given in Particulars of Stock and of Annuities, transferrable in the Books of the several Companies, standing in their Names, which belonged to the several Suitors of this Court, or as their own proper Stock and Annuities, by which Part of the Balance of Cash in their Hands might be made good, or secured. It was further ordered, That they should each of them, forthwith, deliver into the respective Companies, a Declaration in writting, wherein such Stock in each respective Company, or the Annuities there transferrable, as by their respective Accompts appeared to belong to the Suitors of the Court, and likewise the Stock and Annuities by them respectively proposed towards making good, or securing their Balance of Cash, or so much thereof as should equal the Balance of their said Accompts; in Case they had in their Names, more than sufficient for that Purpose should be declar'd to be upon Trust to attend the Orders of this Court: And it was further order'd, That the said several Masters, should forthwith give to the said Mr. Baron *Gilbert*, their Post Accompts of their Receipts and Payments since the former Accompts; and by a subsequent Order of the 21st Day of the said *December*, It was order'd, That the several and respective Masters, whose Effects so ordered to be secured, did not amount to the whole Balance of the Cash admitted by their Accompts, to be in their Hands, should forthwith secure the rest of the Balance of the Cash appearing to be due on their respective Accounts, by depositing in like manner Bank Notes, or other Effects to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties to be approved of by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them, for duly answering from Time to Time as this Court should direct, such Sum and Sums as the remaining Deficiencies of their said respective Balances amount unto. And whereas, Mr. *Edward Conway*, one of the Masters of this Court, did, on the 19th Instant, attend the Right Hon. the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, and acknowledge that he was Debtor to the Suitors of the Court on the Balance of his Cash Accompt, the Sum of 13039 *l.* 4 *s.* 4*d.*½ and that he had brought into the Chest the Sum of 3000 *l.* only, so that he remains Debtor on the said Cash Balance, the Sum of 10039 *l.* 4 *s.* 4 *d.*½ and that since making the said former Orders, he had sold 3500 *l.* South Sea Stock, in the Cause between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of 3425 *l.* and that he had since paid off only the Sum of 2593 *l.* 9 *s.* 3 *d.* pursuant to the Orders of this Court in that Cause, so that there remained the Sum of 831 *l.* 10 *s.* 9 *d.* in his Hands, to be applied to the Parties concerned in that Cause; and that he had since sold 2000 *l.* South Sea Annuities Stock, Part of the Sum of 17950 *l.* South Sea Annuities Stock, belonging to the Suitors of the Court in several Causes, which he ought to re-place. Their Lordships did thereupon order, That the said Mr. *Conway*, should, in a Week, deposit the Sum of 10039 *l.* 4 *s.* 4 *d.*½ and also the said Sum of 831 *l.* 10 *s.* 9 *d.* belonging to the said Cause of *Faulconberg* and *Faulconberg* in Bank Notes, or Money in his Chest at the Bank of *England*, and also should re-place the said Sum of 2000 *l.* South Sea Annuity Stock, or that he should enter into a Recognizance of 26000 *l.* with two sufficient Sureties, to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, for answering the said Sums, and replacing the said 2000 *l.* South Sea Annuity Stock, in such

ſuch Manner as this Court ſhould direct: And this Court being Yeſterday informed by *Mr. Attorney General*, on behalf of the Suitors of this Court, that the ſaid Mr. *Conway* had not depoſited either of the Sums aforeſaid, or entered into a Recognizance with two Sureties, as by the ſaid Order he was directed: It was thereupon ordered that he ſhould on this Day attend the Court, to ſhew Cauſe why he did not yield Obedience to the ſaid Order. And he now attending accordingly, and admitting that he had not depoſited either of the Sums aforeſaid, nor replaced the ſaid 2000*l.* South-Sea Annuity Stock, or given Security with two Sureties, as by the ſaid Order is required: And whereas he did formerly, upon Examination of his Accompts, produce to the Perſons who inſpected the ſame, bank bills, and notes, ſufficient to make good the ſaid Sum of 13039*l.* 4*s.* and 4*d.*½ being the whole balance of his Caſh Accompts, but had only depoſited 3000*l.* part thereof in purſuance of the ſaid Order: And it being ſeveral times demanded by the Court, whether he did know or remember the Names of the perſon or perſons from whom he had the ſaid bank notes, or any of them, or did know or remember the Names of the perſon or perſons to whom he had ſince paid or delivered them, or any of them, he declined giving any direct Anſwer to the ſaid queſtion relating to his own proper Knowledge and Remembrance; but upon Oath ſaid, it was impoſſible for him to anſwer the ſame; whereupon, and upon hearing of *Mr. Attorney General* and *Mr. Solicitor General* on behalf of the Suitors; and what was farther inſiſted on, this Court doth declare, that the ſaid Mr. *Conway* is guilty of very high Contempts, and doth therefore do, for his ſaid Contempts, ſtand committed to the priſon of the *Fleet*; and that for making proviſion for the Execution of his Office, and that no prejudice may happen to the Suitors of the Court, by reaſon of the ſaid Commitment, he do, in the Cuſtody of the Warden this Afternoon, deliver all his Books and Papers belonging to his Office, unto Mr. *Holford*, one other of the Maſters of this Court, who is to act therein as he the ſaid Mr. *Conway* ought to have done during his Commitment; and the Clerk of Mr. *Conway* is to be at liberty, if he thinks fit, to attend Mr. *Holford* therein, and Mr. *Conway* is at liberty from time to time to make ſuch Propoſals to the Court, for making good his Deficiency, as he ſhall think proper.

R. P. *Examined 6th of* May, 1720. *by Book of Entries, Cur' Canc' Letter B.*

Lords Com. *Ordo Curiæ.*

Mercur. tertio Die Febr. *Ann. Regni Georgii Regis undecimo.*

WHEREAS, by an Order of the 29th of *Jan.* laſt, for the Reaſons therein contain'd, it was ordered that Mr. *Thomas Bennet*, one of the Maſters of this Court, ſhould then, ſitting in the Court, give his own Recognizance to be taken by Mr. *Holford*, one other of the Maſters of this Court in the Penalty of 18150*l.* conditioned to anſwer and pay the Sum of 9075*l.* therein mentioned, in ſuch Manner as this Court ſhould direct; and that upon his ſo doing, the time for his performing of an Order of the 12th of *Jan.* laſt, for depoſiting the ſaid 9075*l.* or procuring two or more Sureties, to enter into a Recognizance of the Penalty aforeſaid, as in the ſaid Order is mentioned, ſhould be enlarged till this Day: And if he ſnould procure ſuch Sureties to enter into ſuch Recognizance, he was firſt to give the Names of the intended Sureties to Mr. *Paxton* (Soll. on behalf of the ſuitors of this court), to the end he might enquire after their Abilities; and the ſaid Mr. *Thomas Bennet* was this Day to attend the Right Honourable the Lords Commiſſioners, for the Cuſtody of the Great Seal of *Great Britain*, when ſuch farther Order ſhould be made as ſhould be juſt. And the ſaid Mr. *Thomas Bennet* this Day attending their Lordſhips, in the Preſence of *Mr. Attorney General*, and *Mr. Sollicitor General*, on behalf of the Suitors of the Court; and the ſaid Mr. *Thomas Bennet*, now delivering into Court a Particular of ſeveral Eſtates which he propoſed to aſſign and convey as the Court ſhall direct, in truſt for the Suitors of the Court, and ſubmitting to be examined upon Interrogatories, for diſcovery of all other Eſtate he has, both Real and Perſonal, and that the ſame ſhall be alſo aſſigned and conveyed to the ſame Truſt: Their Lordſhips do therefore Order, that the time for the ſaid Mr. *Thomas Bennet*'s giving his Recognizance with two or more Sureties in the Penalty aforeſaid, be enlarged until *Wedneſday* next, at which time the ſaid Mr. *Thomas Bennet* is to attend in Court, when ſuch farther Order ſhall be made as ſhall be juſt. But in the mean time, he is to aſſign and convey the ſeveral Eſtates by him now propoſed, unto the ſaid Mr. *Holford*, as he, the ſaid Mr. *Holford*, ſhall approve and direct; and is alſo within that time to produce and leave with the ſaid Mr. *Holford*, all Deeds and Writings in his own Hands relating thereto; and ſo far as he is able to procure the Mortgagee and Annuitant, to produce and leave with the ſaid Mr. *Holford*, the ſeveral Deeds and Writings in their reſpective Hands relating to the ſaid Perſons. And the ſaid Mr. *Thomas Bennet* is alſo, within the ſame time to be examined upon Interrogatories before the ſaid Mr. *Holford*, for diſcovery of all other, his real and perſonal Eſtates, and is alſo to aſſign and convey the ſame to the ſaid Mr. *Holford*, as he ſhall approve and direct. And what Eſtates ſhall be by him, the ſaid Mr. *Thomas Bennet*, ſo aſſigned and conveyed to the ſaid Mr. *Holford*, as aforeſaid, the ſame are to be upon Truſt for the Suitors of the Court, as the Court ſhall direct; and the ſaid Mr. *Paxton* is forthwith to prepare and lay Interrogatories before the ſaid Mr. *Holford* for the Purpoſe aforeſaid.

R. P. *Examined 6th of* May, 1725; *by Book of Entry, Cur' Canc' Letter B.*

Ordo Curiæ.

Martis Decimo Nono Die, Januarii, 1724.

WHEREAS, by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the ſeventeenth Day of *December* laſt, it was (amongſt other things) ordered, that the bank notes and other effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, Sir *Nathanael Gould*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the ſeveral Maſters of this Court, upon the Examination of their Accounts, for, or towards anſwering the balance of caſh admitted by their ſaid Accompts to remain in their reſpective hands belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be locked up, and left in the Cuſtody of the Bank of *England*, in ſuch manner as by the ſaid Order is provided. And it was further ordered, that the ſaid ſeveral Maſters ſhould forthwith give to the ſaid Mr. Baron *Gilbert*, Poſt Accompts of their Receipts and Payments ſince their former Accompts. And by a ſubſequent Order of the one-and-twentieth Day of the ſaid *December*, it was ordered, that the ſeveral and reſpective Maſters of this Court, whoſe Effects, ſo ordered to be ſecured, did not amount to the whole Balance of the Caſh admitted by their Accompts to be in their Hands, ſhould forthwith ſecure the reſt of the Balance of the Caſh appearing to be due on their reſpective Accompts, by depoſiting, in like manner, Bank Notes, or other Effects, to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties, to be approved by Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, or any two of them, for duly anſwering from time to time, as this Court ſhould direct, ſuch Sum and Sums, as the remaining Deficiencies of their ſaid reſpective Balances amount unto. And Mr. *Edward Conway*, one of the Maſters of this Court, this day attending the Lords Commiſſioners for the Cuſtody of the *Great Seal* of *Great Britain*, and acknowledging that he was Debtor to the Suitors of the Court on the Balance of his Caſh Account, in the Sum of thirteen Thouſand and thirty-nine Pounds four Shillings and four Pence half Penny; and that he had brought into the Cheſt the Sum of three thouſand Pounds only, ſo that he remains Debtor on the ſaid Caſh Balance, the Sum of ten Thouſand and thirty-nine Pounds, four Shillings and four Pence half Penny; and that ſince the making the ſaid former Orders, he has ſold three Thouſand five Hundred Pounds South-Sea Stock, in the Cauſe between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of three Thouſand four Hundred and twenty-five Pounds; and that he hath ſince paid off only the Sum of two Thouſand five Hundred and ninety-three Pounds nine Shillings and three Pence, purſuant to the Orders of this Court in that Cauſe; ſo that there remains the Sum of eight Hundred and thirty-one Pounds ten Shillings and nine Pence, in his Hands, to be applied to the Parties concerned in that Cauſe; and that he has ſince ſold two Thouſand Pounds South-Sea Annuity Stock, part of the Sum of ſeventeen Thouſand nine Hundred and fifty Pounds South-Sea Annuity Stock, belonging to the Suitors of the Court in ſeveral Cauſes, which he ought to replace: Their Lordſhips do thereupon Order, that the ſaid Maſter *Conway*, do, in a Week, depoſit the ſaid Sum of ten Thouſand and thirty-nine Pounds four Shillings and four Pence half Penny, and alſo the ſaid Sum of eight Hundred and thirty-one Pounds ten Shillings and nine Pence, belonging to the ſaid Cauſe of *Faulconberg* and *Faulconberg*, in Bank Notes or Money in his Cheſt at the Bank of *England*; and alſo do replace the ſaid Sum of two Thouſand Pounds South-Sea Annuity Stock; or that he do enter into a Recognizance of twenty-ſix Thouſand Pounds, with two ſufficient Sureties, to be approved of by one of the Lords Commiſſioners for the Cuſtody of the *Great Seal* of *Great Britain*, for anſwering the ſaid Sums, and replacing the ſaid two Thouſand Pounds South-Sea Annuity Stock, in ſuch Manner as this Court ſhall direct. *Tho. Parnell, Dep. Reg.*

R. P. *Examined 6th of* May, 1725, *with Book of Entries, Cur' Canc' Letter B.*

Ordo Curiæ.

Mercurii Viceſimo Die, Januarii. 1724.

WHEREAS, by an Order made by the Right Honourable the late Lord Chancellor of *Great Britain*, the ſeventeenth Day of *December* laſt, it was (among other Things) ordered, That the Bank Notes, and other Effects therein ſpecified, produced before Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*; and Sir *Nathanael Gould*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the ſeveral Maſters of this Court, upon the examination of their accounts, for, or towards anſwering the balance of Caſh admitted by their ſaid Accounts to remain in their reſpective Hands belonging to the Suitors of this Court, ſhould be depoſited in ſeveral Cheſts, and that then the ſaid Cheſts ſhould be locked up and left in the cuſtody of the Bank of *England*, in ſuch manner, as by the ſaid Order is provided. And it was further ordered, That the ſaid ſeveral maſters ſhould forthwith give to the ſaid Mr. Baron *Gilbert* Poſt Accounts of their receipts and payments ſince their former accounts. And by a ſubſequent Order of the one-and-twentieth Day of the ſaid *December*, It was ordered, That the ſeveral and reſpective Maſters of this Court, whoſe Effects ſo Ordered to be ſecured, did not amount to the whole balance of the Caſh admitted in their accounts to be in their Hands, ſhould forthwith ſecure the reſt of the balance of Caſh appearing to be due on their reſpective accounts, by depoſiting, in like manner, Bank Notes, or other effects, to the amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sure-

ties

ties, to be approved by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them: For duly answering, from Time to Time, as this Court should direct; such Sum and Sums as the remaining Deficiencies of their said respective Balances amounted unto; and Mr. *Kynaston*, one of the Masters of this Court, being this Day present before the Right Hon. Sir *Jeffery Gilbert*, Knt. one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, and being examined touching the Money and Effects for which he was answerable to the Suitors of the Court, did admit, that the Sum of thirty-one thousand nine hundred and fifty-four Pounds, fifteen Shillings and a Farthing, was the Cash-Balance in his Hands, due to the Suitors; and that he had deposited in his Chest at the Bank, the Sum of four thousand six hundred and eighty-six Pounds, one Shilling and Nine-pence, in pursuance of the Order of the seventeenth of *December* aforesaid; and that he had declared a Trust of three hundred Pounds South-Sea Stock for the Suitors, which at the present Valuation is three hundred and sixty Pounds; so that there remains the Sum of twenty-six thousand nine hundred and eight Pounds, eleven Shillings and Three-pence Farthing, deficient and unsecured to the Suitors of the Court; and proposed towards Satisfaction thereof, to assign over a Debt of twenty thousand eight hundred and fifty Pounds, owing to him from Mr. *Delahaye*, in such manner as should be thought proper for the Benefit of the Suitors: But alledged that he was not to be charged with the Sum of seven thousand five hundred and seventy-five Pounds, mentioned in his Accounts to be Part of the aforesaid twenty-six thousand nine hundred and eight Pounds, eleven Shillings and Three-pence Farthing. Whereupon their Lordships considering what was alledged by him, were of Opinion, That he was answerable to the Suitors of the Court for the said Sum of seven thousand five hundred and seventy-five Pounds; and do therefore order, That the said Mr. *Kynaston* do, in a Week, deposite the said Sum of twenty-six thousand nine hundred and eight Pounds, eleven Shillings and three-pence Farthing, in Money or Bank Notes, in his Chest at the Bank of *England*, or enter into a Recognizance in the Penalty of fifty-three thousand eight hundred and seventeen Pounds, with two or more Sureties, to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, to answer and pay the said Sum of twenty-six thousand nine hundred and eight Pounds, eleven Shillings and three-pence Farthing, in such Manner as this Court shall direct.

Tho. Parnell,
Dep. Reg.

R. P. *Examined the 6th of* May, 1725, *by the Book of Entries.* Cur' Canc' *Letter B.*

Mr. Sol. Gen. The Managers for the House of Commons lay before your Lordships these Orders, to shew, that the several Masters thereinmentioned were deficient. It will be incumbent on the noble Lord to shew, that, when they were admitted, they were of Ability proper for such a Trust. We now proceed upon the Declaration that was made on the 21st of *January* last was Twelve-month, and desire that Mr. *Waller* may be called.

(Mr. *Waller* sworn.)

Mr. Sol. Gen. My Lords, we desire he may be asked, whether he applied to my Lord Chancellor upon an Order made by his Honour the Master of the Rolls, relating to Mr. *Conway*; and what it was my Lord Chancellor said on that Occasion?

Mr. *Waller.* In *July* 1723, I had Directions from my Client to apply to Mr. *Conway*, to lay out upon the *South Sea* Annuities the Sum of 4000*l.* that had been brought before him in a Cause between Mr. *Devenant* and my Lord *Cardigan*. The Master told me at first, he would take care of it. Upon further Application, he said, the Order had directed another Sum of Money should be brought before him in the same Cause, and that he could not put out the one without the other. Upon this, I applied by Petition to the Master of the Rolls, praying, that Mr. *Conway* might be obliged to put out the Money, and that he might answer Interest for it after he had had it a reasonable Time in his Hands. Upon that, the Master of the Rolls directed he should lay out the Money immediately.

Mr. Serj. *Probyn.* I beg your Lordships Pardon for interrupting this Witness. In the Manner he is going on, your Lordships observe, he is taking Notice of Orders, Petitions, Acts of the Court, and this he gives upon his Memory. We think these ought to be produced.——

Mr. Sol. Gen. If they are desirous to entertain your Lordships with them, we have them all here. We only make use of them to let in the Declaration of the noble Lord.

E. of *Macclesfield.* If that be all the Use, there is no need to produce these Orders: But if they are to introduce Evidence with relation to the merits of the Cause, it is proper to have them produced.

Mr. Sol. Gen. We don't dispute the Justice of the Order then made, but ask the Occasion of it; and all we desire is, what was declared, and what was the Occasion of the Declaration.

Mr. Serj. *Pengelly.* The Managers don't enter into the Consideration whether the Order is just or no. All they represent to your Lordships, is the Occasion of this Declaration. Whether a Man acts justly that detains Money, and does not pay it out when he ought to do it, that we leave to another Determination. But what we ask now, is the Declaration of the Earl of *Macclesfield*, and the Occasion of it.

Mr. *Waller.* Upon the Petition to the Master of the Rolls, he made an Order to put the Money out, and that the Master should pay some Interest. On this he applied to my Lord Chancellor, to discharge this Order. My Lord, upon that Occasion, said, The Master was not to blame, and that the then Masters were a Sett of Masters of as great Probity, Ability, and Fortune, as ever had been before; and that his Lordship had had the Satisfaction of having put in most of them himself. I cannot say, that these were the very Words, but it was to this Effect.

Mr. Sol. Gen. When, at what Time was this?

Mr. *Waller.* This Declaration was made the 21st of *January*, 1723.

Mr. Sol. Gen. Where was it?

Mr. *Waller.* In Court, at my Lord's House in *Lincoln's-Inn-Fields*, where he usually sat.

Mr. Sol. Gen. Was there at that Time any Vacancy of any Master's Office; and how long did that Vacancy happen before?

Mr. *Waller.* Mr. *Fellowes* died either the Day before, or the Day but one before.

Mr. Sol. Gen. Was there any Observations made at that Time of any Person in Court that took Notice of what was said?

Mr. *Waller.* One of the Counsel took Notice of somebody taking Notes, and said, he believed it would be in the *Amsterdam* Gazette in a short Time, or to that Purpose. My Lord Chancellor asked who he was?

E. of *Macclesfield.* I desire he may tell your Lordships, when Application was made to me by way of Complaint of it, what it was I said at that Time?——Mr. *Waller.* I don't remember.

E. of *Macclesfield.* Pray, recollect yourself, if I did not say it was right, and they had a Right to take Notes there.

Mr. *Waller.* I don't remember that you did.

E. of *Mac.* Did I make no Answer?

Mr. *Waller.* Not as I remember.

Mr. Serj. *Probyn.* I desire he may be asked, whether he kept any Notes or Memorandums of the Words that were then said?

Mr. *Waller.* No, my Lords.

Mr. Serj. *Prob.* How does he then come to remember the very Words?

Mr. *Waller.* Since my Lord *Macclesfield*'s Counsel will have it, I must acquaint your Lordships, that it struck me with so much Astonishment to hear such a Declaration made on the Masters, which most People thought they did not deserve, that indeed I could not but remember it, and have remembered it ever since.

Mr. Serj. *Pen.* We have several other Persons who were present at this Time, when this Declaration was made; but we apprehend it was so public, so notorious, and has been so distinctly proved by a Person present, that it will be unnecessary to call further Evidence to it.

Mr. Sol. Gen. We beg leave to trouble your Lordships as to one Circumstance, to ascertain the Death of Mr. *Fellowes*: We have one of Mr. *Fellowes*'s Servants here.

(*Edward Ange* sworn.)

Mr. Sol. Gen. We desire he may be asked, whether he was a Servant to Mr. *Fellowes*?

Mr. *Ange.* I was a Clerk in Mr. *Fellowes*'s Office at the Time of his Death, and many Years before.

Mr. Sol. Gen. When did he die, what Day?

Mr. *Ange.* Upon the 19th of *January*, 1723.

Mr. Sol. Gen. It was the 21st that the Declaration was made, so that it seems that it was necessary; and such a Declaration was wanting at that Time to keep up the Price of the Office.

(Mr. *Lightboun* called.)

Mr. Sol. Gen. We desire Mr. *Lightboun* may be asked, whether he gave any Intimation to the Earl of *Macclesfield*, that the Circumstances of some of the Masters were suspicious, before the 21st of *January* was Twelve-month?

Mr. *Lutwyche.* I desire Mr. *Lightboun* would give your Lordships an Account what Discourse he had concerning the Masters with the Earl of *Macclesfield.*

Mr. *Lightboun.* I can't say I acquainted him with my suspecting any of the Masters by Name being deficient; but I told him in Conversation, that as a Deficiency had happened in Mr. *Dormer*'s Office, the like Accident might happen in others; and that it might be proper for his Lordship to take some measures to prevent the like for the future, if possible.

Mr. *Lutwyche.* In the Year 1723, Whether had you any Discourse with my Lord Chancellor relating to the Circumstances of any of the Masters, or about any Proposals of Security to be given by them?

Mr. *Light.* In the Year 1723, I had some Conversation with my Lord upon that Subject, and it was upon the Occasion of my Lord's sending for me to know why I had not complied with a Proposal of the Masters, to pay 500*l.* towards making good Mr. *Dormer*'s Deficiency. I asked, whether it was his Lordship's Proposal, or whether it was a Proposal from some of the Masters. My Lord said, it was mentioned by the Masters, and he approved of it; and as the rest had complied, he hoped I would.

Mr. Sol. Gen. You need not now give a particular Account of this; this will be proper on another Occasion; that I desire to ask you now is, only in general, whether before the 21st of *January*, 1723, you had any Conversation with my Lord about the Deficiency of the Masters, and that there was reason to suspect a Deficiency in some of the Masters?

Mr. *Light.* I did not mention any particular Person, but only that an Accident had lately happened, and as it had happened, it might happen again; but I was far from mentioning any Master by Name; for I might thereby have made myself liable to an Action.

Mr. Sol. Gen. We don't desire to ask him whether he mentioned any particular Master, but only in general, whether he did not say he had Grounds to suspect some of them? The Question is in general.

Mr. Com. Serj. The Question was first asked in general; but the Answer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Answer required is only Yea and No. This we apprehend not to be altogether so regular; we therefore desire the Question may be asked in other Terms.

Mr. Sol. Gen. My Lords, I will ask the Question in general, whether he gave any Intimation in general, that there might be a Suspicion of the Masters?

Mr. *Light.* I did in general acquaint my Lord, as this Accident had happened, I did not know how soon it might happen again. The Year 1720, had made great Havock, and I did not know what Effect it might have had amongst us.

Mr. Serj. *Pen.* I desire Mr. *Lightboun* may be asked, whether he can recollect that he had any Discourse with my Lord *Macclesfield* to that Effect at any other time before *January* 1723?

Mr. *Light.* My Lords, I can't confine myself to a particular Time. I have had the Honour of many Conversations with my Lord *Macclesfield* on this Subject, and what passed at one particular Time more than another,

another, I can't remember I have often had the Honour to hear his Lordſhip mentioning the Methods which he thought of to prevent it; and to propoſe ſuch Methods as I thought of; but I can't tell all the particular Times.

Mr. Serj. *Pengelly.* I deſire he may be aſk'd, whether, from the Converſation which paſs'd between the Earl of *Macclesfield* and himſelf, it appear'd to him, that the Earl had any Suſpicion of a Want of Subſtance in the Maſters?

Mr. *Lightboun.* My Lord, when I mention'd it, ſeemed unwilling to think ſo. He ſaid he hoped not; he hoped there was no manner of Danger, they were all recommended to him for Men of Fortunes, or to that Effect. Latterly, this laſt Year, when my Lord was talking of this Matter, he ſeemed to think there was a Neceſſity that there ſhould be an enquiry into this Affair: and when the Maſters were ordered to bring in their own Accounts, I remember I told my Lord I queſtioned if they were able to do it. My Lord ſaid he hoped it, and wiſh'd it.

E. of *Abington.* If Mr. *Lightboun* be left to his own Diſcretion, to relate without Interruption whatever he can recollect that paſſed between him and Lord *Macclesfield* before *January*, 1723. when this Declaration was made in Court, it may give your Lordſhips a fuller Light and Satisfaction.

Mr. *Lightboun.* I don't remember to have had any particular Converſation about the Abilities of the Maſters, farther than I have mentioned to your Lordſhips. I have told you that I did give ſome Hints in a doubtful Manner, that I was diſſatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. *Peng.* My Lords, we proceed now to examine ſome Witneſſes upon the Article relating to the Maſters coming in, and in what manner the Money was paid upon their Admiſſion, either on a Surrender, or Death of a former Maſter; and out of what Fund that Money was paid. We beg leave to call Mr. *Kynaſton.*

[Mr. *Kynaſton* called.]

Mr. Serj. *Peng.* We beg leave he may be aſk'd, in relation to his Treaty with Mr. *Rogers*, when he came into his Office; and in what Manner the Money paid for the Office was raiſed?

Mr. *Kynaſton.* It was in *May*, 1721.

Mr. Com. Serj. Before Mr. *Kynaſton* anſwers to this, we hope the Managers ſhall intimate to your Lordſhips, that they have Evidence to apply this to the Lord who now ſtands accuſed; otherwiſe a bare Diſcourſe between Mr. *Rogers* and Mr. *Kynaſton* cannot affect the Earl of *Macclesfield.*

Mr. *Lutwyche.* I apprehend this Interruption is very unneceſſary: It is the firſt part of the Article we are going to prove, that it was a Practice among the Maſters in Chancery, to pay the Money for their Places out of the Suitors Money; and that though the Chancellor had good reaſon to ſuſpect or know this, yet he applied no Remedy or Redreſs, but let it go on for his own Benefit: Therefore we muſt begin with the firſt part of the Article. They are not to examine and aſk the Managers, whether they have any Proof of the latter part of the Article? We are beginning with the firſt part of the Article, and then ſhall bring it home to the noble Lord.

Mr. Sol. Gen. We ſhall prove the whole, that there was ſuch a Practice, and that it is reaſonable to think the noble Lord knew it, or had reaſon to ſuſpect it, and did not prevent it. We muſt firſt begin with the Practice.

Mr. Serj. *Peng.* My Lords, we deſire he may give your Lordſhips an Account of the Methods taken at the time he came into the Office, of ſelling and paying for thoſe Offices, and in what Manner the Agreement for his Office was tranſacted?

Mr. *Kyn.* My Lords, I treated with Mr. *Rogers* for the Sale of his Place in *May*, 1721. I did underſtand then, and had heard before, that the Method was, that they retained ſo much of the Money belonging to the Office for their places, and that ſuch had been the practice. I did agree with him, and entered into Articles to pay him 6000 *l.* for his Place. I went for ſome time into the Country, and when I was there, he wrote to me, and told me that he deſigned to reſign the place on the 9th of *Auguſt.* I did come up to Town, and on the 9th of *Auguſt* I gave him a Bond for 6000 *l.* Then I went with him to my Lord *Macclesfield*, and was ſworn in Maſter. There was a general Order for him to deliver over the Effects and Securities to me; after this he delivered up the Bond which I had given him, and retain'd ſo much Money belonging to the Suitors of the Court, as amounted to 6000 *l.* He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6009 *l.*

Mr. Serj. *Peng.* I deſire to know what was paid for his Admiſſion?

Mr. *Kyn.* 1500 Guineas were paid to Mr. *Cottingham* by Mr. *Baily.*

Mr. Serj. *Peng.* How was it repaid?

Mr. *Kyn.* In *February* afterwards, I ſtated an Account with the Perſon that was my Caſh-Keeper and kept my Money, in relation to the Money receiv'd and paid, and he charg'd me with the 1575 *l.* and deducted it out of the Money of the Suitors which he had received.

Mr. Serj. *Peng.* I deſire he may be aſked, how much Caſh, what Sum of Money, came to his Hands from Mr. *Rogers?*

Mr. *Kyn.* Something above 20,000 *l.*

Mr. Serj. *Peng.* I deſire he may be aſked, Whether, when theſe Effects were by the Order of Transfer delivered from Mr. *Rogers* to him, there was any Perſon preſent on behalf of my Lord *Macclesfield*, to ſee them delivered over?—Mr. *Kyn.* No.

Mr. Serj. *Peng.* Was there any Account demanded of him afterwards, either by my Lord Chancellor or his Agent, of the *Quantum* of the Effects or Caſh?—Mr. *Kyn* I don't remember there ever was.

Mr. Serj. *Peng.* I beg leave to aſk, whether at that Time he had Money enough of his own to pay Mr. *Rogers* 6000 *l.* for his Place, and 1500 Guineas to my Lord *Macclesfield* for his Admiſſion?

Mr. *Kyn.* Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. *Peng.* What was his Inducement to come into this Office?

Mr. Sol. Gen. Or, I would aſk it in other Words, Whether the eaſineſs of his paying for his Place was not one Thing that induc'd him to purchaſe?

Mr. *Kyn.* Yes, I believe it was one Inducement to me to purchaſe the Place.

Sir. *Wm. Strickland.* I beg leave to aſk another Queſtion: Mr. *Kynaſton* ſays, he had more Money of his own at that Time; but I deſire to know whether he could have paid 7575 *l.* which he gave for his Office, unleſs he had paid it out of the Suitors Money?

Mr. *Kyn.* No, I could not have paid the whole.

Mr. Serj. *Probyn.* If the Gentlemen have done, I deſire he may be aſked, what Money he had of his own at that Time, either in Caſh, or in his Banker's Hands, or in Security?

Mr. *Kyn.* I really cannot tell, I believe I might have between 2 and 3000 *l.*

Mr. Serj. *Prob.* How much can you take upon you to ſay you had?

Mr. *Kyn.* Really I cannot tell.

Mr. Serj. *Prob.* Speak to the neareſt you can.

Mr. *Kyn.* I believe I had about 2000 *l.* very near three, in Money and Effects.

Mr. Serj. *Prob.* What other Eſtate had you? Had you any real Eſtate?

Mr. *Kyn.* I had an Eſtate ſettled upon me at my Marriage; no other Eſtate.

Mr. Serj. *Prob.* I deſire you to give an Account, whether you had any other perſonal Eſtate?

Mr. *Kyn.* No, I do not remember I had, except you reckon Timber ſuch.

Mr. Com. Serj. I deſire, my Lords, he may be aſked, what the annual value of his real Eſtate was?

Mr. Serj. *Peng.* I ſubmit, whether he be obliged to tell his whole Circumſtances?

Mr. *Kyn.* I am very willing to tell, it was about 400 *l.* a-Year.

Mr. Com. Serj. Whether he had not his Eſtate without Impeachment of Waſt?—Mr. *Kyn.* Yes.

Mr. Serj. *Prob.* Of what Value might the Timber be?

Mr. *Kyn.* I was once bid 2500 *l.* for it, but now they know I have an Occaſion to ſell, they will not give me ſo much.

Mr. Serj. *Peng.* I beg leave he may be aſked, whether at that Time his Father was living?

Mr. *Kyn.* Yes, he was at the Time of my purchaſing the Place.

Mr. Serj. *Peng.* As the Caſh was above 20,000 *l.* of what Value were the Securities?

Mr. *Kyn.* Really I cannot tell, I have given in an Account of the Effects.

Mr. Serj. *Peng.* About what Sum?

Mr. *Kyn.* I have given it in my Accounts what it was.

Mr. Serj. *Peng.* To what Sum doth the whole both in Caſh and Securities amount?

Mr. *Kyn.* I believe under 50,000 *l.* about 46,000 *l.*

Mr. Serj. *Peng.* The Securities as well as the Caſh?

Mr. *Kyn.* I mean the Securities and the Caſh together.

Mr. Serj. *Peng.* Upon this Evidence, we ſubmit it to your Lordſhips, Whether the Timber upon his Eſtate was a proper Security for 50,000 *l.* to be put into his Hands.

E. of *Mac.* He now repreſents his Eſtate to be 400 *l.* a-Year. How was it reputed?—Mr. *Kyn.* I believe about 500 *l. per Annum.*

Mr. *Plummer.* I deſire to aſk him, Whether, if he had felled every ſtick of Timber on his Eſtate, that and his perſonal Eſtate would have paid what he was to give for his Maſter's Place?

Mr. *Kyn.* No, it would not.

Mr. Serj. *Peng.* My Lords, We make Uſe of this as a Proof of the former Article.

[Mr. *Thomas Bennet* called.]

Mr. Serj. *Peng.* My Lords, We deſire he may be aſked in what manner the Transfer of his Office was tranſacted, and how the Money was paid for his Maſter's Place?

Mr. *Tho. Bennet.* My Lords, when I treated with Mr. *Hiccocks* about the Surrender of his Office, one of the firſt Things he told me was, that I need raiſe no Money to come into this Office, for whatever Money we agreed for, ſhould be deducted out of the Money to be paid over to me, which I underſtood to be the Money belonging to the Suitors of the Court.

Mr. Serj. *Peng.* What was done in purſuance of this?

Mr. *Tho. Bennet.* This encouraged me to go on and proceed, in order to come into this Office; I ſuppoſed this to be the Practice, elſe I had not gone in.

Mr. Serj. *Peng.* Whether was that generally reputed to be the Practice?

Mr. *Tho. Bennet.* I own I thought ſo. I was a younger Brother, and had not money enough of my own to come into that Office.

Mr. Serj. *Peng.* We beg leave that he may inform your Lordſhips how much he was to pay, and how it was raiſed and paid?

Mr. *Tho. Bennet.* The Sum I agreed to pay Mr. *Hiccocks* was 1500 *l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 3075 *l.*

Mr. Serj. *Peng.* We hope that he ſhall inform your Lordſhips how it was raiſed and paid.

Mr. *Tho. Bennet.* As to the 1500 Guineas, I acquainted your Lordſhips I borrowed it of my Brother, and the next Day returned it him again out of the Money I received of Mr. *Hiccocks.* As ſoon as I was admitted, I went to Mr. *Hiccocks*, and demanded of him the Suitors Effects. He paid me 1500 *l.* and told me I muſt give a Receipt for 9000 *l.* I told him, it was hard to have no more Money paid me, when he told me there was much more Caſh in the Office, and that I had given my Lord *Macclesfield* more than he had offered to pay me: He ſaid he ſhould pay me more afterwards, but he inſiſted on my taking this now, ſo I took the 1500 *l.* and gave him a Receipt for 9000 *l.*

Mr. Serj. *Peng.* I deſire he may be aſked, whether upon any Occaſion he had any Diſcourſe with the Earl of *Macclesfield* relating to the method of his coming in, or about the re-payment of the 1500 Guineas he paid him?

Mr. *Tho. Bennet.* In order to give an account of this, I muſt acquaint your Lordſhips of the Occaſion of my waiting on his Lordſhip. Mr. *Holford* told me, that my Lord Chancellor had ſent to him, and deſired that he and my Brother, *John Bennet*, would endeavour to accommodate matters between Mr. *Hiccocks* and myſelf, on Occaſion of the Deficiency of my Accounts. Mr. *Holford* ſaid he did not care to go; but my Brother did go to Mr. *Hiccocks.* He would do nothing, no Accommodation could be made; but my Brother told me that my Lord Chancellor would pay back to me the 1500 Guineas which he had received, ſo the matter with Mr. *Hiccocks* might be accommodated.

Mr. Serj. *Peng.* When was this?

Mr. *Tho. Bennet.* It was about the Time of our giving in our Accompts.

Mr. Serj. *Peng.* Was it before *Christmas*, or after?

Mr. *Tho. Ben.* It was before *Christmas* last, in *December*; I think about the 7th of *December*. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas? And he said, Yes, he had it from his Lordship; and he did assure me I might depend upon it; but he said nothing could be done with Mr. *Hiccocks*. Then I desired them to acquaint my Lord with it; they both declined it, and desired I would go myself upon this Occasion. I went, and I told my Lord, I was come to wait upon his Lordship to thank him for the kind Offer he had made to my Brother, of returning the 1500 Guineas, and I wished the same could be said of Mr. *Hiccocks*, and I could prevail with him; but nothing could be done: I came to return his Lordship thanks; and I thought I should have received the Money then. My Lord asked me to sit down, and then told me if he had known I had been to give so great a Sum of Money for the Office, he would not have admitted me. I told him I did give so great a Sum, but immediately, as soon as I was admitted, I ensured my Life to the Value of 8000*l.* which cost me 400*l.* so that if I had died, no harm would have come to the Suitors. My Lord said, it was very honourably done. Soon after that, he said, he was very sorry to see the *Items* that were put into my Accompt and Mr. *Kynaston*'s, in relation to Sums in the Hands of an honourable Person; for, says he, that hath discovered the Method of purchasing these Offices, that the Money is deducted out of the Suitors Money, which, said he, I have always taken pains to deny, whenever I have been asked the Question.

Mr. Serj. *Peng.* We beg leave now to ask him, how much the whole of the Cash, and Securities transferred from Mr. *Hiccocks* to him, amounted to?

Mr. *Tho. Ben.* I believe near 100,000*l.*

Mr. Serj. *Peng.* I apprehend he said before, he was a younger Brother, and had but little Fortune of his own; I desire he may be asked, whether any Care was taken by my Lord *Macclesfield* as to the transferring the Effects of the Suitors in Mr. *Hiccocks*'s Hands over to him? and whether any Person was employed by my Lord to see the Effects transferred over?

Mr. *Tho. Bennet.* No.

Mr. Serj. *Peng.* Whether there was any other Security for this great Sum of Money deposited in his Hands, besides what was made by this Insurance on his Life?

Mr. *Tho. Ben.* No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.

Mr. *Lut.* My Lords, Mr. *Bennet* says, he had some reason to hope that the 1500 Guineas would be given him back again; I desire he may be asked, whether there was any subsequent Overture about paying the 1500 Guineas back again?

Mr. *Tho. Ben.* My Lord Chancellor dismissed me at that Time, and told me, I should not know by what means, or by what methods I should receive the Money, or by whose Hands; but his Lordship would take Care that one way or other I should receive it: He would not say how, because I might be called upon to answer what Discourse passed between his Lordship and me in another place.

Mr. *Lut.* Was there any thing done upon that?

Mr. *Tho. Ben.* Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. *Dixon*, and told him that I had used such Expressions in my Accompt, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I desired him to acquaint my Lord that I could not pay this Money, and that I must discover it in a Day or two. This was *Sunday* Night: The same Night Mr. *Dixon* returned from my Lord, and told me, that if Mr. *Holford* would be present the next Morning at the Payment of the Money at Mr. *Kynaston*'s Chambers, that Mr. *Kynaston* and myself should receive it. We were there the next Day. Mr. *Dixon* came, but brought no Money; said my Lord expected some Indemnification. We said, as to an Indemnification we could give none. He said he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he said it was an Holiday, and no Money could be had, and desired we would go to the Judges, and desire two or three Days time to produce this Money. I told him we could not do it, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he said my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.

Mr. *Lut.* My Lords, we desire he may Answer this Question, whether it was explained what that Indemnification was, which was expected, and in what manner it was to be?

Mr. *Tho. Ben.* My Lords, Mr. *Dixon* explained it thus——

E. of *Mac.* I hope whatever Mr. *Dixon* said, shall not affect me; but that they will produce him: He is able to speak for himself.

Mr. *Lut.* Then I only desire he may be asked, what Officer Mr. *Dixon* was under my Lord Chancellor?

Mr. *Tho. Ben.* Mr. *Dixon* was my Lord's Secretary.

Mr. *Lut.* Whether at that Time that you had the Discourse with my Lord *Macclesfield*, you mentioned or said any thing of Mr. *Dixon*'s having come to you in my Lord *Macclesfield*'s name?

Mr. *Tho. Ben.* No, my Lords, that was before Mr. *Dixon*'s coming to me.

Mr. *Lut.* Did you take Notice at any time to my Lord *Macclesfield* of Mr. *Dixon*'s coming to you?

Mr. *Tho. Ben.* No, I never spoke to my Lord Chancellor afterwards. This was the 27th of *December*, and it was the 7th of *December* that I waited upon my Lord.

Mr. Serj. *Peng.* We think it appears that Mr. *Dixon* was an Agent of my Lord *Macclesfield*'s: I desire to know what the Nature of the Proposal of Indemnification was, that he made?

E. of *Mac.* I can't think Mr. *Serjeant* is in earnest. Have they proved that he was employed by me? I have heard no Proof of it, only Mr. *Serjeant* hath said it. Mr. *Dixon* himself is the proper Person to give an Account of what he told them from me. If they do insist upon it, I must beg your Lordships Judgment.

Mr. Serj. *Peng.* If it is insisted upon by the noble Lord, to disavow the Proceedings of his own Agent, we will wave it.

E. of *Mac.* I neither avow nor disavow, but I object to the Evidence of this Gentleman about the Discourse of what Mr. *Dixon* said, who is living and can speak for himself.

Mr. Serj. *Peng.* If the noble Lord will ask him any Thing, he may; we have done.

E. of *Mac.* I beg Leave that Mr. *Bennet* may be asked two or three Questions: He has indeed given Evidence which greatly surprizes me. In the first Place, I desire he may inform your Lordships, whether, when he was with me, he did not tell me, that if Mr. *Hiccocks* would pay 2000*l.* he would make good the whole Money?

Mr. *Tho. Ben.* No, I did not say so; I could not make good the whole Money, or any thing like it. I said that such a Report had been spread, that I proposed, that if Mr. *Hiccocks* would pay me 2000*l.* I would answer the rest; but I was not able.

E. of *Mac.* I would be glad to know how he came to tell me of a Report of his own Act: Was it a Report without any Foundation?

Mr. *Tho. Ben.* I went to Mr. *Hiccocks*, and told him I wanted 6000*l.* but he said if 2000*l.* would do, he believ'd he could lend me that. Lend it me, said I! If you give me 200*l.* it is something. And this was the Foundation of this Report.

E. of *Mac.* I cannot give Evidence myself to disprove him in this; and therefore I desire to know whether he has said to any other Persons, that if Mr. *Hiccocks* would pay him two thousand, or three thousand Pounds, or thereabouts, he would pay the rest?

Mr. *Tho. Ben.* I might say, I would endeavour to raise the rest; but I never said I would pay the whole, for I knew I was not able.

E. of *Mac.* Mr. *Bennet* understands my Question, to which he hath given no Answer. My Question is, Whether he hath not told some other People, that in Case Mr. *Hiccocks* would pay 2 or 3000*l.* he would pay all the rest?

Mr. *Tho. Ben.* No, my Lords, I never told any Body that I would pay the rest; but I believe I might say, if Mr. *Hiccocks* would give me 2 or 3000*l.* I would stand the Hazard; for I did not expect that all the Money should be taken out of my Hand.

E. of *Mac.* I desire he may be asked, whether at that time he was with me, I did not ask him, with what Conscience and Honesty he could buy a Place, when he had not Money to pay for it? or whether it was not in Answer to that, that he told me that he had insured his Life?

Mr. *Tho. Ben.* My Lord did say so to me. I answered I had not Money; that I had not bought the Place, had it not been for the Cash of the Suitors; and that I had since insured 8000*l.* on my Life, in order to secure the Suitors.

E. of *Mac.* I desire to know what visible Estate the Gentleman then had, and of what yearly Value?

Mr. *Tho. Ben.* My Lords, when I came into the Office, I believe I had about 250*l.* a Year, or thereabouts.

E. of *Mac.* I desire to know, whether he was married before?

Mr. *Tho. Ben.* I was.

E. of *Mac.* What Fortune had you with your Wife?

Mr. *Tho. Ben.* The Fortune I had with my Wife, was in the Whole between 2 and 3000*l.* Part of it was an House.

E. of *Mac.* What was the Value of that House?

Mr. *Tho. Ben.* I had not let it then; but since my coming into the Office I have let it for 90*l.* a Year.

E. of *Mac.* I desire to know if he did not keep his Coach and Equipage at that Time?

Mr. *Tho. Ben.* I did set up my Coach in the unfortunate Year 1720. I was once worth 20,000*l.* but lost it all, and became much indebted; the Estate I had of my own was mortgaged for more than it was worth.

E. of *Mac.* Whether he was married in the Year, 1720?

Mr. *Tho. Ben.* No, I was not.

E. of *Mac.* I desire to know what Estate he hath given into the Court of Chancery?

Mr. *Tho. Ben.* That Account lies upon the Table.

E. of *Mac.* What yearly Value is that?

Mr. *Tho. Ben.* About 900*l. per Annum*; part of it is settled, the rest mortgaged, and an Annuity charged on it more than it is worth.

E. of *Mac.* Has any Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. *Tho. Ben.* Part of that given in was so, 68*l. per Annum*, and 40*l. per Annum*.

E. of *Mac.* Has any other Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. *Tho. Ben.* None, but what I have given in. I have given in every Shilling.

Mr. Com. Serj. My Lords, I desire he may be asked, whether he was not, at the Time of his becoming Master in Chancery, in Possession of the Office of Clerk of the Custodies?

Mr. *Tho. Ben.* Yes, I was.

Mr. Com. Serj. Now, my Lords, it will be very proper to ask him what that was sold for, that the Value of his Estate may be known.

Mr. *Tho. Ben.* That may affect me and my Successor.

M. *Lut.* I don't know whether we need put you in mind, that the late Act of Parliament only indemnifies the Masters, but there is none to indemnify the Clerk of the Custodies.

Mr. Com. Serj. Which way it will affect Mr. *Bennet* I don't know. I apprehend no Action can lie against him for the Money he received, nor any criminal Prosecution or Information. But that I may not mispend your Lordships Time, I desire Mr. *Bennet* may inform your Lordships of the yearly Value of the Place.

Mr. *Tho. Ben* It is about 250*l.* a Year.

E. of *Mac.* A Patent for Life?

Mr. *Tho. Ben.* Yes, my Lords.

Mr. Serj. *Probyn.* How much hath it been sold for?

Mr. *Tho. Ben.* I can't tell what it hath been sold for: It may have been once sold for about 1200*l.*

Mr. Serj.

Mr. Serj. *Probyn.* At that time when you ſurrendered, what might it have been ſold for?

Mr. *Tho. Bennet.* I beg Leave to ſubmit, whether I am obliged to anſwer that Queſtion?

Mr. Serj. *Pengelly.* If it was not ſaleable by Law, it was not worth a Farthing. I beg Leave to put your Lordſhips in mind, that Mr. *Bennet* was excuſed Yeſterday from anſwering a Queſtion of the ſame Nature: The Counſel hope that this Day, being a new Day, they may have Liberty to ask the ſame Queſtion over again.

Mr. Com. Serj. There was another Ingredient in your Lordſhips Reſolution Yeſterday. I hope it is no Injury to him to anſwer how much he hath known it to be ſold for; without mentioning by whom.

Mr. Serj. *Probyn.* We hope Mr. *Bennet* will anſwer the Queſtion, What is the moſt he hath known it to be ſold for?

Mr. *Plummer.* My Lords, I object to his anſwering that Queſtion, becauſe if he did ſell it himſelf, that might be the greateſt Sum that he hath known to be given for it, and that will ſubject him to a Penalty.

Mr. Serj. *Probyn.* We don't ask who gave it, or who received it: but what is the greateſt Price he hath known that Office to be ſold for?

E. of *Mac.* He ſays he hath known it to be ſold for 1200 *l.* I deſire he may be asked, Whether he hath not known that it hath been ſold for more?

Mr. *Tho. Bennet.* I believe it hath been ſold for more.

E. of *Mac.* And how much more?

Mr. *Weſt.* This Queſtion is an indirect way to come at that Queſtion that was denied them Yeſterday.

Sir *Wm. Strick.* My Lords, with humble Submiſſion, the Queſtion asked by the Noble Lord, tends directly to make Mr. *Bennet* tell what he ſold his own Office for; for if his own Office was ſold, it is probable that he ſold it for the greateſt Price; and to tell that, is to make him ſay what he ſold his own Office for.

Mr. *Lutw.* By this method your Lordſhips Reſolution of Yeſterday will be evaded. We took it then, that the Witneſs was not obliged to diſcover what he ſold the Office for. Now they are asking what is the greateſt Price he knew the Office ſold for? Then the next Queſtion may be, To whom was the Office ſold, and by whom was it ſold? Therefore we muſt humbly ſubmit it to your Lordſhips, that it is not a Queſtion to be asked.

Mr. Com. Serj. To object to a Queſtion becauſe another may follow, is odd arguing. When ſuch a Queſtion is made, it will be then time enough to oppoſe it: Therefore I hope that we ſhall go on.

Mr. Serj. *Probyn.* My Lords, I apprehend this Queſtion is proper, and the Anſwer to it is neceſſary.

Lord *Lechmere.* Your Lordſhips will obſerve ſome Rules in your proceedings. An Objection hath been made: An Anſwer hath been given: both Sides inſiſt upon your Lordſhip's Judgment: that being done, they muſt withdraw. Therefore I deſire they may withdraw.

E. of *Mac.* The Reply is not yet made; ſomething has been ſaid by the Gentlemen who are Managers by way of Objection to the Queſtion that was propoſed, which, if they inſiſt upon, I deſire my Counſel who are to reply, may be heard before they withdraw.

Mr. Serj. *Probyn.* The Managers for the Houſe of Commons have been pleaſed to examine into the Circumſtances of Mr. *Bennet*, at the time he was admitted Maſter, in order to ſhew that he was then not of Subſtance fit to be intruſted with ſo great a Sum of Money. We are then in Duty obliged to examine him as to that Subſtance, and the Value of his Effects. He hath told your Lordſhips what Eſtate he hath in Land; we are now to examine him as to his perſonal Eſtate: He hath told us he had an Office, the Clerk of the Cuſtodies; that he hath parted with it; the Money ariſing by that Office muſt be reckoned as part of his perſonal Eſtate. To come at the Value of the Office, we do not ask him any Queſtion that makes him liable to a Penalty; but ſuch a Queſtion, where the Anſwer to it may be given with ſafety; and that is, What is the greateſt Sum he hath known to have been given for the Office of the Clerk of the Cuſtodies? He may anſwer this without involving himſelf in any Difficulties, for it is not asked what he himſelf hath ſold that Office for? No Anſwer to this general Queſtion can affect him with any ill Conſequence.

Dr. *Sayer.* I humbly apprehend this is no way irregular. We are inquiring about his Effects; it is owned he had the Office of Clerk of the Cuſtodies, therefore that muſt be a Part of his perſonal Eſtate: The Anſwer to our Queſtion can't any way involve him in Danger, or ſubject him to any Penalty; becauſe it doth not neceſſarily follow that he ſold his Place at the greateſt Price that he ever knew it ſold for. We ſubmit it, whether it is not a Queſtion fair with regard to the Witneſs, and proper to be put to him.

Mr. *Robins.* We agree that where he may ſubject himſelf to a Loſs, there is no forcing him to anſwer; no Perſon is bound to accuſe himſelf. But this is only a matter of diſcovery what the Value of this Office is; the Anſwer cannot affect him; and therefore we hope we ſhall have an Anſwer.

Mr. *Strange.* My Lords, I am ſurprized to hear it ſaid that this is not a Queſtion material for the Noble Earl's Defence: Surely it is as material for us to increaſe his Eſtate, as it is for them to diminiſh it. They have already examined into particulars, to ſhew what ſmall Subſtance he was of, and what the Eſtate he had was mortgaged for: the proper Anſwer to be given to that, as far as it will go, will be to ſhew that he had other Eſtate and Effects, and we are not able to ſhew that without examining him. I humbly ſubmit it therefore that we are as proper to go into that Evidence as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are intitled to examine to it likewiſe on behalf of the Noble Earl.

E. of *Mac.* I apprehend the Objection is, That he is not to be asked a Queſtion, which if he anſwers he will charge himſelf with a Crime or Penalty. Whatever Anſwer he makes to this Queſtion cannot charge him: Let him anſwer and ſay that he hath known this place ſold for 1000, 1500, or 2000 *l.* can that be given in Evidence ſo as to affect him? Therefore the Queſtion To-day is not the ſame as was asked Yeſterday: It was then asked, What he had received for his Place? and if he had anſwered and ſaid what he had received, it would have been a Confeſſion, which would have convicted him: But if the Anſwer be, That he knows it was ſold for ſuch a Price, and that is given in Evidence, by that Anſwer it doth not appear that he ſold it: Therefore upon that I humbly ſubmit to your Lordſhips, and we are ready to withdraw.

Mr. Serj. *Peng.* This is by a Side-wind to know your Lordſhips Opinion upon the 9th Article.

E. of *Mac.* I beg leave to interrupt that worthy Gentleman. I agree that the Commons that bring in the Charge, have a right to reply; but, with Submiſſion, this is an Objection ariſing from my Counſel, and the Reply belongs to them.

Mr. Serj. *Peng.* My Lords, we apprehend the Objection ariſes from the Managers, and therefore the Reply belongs to them. The Managers made the Objection, therefore we beg leave to obſerve, that this is in conſequence to deſire your Lordſhips Judgment upon the 9th Article, Whether the Office of the Clerk of the Cuſtodies be ſaleable by Law, or no? If he is obliged to anſwer this Queſtion, it is upon a ſuppoſition that the Tranſaction is lawful: Therefore, in an Affair of this Nature, there can be no other View but to get an Opinion upon this Article. My Lords, we apprehend this Proceeding is in conſequence the ſame as if a Queſtion was propoſed to your Lordſhips, Whether my Lord *Macclesfield* could by Law ſell the Place of Clerk of the Cuſtodies?

Mr. *Lutw.* My Lords, I muſt beg leave to mention this to your Lordſhips. When it is conſidered upon what Foundation this Queſtion is asked, and what it doth mean, it can be only to elude your Lordſhips Reſolution yeſterday, and to make that of no Effect. My Lords, there ſhould be always the greateſt Candour uſed before your Lordſhips, that no Tricks or Methods ſhould be made uſe of to ask that which ſhould not be asked. Now, my Lords, what is the Queſtion they are examining to, and the Uſe to be made of it? Here is a Perſon that is alledged to be of mean Ability, and the Queſtion is, What Subſtance and Eſtate he hath? And they would reckon into part of his Eſtate an Office not ſaleable by Law, and ask him, what that Office is worth? From whence the Inference muſt be, that he ſold it.

E. of *Mac.* That is not the Queſtion, what it is worth? but a particular Fact, what is the moſt that it hath been ſold for?

Mr. *Lutw.* What doth that tend to? The Queſtion is, What Eſtate this Gentleman had that could enable him to pay this Money for this Office? They have examined him about his own Eſtate, and his Wife's Eſtate, but then there is another part of his Eſtate; which was this Office of Clerk of the Cuſtodies. What is that? It is that very Thing which we ſay it is unlawful to ſell: Therefore we ſubmit it to your Lordſhips as no way material to the Defence of the Earl. We hope your Lordſhips will not admit that to be done by an indirect Method, which would not be admitted to be done by a direct one.

[Ordered to withdraw; which was accordingly done; and all Parties concerned being after ſome time called in again]

The Lord Chief Juſtice *King* declared to them, That it was the Order and Judgment of the Lords, That the ſaid Queſtion was not to be asked.

Mr. *Plum.* I would ask Mr. *Tho. Bennet* one Queſtion, Whethere every Thing he had in the World at the Time of his Purchaſe of the Maſterſhip was worth the Money he gave for it?

Mr. *Tho. Bennet.* All I had in the World was not worth it.

Mr. Serj. *Probyn.* My Lords, Mr. *Bennet* ſays he mortgaged his Eſtate for more than it was worth; I deſire he may be asked, Whether he knew at that time, that it was not worth ſo much as it was mortgaged for?

Lords. No, No.

Mr. *Plum.* My Lords, I beg Leave to ask this Queſtion, and I hope it will be very proper, that is, I deſire to ask Mr. *Bennet*, as he hath given an account of a Converſation with my Lord *Macclesfield*; I deſire to know if my Lord *Macclesfield*, at the time of his Admiſſion into his Office, did ask him what he was worth?

Mr. *Tho. Bennet.* My Lord *Macclesfield* never asked me any Queſtions in Relation to my Circumſtances, or any thing like it.

E. of *Mac.* My Lords, I deſire he may be asked, Whether I had any notice of his Loſſes by the *South Sea?*

Mr. *Tho. Bennet.* Not that I know of: I don't know that my Lord *Chancellor* had any Notice of it.

Mr. Serj. *Peng.* My Lords, if the Counſel have done, we ſhall not give your Lordſhips any farther trouble on theſe two Articles: Both of them are as clearly and as fully proved and ſubſtantiated as it is poſſible. It comes out now, upon the Examination, that tho' ſeveral Maſters were intruſted with 40, 50, or 80,000 *l.* they were not of any competent Subſtance, not really worth what they paid for their particular Places. As to the manner of their paying for their Places, if we have not given a direct Evidence that his Lordſhip knew it, yet the practice and notoriety of the Fact being proved, and that it was thus generally underſtood, is a reaſonable Evidence in itſelf, and by the notice the Earl took of it himſelf by the ſeveral Queſtions he hath asked, we think it is yet clearer. We humbly ſubmit, whether upon this Evidence every part of theſe two Articles is not ſufficiently proved? We depend upon the Examination already taken, and will take up your Lordſhips time no farther.

[Then the Managers and the Counſel were directed to withdraw, and the Lords adjourn'd to the next Morning at Ten a-Clock in the Forenoon.]

Saturday, May 8th. *The Third Day.*

THE Lords being ſeated in their Houſe, Proclamation was made by the Serjeant at Arms for Silence; and another Proclamation, That all Perſons concerned were to take Notice, that *Thomas Earl of Macclesfield* now ſtood upon his Trial, and they might come forth in order to make good the Charge.

Lord Chief Juſt. *King.* Gentlemen of the Houſe of Commons, you may proceed in your Evidence.

Mr.

Mr. *Gybbon*. My Lords, Your Lordships having already heard what has been offered in Support of the preceding Articles, I am commanded by the Commons to assist in maintaining the 13th and 14th Articles of their Impeachment against the Earl of *Macclesfield*.

The Charge in these Articles is, That the Earl knowing Mr. *Dormer* (one of the Masters in Chancery) had disposed of great Part of the Suitors Money for his own private Advantage, by which there became, and still continues, a Deficiency of at least 25,000 *l.* and that Mr. *Dormer* absconded upon that Occasion; That Application was made to the Earl thereupon, who instead of taking proper Methods to compel Mr. *Dormer* to make Satisfaction to the Suitors, (from an Apprehension that a publick Discovery of the said Deficiency might lessen the unjust Gain the Earl proposed to himself, by selling and disposing of the said Offices) did endeavour, by many indirect Practices, to conceal from the Suitors of the Court the true State and Condition of the said Office, and did falsly, and deceitfully declare that Mr. *Dormer* was only gone to take the Air; that he would return in a little Time, and all would be well. That Mr. *Dormer* having, towards a Satisfaction to the Suitors of the Court, assigned to Mr. *Edwards* (who succeeded him in his Office of Master) a Debt of 24,046 *l.* 4 *s.* due from Mr. *Wilson* (a Banker) to Mr. *Dormer*, to the Intent the Money received on that Account should be applied as the Court of Chancery should direct, the Earl of *Macclesfield*, for the unlawful Purposes aforesaid, without regard to the Interest of the said Suitors, by Colour of his said Office, did in an unwarrantable, clandestine, and unusual Manner, authorize, direct and establish a precarious and trifling Composition with the said *Wilson*, upon his paying 1463 *l.* 2 *s.* 1 *d.* and assigning 10,000 *l.* Part of a Debt of 22,060 *l.* 12 *s.* 5 *d.* pretended to be due to the said *Wilson* from *Edward Poulter*, in Discharge of the said Debt; and to that End, on Mr. *Hiccocks*'s Report, then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order, not made in open Court, order Mr. *Edwards* to accept the said Composition in full Discharge of the said Debt; which said *Poulter* was a Person Insolvent, and has since absconded for Debt, and none, or very small Part of the said 10,000 *l.* has been, or is ever likely to be received.

Your Lordships will please to observe, that the Earl is charged with the highest Breach of Trust in relation to the Suitors of the Court of Chancery, and to have committed that Breach of Trust for the most unjustifiable End.

The Crimes, my Lords, stated in these Articles, are in themselves so heinous they need no Aggravation; and I think the noble Lord's Answer shews they are capable of no Excuse.

He is pleased to say, "That Mr. *Dormer* being out of Reach, his "Effects unknown, except the Stock, which could not be transferred "without his Concurrence, and the Earl seeing no other Way open to "get any Thing for the Suitors, and being made believe, if a Deficiency "should happen, the same should be made up by other Masters; "did agree, That in Case Mr. *Dormer* would come over, and make a "full Discovery of all his Effects, and assign the same for the Benefit of "the Suitors, the said Earl would allow him his Liberty on that Condi-"tion, and not otherwise."

The noble Lord says, No other Way was open to get any Thing. Sure, my Lords, the granting of a Sequestration would have been one, and the speediest Way to have found out and secured the Effects; but it might have been a Way too open; for it must have published the Deficiency of the Office; whereas Mr. *Dormer*'s coming home, and quietly resigning, hushed all Enquiry.

What the Earl means by being made to believe the Deficiency should be made up, I am at a Loss, my Lords, to know. Made believe! how, or by whom? It does not appear the Masters entered into any Contract to do it; and could his Lordship think any Discourse between him and the Masters (if such there was) could be sufficient Security for the Suitors of the Court?

But suppose the Masters had contracted to supply the Deficiency, I submit to your Lordships how far that Contract would have been justifiable; for how should that Supply arise? If out of the Suitors Money in the Masters Hands, that was only supplying one Deficiency by making another; and if it was to be out of their own Estates, that likewise, by lessening the Substance of the Masters, would diminish the Security of their own Suitors; and what, my Lords, could induce the Masters to enter into such a Contract? I can imagine nothing, but to conceal the Deficiency, in order to raise a Value on their own Places upon their Resignations. I therefore submit to your Lordships, whether the Earl's Answer is not an implyed Confession of an Endeavour to conceal this Deficiency, in order to keep up the Price of the Office? Your Lordships observe on what Condition the Earl says he permitted Mr. *Dormer* to come over. But I do not find the noble Lord alledges, that in order to gain the End proposed, Mr. *Dormer* was examined on Interrogatories touching the Debts due to the Suitors of the Court, or to what Estates or Effects he had to answer the same: We can shew your Lordships there was no such Examination. We shall prove, that Mr. *Dormer* did not give a satisfactory Account of his Balance, and with great Difficulty was prevailed on to convey his Estate for the Benefit of the Suitors: But yet, my Lords, he continued to have his Liberty. How the Earl will account for those Proceedings, I leave to your Lordships Consideration: I can see no possible Account can be given but this, that an Examination on Interrogatories touching the Debts of the Suitors, and Mr. *Dormer*'s Answer and Confinement, must have published the Deficiency of the Office. The Earl is pleased to say, "He did not doubt but the whole Debt upon "the said *Fleetwood Dormer* would be paid."

I presume he did not doubt but it would be, because he knew in Justice it ought to be paid; and since it is before your Lordships, I likewise do not dout but it will be paid.

The noble Lord in his Answer is pleased to quote, on some Occasions, the Example of his Predecessors; I wish, for the sake of the unhappy Suitors, and for the Honour and Justice of the Court of Chancery, he had here followed the Steps of his Predecessors in the Case of Dr. *Edisbury*.

The noble Lord insists, "He does not remember any Application made "by the Masters for any Assistance of the Court, touching the Person "or Effects of Mr. *Dormer*, but what he granted, as far as he thought "tended to the Benefit of the Suitors."

We shall offer Proof to the contrary: But had that been so, was that, my Lords, sufficient? Was the Earl to wait the setting of a Prosecution on Foot, 'till Application made by the Masters? It was not probable many of them (who had bought at high Prices, and on Resignations, were to make the most of their Places) would apply for the securing the Person or Effects of Mr. *Dormer*, they would not willingly have had a Master imprisoned; the Discovery of a Deficiency in him would have made other Suitors apprehensive that the same might have happened to them; for every one knew how freely those Gentlemen trafficked in the fatal Year 1720. The very Notion of a Deficiency would have put the Suitors on an Inquiry, and upon calling the Money out of the Masters Hands. Could then the Earl expect they would interest themselves much in an Examination of this Kind? But was it less his Duty to enquire and give all necessary Orders, and take all proper Precautions for the Suitors Safety, because the Masters neglected it? No, certainly, unless for the Reason assigned in the Article.

The Earl says, "He did never endeavour to conceal the true State "and Condition of the Office from the Suitors, nor did any of them, "until very lately, apply to him to look into the same."

He well knew, that many of them called for their Money, and were ordered their whole Demands, while Mr. *Edwards* had wherewithal to pay; but those unhappy Suitors, who did not know of the Deficiency, and, from such Orders for the whole Money, might well be persuaded there was no Deficiency, and consequently did not complain, have now, I fear, a melancholy Case. And with what Grace the Earl can insist, that no Suitors ever did, or at least till very lately, complain, I leave to your Lordships Consideration.

The Earl is pleased to say, "He remembers nothing of his using the "Expression charged in the Article, either before or after he knew of "Mr. *Dormer*'s absconding."

I believe the noble Lord, on a little Recollection, will easier call to Mind what he said on this Occasion, than be able to give a justifiable Reason for it.

He is pleased to say in his Answer to the 14th Article, "He quitted "all the Advantage of the Disposal of Mr. *Dormer*'s Office."

The Gentlemen, who have spoke before me have, I hope, sufficiently made it appear to your Lordships, that there could be no such legal or just Advantage. Where then is the Generosity? A Sum of Money, which he ought not to have taken, is given up towards answering the Debt of the Court, for which I take it his Lordship himself is answerable.

He is pleased to say, "That after Mr. *Dormer*'s assigning Mr *Wil-"son*'s Debt to Mr. *Edwards*, the Earl believes Mr. *Edwards* used "great Endeavours to obtain Payment and Satisfaction of the said Debt "from Mr. *Wilson*; but finding all Endeavours fruitless, and that Mr. "*Wilson* had stopped Payment, and was in no Condition of paying his "Creditors the whole of their Debts, but had offered to come to a "Composition, and to pay them in Proportion the utmost he was able; "Mr. *Edwards* thereupon petitioned his Lordship."

What those great Endeavours were, I am, my Lords, at a Loss to know; for I cannot find there was any Commission of Bankruptcy taken out against *Wilson*, (though that was advised and pressed as a safe and necessary Method), no Suit in the Court of Chancery, or in any other Court commenced against him, to get in this Debt, or that he was so much as served with any Process about it. How then the Earl can say, That all Endeavours were found fruitless, I leave to your Lordships Consideration.

He is pleased to say, "Mr. *Hiccocks* reported, 'twas his Opinion the "accepting the said Composition would be for the Benefit of the Persons "entitled to receive the same."

My Lords, It does not appear Mr. *Hiccocks* had looked much into *Wilson*'s Circumstances, had examined the Particulars of his Books on Oath, had called the Creditors before him to enquire into the Justice of their Debts, or to know the Amount; but yet took upon him to apportion Part of *Poulter*'s Debt, as a Composition for the Suitors of the Court; though it will appear that *Wilson* paid several of his Creditors afterwards their full Demands.

Strange Proceeding, sure, in an Affair of this Narure! for which I will not pretend to account. But, my Lords, I cannot but observe that the two Masters, who were employed to take Care, on this important Occasion, for the innocent, unhappy Suitors, were very soon (pending the Affair) allowed to sell their Places at exorbitant Prices. Mr. *Rogers*, *August* 1721. for 6000 *l.* and Mr. *Hiccocks*, *June* 1723. for 7500 *l.* and which very Sums now remain a Debt to the Suitors of the respective Offices. Your Lordships have already heard what was demanded and paid on those Resignations.

The Earl is pleased to say, "That on Mr. *Edwards*'s second Petition, "with Mr. *Hiccocks*'s Report annexed, (in which Mr. *Edwards* expressly "prayed, that he might be ordered to accept the said Composition) the "Earl in a proper and usual Manner ordered the same as prayed, and was "informed, and believes, that the said Composition was made and agreed "to on a Consultation of all or most of the Masters of the said Court."

I have heard, my Lords, the proper and usual Manner is to have Petitions of this Nature set down to be heard in Publick, and the Parties concerned

concerned to be ſummoned; Petitions relating to Bankrupts, to Lunaticks, to Ideots, I believe are ſo: The Statute in the Caſe of Bankrupts directs public Notice to be given in the *Gazette*, for the Creditors to meet; they have an Opportunity there to make all proper Enquiries, and ſee every thing done that may be moſt for their Advantage; the Bankrupt is not entitled to his Liberty, nor any Benefit allowed him, without a Certificate that he has made a full Diſcovery of his Effects, and that there appears no Reaſon to doubt of the Truth of ſuch Diſcovery; and not then neither, unleſs four Parts in five in Number and Value of his Creditors ſign ſuch Certificate, and teſtify their Conſent. How the Earl could think it juſt that the Suitors of the Court of Chancery (whoſe money was forced from them by the Power of that Court, and put into the Hands of a Bankrupt Maſter) ſhould have leſs Care taken of them, leſs Privileges allowed them for their Security, than any other Creditors in the Kingdom, I can no way comprehend, but muſt think, my Lords, this clandeſtine and unuſual Proceeding a ſtrong Proof of the Crime charged in theſe Articles.

" As to what the Earl ſays of the Compoſition being agreed to by moſt " of the Maſters;" if that, my Lords, had been ſo (though we ſhall give Evidence to the contrary), I ſhould not at all have wondered at it; for any Compoſition obſtructed the Inquiry and Proceedings, which otherwiſe muſt neceſſarily have been publick: But, my Lords, had the Compoſition been agreed to on a Conſultation of all or moſt of the Suitors concerned, that indeed would have been a good Defence of the noble Lord.

" He is pleaſed to ſay, at the Time of *Wilſon*'s Aſſignment of *Poulter*'s " Debt, that *Poulter* was looked on to be a ſubſtantial Perſon."

We ſhall produce to your Lordſhips Evidence to the contrary: And I muſt obſerve that the Earl does not offer to ſhew any proper Inquiry was made touching his Solvency. Sure, my Lords, when that Debt was taken as a Payment for the Suitors of the Court, his Circumſtances ſhould have been carefully looked to, and a Recognizance with Securities taken in Court; but that could not be done without a publick Notice of the Deficiency.

When I conſider, my Lords, the long Experience and great Abilities of the noble Earl, I can never think the Remiſſneſs in this Inquiry, theſe clandeſtine and unuſual Proceedings, this precarious and trifling Compoſition, could have happened through Inadvertency only: I therefore, my Lords, muſt inſiſt upon it as a manifeſt Proof of the Charge contained in theſe Articles.

The Gentleman who ſpeaks after me on this Occaſion, will open the Evidence we ſhall offer, and I will therefore take up no more of your Lordſhips time.

Mr. *Hedges*. My Lords, it falls to my Share to endeavour to be Aſſiſtant to the Gentleman who ſpoke laſt, in maintaining the 13th and 14th *Articles*; which I ſhall do by ſtating the Evidence to your Lordſhips as ſhortly as I can.

My Lords, The 13th *Article* ſets forth, That Mr. *Dormer* having *embezzled* great Part of the Suitors Effects, to the amount of 25,000 *l.* or ſome other great Sum, and he thereupon *abſconding*, Application was made to the Earl of *Macclesfield*, then Lord Chancellor, to *ſecure his Perſon and Effects*, which his Lordſhip *neglected* and *declined* to do; and *endeavoured* to *conceal* the true State of the Office, as well with reſpect to Mr. *Dormer*'s Effects, as to the Debt due from him to the Suitors. And upon motion made in the Court of Chancery (after his Lordſhip *knew* that Mr. *Dormer* had *abſconded*) that the Effects of ſome of the Suitors might be *transferr'd* to a more *ſecure* Office, his Lordſhip, in order to *delude* the Suitors into a Belief of the Safety of their Effects, and to prevent a publick Inquiry, then ſitting in open Court, did ſay, That the Parties need not be in haſte; *falſely and deceitfully* at the ſame Time declaring, that Mr. *Dormer* was only gone to *take the Air in the Country*, and that he would return in a little time, and *all would be well*, or to that effect. And, my Lords, notwithſtanding the Earl's Endeavour in his Anſwer to *evade* the Charge contain'd in this Article, I am perſuaded, upon hearing the Evidence, your Lordſhips will reſt ſatisfy'd, that it has been *made out* in every Particular. For, my Lords, as to the firſt part of the Charge, where he denies that he was ever *adviſ'd to ſecure* Mr. *Dormer*'s Perſon, it will be made appear to your Lordſhips, that Mr. *John Bennet*, and Mr. *Lightboun*, went from a Meeting of ſeveral of the Maſters, and in their Names *acquainted* the Lord Chancellor, that it was their Opinion, That Mr. *Dormer* had *not fairly* ſtated his Accounts; that there was a *Deficiency* of upwards of 20,000 *l.* and that it was neceſſary, for Example's ſake, he ſhould be committed, according to the *Precedent* ſet him by the Lord *Cowper* in Dr. *Ediſbury*'s Caſe. But the Earl inſiſting on Mr. *Dormer*'s *Liberty*, they again repeated the *Neceſſity* of making ſuch an Example, but at laſt left the Earl *fixed* in his Reſolution of continuing Mr. *Dormer* at Liberty.

My Lords, this Promiſe of Freedom to Mr. *Dormer* was only conditional; if he gave in a fair and juſt Account, and aſſiſted in getting the Debts. But he was ſo *far* from complying with theſe Conditions, that when he gave an Account in Writing of the Balance of his Caſh, amounting to 49,000 *l.* he only inform'd them, that 24,000 *l.* of it was due from one *Wilſon*, a Banker, *ſince broke*; but as to the Remainder, the Maſter to whom it was given, could never obtain from him any other Notice where it lay, or what was become of it.

Immediately upon this, the Maſters were *ſummon'd*, and *acquainted* with it; and the next morning that Account was *left* with Mr. *Cettingham* for the Lord *Chancellor's peruſal*.

Your Lordſhips will be further inform'd, that Mr. *Rogers* and Mr. *Hiccocks*, being directed by the Lord *Chancellor* to procure a Conveyance of Mr. *Dormer*'s Eſtate to them, for the Benefit of the Suitors, it was with the *greateſt Difficulty* that Mr. *Dormer* was *prevailed* upon to *comply* with it.

In the next Place, my Lords, his Lordſhip, in his Anſwer, denies, that he endeavour'd to *conceal* the true State of the Office from the Suitors; or that he *remembers* any thing concerning the *Expreſſion* he is charged with; that Mr. *Dormer* was only gone into the Country *to take the Air*, and that he wou'd *return* in a little time, and all would be well.

My Lords, I muſt agree that, ſince his Lordſhip is reſolv'd to *deny* that he endeavour'd to *conceal* the State of the Office, it were to be *wiſh'd by him* that he cou'd *falſely deny* this Expreſſion, ſince, if true, it *proves* that Endeavour directly upon him. But, my Lords, the Words *were* ſpoken by his Lordſhip in open Court, and can be *ſworn to* by a Perſon, whoſe *Buſineſs* in Court at that Time was ſuch, as can poſſibly leave no room for a *Doubt*, or *a Miſtake*.

For farther Proof, my Lords, of his Lordſhip's Endeavour to *conceal* the State of this Office, we ſhall ſhew, that a Meſſage was ſent from the Lord *Chancellor* to Mr. *Lightboun*, with a Propoſal that he ſhou'd advance 500 *l.* towards this Deficiency: Acquainting him, at the ſame time, that it was for the *Honour of the Court*; and that the Appearance of a Deficiency would be attended with *ill Conſequences*. But Mr. *Lightboun refuſ'd* to comply with that Demand, which he thought would only *ſkin* over the Wound, and not effectually *cure it*. And yet, my Lords, this Propoſal which Mr. *Lightboun* had the *Honeſty and Courage to reject*, was enforc'd by the impeach'd Earl with the *Threats of a Parliamentary Enquiry*; aſſerting, that if the Maſters did not contribute towards the *Concealment* of this Deficiency, it would *occaſion* a publick *Enquiry*; wherein, if it ſhould appear that they had *bought* their Places *contrary to the Statute 5 and 6 of Edward* VI. it might go ill with him, but that it wou'd fare much worſe with them; turning even that *Parliamentary Enquiry*, which he ought to have *dreaded* as his *ſure Puniſhment*, into means for *extorting* of money. We have alſo Proofs that at another meeting of the Maſters, a farther *Demand* was made upon them, in order to *conceal* the State of that Office; but all the Maſters then *refuſing* to contribute to a *Concealment* ſo *unreaſonable* in its own nature, the Lord *Chancellor paid* that Demand of 1000 *l.* *himſelf*; not out of any *juſt regard* to the Suitors, but for his own *Profit and Advantage*, well knowing, that the Notoriety of this Inſolvency wou'd make the Maſters Places *leſs valuable*; and therefore was content to part with this Sum, to *inſure* to himſelf a greater proſpect of Gain at his next Sale. Nor was it neceſſary for thoſe, who dealt at this *Auction*, to bring any money of their *own* to it; the mere admittance into the Office immediately giving them *Poſſeſſion* of a Caſh ſufficient to anſwer his Lordſhip's Expectations. And thus *Beggars* were his *beſt Purchaſers*; though ſure to be the worſt *Truſtees* for the *Publick*.

How great a Hardſhip muſt it be, my Lords, to the Suitors of that High Court, to be contending many Years for their *juſt Property*, at an Expence poſſibly no ways *proportionable* to their remaining Fortunes; and to find at laſt, when they had *obtain'd* a Decree in their *Favour*, that their money was *loſt in a Bankrupt* Office, without *hopes* of recovery? This is a Conſideration in which every Man in *Great Britain* is more or leſs concern'd. For what Eſtate is there, which may not ſome way or other, in the Courſe of a few years, come under the *Direction* of that Court? How much then does it concern every *Individual*, and even the *Legiſlature* itſelf, that all its *Avenues* of Juſtice ſhould by *ſafe* and *open*? But how much more does it concern the *Honour* and *Conſcience* of the Perſon who *preſides* in it, if there ſhould be a *dangerous Precipice* in the way, to be the *firſt* in ſetting up a *Mark* for all the World to avoid it?

But, my Lords, if in this Article, which I have open'd to your Lordſhips, there appears a *Criminal Endeavour* to conceal the Deficiency of this Office, ſupported by a *falſe Aſſertion* made in open Court, in order to delude the Suitors into an Opinion that their Money was ſafe, and a *great neglect* in not ſecuring Mr. *Dormer*'s Perſon; in the 14th Article, he will appear in a yet *more* guilty Light, not only *neglecting*, as in the former, to *enquire* into his Effects, but on *Enquiry made*, and *Time had* for mature deliberation, confirming a *precarious* and *trifling* Compoſition, and tying down the Suitors of the Court by his Authority, to the certain *Diminution* of one *half* at leaſt of their Effects, and in all probability to the irrecoverable loſs of the whole.

My Lords, in the Anſwer which his Lordſhip returns to this Article, he denies *none* of the matters of Fact contain'd in it, but *admits* them as they there ſtand charg'd. I ſhall therefore only make ſome Obſervations on the nature of this Tranſaction, and on the Aſſertions in his Lordſhip's Anſwer.

In the firſt Place, my Lords, he inſinuates that Mr. *Edwards* us'd *great Endeavours* to obtain Payment from *Wilſon*, but found them fruitleſs; *Wilſon* having ſtopp'd Payment long before.

My Lords, I know not what *Endeavours* his Lordſhip can prove Mr. *Edwards* to have us'd: but whatever they were, they were not unlikely to prove *fruitleſs*, ſince, as his Lordſhip adds immediately, *Wilſon* had *long before ſtopp'd* Payment: But this we can *prove*, That *Wilſon*'s Books were never *inſpected* by Mr. *Edwards*; that he never *knew* what his Debts were; nor any thing more of him, than that *Wilſon* came *voluntarily* to Mr. *Edwards*, and propos'd of himſelf to pay him 1400 *l.* in ready money and to aſſign over to him a Debt of 10,000 *l.* due from one *Poulter*, whoſe Circumſtances were ſtill more *precarious* than his own.

In the next Place, his Lordſhip aſſerts, that he order'd this whole Affair of *Wilſon*'s Compoſition in the *uſual* manner; and is inform'd, and believes, that this Compoſition was made and agreed to, upon a *Conſultation* of all, or moſt of the Maſters. But, my Lords, we ſhall make it appear, that the *Delivery* of the Petitions, the *Orders* made upon them, and the *whole Tranſaction* of this Affair, was carried on from *firſt to laſt* in a *clandeſtine*, *private*, and unuſual manner.

As to the Conſent which his Lordſhip ſays he *belives* the other Maſters gave to this Compoſition, we ſhall *prove*, my Lords, that Mr. *Edwards* was the only Perſon concerned on behalf of the Suitors, and ſo far was he, or any of the reſt of the Maſters, from taking the *beſt Care* they could, that the *firſt* Draught of a Compoſition, which *Wilſon* brought, was accepted and ſettled between him and Mr. *Hiccocks*. And that when Mr. *Edwards*

wards did mention this Composition to *some* of the Masters; they were so far from approving of it, that Mr. *Edwards acquainted* the Lord Chancellor, that it was the Opinion of one of them, that a *better Composition* was to be had. And another of the Masters was so far from agreeing to this method at all, that he proposed a *Commission of Bankruptcy* as the *only* means to bring this matter to a *proper Light*.

But that *Light*, my Lords, was what his Lordship was most *afraid* of. That would have *discovered* the *Deficiency* of this Office, which would have brought a *Disrepute* upon others, and consequently have *lowered* their *Price*. This was his Lordship's *only* Care; whilst for the rest he could sit *unconcerned*, and see so great a Sum of the Suitors money *wasting away to nothing*, as it passed through the Hands successively of three Bankrupts.

But, my Lords, we shall farther prove, that when his Lordship ordered a Petition to be preferred to himself, that he might approve of this Composition, he never ordered the *Suitors* to be acquainted with it, nor had they *any Notice* of it. Nor did his Lordship *ask*, if *Wilson* had *compounded* with any other Creditors, nor so much as *enquire* if he had *sworn* to his Circumstances.

It will be made appear, that at this very Time Mr. *Edwards* was informed, and *did believe*, that *Poulter*'s Circumstances were *very bad*, and that neither he nor any one else *attended* the Commission of Bankruptcy against *Poulter* on Behalf of the Suitors.

And, my Lords, to judge a little farther of this matter, by a very sure Rule of Justice, that of *doing as one would be done by*; your Lordships will find, that Mr. *Edwards confesses*, that if it had been his *own* money, he would have looked more *carefully* after it.

Farther yet, my Lords, we shall prove, that notwithstanding this Debt was *compounded* with *Wilson*, yet he has paid the *whole Amount* of other Debts, with Interest, to *several* of his Creditors.

Lastly, my Lords, his Lordship in his Answer says, that he *believes* Mr. *Edwards* has since got in one thousand Pounds of *Poulter*'s Debt. The Truth is, one thousand Pounds has been recovered; but it was by an *accidental Discovery* of *concealed* Effects belonging to *Poulter*; one thousand Pounds of *which* was paid to Mr. *Edwards* by *Wilson*, as Part of *Poulter*'s Debt.

But does his Lordship *seriously* intend this for any *Vindication* of himself, or any *Compensation* to the Suitors, that after *four or five Years Expectation*, instead of *twenty-four thousand Pounds due to them*, he *believes* one thousand Pounds *may* have been since recovered?

I cannot help observing here to your Lordships, how *different* a Care has appeared throughout his Lordship's whole Behaviour, with regard to his *private* Advantage, and the *Safety* and *Protection* of the Suitors of the Court.

In *their Case*, he could think it *equitable* to subject *their* Estates to the Losses of a *Master in Chancery*, who had *squandered* and *gamed* away their Substance and his own. But in his own *private* Affairs, how *cautiously circumspect* was his Lordship? The least Advantage was not neglected, and if a Master's Place was to be alienated, a *Difference* of Guineas was meanly insisted upon, instead of the Pounds which had before been oppressively extorted.

But, my Lords, in this Impeachment, the Commons, with regard to the Dignity of their own Proceedings, with regard to this august Judicature, are not desirous to enlarge upon matters of *smaller* moment. His Lordship might have enjoyed his *hundred Guineas* in quiet, had not a *long Series* of his Conduct in so high a Station, tended to *destroy* the Reverence due to the Laws, by an *Execution* of them instrumental to the Ruin of the Subject.—Against apparent Extortioners and Robbers, we guard ourselves with a Caution proportionable to the Infamy of their Characters: But when the Sanctity of the Laws, and the Ensigns of Authority, designed to defend and protect us, are made use of *to invite* us into Ruin, how sure and extensive must that Ruin be?

My Lords, The Commons have beheld with the deepest Concern such corrupt Practices in this high Court; such as have *deformed* the *Beauty* of Justice, and rendered the Administration of it *grievous*, and even *fatal* to the Subject. They have beheld that Minister of Justice, whom the Laws of the Land have invested with an *extraordinary* Power to punish *Frauds and Deceits*, himself carrying on a most *pernicious* Deceit, to the great *Dishonour* of the Court, and the *Ruin* of its Suitors. The *Guardian* of Orphans become their *Oppressor*, the Keeper of the King's Conscience prostituting his *own*, and the Dignity of his high Station, to an ignominious *Traffick* with the best Bidder, and employing the SCALES OF JUSTICE in the Business of an *Usurer*.

But, my Lords, that parliamentary Enquiry is *now* come, with the *Terrors* of which he *forced* the Masters into Compliance with his *arbitrary* Demands. He then *foretold* it might possibly GO ILL WITH HIM, tho' it would fare worse with them. So *just* a *Decree* pronounced by *himself* against *himself*, is, we trust, in no Danger of being *reversed*; but rest assured, that as far as it regards him, it will be unanimously *confirmed* by your Lordships.

Mr. *Lutwyche*. My Lords, we shall now proceed to our Evidence on these two Articles together: To shew to your Lordships that the Deficiency of *Dormer*'s Office was endeavoured to be concealed by many indirect Practices: And first of all we shall call a Witness to prove Mr. *Dormer*'s Deficiency to be about twenty-five thousand Pounds.

(Mr. *Thomson* called, and appeared.)

Mr. *Lutw*. My Lords, we desire that Mr. *Thomson* may refresh his memory, as this matter was referred to him to examine; and that he would please to give your Lordships an Account how he found the State of Mr. *Dormer*'s Office, and what Deficiency there was in it?

Mr. *Thomson*. My Lords, I find in our Report the Debt due from Mr. *Dormer*'s Office was stated at 49 604 *l.* 11 *s.* 11 *d.* and I find that Mr. *Edwards*, who succeeded Mr. *Dormer* in that Office, had paid to the Suitors 23,725 *l.* 15 *s.* 9½ *d.* so that there remains due to the Suitors of the Court, such as have paid their money into Mr. *Dormer*'s Office, the Sum of 25,878 *l.* 16 *s.* 1 *d*¼. And this I believe to be a true State of the Account, from such Evidence as was laid before us.

Mr. *Lutw*. If the Counsel on the other Side don't think fit to ask this Evidence any Question, we beg Leave to call Mr. *Edwards*, who succeeded Mr. *Dormer*, and will give your Lordships an Account of the State of that Office, and what the Deficiency was.

(Mr. *Henry Edwards* sworn.)

Mr. *Lutwyche*. My Lords, we desire that Mr. *Edwards* may be asked, how much the Deficiency is in Mr. *Dormer*'s Office?

Mr. *Edwards*. My Lords, according to the Account given in, the Deficiency appears to be about twenty-five thousand odd hundred Pounds; but since that, there is discovered about fifteen hundred Pounds more, which was not brought into the Account. It was discovered about three Weeks or a Month ago, and not before.

Mr. *Lutw*. I desire he may be asked, whether he knows of any other Deficiency discovered?

Mr. *Edw*. No, my Lords, I do not.

Mr. Serj. *Probyn*. My Lords, I desire Mr. *Edwards* may be asked, that as there hath been a further Deficiency discovered, whether there hath not also been a Discovery of further Effects?

Mr. *Edw*. Not as I know of. I am informed Administration hath been lately taken out to Mr. *Dormer*, that there hath been a Discovery of Effects, but to what Value I can't tell.

Mr. *Strange*. I would desire he may be asked, whether he hath had any Account from the Administrator?

Mr. *Edw*. I have seen Mr. *Paxton*, who I understand administred. He told me he had discovered some Effects, but he did not tell me to what Value.

Mr. *Lutw*. If the Counsel for the noble Earl have done, we would beg Leave to ask another Question in relation to this Matter: They examine what were the other Effects of Mr. *Dormer*, we desire to know, if Mr. *Edwards* can inform us, how long ago this Discovery was?

Mr. *Edw*. I can't certainly tell. I believe it is about two Months ago that Mr. *Paxton* hath had Administration; and since that he hath made this Discovery.

Mr. *Lutw*. It is proper from this Question that hath been asked by the Counsel for the noble Lord, to call another Witness to prove that there have been Effects discovered, and that there have been Goods laid by three or four Years, and almost spoiled, because no Care was taken of his Effects.

Mr. Serj. *Prob*. My Lords, before this Gentleman goes, I beg Leave he may be asked one other Question, whether he had not Notice before *Christmas* last, that there were other Effects of Mr. *Dormer*, and from whom?

Mr. *Edw*. Yes, I believe I had; and when I understood that Mr. *Paxton* was the Person who had taken out the Administration, I told him of it.

E. of *Macclesfield*. My Lords, I desire he may be asked, who it was that brought him Notice of these Effects?

Mr. *Edw*. It was a Gentleman that came out of the Country. I don't remember his Name. He was a Person that lived near the Place where Mr. *Dormer*'s Country House was. I have forgot his Name.

E. of *Mac*. Can you recollect if you hear his Name? Was his Name *Goodfellow?*——Mr. *Edwards*. I believe it was.

E. of *Mac*. I desire, if you can recollect, who he said he came from?

Mr. *Edw*. I think he said he came from Mr. *Cottingham*; I don't know that he mentioned your Lordship. I understood your Lordship had been acquainted with it, but not that he acquainted you of it.

(Mr. *Campbel* sworn.)

Mr. *Lutw*. My Lords, I desire that this Witness may be asked, whether he knows of any Goods or Effects of Mr. *Dormer* being discovered, and at what Time, and how long they had lain in that Place where they were found?

Mr. *Campbel*. In the Year 1721. I did buy a Parcel of Hops, but who they belonged to, I did not then know; but since I find they were Mr. *Dormer*'s. They were one hundred and forty-eight Bags of Hops. I sold sixteen of them the same Year, one hundred and one since. I bought them of Countrymen; some of one Man, and some of another. I bought them by Commission; but Mr. *Dormer* was not the Man that employed me, neither did I receive the Money from his Hands.

Mr. *Lutw*. We desire to know how long the Goods did lie in that Place where they were; and whether there were any Loss by the Sale of those Goods, being left so long there?

Mr. *Campbel*. They had lain there about three Years, and I believe, modestly speaking, there was about five hundred Pounds Loss upon them.

Mr. *Plummer*. I desire Mr. *Campbel* may be asked, how he came to know they were Mr. *Dormer*'s Hops?

Mr. *Campbel*. I never did know they were Mr. *Dormer*'s Hops, nor do I still know it, but as I am told.

Mr. *Plummer*. My Lords, I desire he may be asked who told him so?

Mr. *Campbel*. This Gentleman told me so [pointing to Mr. *Paxton*.]

Mr. Serj. *Pengelly*. My Lords, we shall now call Mr. *Paxton*, who hath taken out Administration by the Direction of the Lords Commissioners of the Great Seal; and under that Administration he hath possessed himself of those Effects which were scattered and lay waste before.

Mr. Serj. *Prob*. My Lords, I beg Leave this Witness may be first asked one Question: I think he hath said, that he bought those Hops by Commission, not by the Order of Mr. *Dormer*, nor for Mr. *Dormer*: I desire he may be asked, by whose Direction they were kept so long by him?

Mr. *Campbel*. He that gave me the Orders to buy them, was not Mr. *Dormer*, neither did he pay me the Money. The Reason they lay so long was, I had no Orders to sell them.

Mr. Serj. *Prob*. Who was the Person that gave you Orders to buy them?

Mr. *Campbel*. The Person's Name is Mr. *Longmead*.

Mr. Serj. *Prob*. Where does this Person live?

Mr. *Campbel*. He lives at *Islington*.

Mr. Com. Serj. My Lords, I desire this Witness may be asked, whether or no, about the Time that these Hops were bought, they were not very cheap, and at a low Price?

Mr. *Campbel*. They were at a low Price.

Mr. Com. Serj. Whether a great Number of People have not kept Hops upon a Supposition that they would rise?

Mr. *Campbel*. Yes, they have a great many.

Mr.

Mr. Serj. *Probyn.* I desire he may be asked, whether he did not keep other Hops as well as these by him, for the Advantage of a better Market?

Mr. *Campbel.* Yes, I had several other Hops bought in that Year that I kept for a better Market, and still had a worse. I have Hops by me cost me 5 *l.* a Hundred, not worth now 10*s.* a Hundred.

E. of *Macclesfield.* How much a Bag might that be?

Mr *Campbel.* I can't tell how many hundred may be in a Bag: I can't tell, because they are not weighed.

E. of *Mac.* Whereabouts?

Mr. *Campbel.* Sometimes there are three hundred, sometimes 2 and a Half, sometimes 2 and 3 qrs.

Mr. *Lutwyche.* My Lords, to explain this Matter I desire he may be asked, whether this Loss he speaks of, of 4 or 500 *l.* happened in the Difference of the Price, or by the Hops being spoiled?

Mr. *Campbel.* Both by the Difference of Price, Hops being cheaper, and by the Antiquity of the Hops.

Mr. *Lutw.* My Lords, we desire he may be asked, who is this Mr. *Longmead?*

Mr. *Campbel.* He keeps a Shop in *Islington*, he keeps a Grocer's Shop.

Mr. *Lutw.* My Lords, I desire he may be ask'd, whether he is not Mr. *Dormer*'s Servant, or an Agent for him?

Mr. *Campbel.* For any thing I know he was an Agent for Mr *Dormer.*

Mr. Com. Serj. My Lords, we desire he may be ask'd, whether, for aught he knows, he was not an Agent for Mr. *Dormer?*

Mr. *Campbel.* I believe he was an Agent for him, and I have good Reason to believe it, because he paid me all the Money, and gave me Orders to buy the Goods.

E. of *Mac.* I desire to know, whether the Witness infers that *Longmead* was Mr. *Dormer*'s Agent because he paid him money; might not he have paid him the money though he had not been his Agent?

L. C. J. *King.* Speak your own Knowledge, whether he was Agent for Mr. *Dormer* or no.

Mr. *Campbel.* I never did ask him whose they were: He employed me, and I bought the Goods, and did suppose they were for Mr. *Dormer.* I never ask'd him whether they were his Goods or not.

Mr. Sol. Gen. My Lords, we desire that Mr. *Paxton* may be called, to shew how he discovered these Effects.

[Mr. *Nicholas Paxton* Sworn.]

Mr. *Lutw.* My Lords, we desire Mr. *Paxton* may give your Lordships an Account what he knows of these Hops.

Mr. *Paxton.* After I had got Letters of Administration to Mr. *Dormer* granted me, I did make what Inquiry I could relating to the Effects of Mr. *Dormer.* This Mr. *Longmead* came and told me of some Hops; that he was Servant to Mr. *Dormer*, and had bought them by his Direction. Then we went to Mr. *Campbel*'s, who took out a Handful, and said they were Saleable, and would bring in about 200 *l.* He told me they cost 800 *l.* and it would be best to dispose of them as fast as I could, that there might be no more Loss. They are not yet sold, they may be worth about 200 *l.*

Mr. *Lutw.* My Lords, It is admitted by the Answer, that Mr. *Dormer* absented himself and absconded. It was notorious, and talked of by every Body: It will lie upon this Noble Lord to give an Account what he did thereon. My Lords, we will now proceed to give your Lordships an Account of this Composition made with *Wilson* who was indebted to *Dormer.* This *Wilson* was a Banker, the Person that Mr. *Dormer* intrusted with Money; and upon that Occasion, there being a great Debt due to *Dormer*, as is set forth in the Articles, a Composition is made with *Wilson* on Account of that Debt. There were such Dealings and Proceedings therein, as will appear to your Lordships to have been unusual and unwarrantable. We beg leave, therefore, to shew your Lordships a written Evidence, an Order under the Hand of this Noble Lord himself for this Composition, though never drawn up: And indeed your Lordships will observe, that through the whole Course of these Proceedings, there is not any one Affidavit, or any one Order, or any Report filed in the usual Manner. From whence we may infer, that it was intended to be a clandestine thing, that nothing might appear of it upon Record, as other things do. The first Thing we shall beg Leave to shew is, an Assignment from Mr. *Dormer* to one of the Masters in Chancery of this Debt. When we have shewn that Assignment, then we shall beg Leave to give your Lordships an Account of the Methods and Proceedings thereupon.

[Mr. *William Green* sworn, and the Assignment produced.]

Mr. *Lutw.* My Lords, we desire this Witness may be asked, Whether he saw this Deed executed, and by whom?

Mr. *Green.* My Lords, I did see this Deed executed by the late Mr. *Dormer:* I am one of the Witnesses to it, and *John Jones* is the other Witness.

Mr. *Lutw.* My Lords, we desire this Deed may be read.

Clerk reads. This Indenture, made the six-and-twentieth Day of *July*, *Anno Dom.* 1721, and in the seventh Year of the Reign of our Sovereign Lord *George*, by the Grace of God King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* Between *Fleetwood Dormer* of *Lincolns-Inn* in the County of *Middlesex*, *Esq.* late one of the Masters of the High Court of *Chancery* of the one Part, and *Henry Edwards* of *Lincolns-Inn*, aforesaid, *Esq.* one of the Masters of the said High Court of *Chancery* of the other Part. Whereas *William Wilson* Citizen and Goldsmith of *London*, is and stands justly indebted unto the said *Fleetwood Dormer* upon Account, in the full and just Sum of twenty-four Thousand and forty-six Pounds and four Shillings of lawful Money of *Great Britain*, or upwards, as by the Books of the said *William Wilson* may and doth appear: And whereas the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in the said High Court of *Chancery*, in several considerable Sums of Money, for and on Account of moneys brought before and paid to him as one of the Masters of the said Court: Now, therefore, for the more speedy getting in and recovering of the aforesaid Debt, due and owing by and from the said *William Wilson* as aforesaid; and also for the more speedy and effectual Payment of all such Sum and Sums of Money as are owing by the said *Fleetwood Dormer* as aforesaid: This Indenture witnesseth, That for the Ends and Purposes aforesaid, and for and in consideration of the Sum of 10*s.* of lawful Money of *Great Britain* to the said *Fleetwood Dormer* in Hand, paid by the said *Henry Edwards*, at or before the ensealing and delivery of these Presents, the Receipt whereof is hereby acknowledged: He, the said *Fleetwood Dormer*, hath granted, assigned, transferred, and set over, and by these Presents, doth grant, assign, transfer, and set over unto the said *Henry Edwards*, his Executors, Administrators, and Assigns, the said Debt or Sum of twenty-four Thousand and forty-six Pounds and four Shillings, and all and every Part thereof, and all and every other Debt or Debts, Sum or Sums of Money any ways due or owing by or from the said *William Wilson* to the said *Fleetwood Dormer*, and every Part thereof, and all Interest due, or to grow due, for the same, and all Bonds, Bills, Notes, and other Securities, for the same or any Part thereof. And all the Right, Title, Interest, Property, Benefit, Advantage, Claim, and Demand whatsoever, both in Law and Equity, of him, the said *Fleetwood Dormer*, of, in, to, or out of the same, and every or any part thereof, to have, hold, receive, perceive, take, and enjoy the said Debt or Sum of twenty-four Thousand and forty-six Pounds and four Shillings, and all such other Debts and Sums of Money as are due or owing to the said *Fleetwood Dormer* by the said *William Wilson* as aforesaid, and every Part thereof, and all the Benefit thereof, and all and singular other the Premisses unto the said *Henry Edwards*, his Executors, Administrators, and Assigns upon trust. Nevertheless, and to the Intent and Purpose that he, the said *Henry Edwards*, his Executors, Administrators, or Assigns, shall and do issue, pay, apply, and dispose of the same, or such Part or Parts thereof, as shall from time to time be by him or them got in and received, in such manner as the said High Court of *Chancery* shall in that behalf order or direct, for and towards Payment and Satisfaction of such Debts and Sums of Money as are now due and owing by the said *Fleetwood Dormer*, for, or on Account of monies brought before and paid to him, as one of the Masters of the said Court. And in the mean Time, after Receipt thereof, and until the same shall be so paid, applied, and disposed of, shall and do deposit, lend, or place out the same, or any Part thereof, in such manner as the said Court of *Chancery* shall in that Behalf order or direct. And for the better enabling the said *Henry Edwards*, his Executors, Administrators, and Assigns, to get, call in, and receive the aforesaid Debt or Sum of Twenty-four Thousand and forty-six Pounds and four Shillings, and other the said hereby assigned Premisses upon the Trusts aforesaid; He, the said *Fleetwood Dormer*, hath made, ordained, constituted and appointed, and in his Place and Stead put and deputed, and by these Presents doth make, ordain, constitute and appoint, and in his Place and Stead, put and depute the said *Henry Edwards*, his Executors, Administrators, and Assigns, his true and lawful Attorney and Attornies irrevocable for him the said *Fleetwood Dormer*, and in his Name; but upon the Trusts aforesaid, to ask, demand, sue for, recover, and receive of and from the said *William Wilson*, his Heirs, Executors, or Administrators, and all and every, or any other Person or Persons whom it may concern, the aforesaid Debt or Sum of twenty-four Thousand and forty-six Pounds and four Shillings, and other the said hereby assigned Premisses, and every or any Part thereof upon the Trusts aforesaid; and likewise to compound for the same, and every or any Part thereof, as he or they shall in their Discretions think fit, and upon Non-payment of the same Debt or Sum, Debts or Sums, or any Part thereof, or bring, commence, and prosecute such Action or Actions, Suit or Suits, either at Law or in Equity, or elsewhere, for the Recovery thereof, as he or they shall be advised; and on Payment thereof, or any Part thereof, to give Receipts and Discharges for the same, and one or more Attorney or Attornies for the Purpose aforesaid, to make and constitute, and at Pleasure to revoke, and generally to do and act in the Premisses for the recovering and obtaining of the said Debt or Sum of twenty-four Thousand and forty-six Pounds and four Shillings, and other the said hereby assigned Premisses, and every or any Part thereof, as fully and effectually to all Intents and Purposes as he the said *Fleetwood Dormer*, his Executors or Administrators might have done; giving and hereby granting unto the said *Henry Edwards*, his Executors, Administrators and Assigns, the full and whole Power and Authority of him the said *Fleetwood Dormer*, in and about the Premisses upon the Trusts aforesaid; hereby ratifying, confirming, and allowing all, and whatever the said *Henry Edwards*, his Executors, Administrators, or Assigns, or his or their Attorney or Attornies shall lawfully do, or cause to be done, in or about the Premisses by virtue of these Presents. And the said *Fleetwood Dormer* doth hereby, for himself, his Heirs, Executors, and Administrators, covenant, promise, and agree to and with the said *Henry Edwards*, his Executors, Administrators, and Assigns in manner following: That is to say, That he, the said *Fleetwood Dormer*, hath not received, compounded, released or discharged, or consented to the receiving, compounding, releasing, or discharging the said Debt or Sum of twenty-four Thousand and forty six Pounds and four Shillings, and other the hereby assigned Premisses, or any Part thereof, and that he, his Executors or Administrators shall not, nor will at any time hereafter, receive, compound, release, or discharge the same or any Part thereof, without the Consent of the said *Henry Edwards*, his Executors, Administrators, or Assigns, first thereunto had and obtained in writing under his or their Hands. And further, That he the said *Fleetwood Dormer*, his Executors, and Administrators, shall and will, at the Requests, Cost and Charges of the said *Henry Edwards*, his Executors, Administrators, or Assigns, make, do, and execute, or cause and procure to be made, done, and executed, any further or other lawful and reasonable Acts, Deeds, Powers and Authorities, for the better enabling him, the said *Henry Edwards*, his Executors, Administrators, and Assigns, to sue for, recover, and obtain the said Debt and Premisses hereby assigned, and every or any part thereof upon the Trust aforesaid. And it is hereby declared and agreed, that the said *Henry Edwards*, his Executors, Administrators, or Assigns shall not be charged or chargeable with, or accountable for, any more monies than he or they shall actually receive, or shall come to his or their Hands by Virtue of these Presents; and that it shall and may be lawful

lawful to and for the said *Henry Edwards*, his Executors, Administrators, and Assigns, in the first place, by and out of the premisses, to deduct and reimburse him and themselves all such losses, costs, charges and expences as he, they, or any of them shall sustain or be put unto, by Reason of the Trust hereby in him reposed, or the Management or Execution thereof, or any other thing in any wise relating thereunto: In witness whereof, the said parties to these presents have hereunto interchangeably set their Hands and Seals the Day and Year first above-written.

Fleetwood Dormer.

Mr. *Lutw.* The next thing we shall trouble your Lordships with in relation to this matter of the Composition, is a Petition of Mr. *Edwards*, to which there is an answer. The answer is writ by Mr. *Cottingham*, and signed by the noble Lord. I mentioned to your Lordships that no Order is drawn up upon it: Nothing appears in publick: Therefore we must beg leave to prove the Earl's Hand to this Order made upon this Petition.

E. of *Mac.* After taking the Petition in his Hand, and looking upon the Name subscribed to the Answer written upon it, said, My Lords, this is my Hand.

Clerk reads,

To the Right Honourable Thomas *Earl of* Macclesfield, *Lord High Chancellor of* Great Britain,

The Humble Petition aod Representatien of Henry Edwards, *Esq. one of the Masters of the high and honourable Court of* Chancery,

Sheweth,

THAT *William Wilson*, Citizen and Goldsmith of *London* is, and stands justly indebted to *Fleetwood Dormer*, Esq. late one of the Masters of this Court upon Account, in the full Sum of twenty-four thousand and forty-six Pounds, four Shillings, as by the Books of the said *William Wilson* doth and may appear.

That the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in this Court, in several considerable Sums of Money. And for the more speedy getting in and recovering the said Debt, and effectual Payment of all such sum and sums of Money as are owing by the said *Fleetwood Dormer* as aforesaid, the said *Fleetwood Dormer*, for that End and Purpose, hath by Indenture, bearing Date the 26th of *July* 1721, granted, assigned, transferr'd, and set over to your Petitioner, his Executors, Administrators, and Assigns, the said debt or sum of twenty-four thousand and forty-six pounds, four shillings, in Trust, and to the Intent that your Petitioner shall pay, apply, and dispose of the same, or such part thereof as shall from time to time be by him got in and received of and from the said *William Wilson*, in such Manner as this Court shall order and direct.

That it appears to your Petitioner, that the said *William Wilson* is indebted to divers other Persons in great Sums of Money, and for some time hath not been able to carry on his Business, or to make good and pay the said Debt so assigned to your Petitioner; but hath lately offered to your Petitioner and his other Creditors to come to a Composition, and to pay them in proportion the utmost he is able. And your Petitioner, doubting whether he can with safety to himself, agree to any such Composition,

Humbly prays your Lordship would be pleased to refer it to one of the Masters of this Court, to see if such Composition, so proposed by the said *Wilson*, be for the Benefit of the Persons intituled to receive the same.

And your Petitioner shall ever pray, *&c.*

30th of June, 1722.

Be it as is prayed, and to that End let it be referred to Mr. Hiccocks *one of the Masters of this Court, and let the Master speed his Report: After which, such further Order will be made as shall be just; of which give Notice forthwith.*

Macclesfield, C.

Mr. *Lutw.* My Lords, I beg leave to take Notice, that in this Petition it is expresly recited, that *Dormer* was indebted to the Suitors of the Court, and that being so, we apprehend the greatest Care should have been taken for their Benefit. Your Lordships shall see, in the Progress of this thing, how it was transacted. I believe any Person that is concerned in the Court of *Chancery* hath not known such a Proceeding in the most trifling matter whatsoever. My Lords, the next thing is a second Petition, said to be with a Report annexed, but we can't find it filed; here is a Paper of Mr. *Hiccocks* not stampt nor filed, which we do apprehend to be the Report meant, and therefore we desire that may be first read.

Clerk reads,

26th of *July*, 1722.

WHereas by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the thirtieth of *June* last, upon the humble Petition of *Henry Edwards*, Esq; one of the Masters of this Court, I am directed to see if the Composition in the said Order mentioned, to be offered or proposed to be made by *William Wilson*, Citizen and Goldsmith of *London*, to the said Mr. *Edwards*, as Assignee of *Fleetwood Dormer*, Esq. late one of the Masters of this Court, who was a Creditor of the said *William Wilson*, for the Sum of 24046*l.* 4*s.* in the said Petition mention'd, before the Benefit of the Persons intituled to receive the same. I have been attended by the said Mr. *Edwards*, and by the said *William Wilson*, and considered of the several Matters by the said Petition and Order to me referr'd. And the said *William Wilson* hath under his Hand in Writing proposed to assign over to the said Mr. *Edwards* (as a Composition for, and in full Discharge of the said Sum of 24046*l.* 4*s.*) the Sum of 10,000*l.* part of a larger Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, in the County of *Middlesex*, Gent. and to pay to the said Mr. *Edwards* in Specie the Sum of 1463*l.* 2*s.* 1*d.* over and above the Sum of 560*l.* already paid to the said Mr. *Dormer* in part of the said Composition. And upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, I am of Opinion that the accepting the said Composition will be for the Benefit of the Person or Persons entitled to receive the same. All which I humbly certify and submit to his Lordship. *Hiccoks.*

Mr. *Lutwyche.* Now read the Petition of Mr. *Edwards*, and the Order thereupon.

Clerk reads,

To the Right Hounourable Thomas *Earl of* Macclesfield, *Lord Hiigh Chancellor of* Great Britain,

The humble Petition of Henry Edwards, *Esq. one of the Masters of the high and honourable Court of* Chancery,

Sheweth,

THAT upon your Petitioner's former Petition preferr'd to your Lordship relating to *William Wilson, Citizen and Goldsmith of* London, your Lordship *the* 30th *of June last was pleased to refer it to Mr.* Hiccocks, one of the Masters of this Court, *to see if the Composition mentioned in the* said Petition and *Order to be proposed by the said* Wilson, would be for the Benefit of the Persons entitled to receive the same.

That the said Mr. *Hiccocks* having been attended by your Petitioner and the said *Wilson*, hath, pursuant to your Lordship's said Order, made his Report, dated *the* 26th *of July last*, whereby he certifies, that he is of Opinion that the accepting of the Composition, in his Report mentioned, will be for the Benefit of the Person or Persons entitled to receive the same, as by the Report annexed.

Wherefore your Petitioner most humbly prays your Lordship to take into your Consideration the Matter of the said Report, and to order your Petitioner to accept of the said Composition upon the Terms therein mentioned, if your Lordship shall so think fit, or to make such other or further Order in the Premisses as to your Lordship shall seem most meet.

And your Petitioner shall ever pray, *&c.*

3d of *August*, 1722.

On the Report annexed be it as is prayed. Of which give Notice forthwith,

Macclesfield, C.

Mr. *Lutw.* My Lords, I must beg leave to make one Observation upon this, that the noble Lord may explain it, for I believe there is no precedent for it; when there is a Composition thus to be made, and thus referr'd, and a Report hath been made, the Prayer of the Petition is, That Mr. *Edwards* may be ordered to accept of this Composition, or to make such other Order as his Lordship should think fit. The Answer to it is; Be it as is prayed, of which give Notice forthwith; by which I suppose the Parties understood that it was ordering Mr. *Edwards* to accept of this Composition. Now it is wonderful to me, if he was ordered to accept of the Composition, why it is said, Give Notice forthwith. What? when the thing is done? Besides, there is another thing more material, To whom should such Notice be given? Surely to the Suitors of the Court. But it is well known his Lordship had not appointed any Sollicitor for the Suitors of the Court, and they had no Notice, tho' there is a semblance or shew of what is done in other Cases. We shall beg leave to shew next to your Lordships, that these Orders on these Petitions, this Report, and these Proceedings, were not one of them entered or filed as Orders usually are.

Mr. *Plum.* My Lords, I beg leave to make one Observation before this Matter goes over. The Petition is by Mr. *Edwards* only, one of the Masters, and it is, that my Lord *Maccle field* would be pleased to order him to accept of the Composition. None of the Suitors of the Court, who were the Persons entitled to receive the same, are Petitioners.

Clerk reads two Certificates from, and signed by *Edward Goldsbrough*, Deputy Register, that there were no such Orders entered, nor no such Report filed.

Mr. *Lutw.* My Lords, the Composition is signed by *William Wilson*: I desire Mr. *Edwards* may be asked, whether he knows Mr. *Wilson*'s Hand?

Mr. *Edwards.* This is signed by Mr. *Wilson*; it is Mr. *Wilson*'s Hand.

Clerk reads,

WHereas a Suit in Chancery is now depending between Mr. *Edward Poulter* of *Hackney*, and myself, for the Sum of 22060*l.* 12*s.* 5*d.* which he agreed to pay me for and upon closing all Accompts between us: And whereas *Fleetwood Dormer*, Esq. late a Master in the High Court of Chancery, being indebted to divers Persons, Suitors in the said Court, in several considerable Sums of Money, for and on account of Money brought before, and paid to him as one of the Masters of the said Court, he the said *Fleetwood Dormer*, for the better Payment thereof, did by Assignment, dated the 26th of *July* 1721, assign over to *Henry Edwards*, Esq. one of the Masters of the said Court, a Debt or Sum of 24046*l.* 4*s.* which was and is due and owing from me to him, the said *Fleetwood Dormer*: And whereas I being incapable of paying the said Debt of 24046*l.* 4*s.* did lately propose as a Composition for, and in full Discharge of the same, to assign to the said *Henry Edwards* the Sum of 10,000*l.* part of the Sum of 22060*l.* 12*s.* 5*d.* due to me from the said *Edward Poulter*, as aforesaid; and likewise to pay to him, the said *Henry Edwards*, the Sum of 1463*l.* 2*s.* 1*d.* in Specie, over and above the Sum of 560*l.* before paid to the said Mr. *Dormer*, in part of the said Composition: And whereas on a Petition preferr'd

ferr'd to the Right Honourable the Lord High Chancellor of *Great Britain*, by the ſaid *Henry Edwards*, repreſenting the matter of the ſaid Propoſal; and after ſeveral ſubſequent Proceedings had upon the ſaid Petition, his Lordſhip was pleaſed, by Order dated the third of *Auguſt*, 1722, to order the ſaid *Henry Edwards* to accept of the ſaid Compoſition: And the ſaid *Henry Edwards* having thereupon agreed to accept of the ſaid Compoſition, accordingly I do hereby, in Conſideration thereof, aſſign over to the ſaid *Henry Edwards* the Sum of ten thouſand Pounds, part of the Sum of twenty-two thouſand and ſixty Pounds, twelve Shillings and Five-pence, due to me from the ſaid *Edward Poulter* as aforeſaid, having already paid him, the ſaid Mr. *Edwards*, the other Sum of 1463*l.* 2*s.* 1*d.* before-mentioned. And I do hereby promiſe to pay to the ſaid *Henry Edwards*, Eſq. or his Order, the ſaid Sum of ten thouſand Pounds, on my recovering the Sum of twenty-two thouſand and ſixty Pounds, twelve Shillings and Five-pence aforeſaid, or otherwiſe to pay him a like Proportion of what I ſhall recover, more or leſs, from the ſaid *Edward Poulter*. And I do hereby further promiſe, that I will not do any Act to incumber or diſcharge the Demand I now have againſt the ſaid *Edward Poulter*, without the Conſent of the ſaid *Henry Edwards*. And whereas the ſaid Mr. *Edwards* does now accept of the ſaid Compoſition, I do hereby declare and agree, that if I do not on Demand pay him the before-mentioned Proportion of what I ſhall recover from the ſaid *Edward Poulter* as aforeſaid, or do any ways diſcharge the Demand I now have againſt him, without the Conſent of the ſaid *Henry Edwards*, that then the ſaid Compoſition ſo made by the ſaid *Edwards*, ſhall be void, and of no effect, as if it had never been made. And I do hereby further promiſe, I will at my own Charge proſecute the ſaid Suit, and alſo do and execute all further and other Acts that ſhall be neceſſary for the better aſſigning to the ſaid *Henry Edwards*, Eſq. the before-mentioned Proportion of what I ſhall or may recover as aforeſaid, from him the ſaid *Edward Poulter*, as he the ſaid *Henry Edwards* ſhall at any Time require. Witneſs my Hand this twenty-eighth Day of *Auguſt*, 1722.

William Wilſon.

31ſt of *October*, 1724. Paid to *Henry Edwards*, Eſq. the Sum of one thouſand Pounds, in Part of this Note of Aſſignment.

William Wilſon.

Mr. *Lutw.* My Lords, this Compoſition which hath been read to your Lordſhips, is recited to be in full Satisfaction and Diſcharge of *Wilſon*'s Debt. Now we beg Leave Mr. *Edwards* may be asked, Whether he made any Application to the Earl of *Macclesfield*, before the firſt Petition was preferr'd?

Mr. *Edwards.* My Lords, I had received Propoſals from Mr. *Wilſon*; he came to me and told me, he had a Sum of Money in his Hands, and was willing to pay the Debt to Mr. *Dormer*, in proportion with his other Creditors, and asked me whether I would accept of a Compoſition, and give him a Diſcharge in full? I told him I had no power to make a Compoſition, but however, I would repreſent it to ſome of the Maſters; and accordingly I ſpoke to Mr. *Hiccocks*, who was then ſenior Maſter, and told him the Propoſal Mr. *Wilſon* had made; and I believe I mentioned it to others, but eſpecially to Mr. *Hiccocks*, he being the ſenior Maſter, and more particularly concerned in Mr. *Dormer*'s Affairs. Mr. *Hiccocks* was of Opinion I could not ſafely make a Compoſition. I asked, What Method then was the moſt proper to be taken? If that was really all he had to pay, I had better ſecure that than have nothing. He ſaid he did not ſee why it might not be in this Caſe as in other Caſes; whether upon a Petition to my Lord Chancellor, he might not direct an Enquiry to be made by a Maſter, whether it was for the Benefit of the Parties to make ſuch Compoſition or not? Upon that I waited upon my Lord Chancellor, and acquainted him with Mr. *Wilſon*'s Propoſal. I told his Lordſhip, I thought I had not power to do it. He ſaid, I think ſo too; I don't ſee that you have power to do it. Said I, I am informed that it is uſual in Caſes of this Nature, to apply to the Court by Petition, that it may be referr'd to a Maſter, to ſee whether the accepting of this Compoſition be for the Benefit of the Parties concerned or not. Yes, ſays my Lord, I think that is very proper, that will indemnify you, I would have you prefer a Petition; which accordingly I did.

Mr. *Lutw.* I would beg Leave to ask in Relation to what he mentions, that it was taken Notice of that he had no power to make ſuch Compoſition, whether any thing was ſaid whether my Lord *Macclesfield* had ſuch a Power?

Mr. *Edw.* No, there was nothing ſaid of that.

Mr. *Plum.* My Lords, I deſire he may be asked, Whether any of the Suitors were acquainted with this intended Compoſition?

Mr. *Edw.* No.

Mr. Sol. Gen. Did my Lord *Macclesfield* give any Direction to give Notice to any of the Suitors?-----Mr. *Edw.* No.

Mr. *Plum.* My Lords, I deſire he may be asked, if he himſelf attended Mr. *Hiccocks*, when Mr. *Wilſon* was before Mr. *Hiccocks?*

Mr. *Edw.* I am not ſure I was there at any time with Mr. *Wilſon.*

Mr. *Plum.* If he knows what Methods were taken to know what Mr. *Wilſon* was worth?

Mr. *Edw.* I underſtood that Mr. *Hiccocks* and Mr. *Rogers*, the two ſenior Maſters, upon Mr. *Dormer*'s abſenting himſelf, had Mr. *Dormer*'s Accompts laid before them, and that they were directed to inſpect thoſe Matters; and I was informed they did look into *Dormer*'s Books, and had alſo the Peruſal and Inſpection of Mr. *Wilſon*'s Books, to ſee how Mr. *Dormer*'s Affairs ſtood in thoſe Books.

Mr. *Plum.* My Lords, I deſire Mr. *Edwards* may be asked, if any Body was employed for the Suitors on their Behalf?

Mr. *Edw.* I was before Mr. *Hiccocks*, but not preſent with Mr. *Wilſon.*

Mr. *Plum.* I ask if any Body on the Suitors Behalf was before Mr. *Hiccocks*, when Mr. *Wilſon* was there, to ſee and croſs-examine him?

Mr. *Edw.* I don't remember there was.

Mr. Serj. *Peng.* My Lords, I deſire Mr. *Edwards* may be asked, Whether this Petition is of his own Hand-writing?

Mr. *Edw.* No, my Lords.

Mr. Serj. *Peng.* Do you know whoſe it is?

Mr. *Edw.* It is my Clerk's Hand.

Mr. Serj. *Peng.* Whether the two laſt Lines were ſtruck out before the Anſwer to the Petition, and by what Hand?

Mr. *Edw.* I don't know when they were ſtruck out.

Mr. Serj. *Peng.* My Lords, we will beg leave to mention what it is. At the End of the firſt Petition, the Maſter deſires an Indemnification by the Order of the Court: Part of the Petition is, that he may be indemnified and ſaved harmleſs in making ſuch Compoſition. But that is ſtruck out before the Anſwer, which ſhews, as I humbly apprehend, the very Notice that the Earl of *Macclesfield* himſelf took, how dangerous and hazardous that Tranſaction was.

Read the Words.

Clerk. reads. And that your Petitioner may be indemnified and ſaved harmleſs in making ſuch Compoſition.

Mr. Serj. *Peng.* Do theſe Words ſtand now in the Reading?

Clerk. No, they are razed out.

Mr. *Edw.* I remember this was a Paper that I laid before the honourable Committee. I was a little ſurprized to ſee thoſe Words ſtruck out; but when they were ſtruck out I can't ſay, nor by whom.

Mr. *Lutw.* I deſire he may be asked, if they were ſtruck out before he delivered the Petition into the Committee?

Mr. *Edw* Yes they were.

Mr. Sol. Gen. My Lords, we deſire he may be asked, how much he hath received of this Compoſition?

Lord *Lechmere.* I deſire him to explain himſelf, whether theſe Words were ſtruck out after the Petition delivered, and before the Order made by the noble Earl?

Mr. *Edw.* My Lords, I don't remember ever to have taken Notice, that thoſe Words were ſtruck out, till I had occaſion to look for it to lay it before the Committee.

Lord *Lechmere.* Whether he hath any Doubt, whether they were ſtruck out before they were delivered into the Committee?

Mr. *Edw.* They were ſtruck out before I delivered them into the Committee.

Mr. Sol. Gen. In whoſe cuſtody was this Petition?

Mr. *Edw.* I believe part of the time in Mr. *Hiccocks*'s; Mr. *Hiccocks* ſent it to me, and I have had it ever ſince.

Mr. Serj. *Peng.* Whether he ſtruck out theſe Words that were inſerted for his own Indemnification?

Mr. *Edw.* No, upon my Oath I did not.

Earl of *Abingdon.* As I apprehend, there was no Commiſſion of Bankruptcy againſt *Wilſon*, therefore I would know what Method was taken to inform the Court of the real Subſtance and Ability of *Wilſon* before this Compoſition was made?

Mr. *Edw.* I know of no other Application made to the Court by Mr. *Wilſon.*

E. of *Abing.* Was *Wilſon* examined upon Oath?

Mr. *Edw.* Mr. *Hiccocks* told me that Mr. *Wilſon* had made an Affidavit, that this Sum of Money which he propoſed as a Compoſition, was what he was able to pay in Proportion with the reſt of his Creditors, and that he grounded his Report thereupon.

Mr. *Lutw.* Was this Affidavit ever filed?

Mr. *Edw.* No, my Lords.

Mr. Sol. Gen. My Lords, we deſire he may give an Account, how much he hath received of this ten thouſand Pounds?

Mr. *Edw.* The firſt Sum was fourteen hundred and odd Pounds, and the Sum of one thouſand Pounds ſince.

Mr. Sol. Gen. How much of this was of the ten thouſand Pounds?

Mr. *Edw.* Only the one thouſand Pounds.

Mr. Sol. Gen. What is become of *Poulter?*

Mr. *Edw.* *Wilſon* hath told me that he is in *Holland* or *France.*

Mr. Sol. Gen. What was his Character, as to ſubſtance at the time of his Compoſition?

Mr. *Edw.* I never met any Body that could give an Account of his Character. All I heard of him was from Mr. *Wilſon* himſelf.

Mr. *Lutw.* My Lords, I deſire he would acquaint your Lordſhips, when the one thouſand Pounds was paid?

Mr. *Edw.* I can't recollect exactly the Time.

Mr. *Lutw.* As near as you can, before or ſince *Chriſtmas?*

Mr. *Edw.* I believe it was in *September* or *October* laſt; I believe in *October.*

Mr. Sol. Gen. I deſire Mr. *Edwards* may inform your Lordſhips what he thought of *Poulter* at the Time of the Compoſition, whether he looked upon him as a Man of Subſtance?

Mr. *Edw.* I could make no Judgment of the man; I never ſaw him before; I know nothing of him, otherwiſe than as Mr. *Wilſon* told me.

Mr. Sol. Gen. That is no Anſwer to my Queſtion, which is, what his Opinion was as to his ſubſtance at the time of the Compoſition, whether he would have truſted him with one hundred Pounds?

Mr. *Edw.* I can't tell what Anſwer to give to it; *Wilſon* repreſented him to me as a man able to pay the Debt; and from his Repreſentation I believed that *Poulter* was ſufficient.

Mr. Sol. Gen. Whether he enquired into *Poulter*'s Character?

Mr. *Edw.* There was Nobody I knew to enquire of.

Mr. Sol. Gen. Did he enquire, or did he not?

Mr. *Edw.* I asked Mr. *Wilſon* as many Queſtions as I could, and what his Opinion was about him. He told me he believed he was able to pay his Debts, and he told me one *Helbut*, a *Jew*, who was his bail, could tell his

his Substance. I happen'd to meet *Helbut* at the *Rainbow* Coffee-House, and I ask'd him if he knew *Poulter?* He said Yes. Says I, Is he a man of any Substance, what is he? No, says he, I believe he is in very mean Circumstances. This is all I ever asked.

Mr. Sol Gen. What was your Opinion of this Man's Abilities?

Mr. *Edwards.* My Lords, I told you that as to the account I had of him, Mr. *Wilson* gave me a great assurance that he was a Man of Ability.

Mr. *Plum.* I desire he may be ask'd, whether Mr. *Wilson* hath not paid his whole Debt to several other Creditors?

Mr. *Edwards.* I am inform'd he hath paid his full Debt to some Creditors.

Mr. *Plummer.* My Lords, I desire he may be ask'd, what Directions he receiv'd from my Lord *Macclesfield* to enquire into this Man's Circumstances?

Mr. *Edwards.* I had no Directions.

Mr. *Plummer.* Whether any inquiry was made by the Earl of *Macclesfield?*

Mr. *Edwards.* Not as I know of.

Mr. *Lutw.* I think he mentioned one *Helbut* as his Bail: I desire to know, whether there was a Suit commenced for this Debt assigned?

Mr. *Edwards.* I understood it was for this Debt assigned which *Wilson* recovered at Law.

Mr. Serj. *Peng.* My Lords, I desire he may be asked, whether Mr. *Poulter* hath appeared here and been esteemed solvent, or a Person quite gone away?

Mr. *Edwards.* I have not seen Mr. *Poulter*, nor any that have seen him, for some considerable Time.

Mr. Serj. *Peng.* My Lords, I beg leave to make one Observation, and it is to save your Lordships Time; that is, That you would be pleased to observe in the Proceedings upon this Article, the several Acts and Orders made by the Earl of *Macclesfield* relating to this Deficiency of *Dormer*'s, do take Notice of his Deficiency, and you'll find the Earl himself doing one Act which makes a Deficiency; that is, compounding a Debt due from *Wilson* to *Dormer*; and therefore those Orders having been read before your Lordships, you will please to retain them in your memory, till we come to the 6th Article, wherein it is charged that there was a Deficiency in *Dormer*'s Office, and there we shall shew that this noble Lord declared that he never knew of any Deficiency; and by an Order made in Court, pronounced by himself, he then did direct that a Master should inquire if there was any Deficiency in this Office; so that those publick Acts won't be necessary to be read over again upon that Article, but as now produced, will be sufficient to prove the Notice the noble Earl had of this Deficiency, and that even he made Part of the Deficiency himself.

Mr. *Lutw.* My Lords, we have done upon these two Articles we have opened.

M. Serj. *Probyn.* My Lords, if the Gentlemen have done, we desire to ask some Questions; and first we beg leave that he may be ask'd, whether any of the Masters were acquainted with this Agreement or Composition with Mr. *Wilson?*

Mr. *Edwards.* I don't remember that any were but Mr. *Hiccocks.*

Mr. Serj. *Probyn.* My Lords, we desire he may recollect whether there was any Consultation between him and any other Master, as to the manner that this Composition should be made before it was accepted, and whether it was a reasonable Composition or not?

Mr. *Edwards.* I mentioned it to two or three other Masters at the publick Office, but I can't charge my memory particularly who they were.

Mr. Serj. *Probyn.* Was that before the Time that the Composition was made?

Mr. *Edwards.* Before the Time I applied to my Lord *Macclesfield.*

Mr. Com. Serj. My Lords, I desire that Mr. *Edwards* may inform your Lordships from whom it was that he received this Information, that several of the Creditors of *Wilson* were paid their full Debts?

Mr. *Edwards.* The first Person that informed me was Sir *Laurence Carter*; I happened to be at his Chambers, and naming to me the Affair of *Wilson*, he told me his Brother, Mr. *Thomas Carter*, had received 120*l.* which Mr. *Wilson* owed him, and which was his whole Sum.

Mr. Com. Serj. I desire to know when it was that he received that Sum?

Mr. *Edwards.* There was no Time mentioned when that was paid him: As near as I can recollect the Time, when Sir *Laurence Carter* told me this, it was soon after the Composition.

Mr. Com. Serj. My Lords, I desire he may recollect, whether this Payment was made before the Composition or after? Did not he say it was before the Composition?

Mr. *Edwards.* No, I don't remember that.

Mr. Serj. *Probyn.* I desire he may be asked, whether he knows any thing of this Payment to Mr. *Carter* of his own Knowledge?

Mr. *Edwards.* No, I don't know it of my own Knowledge, but I believe it to be very true.

Mr. Serj. *Probyn.* Since he had this Information of one Debt being paid intirely, tho' he had compounded with others, I desire he may be ask'd, whether he ever charged Mr. *Wilson* with it?

Mr. *Edwards.* Yes, my Lords, I did: A little after I went to Mr. *Wilson*, and I told him that I was informed he had paid Mr. *Thomas Carter* his full Demand, and it was rumoured about that he had paid several others their full Debts, and that it look'd unfair. Says he, this Money was lent me by my particular Friend, to pay off some little straggling Debts to keep me up in my Business, and therefore I was unwilling he should lose it.

Mr. Serj. *Probyn.* Whether did he apprehend this to be a new Debt contracted since his Failure, or an old one due before?

Mr. *Edwards.* I don't know when the Debt was contracted.

Mr. Com. Serj. I apprehend he says, that this Money was lent him by some Friends to set him up again?

Mr. *Lut.* Really, my Lords, we would not interrupt the Gentlemen, but I take it, what they are going on with is not Evidence. We must submit it, whether what Mr. *Wilson* said is Evidence, either on the one Side or on the other?

Mr. Com. Serj. We must humbly be in your Lordships Judgment, whether this kind of Evidence be not as proper on our Side as on the other? Most of the Evidence Mr. *Edwards* has given to affect the noble Earl, has been only Informations he has had from *Wilson* or Sir *Laurence Carter*, and yet now the learned Manager objects the same Information must not be admitted as Evidence on the other Side. I apprehend if any Favour is to be shewn on either Side, it should rather go on in the Support of Innocence.

Lords. Go on, go on.

Mr. Sol. Gen. My Lords, we don't oppose their going on, we only beg leave to set your Lordships right. We did not give a Tittle of Evidence of what Mr. *Wilson* said: We have proved the Petitions, we have proved the Orders, we have proved the Facts; we did not mention a Word of Sir *Laurence Carter*, it sprung from this Examination; but we are willing they may go on, if your Lordships think fit.

Earl of *Macclesfield.* My Lords, I apprehend there is no Occasion to give your Lordships any trouble. If what this Gentleman hath said, with relation to Mr. *Wilson*'s Payment to his Creditors, is no Evidence, it needs no Answer.

Mr. Com. Serj. My Lords, we desire that Mr. *Edwards* may inform your Lordships, whether or no there was any Consultation among the Masters relating to this matter, and what their Opinion was?

Mr. *Edwards.* I don't know of any Consultation about it.

Mr. Com. Serj. We desire that he may inform your Lordships, whether he made any Acknowledgment for his being admitted into his Office, and to whom this Money was paid, and to what Purpose, and how applied?

Mr. *Edwards.* My Lords, the Steps I took to be admitted into my Office, if your Lordships will give me leave to trouble your Lordships with the Narrative, were these: First, I applied to Mr. *Godfrey* one of the Masters, with whom I had most Acquaintance: I told him I heard Mr. *Dormer*'s Office would be disposed of; he told me he believed it would. Says I, if I could be accepted I have some Thoughts of treating for it. What is the usual method in those Cases to be recommended to my Lord Chancellor? Says he, you must apply to my Lord's Secretary, Mr. *Cottingham*; accordingly I did, and I told Mr. *Cottingham* that I had heard Mr. *Dormer*'s Office was to be disposed of. Mr. *Cottingham* told me it was to be disposed of. I then talk'd to him about the Terms. Mr. *Cottingham* told me, As to the Price and the Person, my Lord *Macclesfield* had left it intirely to the other Masters; for whatsoever that Place could fetch, was intended to go towards making up Mr. *Dormer*'s Deficiency. Upon that, my Lords, I went again to Mr. *Godfrey*, and after a meeting or two, I concluded to give five thousand Pounds if I could be admitted. Whether Mr. *Godfrey*, or Mr. *Cottingham*, or who went to my Lord, I can't tell. I had not the Honour to see my Lord till I was admitted: But upon these Terms I was approved. I had Directions, I can't say whether Mr. *Godfrey* or Mr. *Cottingham* gave me the Directions, that I should pay my Money into the Hands of Mr. *Rogers* the then senior Master; accordingly I did pay five thousand Pounds, and in three or four Days, after I had the Honour to be admitted and sworn in.

Mr. *Strange.* My Lords, I desire he may be asked, whether at the time of his Admission any Presents were made by him to the Earl of *Macclesfield*, or to his Secretary?

Mr. *Edwards.* None at all, but the Secretary's Fees as usual in those Cases.

Mr. *Strange.* Whether at the Time he agreed to pay the Sum of five thousand Pounds for the Office, he knew how the Money was to be apply'd?

Mr. *Edwards.* Yes, Mr. *Godfrey* told it me when I went back to him from Mr. *Cottingham*; I remember to have asked him several Questions, and made him several Proposals relating to the Offices, for we differed a great deal about its Value; I think I first proposed three thousand Pounds for it; but he disliking that and some other Offers I made him, I desired to know how much it was my Lord *Macclesfield* insisted upon? To which he answered, that it was not my Lord's Intention to take any thing for the Admittance, but that he had left it to the Disposal of the Masters, to make the most of it for the Benefit of the Office.

Mr. Com. Serj. Whether he knows how this Money was disposed of, and to what use employed?

Mr. *Edwards.* I can't remember the Time, but some short Time before Mr. *Rogers* surrendered his Office, he paid me back this five thousand Pounds which I, in a little Time, paid to the Suitors of the Court.

Mr. *Strange.* Whether before he surrendered his Office, he had any Discourse with the Masters how Mr. *Dormer*'s Debts were secured?

Mr. *Edwards.* No otherwise than upon this Treaty. I told Mr. *Cottingham*, I hear there is a Discourse of a Deficiency in Mr. *Dormer*'s Office; says he, I believe there is, but how much I can't tell; but that can be no Objection to you, because you are to answer for no more than you receive. Matters are all settled and taken care of, that what Deficiency soever there is shall be made good.

Mr. Serj. *Probyn.* By whom?

Mr. *Edwards.* He did not say by whom, or in what manner.

Mr. Serj. *Probyn.* Had you any Discourse with any other Master?

Mr. *Plummer.* My Lords, I beg leave to make one Observation. The Counsel says with any other Master, and the Gentleman at the Bar says it was Mr. *Cottingham* told him so.

Mr. Serj. *Probyn.* This Gentleman I am examining is one of the Maſters, therefore it is not improper to aſk, whether he had any Diſcourſe with any other of the Maſters?

Mr. *Edwards.* I made the ſame Objection to Mr. *Godfrey*, and he anſwered me much the ſame. Mr. *Godfrey* ſaid he could not tell what the Deficiency was, but whatſoever it was, that would be all ſettled and made good.

Mr. Serj. *Prob.* As he had this Diſcourſe with Mr. *Godfrey*, I deſire he may be aſk'd, Whether he hath not likewiſe had ſome Diſcourſe with Mr. *Rogers* how this Deficiency was to be made good?

Mr. *Edw.* No; I don't remember I had any Diſcourſe with Mr. *Rogers.*

Mr. Com. Serj. My Lords, I deſire he may inform your Lordſhips, Whether at any other Time he had any Diſcourſe with any of the Maſters about this matter?

Mr. *Edw.* My Lords, I often talk'd upon this Subject with the Maſters, as a matter which very much concern'd my Office. This I mention'd at the Time I came in. They were then all of Opinion that this Deficiency was to be made good. I don't remember that any Body told me in what method or particular way it was to be made good.

Mr. Com. Serj. I deſire he would inform your Lordſhips, as near as he can remember, Whether it was ſaid that it would be made good, or that it was to be made good?

Mr. *Edw.* I can't remember the diſtinct Words, I took it to have the ſame tendency and meaning.

Mr. Serj. *Prob.* I deſire he may be aſk'd, Whether he hath not ſeveral Times, and on many Occaſions, heard the Maſters declare, that this Deficiency was to be made good, and by the Maſters?

Mr. *Edw.* I have heard them ſeveral Times declare, That they did not doubt but it would be made good; but I never heard them ſay that it would be made good by the Maſters. I have often heard the Maſters ſay they would not make it good.

Mr. Serj. *Prob.* I deſire he may be aſk'd, Whether, about the Time that the Maſters advanced the five hundred Pounds a-piece, he did not hear them declare how this Deficiency of *Dormer* was to be made up?

Mr. *Edw.* My Lords, when I came into the Office, I think the very Day that I was admitted, Mr. *Rogers* paid five hundred Pounds; eight more paid five hundred Pounds a-piece, ſome at one Time, ſome at another; they did not all pay at the ſame Time. That, I heard, was to go towards making up this Deficiency; but how far the Maſters intended to contribute further, I can't ſay.

Mr. Com. Serj. I deſire he may inform your Lordſhips, Whether he did not apprehend that the making up of this Deficiency was a great Concern to him?

Mr. *Edw.* Yes; I think it hath been of a great Concern to me.

Mr. Com. Serj. I deſire to know then how it comes to paſs that he inquired no more into it?

Mr. *Edw.* My Lords, I remember I was once aſking ſome Queſtions relating to that Account, and it was told me, that the State of this Deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this Contribution of the Maſters, of five hundred pounds a-piece, had been in Concert with my Lord Chancellor. I underſtood it to be ſo; I don't know whether my Lord gave Orders that it ſhould be ſo.

Mr. Com. Serj. I deſire he may be aſked who it was that told him ſo?

Mr. *Edw.* I think Mr. *Hiccocks* told me ſo.

Mr. Serj. *Prob.* My Lords, we have done.

Mr. *Robins.* I deſire to know what Anſwer Mr. *Hiccocks* gave to the Queſtion he aſked?

Mr. *Edw.* Only that my Lord was acquainted with it, and had the State of Mr. *Dormer*'s Office laid before him.

Mr. Serj. *Peng.* My Lords, if they have done, we only beg leave to obſerve, that they have been eſtabliſhing the Notice of this whole Deficiency of the Earl, upon the firſt Vacancy in the Office, even before Mr. *Edwards* came in; ſo that the whole Tranſaction afterwards proceeded upon a full Notice of the Circumſtances and State of the Office. The Evidence of the Contribution of the Maſters, and of the Earl of *Macclesfield*, towards making good this Deficiency, prevents, in a great Meaſure, our bringing any Proof to the fifteenth Article, which is now going to be opened.

Mr. *Plummer.* My Lords, if they have done, I only beg leave to obſerve, That the very letting Mr. *Edwards* pay his five thouſand Pounds to the Deficiency of the Office, and my Lord *Macclesfield*'s not taking it to his own Uſe, is a ſufficient Proof of his Knowledge of the Deficiency. And as to this Compoſition, I have one Queſtion more to aſk. I think he ſays he mentioned it to two or three Maſters; I deſire to know if he did ſo, and whether they approved it?

Mr. *Edw.* I think one of the two or three Maſters was Mr. *Lightboun.* He was there, and he did ſay, as I remember, that he thought we might as well loſe the whole, as to take ſo ſmall a Part of ſuch a Debt.

Mr. *Plum.* I deſire another Queſtion, and that is, if he conſulted any of Mr. *Wilſon*'s Creditors before he made this Compoſition?

Mr. *Edw.* No, my Lords, I did not know any of them.

Mr. Serj. *Peng.* How much did he receive in the whole from the Maſters?

Mr. *Edw.* I received five hundred Pounds from nine of them.

Mr. Serj. *Peng.* Did any of the Maſters, and which, refuſe?

Mr. *Edw.* Yes, Mr. *Lightboun* refuſed.

Mr. Serj. *Peng.* For what Reaſon?

Mr. *Edw.* That I can't tell; he did not give any particular Reaſon.

Mr. Com. Serj. My Lords, I believe it may be neceſſary to trouble your Lordſhips with aſking another Queſtion: Whether this Diſcourſe, in relation to this Compoſition, was before or after the Compoſition was made?

Mr. *Edw.* I believe it was before.

Mr. Com. Serj. Then I deſire to know, whether Mr. *Edwards*, upon that or any other Occaſion, acquainted the noble Earl of it?

Mr. *Edw.* No; I don't remember I did.

Mr. Sol. Gen. My Lords, I believe we have done with theſe two Articles.

Sir *John Ruſhout.* My Lords, the Commons proceed to the fifteenth Article againſt *Thomas* Earl of *Macclesfield*, and they have entruſted me to lay open to your Lordſhips the Subject matter of this, and the two enſuing Articles, and the Nature of the Evidence they think proper to produce to make good the Charge in theſe Articles; by which it will appear to your Lordſhips very fully, That the Crimes charged upon the Perſon at your Bar, which have already been manifeſted in ſo many Inſtances, did not proceed from miſtake, or mere Negligence; altho' theſe would have been Faults not excuſeable in a Perſon placed in ſo high a Station, but that they were the Effects of Art and Contrivance, formed to carry on and promote a corrupt and illegal Gain and Advantage to himſelf.

It may ſeem at firſt Sight very ſurprizing, and may not readily obtain Belief with your Lordſhips, that a Perſon raiſed by his Majeſty's abundant Goodneſs to Stations of ſo great Honour and Profit, who had received large Additions to a plentiful Income by ſucceſſive and repeated Grants from the Royal Bounty, that ſuch a Perſon ſhould condeſcend to receive, much more that he ſhould uſe Arts and Stratagems to obtain, further Supplies to his infatiable Thirſt of Lucre.

But this your Lordſhips will plainly ſee to be the Caſe, when we have given our Proofs to the fifteenth, ſixteenth, and ſeventeenth Articles. Your Lordſhips have already heard that there was a very great Deficiency and Loſs of the Suitors money in the Office of Mr. *Dormer*, a late Maſter in the Court of *Chancery*; that the Earl at your Bar then preſiding in that Court, well knew that there was ſuch a Deficiency; that inſtead of applying Remedies to redreſs the Evil, he made uſe of ſeveral methods to cover and conceal it; it being very obvious for him to reflect, that, if ſuch a Deficiency was publickly known, and not effectually remedied, none would ever after purchaſe a Maſter in *Chancery*'s Place, at leaſt not at ſuch exorbitant Prices to which the Purchaſe had lately been raiſed.

What then muſt be done? Here was like to be an entire Stop put to this Branch of Revenue which had yielded ſo plentifully, and proved ſo beneficial to his Lordſhip.

The Contrivance, therefore, is to oblige the Maſters, who had already paid for their Places, to pay again towards making good this Deficiency, and by an artful drawing them to a Compliance in this Point, to conceal and continue the miſchief.

This is what the Commons charge in the fifteenth Article, that the Earl of *Macclesfield*, to conceal the Deficiency in Mr. *Dormer*'s Office, did order ſeveral Maſters of the Court to bring in their Accounts of the Caſh, Effects, and Securities belonging to the Suitors which were in their Hands, with Intent to terrify the Maſters thereby, ſo far, as to oblige them to contribute large Sums to anſwer the Demands of that Office: And further, to engage them to a Compliance in that Reſpect, he repreſented to them, that unleſs they would do it, the money and Effects of the Suitors would be taken out of their Hands: That by this means he did induce nine of the Maſters to contribute five hundred Pounds a-piece, which ſeveral of them did, out of the Suitors money in their Hands; and this being done, they were never obliged to bring in their Accounts.

What Anſwer is given to this Charge? The Anſwer hath been read, and I need not trouble your Lordſhips with a Recital of it. But the Earl admits that he gave ſuch Orders that the Maſters ſhould bring in their Accounts:

That ſeveral Maſters did afterwards pay and contribute as is charged:

That they were not afterwards obliged to bring in their Accounts:

But then in Excuſe he alledges, That this was not done to terrify the Maſters to make any Contribution to the Demands on *Dormer*'s Office:

That what they did contribute, he believes they paid freely, and out of their own money:

That he believes he followed therein a Precedent of the like Nature in the Failure of Dr. *Eddiſbury:*

That he continued to call for the Accounts, but was convinced how tedious a Work it would be, what Obſtruction it would give to the Buſineſs of the Court; ſo he laid it aſide: And obſerves, that what is lately done with reſpect to the Accounts of the Maſters, ſhews the inſuperable Difficulties of ſuch an Undertaking.

From this Anſwer your Lordſhips may reflect, how juſt the Obſervation is that the Commons have made in their Replication, when they ſay, The Earl of *Macclesfield* hath induſtriouſly avoided giving a direct and particular Anſwer to ſeveral matters poſitively and certainly alledged againſt him, which from the Nature of the Facts themſelves muſt neceſſarily lie in his own Knowledge.

For he admits the Fact charged upon him by the Article; but to that Part of it which charges that this was done to conceal the Deficiency in *Dormer*'s Office, he makes no Anſwer at all.

And where the Article charges, that in order to obtain what is own'd to be done, he did repreſent to the Maſters, that unleſs they would comply, the Money and Effects of the Suitors ſhould be taken out of their Hands; to this likewiſe he makes no Anſwer:

My Lords, It may be difficult for me who am little converſant in Law Proceedings, to lay this matter in its ſtrongeſt Light before your Lordſhips. But I take the Caſe to be this.

The Commons charge, that the Earl of *Macclesfield*, to conceal the Deficiency in *Dormer*'s Office, order'd the Maſters to bring before him their Accounts of the Suitors Effects, and threatened that unleſs they would contribute towards that Deficiency, thoſe Effects ſhould be taken out of their Hands: They contribute, the matter is dropt, and no Accounts are ever brought before him.

The

The Earl acknowledges that he ordered those Accounts to be brought before him; that upon his giving that Order several Masters contributed 500 *l.* a-piece, and that afterwards the bringing the Accounts was dropt; that this was done to conceal *Dormer*'s Deficiency, and procured by the menace of taking the Effects of the Suitors out of the Hands of the Masters cannot be denied: What part of the Charge then remains unadmitted? I must submit it to your Lordships, whether, upon what the Earl hath allowed in express Terms by his Answer, as well as what he hath admitted by not answering at all, the whole Charge of this Article does not stand confessed, and the Commons might demand Judgment against the Earl, upon this Article, on his own Confession.

But the Earl adds some things by way of Excuse, I suppose, or Extenuation of the Offence; how immaterially and how evasively your Lordships will soon observe.

He denies, that the ordering the Masters to bring in their Accounts, was done to terrify them to make any Contribution towards *Dormer*'s Deficiency, and yet there is not the least Appearance of any other End or Design, for which it could be done; nor does he mention, or so much as pretend to any other End which, with the least Colour of Reason, could be intended by it; he says, indeed, he had a mind to know the State and Condition of the several Offices, that he might be able to make proper Regulations concerning them; but the thing was dropt before he had this Knowledge given him, and before he made one Regulation in the matter; and yet he solemnly declares that this was his real and whole Intention: If it was his Intention, how came he to alter it so soon? Could it not last till one Regulation was made in a matter which wanted it so much?

Your Lordships will from hence judge, That the Crime which the Commons charge upon the Person at your Bar was not a Sin of Ignorance; he was informed of the miscarriage of the Officers of his Court, he was conscious that it needed Regulation, he had sometime a Thought and Intention to make such Regulation; but, alas! it soon proved abortive, and the intended Reformation, however necessary for the Honour of the Court, as well as the Safety and Advantage of the Subject, was soon laid aside: A Conduct so weak and so greatly inconsistent, as not to be accounted for in any Person, who had not been capable of pleading Innocence and Pardon to the same Fact.

However his Lordship having found it necessary to excuse this Proceeding with the Masters, by pretending an Intention to make some Regulations concerning them; it became as necessary, in the next Place, to make some Apology for not proceeding to such Regulations.

And for this, he says, that it would be a difficult and tedious Work:

That it would be an Obstruction to the Business of the Court:

That what has been lately done shews the insuperable Difficulties of the Undertaking:

I may reasonably fear I should grow tedious to your Lordships if I should attempt to take notice of all the Inconsistencies, Inconsequences and Evasions in the Answer to this single Article.

Upon what account was the Person now at your Bar advanced to the highest Station of the Law; intrusted with the Distribution of Justice and Equity in his Majesty's supreme Court in *Westminster-Hall*, if it was not to secure the Property of the Subject to those to whom it did in Conscience belong? And upon what Account were the moneys brought into Court deposited with the Masters, but only for safe Custody, till it appeared to whom Equity would determine the Right?

But when it was once manifest that those, who were employed in this trust, had shamefully broken it, and by notorious mismanagement were likely to bring Ruin to all the Suitors of the Court, was it fit to cherish and cover up the Evil, because it was a difficult and tedious Work to redress it? Was it likely to be less difficult by the Delay, or rather did not every Day propogate and increase the Mischief, and make it less capable of Remedy? Or could any thing be more proper for the Business of the Court?

Your Lordships have too much Sagacity not to discern the Weakness of such an Excuse, nor will you easily be persuaded to believe, That the Earl of *Macclesfield* was only going on in a Path his Predecessors trod before him, or that he is to be sheltered, because what hath been since done hath met with Difficulties in the Undertaking.

It is known how, upon the first Failure, in the Time of his Predecessors, an effectual Remedy was immediately applied; and that those, who have since attempted to give an helping Hand, have prevented any new Eruption of the Evil complained of; and if the undertaking was attended with Difficulties, their Care and commendable Zeal for the publick Service have already been able to surmount them in some measure; altho' the gross Encouragement given by the Earl of *Macclesfield* had laid such a strong Foundation for those Difficulties, as if he had designed really to make them insuperable, that they might serve for such a Sort of Excuse as he now endeavours to draw from them.

But the Earl alledges further, that he believes the Masters, who contributed towards *Dormer*'s Deficiency, did it freely and out of their own Money; and that in bringing them to contribute, he followed the Precedent in Dr. *Eddisbury*'s Case.

I need not trouble your Lordships long upon this Branch of the Article, since no one besides his Lordship can well believe the Masters contributed freely; and the Proof we shall lay before your Lordships upon this Head will give full Satisfaction, that none of them did it freely, nor all of them out of their own Money; nor is it the Crime the Commons charge, that the Masters were prevailed on to contribute towards the Deficiency; but that the Earl, whose high Station made it his Duty, when he was informed of the Deficiency, to take care to redress it, did not, as in the Case of Dr. *Eddisbury*, provide that the whole Money belonging to the Suitors should be effectually answered; but instead of following that Precedent in the just and honest use of it, he turned it to answer his own corrupt Purposes, and to conceal from publick Notice, that Loss to the Suitors which it was his Duty to have wholly prevented.

The next Article we proceed to is the sixteenth, which charges, that one *Elizabeth Chitty* having obtained an Order of the 17th of *March*, in the tenth Year of his present Majesty, whereby Mr. *Edwards*, who succeeded in Mr. *Dormer*'s Office, was ordered to pay 1000 *l.* part of a very large Sum due to her, which had been paid into *Dormer*'s Hands; Mr. *Edwards* complained of this as an Hardship to him, who had never received the Money; upon this the Earl would have persuaded the rest of the Masters to pay the Money to prevent a Parliamentary Enquiry, and they refusing, he paid it himself to one Mr. *Lockman* for the use of the said Mrs. *Chitty*; with Intimations, however, that she must not expect any more of the 10,000 *l.* which had been paid on her account into *Dormer*'s Hands.

Your Lordships will be surprized at the Detection here made, both of the Guilt and the Boldness of the Offender; that the Person, who is so sensible of his Crime, as to tell the Masters this matter would affect both himself and them, who discerns the monstrous Consequences of the Mischief before him, who foresees the Punishment of that Crime by a Parliamentary Enquiry; that this Person, instead of applying Remedies to the Evil, should use little Artifices only to conceal it.

What Answer gives the Earl to this Charge? He admits the Order made, and that Mr. *Edwards* refused to pay the 1000 *l.* that he himself paid the Money, and told *Lockman* that was all they must expect from him; but he does not believe he had any Discourse with the Masters to persuade them to pay the 1000 *l.* to *Lockman*.

Your Lordships must be convinced of the Guilt, when the Offender himself hath not the Assurance to deny it; he cannot deny but that he knew and represented the Consequences that would ensue what was done; that it would produce a Parliamentary Enquiry; that it would affect himself as well as the Masters, and that it would hazard the Forfeiture of their Offices. Your Lordships have now an Opportunity to vindicate the Honour of Paliaments, and to leave this Instruction to Posterity; that those who foresee their unwarrantable Actions will give Occasion for a Parliamentary Enquiry, shall not be able, by any Contrivances, by any Means whatever, to evade the Justice of it.

As to the last part of this Article, which charges, That on a Motion in a Cause, *Harper* against *Case* and others, relating to 260 *l.* which having been paid into Mr. *Dormer*'s Hands was in Danger of being lost, the Earl falsly and deceitfully declared he had heard there was a Deficiency in *Dormer*'s Office, but knew nothing of it only as public News: The Commons will give sufficient Evidence to your Lordships of the Truth of this Charge.

The Earl indeed gives a large Account of this Cause and the Orders made in it, and then concludes; he believes he expressed himself to this Effect, That he had indeed heard of *Dormer*'s Deficiency, but that it had never come judicially before him upon complaint of any of the Suitors of the Court: that several Circumstances taken Notice of at large had concurred thereto; and adds, that he said he did not know how all these things would come out, and expressed himself to that effect and no other; and upon all this Circumlocution in the Answer, without any denial of the Words as they stand charged, we have reason to believe your Lordships would be very well satisfied, without farther Proof, that the Words mentioned in the Article were undoubtedly used by the Earl of *Macclesfield*.

It is further observed by the Earl, that this happened after such time as the Masters Accounts had been laid before the Lords of the Council, and had been under the Examination of the Judges and others to whom they had been referred by his Majesty; and there may be some reason to doubt whether the Knowledge of a Deficiency had been so soon declared by his Lordship, if the Examination under which his Majesty's abundant Goodness and Care for his People had put those Accounts, had not already laid open, and made a public Discovery of it.

The 17th Article charges, That tho' the Earl of *Macclesfield* knew of the great Deficiency in *Dormer*'s Office, yet to conceal it, in order to carry on his corrupt and unjust Designs, he made Orders upon Mr. *Edwards* for the payment of several Sums, which were paid without Regard to the Proportion the rest of the Suitors were justly entitled to out of *Dormer*'s Effects, and consequently to their great Loss and Prejudice: To this the Earl answers with his usual Candour, That he never endeavoured to conceal the Deficiency; but as he was under a full Persuasion it would in due time be made good, that he did not think it incumbent on him, *ex officio*, to make a Declaration of an average; that he doth not know any Order was made by him for Mr. *Edwards* to pay Money lodged with Mr. *Dormer*; but believes several Orders were made by the Court for that Purpose.

Your Lordships, upon the bare reciting the Words of the Answer, will perceive the Art and Fallacy of the Answerer; he doth not know any Order was made by him, but believes several were made by the Court; as if he could hope to make your Lordships believe he was a Stranger to, and unconcerned in the Orders made by the Court, of which he was the only Judge.

He admits he did endeavour to conceal the Deficiency, but was persuaded it would be made good in due time, without acquainting your Lordships with any Grounds for that Persuasion, or even mentioning when he thought that due time would come.

He intimates it was incumbent to make a Declaration of an Average, but thought it not incumbent upon him to make it *ex officio*: He could not deny it to be the most equal rule, that if a loss was not inevitable, an Average ought to be made; that the loss might be borne equally and in proportion among all: He could not deny the making Orders to pay some was inconsistent with, and destructive to this Equality; and he could not however think it incumbent on him to do this *ex officio*: And yet it belonged to No-body's Office but his own to effect it.

Thus your Lordships may observe how, to every Article, the Answer either admits the Charge, or uses loose, general, or foreign Circumlocutions to evade it, when the Evidence of the Fact will not allow him to deny it; yet he would be thought to say something at least in excuse: But his Knowledge of your Lordships superior Understanding, ought to have deterr'd him from all Expectations of imposing upon your Lordships by any little Shifts and Artifices of this kind; nor should he hope to pass here the Answer as sufficient, which must have been reported contrary, if I am rightly informed of the Practice, by any of the Masters of his Court.

But I ſhall not longer detain your Lordſhips with Obſervations in matters in themſelves ſo evident; what is admitted to every one of theſe three Articles is ſufficient to juſtify the Charge of the Commons, and whatever remains but imperfectly admitted, we doubt not, by Witneſſes and other Proofs, to make out to your Lordſhips entire Satisfaction.

My Lords, It is a Province enjoined me likewiſe, to maintain the Charge exhibited by the Commons of *Great Britain*, in the fifteenth, ſixteenth, and ſeventeenth Articles of their Impeachment againſt *Thomas* Earl of *Macclesfield*. And it is with the greater Chearfulneſs I undertake that Province, ſince I come to demand that Juſtice, which your Lordſhips are always diſpoſed to adminiſter, to every Subject of *Great Britain*; and therefore I cannot but be fully aſſured of your juſt inclinations, to do equal Right where it is demanded by the Houſe of Commons, the Repreſentative Body of the whole united Kingdom.

It is very ſtrange, that the Earl now under Proſecution; who hath been ſo many Years within the Walls of this Houſe; who hath ſo long been Witneſs of your Lordſhips great Integrity and Wiſdom, ſhould not thereby be deterred from attempting what might ſubject him to your Cenſure. But it is ſtill more unaccountable, that a Perſon, who hath had ſo long Experience of that Judgment and Sagacity, whereby you ſkilfully diſtinguiſh between right and wrong, ſhould hope, by the Artifice of Words, and looſe, general, evaſive Expreſſions; that he ſhould ever hope, I ſay, my Lords, by ſuch Fig-leaves as theſe, to hide himſelf from the Eyes of your Lordſhips impartial Juſtice.

The worthy Gentleman, who hath preceded me upon this Head, hath ſo fully open'd the ſeveral Articles now under Conſideration, and hath ſo clearly detected the Sophiſtry and Inſufficiency of the Anſwers that are given to them, that I ſhall not need to be long upon that Head; it would indeed be difficult to add any thing new to what hath already been obſerved, did not the innumerable Fallacies and Inconſiſtencies with which his Anſwer abounds, continually ſupply freſh Materials for Obſervation.

But I ſhall content myſelf only to take Notice upon the Anſwer to the fifteenth Article, that the Earl ſtands in a manner convicted by his own Confeſſion: He admits the Fact, but would avoid the Conſequence, by ſaying, that he really intended to make the Maſters bring in their Accounts, although he did not do it: If it was intended, why was it not done? It was a difficult and a tedious Work.

I am ſurpriſed, my Lords, to find that any Perſon ſhould expect to ſatisfy your Lordſhips, by ſo weak and frivolous an excuſe.

A Perſon who preſides in the higheſt Court in *Weſtminſter-Hall*, is informed of ſome unwarrantable Practices of the Officers to whom the money of the Suitors is intruſted, which, for want of due Care, hath already proved very pernicious, and muſt in Time prove deſtructive to the Property of all the Suitors of that Court, unleſs ſome ſpeedy Check be put to this growing Evil; is convinced the matter needs Regulation; but he lets it go on, becauſe it would be a difficult and tedious Work to redreſs it.

In moral Evil, my Lords, the Continuation of the Practice of an ill Habit, becauſe it is difficult to break it, is ſo far from extenuating, that it is juſtly eſteem'd to aggravate the Fault; and I don't doubt but that your Lordſhips will have the ſame Sentiments in this Caſe; for ſince it was neceſſary to apply a Remedy, the ſooner it was done the better, and the Difficulty of the Work ſhould have been a Spur, rather than a Check to a vigorous Endeavour for redreſſing it.

In his Anſwer to the ſixteenth Article, your Lordſhips will obſerve the ſame Prevarication ſpread through the whole: The Widow *Chitty* having a conſiderable Sum of Money, to which ſhe was intituled, brought into Court, and depoſited in Mr. *Dormer*'s Hands for the ſafe Cuſtody of it only, petitions for 1000 *l.* part of her own money; ſuch a Petition could not be denied entirely, without bringing on a ſpeedy Enquiry of the Cauſes and Occaſions of the Embezzlement which had happen'd in that Office; and the Diſcovery muſt have brought on a Neceſſity of remedying the Evil that would thereby have been made ſo public, and ſo notorious.

An Order therefore is granted, that the 1000 *l.* ſhould be paid; but then the Difficulty is renew'd, how to make that Payment without diſcovering to the Public the Miſmanagement, which muſt have put a Stop to the Sale of the Maſters Places, which were diſpoſed of at exorbitant Prices, and brought in an immenſe, though illegal Gain. Mr. *Edwards* would not pay it; he had no money of Mr. *Dormer*'s in his Hands: the next Application was made to the Maſters of the Court, to ſee if they could be prevailed on once more to raiſe a Sum by Contribution amongſt them; to this End they were told, that if they did not comply, *Dormer*'s Deficiency would be diſcovered; and that might occaſion a Parliamentary Inquiry, the Conſequence of which might be, the Forfeiture of their Offices, bought contrary to the Statute of *Edward* the ſixth: that this might affect himſelf a little, but them much more; all this, my Lords, is charged in this Article, and not denied by the Earl, but in ſuch a lamentable, evaſive manner, as betrays more Guilt than an open and ingenuous Confeſſion.

It paſſes my Obſervation, in that little View I have been able to make of paſt Times, that any Judge of a Court in *Weſtminſter-Hall*, ſhould own the Knowledge of ſo great a Crime in the Officers of his Court, as that they came into their Places contrary to Law, without any Cenſure, or Blame for it.

But that a Perſon raiſed by the unmerited Bounty of his Majeſty, to preſide in the higheſt Court there, to conduct the Adminiſtration of Juſtice agreeable to the Rules of Equity and good Conſcience, as his Majeſty's Vicegerent in that great Station; that ſuch a Perſon ſhould not only be conſcious of the Illegality of the Maſters obtaining their Places, and a Party to ſuch Illegality, but ſhould have the Aſſurance to make uſe of that as an Argument to extort Money from them, in order to prevent the Diſcovery, and the Puniſhment conſequent thereto, will, I perſuade myſelf, ſtir up in your Lordſhips the greateſt Indignation.

It ſeems he apprehended the Terror of a Proſecution by Parliament might have ſome Effect upon them, and engage them to comply with his Demands, although it had not the leaſt Effect upon himſelf. It was a proper Expedient to bring them into a Contribution of 1000 *l.* but it was not ſufficient to deter him from thoſe Practices, which juſtly merited ſuch a Proſecution.

Our Anceſtors thought it became them to keep in Awe the greateſt Subjects in the Realm, and none were too big to be call'd to Account for the Wrongs and Injuries they did the Public; the Caſe of *Michael de la Pole* in *Richard* the Second's Time, and Cardinal *Woolſey* in *Henry* the Eighth's, with many others, ſome of which have been already mention'd to your Lordſhips, are flagrant Inſtances of it. And we have now a juſt Opportunity of ſhewing, that we have the ſame Regard for the Honour of Parliaments, and the Good of the People; that no one ought to preſume to tranſgreſs the Laws, be his Station, or his Power, never ſo highly advanced, upon proſpect of Impunity; ſince a *Britiſh* Parliament can reach the moſt lofty, and puniſh the moſt inſolent, corrupt Offender: So that he, who is not reſtrained within the limits and boundaries of the Law out of Awe and Reverence to it, muſt expect to fall a Sacrifice to the Power of their Juſtice.

Your Lordſhips have here an Inſtance of one placed at the Head of the Law, who is conſcious that his Actions are contrary to it; who makes no Scruple of avowing this, where it may ſerve his Intereſt, defies a Parliamentary Inquiry, and goes on in Practices which he knows, and profeſſes to be illegal. Your Lordſhips will obſerve how he endeavours to ſhelter himſelf from Danger, and by an infamous Degree of Diſſimulation; what he openly avows, to raiſe a Contribution from the Maſters of the Court, he more publickly denies, with Deſign to carry a plauſible appearance in this Affair to the People.

The Deficiency of *Dormer* at laſt became a public Clamour; it was not Mrs. *Chitty* only, but many others wanted their Money depoſited and entruſted in the Hands of the Court, and by the Court entruſted to the Cuſtody of the Maſters; and the Suitors then made open Complaint upon this Subject. In the Cauſe therefore of *Harper* and *Caſe*, a motion being made, that 260 *l.* lodged in *Dormer*'s Hands might be paid before the Execution of the Conveyance directed by the Court; he who had been ſo long informed of the ſhameful Embezzlement of the Money of the Suitors in *Dormer*'s Office, who had invented ſo many artful Contrivances to conceal the Knowledge of it from the Public, in order to ſerve his own private, unjuſt, corrupt Deſigns, the matter being now declared in open Court, he could no longer deny the Knowledge of what he was ſo plainly inform'd of; that therefore all By-ſtanders might imagine his Care and Concern for the public Good was ſo extraordinary, that he could not have forborn to have remedied the miſchief if he had been before apprized of it; he then publickly and falſly declared that he had heard there was a Deficiency in *Dormer*'s Office, but that he knew nothing of it but as public News. In the Earl's Anſwer, my Lords, he explains this Expreſſion, by ſaying, that it never came judicially before him upon the Complaint of any of the Suitors of the Court: This I am perſuaded your Lordſhips will think a very poor Excuſe, that he who was the Protector of all the Fortunes of the Fatherleſs and Lunaticks, ſhould not, upon the firſt Intimation, or even Suſpicion that they were like to be Loſers, cauſe a ſtrict Examination to be made into it.

It can ſcarce be believed a Perſon who has ſo great a Capacity to judge in what manner he ought to act, ſhould ever deſcend to ſo low a Degree, ſo unworthy the Station in which he was placed, ſo unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherwiſe than as News and accidental Diſcourſe) of what he had been ſo frequently inform'd of, and what he had taken Pains ſo long, and ſo deliberately to conceal.

I need not uſe any Words to repreſent to your Lordſhips the Indignity of ſuch Prevarication, who will, upon the firſt Intimation, be ſenſible of every thing that may ſeem in the leaſt Degree to depart from the Rules of Honour: It is indeed almoſt inconceivable, that a Perſon advanced to be a Part of your noble Body, ſhould ſo far forget himſelf and you; it is what, if he could have expreſsly denied by his Anſwer, we muſt have deſpair'd to have gain'd Credit in, though we could have proved it by inferior Witneſſes; but his Anſwer will ſufficiently convince your Lordſhips of the Truth of the Allegation; for he who could not directly deny a Charge of ſo groſs a Crime, muſt by his own Silence, in a matter of ſo heavy a Nature, be concluded to be guilty of it.

I have already detain'd your Lordſhips ſo long upon this ſixteenth Article, that I ſhall not take the Liberty of trying your Patience by making any Obſervations upon the Seventeenth, but ſhall leave it to the Gentleman that is appointed to aſſiſt in it.

It contains only repeated Inſtances of a corrupt Endeavour, ſtill to conceal the Knowledge of that Deficiency from the Public, which it was his Duty to have prevented; or at leaſt to have ſupplied, and rather to have made it good, than have conceal'd it. What Ground or Reaſon could there poſſibly be, why a miſchief of this Kind, if it did happen by Accident, ſhould with ſo much Induſtry be covered and continued, when that Concealment could anſwer no good or honeſt Purpoſe, but muſt by the Delay increaſe and grow more deſperate, and tend to bring Deſtruction and Ruin on the Suitors of the Court?

But as your Lordſhips, by the Proofs upon the former Articles, had an Opportunity to take notice what large Sums of Money had been paid for the Purchaſe or Exchange of the Places of the Maſters of the Court of *Chancery*; it is natural to conclude from thence, that the Maſters were neceſſarily to be indulged in making uſe of the Suitors Money in their Hands, in order to make up the vaſt Sums they had given for their Offices; and if there had been miſcarriages in Attempts of that Kind, (which in bold Adventurers for ſuch Ends could hardly be avoided) the Diſcovery of ſuch a miſchief would have made it abſolutely neceſſary to have removed the Money from thoſe who had proved ſuch unfaithful Stewards, or at leaſt to have obliged them to have given proper Securities to indemnify thoſe, whoſe Fortunes were intruſted to their Care, from any loſs which might happen by their miſmanagement; the Conſequence of which Caution muſt unavoidably have drawn on a Retrenchment of the exorbitant Prices which of late have been given for thoſe Places.

But I need not give your Lordships any further Trouble, by enlarging more upon this Topick, who ought rather to make Apology for having been already so long upon it; the Gentleman who went before me, and he that will follow me upon this Head, will be sufficient to give your Lordships more ample Satisfaction; and the Certainty of the Facts (which the Earl himself seldom hath the Assurance to deny, but only attempts by false Colours to avoid the Inferences from them) will, where-ever there is Need or Occasion, be supported, and made good by full Evidence.

Mr. *Thompson*. My Lords, I am commanded by the Commons to assist in maintaining the fifteenth, sixteenth, and seventeenth Articles of their Impeachment. The Gentlemen who have gone before me, have acquitted me from giving your Lordships any Trouble upon two of these Articles; and I count it my good Fortune that the third is fallen to my Lot, since the Evidence to prove the Charge contained in it, is so very clear and direct, that little need be said, either to shew the Necessity of the Accusation, or the Truths of the Facts alledged by the Commons.

My Lords, I will avoid as much as I can recapitulating any Evidence which has been opened before; but the Crimes of the unfortunate Earl of *Macclesfield* are so interwoven, that it may be sometimes necessary for me to look back upon Circumstances that have been spoken to upon other Articles.

The Commons in the seventeenth Article set forth, 'That the Earl 'very well knew there was a Deficiency in Mr. *Dormer*'s Office, and that 'Mr. *Edwards* (his Successor) had not sufficient in his Hands to pay the 'whole Money due to the Suitors.' My Lords, as to the Earl's Knowledge of this Deficiency, he admits it in his Answer, by saying, 'He ne-'ver endeavoured to conceal it:' And Mr. *Edwards* has not only declar'd upon Oath this Day at your Bar there was a Deficiency, but also, 'That 'it was laid before my Lord before he was admitted.'

Yet 'Notwithstanding he very well knew it,' the Commons aver, 'That he did from Time to Time make Orders for the Payment of se-'veral Sums out of this Office,' and in Support of this Charge, we shall produce divers of his Lordship's original Orders.

And, my Lords, I appeal to the Testimony of every Master in *Chancery*, who has been, or may be examined before you; I appeal to your Lordships Observations upon the Evidence you have already heard, whether or no such Proceedings were not calculated, 'to carry on his unjust 'Designs, and to prevent a parliamentary Enquiry?'

As to the latter Part of the Article, 'That Sums were paid without 'any Regard to, or Consideration of the Proportion the rest of the Suit-'ors were entitled to,' we shall not only prove the Fact, but shew likewise that this Partiality was not carried on inadvertently, but deliberately; that this unequal Distribution of Right did not flow from a supine Neglect, or careless Oversight, but sprung from a depraved Intention, and determined Corruption.

Mr. *Edwards* will acquaint your Lordships, that he forewarned the Earl of the Consequences that must follow from his Payments, who still bid him 'continue paying;' and Mr. *Lightboun* (reasoning with him as became a Person associated to the Chancellor) urged, 'That he did not 'think any measures justifiable in a Court of Equity, whereby any undue 'Preference might be given, and some have their whole Money and others 'be left in the Lurch.'

So that this Misdemeanor, this Fraud, was in 'manifest and wilful 'Violation of the Trust reposed in him,' a Trust, my Lords, (when faithfully executed) wherein consists the Glory and Happiness of this Kingdom. It is the Security of all our Properties, a Refuge for distrest Widows, and a Protection to helpless Orphans; and when the Commons saw that Oppression had possest the Seat of Justice, that Partiality had usurped the Throne of Equity, that the Guarantee for our Fortunes was become the Invader of them, they beheld it with Indignation and Horror, and have applied to your Lordships to demand Redress and Vengeance.

Now, my Lords, I beg your Attention, whilst I take a View of the Earl's Answer.

He says, 'He never endeavoured to conceal *Dormer*'s Deficiency.' You will hear that he did, and alledged, 'It would be for the Honour of the 'Court to conceal it.'

The accused Earl proceeds, 'As he was under a full Persuasion the 'same would be made good.' I dare say the Earl of *Macclesfield* will, at a proper Time, acquaint you what were the Grounds of this Persuasion. The Commons observe, with the deepest Concern for the miserable Suitors, that they have met with no Foundation, no Colour of Reason to induce 'Them' to entertain such Hopes. On the contrary, the Master who succeeded to Mr. *Dormer*'s Office frequently represented to the Lord Chancellor 'The Hazards the Suitors were in from this Deficiency.'

Yet the Earl boldly asserts, that this very Master, 'Mr. *Edwards* was 'under a firm Persuasion the whole would be made good.' We shall convince your Lordships he never had the least Prospect, the least Glimpse of it; and I am afraid the Earl and he had just the 'same full and firm 'Persuasion of the State of this Office.'

The noble Lord goes on: 'And as no Application was made to him 'by Persons concerned to stop Payment.' I suppose he means before that remarkable Motion which produced his extraordinary Declaration in open Court.

Perhaps the learned Lord will here make another notable Distinction, and explain by the Words, 'Persons concerned,' the 'Suitors only;' and have Recourse to his old Subterfuge, 'That it never came judicially 'before him.' We think, and no doubt your Lordships will think so too, that 'Mr. *Edwards* was a Person concerned;' that his pressing Applications ought to have been sufficient, and that our Evidence is not to be defeated by so weak an Evasion.

But admitting, my Lords, 'That the Earl had this full Persuasion, 'and that no Application was made to him to stop Payment:' What Justification does he draw from thence? 'That he did not think it a Duty 'incumbent upon him, *ex officio*, to make a Declaration of an Average.'

How contradictory, my Lords, how inconsistent is this with his Answer to the fifteenth Article! There he pleads the Case of Dr. *Eddisbury*, and in that Case an Average was declared. The Precedent was followed to encourage Contribution, but was laid aside when it directed him to secure the Suitors their Proportions. Here I can't help observing, that as the Earl has, through the whole Series of his Actions, copied Precedents from the worst Views, so he has now quoted them in the most disadvantageous manner. When his Predecessors took small Sums, he ventured by their Example to swell his Demands to exorbitant Prices; but when their Patterns should have led him to a nice and scrupulous Caution in the Choice of his Officers, he disdained to tread in their Footsteps. And, my Lords, this Precedent was good for the corrupt Purpose of concealing a Deficiency, but ceased to be so, when it was to do Justice to the injured Suitors. He has turned his Weapons upon himself, and if Dr. *Eddisbury* guards him in one Article, he must of Necessity wound him in another.

What I shall next take Notice of in his Answer is, "That he does "not know any Orders were made by him, except in the Case of *Chitty*." That Case is attended with such Circumstances, and may be followed by such Consequences, that he has not yet, nor will, I dare say, soon forget it: However, I presume he will recollect others, when we produce his own original Orders for three several Payments, one of 400 *l.* another of 642 *l.* and a third of 2000 *l.*

This Evidence alone, my Lords, would support this Article; but the Earl has thoroughly confirmed the Charge in his next Sentence. "He "believes Orders have been made by the Court."

Though his own Orders were criminal, Orders from the Court were innocent, till they received his Stamp of Guilt, who knowing the Condition of the Office, commanded "Payments to be made as Orders came "in." The impeached Lord (and were this his only Offence, therefore justly impeached) commanded these Payments.

His Defence is again become his Accusation. Orders from the Court would have ended, had he suffered the Master to stop Payment; but that would have discovered what he took such unwarrantable Pains to conceal; and from that Concealment arose the Injuries to the Suitors: That was the malignant Ground-work of his infamous Designs, and is now subject of our just Charge.

Certainly the Earl did not mean here obliquely to insinuate, that he had a Sharer in his wicked Administration, or to bring another great Name in question with his: That were not for his Service. Characters, my Lords, receive their Lustre from their Foils.

My Lords, I have opened to you, that we shall prove the Accusation contained in the Article, and enforce it from the Earl's Answer. If your Lordships find we have made good our Charge, I submit it to your Lordships, what Judgment you will pass upon such "manifest and wilful "Violations of the Rights of the Subjects."

Far be it from me to add Load to the Guilty; here, indeed, it is impossible. Crimes committed by a Lord Chancellor are capable of no Aggravations; his Station enhances his Guilt. Such Crimes are now become a parliamentary Enquiry, as the Chancellor's conscious Heart long since presaged; and the Commons think they have shewn good Reason why your Lordships should convince the Earl of *Macclesfield* that he flattered himself with vain Hopes, when he menaced the Masters, "That "this Enquiry would affect him, but them much more."

The Commons are sensible, that he who has so long been a Stranger to Justice, will at last meet with it here; and that your Lordships providential Wisdom will never suffer such Reproaches to be cast upon this, as have been thrown out upon another Nation. 'That a Judge is an 'Evening Wolf; that Justice standeth afar off, and Equity cannot 'enter.'

Mr. Serj. *Pengelly*. My Lords, we beg leave to call our Witnesses in Support of these Articles. We desire Mr. *Conway* may be called.

(*Mr.* Conway *called and sworn.*)

Mr. Serj. *Pen.* My Lords, we beg leave that Mr. *Conway* may be asked, whether he paid any Money in the Nature of a Contribution, and when? We have the Receipt here (shewing it to Mr. *Conway*.)

Mr. *Conway*. My Lords, this is a Receipt given me by Mr. *Edwards*, *Aug.* 11, 1721. for the Sum of 500 *l.* contributed by me.

He reads the Receipt.

Aug. 11, 1721.

Received then of Master *Edward Conway*, Esq. the Sum of 500 *l.* voluntarily contributed by him in Aid of the Deficiency of my Predecessor, *Fleetwood Dormer*, Esq. in the Cash of his Office, which I promise to repay in case the same shall at any Time hereafter be otherwise made good.

H. Edwards.

Mr. Serj. *Peng.* We desire he may be asked in what manner he paid it, whether it was out of his own money, or stopt out of any other money paid into Court?

Mr. *Conway*. Soon after, (my Lords), I was admitted a Master, Mr. *Dormer*'s Deficiency broke out; and the Contribution of the Masters being then spoken of, I was among the rest applied to to contribute: I was sworn in in *January*, 1720, and this Receipt is in *August*, 1721, when Mr. *Edwards* came home to bring me some junior Masters money, which he was to deliver to me, out of which he stopt this 500 *l.* upon Account of the Contribution which I had promised to come into.

Mr. Serj. *Peng.* We beg leave that Mr. *Conway* may be asked, whether the 500 *l.* was allowed or deducted at that time out of the Suitors money?

Mr. *Conway*. Yes, my Lords, it was stopt by him at that Time.

Mr. Serj. *Peng.* What Persuasions were made use of to induce the Masters to contribute to pay this money?

Mr. *Conway*. When the Affair of Mr. *Dormer* came out, what I can remember is, That Letter that came from him from *Holland* was sent to Mr.

Holford

Holford to be read before the Maſters in the publick Office, and there the Maſters ſpoke of what they thought proper.

Mr. Serj. *Peng.* What Intimation was there from him, or from any other Perſon, of any Direction from my Lord *Macclesfield* relating to the Payment of this 500 *l.* Contribution?

Mr. *Conway.* I think my Lord *Macclesfield*'s Secretary was there at the time Mr. *Dormer*'s Letter was read. I think he had ſpoken what he had principally to ſay before he came in; but I think he ſaid the Conſequence might be fatal to the Maſters, if we did not take care of this Deficiency.

Mr. Serj. *Probyn.* We would not preſume to interrupt the learned Managers; but I think the particular time when this was done, and the particular Sums that were paid by each Maſter ſhould be ſtated. I remember Mr. *Edwards* was pleas'd to ſay, the firſt 500 *l.* that was contributed was paid upon the Day he was ſworn in, which I think was in *May*, 1721. We deſire therefore that he would pleaſe to expreſs the Day when every other Sum was paid in.

Mr. Sol. Gen. We only deſire this Gentleman to ſpeak to his own Payment.

Mr. *Conway.* The Receipt is dated *Auguſt* 11, 1721. Then Mr. *Edwards* ſtopt ſo much Money.

Mr. Serj. *Peng.* We deſire he may be aſked how he paid that Money, whether voluntarily, or freely, or upon what Ground?

Mr. Com. Serj. I beg Pardon, but I muſt beg leave that the Witneſs may declare at what time this Tranſaction was?

Mr. *Conway.* It was the Day the Receipt bears Date, the Tranſaction happen'd *Auguſt* 11, 1721.

Mr. Sol. Gen. We deſire he may be aſk'd, what induced him to pay in this Sum?

Mr. *Conway.* It was ſtopt as a Contribution towards making up Mr. *Dormer*'s Deficiency.

Mr. Serj. *Probyn.* My Lords, we deſire that this Witneſs may be aſk'd, Whether there was any preceding Promiſe or Agreement to pay this Money?

Mr. *Conway.* My Receipt mentions a Promiſe.

Mr. Serj. *Probyn.* Then I deſire to know how long before this Promiſe was made?

Mr. *Conway.* Soon after the Deficiency was ſpoken of in Mr. *Dormer*'s Office, in *February*, 1720. about three Weeks after I was admitted.

(Mr. Edwards *called.)*

Mr. Serj. *Peng.* My Lords, we only call Mr. *Edwards* to aſcertain the time when he received the Money of Mr. *Conway* for his Contribution.

Mr. *Edw.* My Lords, according as I have taken it out of my Book, it was the 11th of *Auguſt*, 1721.

Mr. Serj. *Peng.* Now, my Lords, we ſhall ſhew the manner how this Payment was made.

(Then Mr. Lightboun *was called, and appeared.)*

Mr. *Plum.* I deſire Mr. *Lightboun* may be aſk'd, if he was ever preſs'd to pay 500 *l.* by whom, and for what?

Mr. *Lightb.* Not long after Mr. *Dormer*'s Failure, Mr. *Cottingham*——

Mr. Com. Serj. My Lords, I hope Mr. *Lightboun* ſhall mention the time as he goes along.

Mr. *Lightb.* Not long after the Failure of Mr. *Dormer*, I met Mr. *Cottingham* by accident at my Lord Chancellor's Room at *Weſtminſter*, and he aſked me, whether there had been mentioned to me a Propoſal of paying or advancing 500 *l.* a-piece towards making up the Deficiency of Mr. *Dormer*'s Office, for carrying on the Buſineſs there? I ſaid I had heard it; he ſaid it was propoſed that it ſhould be immediately raiſed, that the Buſineſs of the Office might be carried on, till Mr. *Dormer*'s Effects could be diſpoſed of and ſold; and ſome Intimation was given, that poſſibly we might have our Money again as *Dormer*'s Effects came in. I have heard ſuch a Thing talk'd of, ſays I, but I will never come into it; I thought it attended with dangerous Circumſtances, and a dangerous Precedent, and therefore I was reſolved I would not contribute.

Mr. *Plum.* Can you recollect what paſſed afterwards?

Mr. *Lightb.* He ſaid all the reſt would. I ſaid I would not; and I continued the ſame Reſolution when I talked with the Maſters about it.

Mr. *Plum.* I deſire he may be aſked, if my Lord *Macclesfield* ever preſſed him to pay this Money, and when?

Mr. *Lightb.* It was often mention'd to me by the Maſters, why I did not contribute as the others did, and I was made not a little uneaſy for not having done it. I think, in the beginning of the Summer 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own Houſe, (where I had the Honour to have been ſitting with him) ſaid, Mr. *Lightboun*, I would ſpeak with you. I followed his Lordſhip into his Houſe up into his Study, where my Lord was pleaſed to ſay, Mr. *Lightboun*, I am very ſorry to hear that you have not contributed your 500 *l.* towards making up Mr. *Dormer*'s Deficiency; for, ſays he, it muſt be conſidered, that it will be attended with ill Conſequences, if that matter is not taken care of. I aſked him, was it your Lordſhip's Propoſal? He ſaid it came from the two ſenior Maſters, but he approved of it. I anſwered, that if it had come from his Lordſhip, it might have had a different Conſideration, but as it was theirs, and to ſerve their own Purpoſes, I hop'd his Lordſhip would not inſiſt upon my coming into it. The two ſenior Maſters had been long in their Offices, were grown in Years, and were willing to get out, and ſell at high Prices; one of them had ſlipt out, and the other was about it: that I was but lately come into the Office, and intended to continue in it, and ſaid, I will not concern myſelf in this Affair, unleſs the Office can be put upon ſuch a Foot that the Suitors may be made ſafe and eaſy.

Mr. Serj. *Peng.* My Lords, I deſire he may be aſk'd, Whether at this time my Lord *Macclesfield* made uſe of any Reaſons, Arguments or Promiſes towards prevailing upon him to pay this Money?

Mr. *Lightb.* I can't ſay my Lord preſs'd me; he left me to my own Inclination, but adviſ'd me to pay it, and not to ſtand out; to do as the reſt did, and not to ſtand alone in it.

Mr. Serj. *Peng.* Whether did he mention of what Conſequence or Advantage it would be to the Maſters?

Mr. *Lightb.* His Lordſhip ſaid, if there were not ſome meaſures taken it might be of ill Conſequence, and that this was the only Expedient he thought of. I told his Lordſhip, I thought there were many others, but this was one I would not come into; but that it was not for me to preſume to dictate to his Lordſhip, I thought it did not become me.

Mr. Serj. *Peng.* My Lords, I deſire he may aſk'd, if after theſe Diſcouragements my Lord *Macclesfield* did not again demand Money of him, and when?

Mr. *Lightb.* My Lords, in the Year 1724, about the latter end of *July*, I met Mr. *Cottingham* by accident at the Tavern. He came in and deſired me to go into a Room, for he had ſomething to ſay to me. He told me, that my Lord *Macclesfield* had ſent him to tell me, that he wonder'd that I had not paid my 500 *l.*; that there was 1000 *l.* to be paid to Mrs. *Chitty*, or to Mr. *Lockman*, that muſt be immediately paid; that my Lord had been apply'd to, and much preſs'd, and it muſt be forthwith paid, and he expected that I would advance the 500 *l.* and the reſt of the Maſters 50 *l.* a-piece, which would make up the Sum. I ſaid to Mr. *Cottingham*, I cannot think my Lord *Macclesfield* would ſend you on ſuch an Errand to me; I told my Lord formerly I would not pay it, I was with his Lordſhip this Morning and he ſaid nothing of it, and ſhall have the Honour of waiting upon him in a Day or two, and if he then think fit to talk to me about it, I ſhall give him a proper Anſwer; but I don't care to ſend my Meſſages to him by you, becauſe Meſſages are liable to be miſtaken and miſrepreſented, and I will give my Anſwer myſelf. Upon that Mr. *Cottingham* began to be angry at my diſtruſting him, and thinking that he came of his own accord, and averr'd to me that he came with my Lord Chancellor's Privity. I repeated the ſame Anſwer again to him, that I would give my own Anſwer to his Lordſhip, and would return none by him. In a Day or two after there was an Intimation given, that my Lord Chancellor expected all the Maſters to attend him at ſix a-Clock in the Evening: we imagined that it was a call upon the other Maſters for more Money, and for my five hundred Pounds. They had all declared to me they would never contribute any thing more, and therefore I deſired them that, in caſe that were the Buſineſs, they would freely declare their Thoughts before my Lord himſelf. I believe it was the ſenior Maſter I preſſed to do it, ſaying to him, It beſt becomes you to give the Anſwer. Says he, If the Queſtion be put, I ſhall propoſe that we may have time to conſider of it. I deſired he would not do that, it would encourage my Lord, and he might think that if he importuned it farther we would comply, and for my part I am determined not to do it; ſo we went on to my Lord, and were carried up Stairs; when we came there, my Lord ſaid, there hath been an Application made to me on behalf of Mrs. *Chitty* or Mr. *Lockman*, I think he was the Perſon expreſly named, and that he had been much preſſed by Perſons of Diſtinction; and then he turned to me, and ſaid, Mr. *Lightboun*, I am extremely ſurprized you have not paid the 500 *l.* as the reſt have done. After he had us'd a good many Perſuaſions and Arguments, I told his Lordſhip, it was with great Concern that I refus'd to do any thing that his Lordſhip could deſire of me; but this was a Thing of ſuch a dangerous Conſequence, that I would not contribute one Farthing, and that I had given his Lordſhip my Reaſons before; if he would hear them again, I would repeat them again; but this one was of moſt Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, if ever there ſhould be a national Inquiry into theſe Matters; and that I would be anſwerable only for my own Debts: That as I had not contributed towards the Misfortunes of others, I would not contribute towards Payment of their Debts; that I did not know but the paying Contributions to make good the Demands on other Offices might make Deficiencies in our own; I had always refus'd it, and never repented it, and I had the pleaſure of hearing every Maſter repent the doing it. I called upon the reſt of the Maſters to deal ingenuouſly with my Lord, to tell him what they had ſaid when they had talk'd over the Matter among themſelves, that they would not contribute any more; upon that Mr. *Holford* got up and ſaid, he would never do it. Then my Lord ſaid, he either would pay it himſelf, or take care it ſhould be paid.

Mr. *Plum.* I deſire he may be aſk'd, if my Lord *Macclesfield* uſed any Inſinuations with reſpect to the Parliament?

Mr. *Lightboun.* I forgot that my Lord *Macclesfield* was pleaſed to ſay, that the Conſequences of not contributing to raiſe a Sum of Money to pay the Debt of Mr. *Dormer*, might be, that the Money and Securities would be taken out of our Hands. I told him I was ready to deliver both the Money and Securities the next Day, if his Lordſhip made the proper Orders, and I was properly indemnified. I think his Lordſhip ſaid further, this may produce a Parliamentary Enquiry, and ſhould it be reſolved that purchaſing a Maſter's Place is contrary to the Statute of the fifth and ſixth of *Edward* VI. you might loſe your Places; to that I replied, I would quit my Office rather than hold it upon thoſe Terms of paying other Maſters Debts. He went on farther about a Parliamentary Enquiry; I ſaid, let the Conſequence be what it will, I would not pay it. Then I called upon the other Maſters, who ſaid they would not pay it.

Mr. Serj. *Probyn.* My Lords, As to the paying of the 1000 *l.* to Mrs. *Chitty* or Mr. *Lockman*, I deſire Mr. *Lightboun* may be aſk'd, whether the late Lord Chancellor was pleaſed to ſay, That he had or would take care to pay the 1000 *l.* himſelf; or what the particular Expreſſion was that he then made uſe of, that he had taken care, or would take care?

Mr. *Lightb.* I can't remember, at this diſtance of time, whether he ſaid he had, or would take care to pay it. There is ſo little Difference, that I cannot ſay which. I do not pretend to ſay thoſe were the very Expreſſions my Lord uſed to me, or I to him. I ſpeak as to the Tenor or Purport of our Converſation; I would neither aggravate nor ſoften matters.

Mr. Serj. *Peng.* The next Witness we call is Mr. *Holford*, who was present at this Conversation.

[*Mr.* Holford *sworn.*]

Mr. Serj. *Peng.* We desire Mr. *Holford* may be asked, whether he was present at this time, as is mentioned, when the Masters were required by the Earl of *Macclesfield* to raise this 1000*l.* for Mrs. *Chitty* or Mr. *Lockman*?

Mr. *Holford.* My Lords, I was present at that meeting. It was desired, as I apprehended, by my Lord *Macclesfield*, for us to attend him at Six o'Clock. When we came up there, I think, the first thing that my Lord *Macclesfield* said was, he asked Mr. *Lightboun* why he would not pay his 500*l.* as others had done? Mr. *Lightboun* did give this Answer: That he had told him several times before, that he would not do it; he had given his Reasons, and it was in vain to repeat those Reasons again, he was of the same Mind still. My Lord then spoke of a Demand there was of 1000*l.* on Mr. *Dormer*'s Office for one Mrs. *Chitty* and Mr. *Lockman*; and I apprehended my Lord mentioned it as if he intended that the Masters should contribute towards making it up; but he after said he would take care of it. After that my Lord did not mention the 1000*l.* but, in general, spoke of the Deficiency in Mr. *Dormer*'s Office, and it ought to be made up; and he proposed, as I did apprehend, that the Masters should make it up. Mr. *Lightboun* did call upon me to declare; upon that I told my Lord it was very unadviseable to contribute towards a Deficiency which nobody knew what it was; and the doing so would only be ruining one's self, for fear of being undone; and, for my Part, I was unwilling to do it; any Body else might do as they thought fit.

Mr. *Plum.* In what manner did my Lord address himself to Mr. *Lightboun*? Did he do it in gentle Terms, or how?

Mr. *Holford.* He spoke pretty sharply to him.

Mr. Serj. *Peng.* What was said by the Earl of *Macclesfield*, to persuade the Masters to come into this Contribution?

Mr. *Holford.* My Lord said it was a grievous thing there had not been that due Care taken there ought to have been; that those who came first had all their Money, and those that came after would have none; which would make a great Clamour upon the Masters.

Mr. Serj. *Peng.* What was said upon that?

Mr. *Holford.* I don't remember what in particular.

Mr. Serj. *Peng.* What was said as to a Parliamentary Enquiry?

Mr. *Holford.* I remember my Lord did say, it might perhaps occasion a Parliamentary Enquiry. Suppose, said he, the Parliament should resolve, that the Office of a Master in Chancery is a Place relating to the Execution of Justice, and resolve that every Body that hath purchased those Offices is within the Statute of the 5th and 6th of *Edward* VI. It may affect me in some Degree, in the Loss of the Disposition of the Offices; but it will affect you in the Loss of the Places themselves.

Mr. Serj. *Peng.* Whether any Person then asked my Lord, in what manner it might come before the Parliament?

Mr. *Holford.* I asked my Lord myself, and said it would be a Favour if he would give us his Opinion, in what manner it might come before the Parliament, and in what way? He said, it might come in by the Committee for Courts of Justice, appointed by the House of Commons at the Beginning of every Session. But when I came out of the Room, I said, it was more likely to come by way of Complaint than that way.

Mr. Serj. *Peng.* I desire he may be asked, whether, at this time, the Masters agreed to come to a Contribution to pay this 1000*l.* and what was said about it?

Mr. *Holford.* It was disagreed to; and when it was so, my Lord did say, that he himself would pay the 1000*l.*

Mr. Serj. *Peng.* We leave that as a Circumstance of my Lord's endeavouring to prevent a Parliamentary Enquiry.

Mr. Serj. *Prob.* My Lords, we desire Mr. *Holford* may be asked, whether he can be positive as to the time of this Meeting?

Mr. *Holford.* I believe it was in *July* or *August*, 1724.

Mr. Serj. *Prob.* You can't be positive?

Mr. *Holford.* No; I can't be positive.

Mr. Serj. *Prob.* Whether was there, at that time, any Proposal made to raise Money, by any annual Sum or Payment out of the Offices, towards paying the Deficiencies by Degrees?

Mr. *Holford.* I do not remember any such thing.

Mr. Serj. *Prob.* Was such a Proposal made at any other Time?

Mr. *Holford.* I don't remember that it was ever proposed by my Lord. I have heard talk among the Masters of a great many Schemes and Proposals; but they never did agree in any one thing.

Mr. Serj. *Prob.* I desire he may refresh his memory, and that he may inform your Lordships if there was not a Proposal made, that if they might be maintained in their Offices, as they then were, they would not then consent that a Contribution should be raised among the Masters.

Mr. *Holford.* No, I don't remember that; I believe it was mentioned, that supposing the Masters might be continued on the foot they were, whether they would not think it worth their while to do it? I said it was a matter fit to be considered, and I did not know but it might; but there was no method proposed but what seemed difficult; and I don't remember that any thing was agreed to.

Mr. *Strange.* I desire he may be asked, whether, after they had contributed the 500*l.* a-piece, their Accompts were called for by my Lord *Macclesfield* in the manner they were called for before?

Mr. *Holford.* I don't know but they might. The manner of calling for those Accompts was thus: There was a Writing left in the publick Office, in which there was a great many *Items* in what Method those Accompts should be brought in. I had prepared mine, and waited till they should be called for, but they were not called for nor demanded; so I laid mine by.

Mr. Com. Serj. I desire he may be asked, whether this Discourse, in relation to the raising of Money, was to pay off the whole Deficiency, or confined to pay off this Demand of 1000*l.*

Mr. *Holford.* I don't remember any Proposal, but only a Discourse that was started. I did not apprehend the whole Deficiency was intended to be paid; for I never knew any Body that could tell what the whole Deficiency was, till of late.

Mr. Com. Serj. I desire to know, whether he speaks this from his Memory?

Mr. *Holford.* I can speak from nothing but my Memory.

Mr. Com. Serj. I desire that he will inform your Lordships, whether he doth not remember, that in *November* last there was a Signification to the Masters, and to him in particular, to bring in their Accompts?

Mr. *Hol.* Yes, my Lords.

Mr. Com. Serj. If there was such an Intimation in *November* last, to deliver in their Accompts, how comes it that you say you have them by you still?

Mr. *Holf.* This is a Mistake; you misapprehend me. The Accompt, that I mentioned before, was what was immediately called for after the Failure of Mr. *Dormer*; but the Accompt in *November* last was what was called for by the Judges, and delivered into the Council.

E. of *Mac.* My Lords, I desire to know, whether Mr. *Holford* can remember what particular Directions as to those Accompts were, and whether the Accompts he prepared were drawn up according to those Directions?

Mr. *Holf.* Those Directions were many; in drawing up my Accompt, I did not draw it up exactly according to those Directions; but I drew them up to shew the Balance of Cash and Securities in my Hands.

E. of *Mac.* I would desire to know, whether they were not the like Directions as in *November* last, and whether the Matters did not think it impracticable to draw it up accordingly?

Mr. *Holf.* Yes, my Lords, they did; they thought it difficult; I thought it was not practicable without a great deal of Trouble.

Sir *Gorge Oxenden.* I desire to know whether it was required by my Lord Chancellor to look into *Dormer*'s Deficiency, to see what the true State of it was at that Time?

Mr. *Holf.* All I heard of it was: I heard that my Lord had ordered Mr. *Edwards* to deliver in an Accompt of Mr. *Dormer*'s Office to me and Mr. *Bennet*: He did deliver one; but it was an Accompt done in haste, and did not shew what the Deficiency was. For some of the Payments said to be made, no proper Vouchers were produced; there were mistakes, and it it was not a proper Accompt; and without examining it we could not depend on it.

Mr. Serj. *Peng.* He mentions, that at this meeting it was said, Supposing the Masters might be continued on the same Foot they then stood, &c. I desire Mr. *Holford* may explain what he meant by the Foot they then stood on? what Liberties and Privileges were meant by that Expression?

Mr. *Holf.* I understood it was their continuing in the Possession of the Money.

Mr. Serj. *Peng.* Whether that was to lock the Money up in a Cabinet, or to have Power of the Money to make use of it?

Mr. *Holf.* For my own Part, I should not have lock'd it up.

Mr. *Lutwyche.* I would beg leave to ask him, as he hath mentioned the calling for the Accompts, whether he delivered any Accompt to the Earl of *Macclesfield*, till the Order made by the Council?

Mr. *Hol.* My Lords, I did deliver an Accompt to my Lord *Macclesfield*, or to *Mr. Cottingham*, of my Money, but not of the Securities.

Mr. Serj. *Peng.* We desire Mr. *Edwards* may be called again.

[*Accordingly Mr.* Edwards *was called, and appeared.*]

Mr. Serj. *Peng.* My Lords, we beg leave that Mr. *Edwards* may give your Lordships an Account (because he was immediately concerned in a Demand made upon this Office) what application was made to him for this Mrs. *Chitty*'s Money? and what Application he made to the Earl of *Macclesfield* on that Occasion?

Mr. *Edwards.* My Lords, there was an Order brought to me, that was made by my Lord *Macclesfield*, for the Payment of 1000*l.* to Mrs. *Chitty*. I told the Party, I had not Money in my Hands of Mr. *Dormer*'s sufficient to answer the Demand upon the Office. I then went to my Lord *Macclesfield*. I told him (I had been forced to trouble him pretty often upon that Occasion), that it gave me a great deal of Uneasiness that there was no Fund in my Hands to answer those Demands that were upon my Office. I hoped his Lordship would take Care that there should be a Supply, or that he would not be pleased to make Orders upon me for the Payment of Money.

Mr. Serj. *Peng.* Give an Account of the whole that passed, the whole Conversation.

Mr. *Edwards.* My Lord *Macclesfield*, in answer to that said (at least, it was what I understood by his Answer), that if the People would but have a little Patience, he was doing every thing necessary, and making proper Regulations for that Purpose.

Mr. Serj. *Peng.* I desire he may be asked, whether my Lord *Macclesfield*, at that Time directed him to proceed to make any farther Payments, or encouraged him to go on to make Payments?

Mr. Serj. *Prob.* My Lords, we apprehend that this is too leading a Question.

Mr. Serj. *Peng.* What Directions he had, in general?

Mr. *Edw.* My Lords, I had no Directions that I remember.

Mr. Serj. *Peng.* I desire he may acquaint your Lordships, whether he said any thing relating to the State and Condition of the Suitors of the Court?

Mr. *Edw.* Several times that I had the Honour to wait on my Lord *Macclesfield*, I told him there was like to be a great Deficiency in Mr. *Dormer*'s Effects: All that had been raised out of *Dormer*'s Effects was exhausted and gone, and there were a great many Demands; and I hoped Provision would be made to answer them: It was not for me to do it else; and I hoped it was not expected that I should.

Mr. Serj. *Peng.* Was any thing represented at that time, concerning paying some of the Suitors of the Court, and not others?

Mr. *Edw.* About that time, or rather since, as I remember, I told my Lord *Macclesfield* that I saw the Masters were determined not to make any further Contributions; and if that were to be the Case, and that there was to be no further Supply of Money, it would be very hard for some to have all

all their Money, and others none at all. My Lord Chancellor ſaid, I do not know what to ſay to it; I think it is very hard it ſhould be ſo; I will take all the Care I can, and hope to make every Body eaſy.

Mr. *Lut.* My Lords, I deſire he may be asked, whether he had not paid all the Money, or near all, when this Diſcourſe happened?

Mr. *Edwards.* Yes, my Lords.

Mr. *Lut.* I deſire he may be asked, whether he was preſent at the meeting of the Maſters, when this 1000*l.* was inſiſted upon, and on what Occaſion it was?

Mr. *Edwards.* It was upon a Summons that all the Maſters ſhould attend his Lordſhip; I am not ſure as to the Day; I think it was the latter End of *July:* We waited upon his Lordſhip about ſix of the Clock in the Evening, and my Lord mentioned it to Mr. *Lightboun*, that he was ſurprized that he had not contributed his 500*l.* he wondered that he ſhould be ſo backward in doing what others thought right to do, and that there was Occaſion at that Time for the Payment of 1000*l.* he mentioned, either to Mrs. *Chitty* or Mr. *Lockman.* Mr. *Lightboun* told him, that he did not expect to be asked again upon this Subject, he had ſo often told his Lordſhip he would not contribute; other People might do what they pleaſed, but, as for his Part, he was determined not to do it.

Mr. *Lut.* We deſire to know what paſſed, and what was ſaid by the Earl at that meeting?

Mr. *Edwards.* When this was refuſed by Mr. *Lightboun*, there was a Diſcourſe in the Company, that if the reſt of the Maſters would advance 50*l.* a-piece, and Mr. *Lightboun* his 500*l.* it would make up the Sum. The Maſters, moſt of them, ſpoke their mind, and ſhewed an Unwillingneſs to contribute any more. My Lord *Macclesfield* was pleaſed to ſay, this is a Thing of Conſequence, a matter that ought to be conſidered; here is a very preſſing Occaſion for a Sum of money to be immediately paid; if not paid, I don't know what the Conſequence may be: Clamours begin to grow pretty ſtrong, I don't know but it may occaſion a parliamentary Enquiry; or to that Effect.

Mr. *Lut.* I deſire he may be ask'd, whether there was any further Diſcourſe what the Parliament might do?

Mr. *Edwards.* My Lord *Macclesfield* was pleaſed to ſay further, I don't know, if this matter comes into the Conſideration of Parliament, how far it may affect your Offices, the Sale of them is againſt an Act of Parliament: Suppoſe it ſhould be reſolved by the Houſe, that theſe Places, being bought contrary to the Act of Parliament, are forfeited, I can't ſay how far it may affect me in ſome meaſure, but it will affect you much more.

Mr. Serj. *Peng.* Theſe are the very Words of the Article, and we may rely upon the Opinion of the Earl himſelf, when he was in the Poſſeſſion of that great Office?

Earl of *Macclesfield.* My Lords, I deſire Mr. *Edwards* may be asked, whether the Subject matter of this Diſcourſe was the Payment of this 1000*l.* or making good the Whole of *Dormer*'s Deficiency?

Mr. *Edwards.* I underſtood the only Subject to be this 1000*l.*

E. of *Mac.* You underſtood it ſo?

Mr. *Edwards.* And the Reaſon why I underſtood it ſo was, becauſe if Mr. *Lightboun* would have been pleaſed to have paid his 500*l.* and the other Maſters 50*l.* a-piece, it would have made up the Sum.

Earl of *Mac.* Was the Propoſal of paying 50*l.* a-piece, after Mr. *Lightboun* had refuſed the Payment of 500*l.*?

Mr. *Edwards.* I believe it was.

E. of *Mac.* What Occaſion was there for the Propoſal to pay 50*l.* a-piece, when the Payment of 500*l.* was abſolutely refuſed?

Mr. *Edwards.* I believe it was underſtood by ſeveral, that, if the other Maſters would have contributed 50*l.* a-piece, it would have been an Inducement for Mr. *Lightboun* to have come in and paid his 500*l.*

E. of *Mac.* Somebody muſt propoſe this that had that Apprehenſion.

Mr. *Edwards.* I can't ſay who propoſed it, nor whether it was propoſed by my Lord *Macclesfield*; but 50*l.* a-piece was mentioned.

E. of *Mac.* My Lords, I deſire to know of Mr. *Edwards*, whether the Maſters did not at any Time agree to make good *Dormer*'s Deficiency?

Mr. *Edwards.* My Lords, I think I remember a meeting of the Maſters at his Lordſhip's Houſe not long before this, where they ſeemed inclinable to agree, that if they were continued in the Rights of their Office in all Reſpects, and on the ſame Foot as they had enjoyed them, that then they would have endeavoured to have made this Deficiency good.

E. of *Mac.* I deſire to know if he hath not ſaid, that on his coming into the Office, the Maſters told him, they would make good the Deficiency?

Mr. *Edwards.* I can't ſay the Maſters ever told me they would make good the Deficiency; I can't ſay I ever heard them ſay that they would make it up.

E. of *Mac.* I deſire you would recollect yourſelf, whether, when you was with me, and I deſired you to give an Account of this matter, you did not ſay, that the Maſters did promiſe to make it good, or elſe you would not have come into the Office?

Mr. *Edwards.* I don't remember I told your Lordſhip ſo; I believe it was deſigned by the Maſters to have it made up, if not the Whole, the greateſt Part of the Maſters, were inclinable to make up the Deficiency.

E. of *Mac.* I deſire an Anſwer to the Queſtion, whether he did not ſay, that the Maſters did promiſe him to make good the Deficiency?

Mr. *Edwards.* I don't remember that I ſaid ſo directly; I told your Lordſhip, that unleſs I had had Aſſurances that the Deficiency of the Office would have been made up, I never would have meddled with it. Theſe Aſſurances I had from Mr. *Cottingham* and Mr. *Godfrey.*

E. of *Mac.* I think you ſay, the Maſters did ſeem to agree, that if they were kept in Poſſeſſion of the Rights of their Offices, they would contribute. Had you two meetings with me in *July*, or *Auguſt?*

Mr. *Edwards.* I think there were two in the ſame month of *July:* Within a Month the two meetings were.

E. of *Mac.* Whether the Maſters have not made ſeveral Complaints to me, of the Invaſion of their Right in their Offices, and deſired me to make an Order to redreſs them?

Mr. *Edwards.* Not only Complaints of that Sort were made, but I believe thoſe Complaints were reduced into Writing, and laid before your Lordſhip; there were frequent Complaints by Concurrence of all the Maſters.

E. of *Mac.* How long before that Time were Complaints made to me of the Maſters being injured in the Profits of their Office?

Mr. *Edwards.* I believe near a Twelvemonth.

E. of *Mac.* Was it not more?

Mr. *Edwards.* It was a full Year.

[*Earl of* Macclesfield *ſhews Mr.* Edwards *a Paper.*]

Mr. *Edwards.* This is what I mentioned, a Repreſentation in Writing laid before your Lordſhip.

E. of *Mac.* Pray look upon that.

[*Shews another Paper, which Mr.* Edwards *looks upon.*]

E. of *Mac.* Are thoſe two Papers ſigned by you, and the other Maſters whoſe Names are at the End of them?---Mr. *Edwards.* Yes.

E. of *Mac.* I deſire to know, in the next Place, whether I was not much preſſed by the Maſters to have made ſome Alterations in the Proceedings of the Court? And what Anſwer did I give?

Mr. *Edw.* Upon this Repreſentation there were a great many Applications made to my Lord *Macclesfield.* I went ſeveral Times myſelf. Sometimes two or three would make Application to him, that he would be pleaſed, if he thought the matters repreſented to be Grievances, that he would redreſs them. My Lord did ſay, that he thought that the matter of our Complaint was juſt, and that thoſe matters were proper to be rectified, and he would take all proper meaſures to do it.

E. of *Mac.* And why were not all theſe Things ſet right?

Mr. *Edwards.* I remember one Circumſtance that I believe will be an Anſwer to the noble Lord's Queſtion. Thoſe matters were not laid together all at once before my Lord Chancellor, but ſome at one Time, and others at another Time; and my Lord *Macclesfield* did ſay, I would have you draw up a State of all theſe Grievances you complain of, and then I ſhall ſee them better under one View, and take them together.

E. of *Mac.* Was there any Order made in Favour of the Maſters, and to redreſs theſe Grievances?

Mr. *Edwards.* I remember we were a little impatient that there was no Order made; we often ſollicited on ſeveral Accounts before they were made.

E. of *Mac.* For what particular Reaſons were you ſo impatient?

Mr. *Edwards.* It is impoſſible to recollect the particular Reaſons; they were, in many Inſtances, relating to the Proceedings at the Rolls, and the Innovations there to the Prejudice of the Maſters Offices.

Mr. *Plum.* My Lord *Macclesfield* hath aſk'd ſeveral Queſtions, and I would make an Obſervation upon this Evidence, That theſe Gentlemen applied to Lord *Macclesfield* to redreſs Grievances, but he would not promiſe them a Redreſs till they paid this Debt.

Sir *George Oxenden.* I deſire to know what he means by the Profits of the Office?

Mr. *Edwards.* The principal Thing that I mean is the keeping of the Money; but there were ſeveral other Things in which we thought our Offices leſſened, by taking away the cuſtomary Fees which uſually belonged to the Maſters.

Sir *Geo. Oxen.* If the Profits of the Office was the keeping of the Money, I ſuppoſe they made uſe of it?

Mr. *Edwards.* Yes, my Lords, I believe it was not underſtood by any Body, that the Money was to be lock'd up. By the Profits of the Money is meant the putting out the Money at Intereſt for ourſelves. But that is not all, the placing the ſame out at Intereſt for the Suitors occaſions ſeveral Perquiſites, as Reports and other Things, which would be loſt by taking away the Money.

[Mr. *John Bennet* called again.]

Mr. Sol. Gen. My Lords, we deſire Mr. *John Bennet* may be aſk'd, whether he was preſent at the meeting at the Lord Chancellor's, when Propoſals were made for the raiſing this 1000*l.*

Mr. *Bennet.* My Lords, I was there, and my Lord *Macclesfield* was earneſt in perſuading Mr. *Lightboun* to pay his 500*l.* Mr. *Lightboun* ſaid he had much rather bring in all the Money and Securities he had in his Hands, and deliver them up, than pay this 500*l.* Upon which my Lord *Macclesfield* ſaid, delivering up the Money and Securities too might be the Conſequence, but that was not the worſt; there might be Votes of the Houſe of Commons, that the Office of a Maſter in Chancery did concern the Execution of Juſtice, and that the Maſters in Chancery, by purchaſing their Offices, had incurred the Penalty of the Statute of *Edward* the VIth, and thereby forfeited their Places, and that a new Sett of Maſters might be put in; it might redound to ſome Loſs to his Lordſhip in diſpoſing of thoſe Offices, but it would redound much more to their Loſs, the Loſs of their Places.

Mr. *Lutw.* When the Maſters refuſed to contribute to this of *Chitty*, what ſaid my Lord?

Mr. *Bennet.* My Lord ſaid, he would take care of it himſelf, or that he would pay it himſelf, I can't ſay which.

Mr. *Lutw.* Whether any thing was ſaid concerning the Conſequence of not paying this 1000*l.* and whether any mention was made of *Dormer*'s Deficiency?

Mr. *Bennet.* There was mention made of Mr. *Dormer*'s Deficiency, and one Maſter mentioned, that it was a bottomleſs Pit; and as my Lord had deſired me and Mr. *Holford* to take ſome Account of it, we both declared, we had not received ſuch a ſatisfactory Account from Mr. *Edwards* as could be depended upon, and that the Deficiency appeared to us to be very uncertain.

Mr.

Mr. *Lutwyche*. I desire he may be asked, whether any mention was made of any Fear of the Discovery of that Deficiency?

Mr. *Bennet*. I can't say by whom it was said, but it was said in Discourse, If this 1000 *l.* was not now paid, the Deficiency of Mr. *Dormer*'s Office would be discovered.

Mr. *Lutw*. Pray, recollect who was that said by?

Mr. *Bennet*. I can't take upon me to say whom it was said by, but it was said in the Conversation that passed at that time.

Mr. *Lutw*. And who were then present?

Mr. *Bennet*. I believe, all the Masters.

Mr. *Lutw*. And who besides?

Mr. *Bennet*. My Lord *Macclesfield*.

Mr. *Lutw*. Were not all the Masters against making up the Deficiency?

Mr. *Bennet*. Yes, all of them.

E. of *Mac*. Was *Dormer*'s Deficiency then known?

Mr. *Bennet*. It was known abroad, but it was not known how much.

E. of *Mac*. Were there two Meetings between me and the Masters in *July*, or the Beginning of *August*?

Mr. *Bennet*. I believe within a Month there were two Meetings.

E. of *Mac*. What was the subject matter of the other Meeting?

Mr. *Bennet*. The first Meeting was to put us all in Mind of our Duty, and to admonish us to avoid any Complaint.

E. of *Mac*. That was the first Meeting. Was there any thing said about *Dormer*'s Deficiency?

Mr. *Bennet*. I don't remember there was.

E. of *Mac*. What Admonition was it that was given to the Masters, and what was said to them, if they did fail in their Duty?

Mr. *Bennet*. The Admonition was generally to take care to perform our Duty, not to give any Cause of Complaint, and, in particular, not to go out of Town, till a Week after the last Seal.

E. of *Mac*. Do you not remember, that I said in my Admonition, that if any Master failed in his Duty, I owed it to the rest to punish him, and to make him an Example?

Mr. *Bennet*. I believe you did say so.

Mr. *Lutw*. At the time when this Admonition was given, was any thing then said about your Accounts?

Mr. *Bennet*. No, I don't remember that any thing was then said on that Subject.

E. of *Mac*. In Point of Regularity, when these Gentlemen speak of this 1000 *l.* they should produce the Order.

Mr. Serj. *Peng*. It is here, and it is admitted in the Answer.

[*The Order produced, proved by Mr.* Ralph Paxton, *who swore it to be a true Copy of the Order taken from the Report-Office.*]

[Mr. *Paxton* begins to read.]

Martis decimo septimo Die Martii Anno Regni Georgii Regis decimo, inter Prideaux Sutton Cler. & Annam Uxorem ejus, Mercy Sheldon Spinster & Egidium Laurence Executor. Winifred Sheldon Spinster Defunct. Quer. Elisam Chitty, Johannem Russel & alios Defendentes.

Whereas the Defendant, *Elizabeth Chitty*,——

E. of *Mac*. It is not necessary to trouble my Lords in hearing the whole Order, only the ordering Part.

[Mr. *Paxton* reads again.]

His Lordship doth order, that the said Master do, out of the said Money in his Hands, pay unto the Defendant Eliz. Chitty *the Sum of one thousand pounds, and to the Plaintiffs the Sum of five hundred pounds, subject to the further Order of this Court.*

[Mr. *Lovibond* sworn.]

Mr. *Lutw*. My Lords, we desire that Mr. *Lovibond* may be asked, whether he was at the meeting when the Masters attended my Lord *Macclesfield* about *July* last, and what passed at that meeting?

Mr. *Lovibond*. I was at that meeting with several of the other Masters, I think most of them: As to what passed then, according to the best of my Recollection, the first thing was, my Lord *Macclesfield* turned to Mr. *Lightboun* and asked him, why he had not paid the 500 *l.* as well as the rest of the Masters; to which he replied, he never would; and gave my Lord some Reasons why he would not. Then my Lord *Macclesfield* was pleased to say, there was a matter that required Expedition, a further Demand was made of a Sum of money, by one Mr. *Lockman*, who belonged to the Prince's Court, and it did behove us to find out some Way to make him easy. He proposed that the Masters should raise that money among them. The Masters in general said, that they could not do it.

Mr. *Lutw*. What Arguments were made use of by my Lord *Macclesfield* to persuade them to it?

Mr. *Lovibond*. I remember that Mr. *Lightboun* said, rather than pay it, he would deliver up all the money and effects in his Hands; and my Lord *Macclesfield* did reply, Perhaps that is not the worst of the matter, it may be worse than that; suppose there should be a Parliamentary Enquiry, and the Parliament should come to a Resolution, that you have forfeited your Offices, by having bought them against the Statute of *Edw.* the VIth.

Mr. *Lutw*. I desire he may be asked, whether any Encouragement was given, in case they would pay this money?

Mr. *Lovibond*. I don't remember there was any thing spoke, by way of Encouragement to the Masters, for Payment of that Sum of money.

Mr. *Lutw*. I desire to know what was the Result of this matter, as to this Sum of Money being to be paid, and who it was that said it should be paid?

Mr. *Lovibond*. Upon the Refusal of the Masters, my Lord *Macclesfield* said, Well, I will take Care of that Part myself.

Mr. *Lutw*. I desire he may be asked, whether any thing was then said in relation to the Deficiency of *Dormer*'s Office?

Mr. *Lovibond*. Yes there was some Discourse about that matter, and my Lord *Macclesfield* did express himself as though it would be an unlucky Thing, and it must be made up one Way or other, and he desired the Masters to think of a Way to make it up. My Lord *Macclesfield* said, If you can have the Enjoyment of your Places, as you have had them these Forty Years, will you come into some Terms to make up that Debt? Some said they could not come into it; some said there might be a means of paying it by Annual Instalments out of their several Offices, some seemed to agree to it; others said we may as well make good the Bankers Debts, as make good this Debt.

E. of *Mac*. I desire he may be asked, whether he did not agree, that this Deficiency should be made good by Annual Payments?

Mr. *Lovibond*. No, I did not.

E. of *Mac*. I desire to know, whether the rest of the Masters did not?

Mr. *Lovibond*. I believe some of the Masters did.

E. of *Mac*. I desire to know, whether they did all agree?

Mr. *Lovibond*. I believe the major Part did. I did not.

E. of *Mac*. Do you believe any besides yourself disagreed?

Mr. *Lovibond*. Indeed I can't tell. The greatest Part did agree. I can't say I heard any body refuse.

E. of *Mac*. Some, he says, did agree to it, the major Part, and none that he heard refused. I desire to know, if it was not endeavoured to find out a Way to make up whatever Deficiency there was; and whether this was the subject matter, the making good the 1000 *l.* or the whole of the Debt?

Mr. *Lovibond*. The making good the whole of the Debt, as I understood it.

E. of *Mac*. I think he said, that I said then, I would take care of the 1000 *l.* Whether was that after they had agreed that the Deficiency should be made good, or before?

Mr. *Lovibond*. No, I think it was before.

Mr. *Plummer*. I desire to know, if my Lord *Macclesfield* did say, he would take Care of it, when the Masters refused to contribute?

Mr. *Lovibond*. To the best of my Remembrance, it was upon their Refusal that he said so.

[Mr. *Thomas Bennet* called again.]

Mr. *Tho. Bennet*. My Lords, before the Managers propose a question, I beg the Favour to mention a Thing that my memory slipped me in Yesterday. My Lord *Macclesfield* then asked me, what Estate I had purchased? I said 68 *l.* a-Year in *Kent*, and 40 *l. per Annum* in *Suffolk*. I forgot a House I bought for 700 *l.* which is mortgaged for the same Sum. The Account lies upon the table, I forgot it then, and I did then refer to my Account that lies upon the table, that I might not be mistaken.

Mr. Sol. Gen. I desire he may be asked, Whether he was present at this meeting at my Lord *Macclesfield*'s?

Mr. *Tho. Bennet*. Yes, I was summoned to attend my Lord *Macclesfield* on this Occasion. I dined that day with my Brother and Mr. *Lovibond* and one more; and my Brother told me, that there was a proposal come from my Lord *Macclesfield* by Mr. *Cottingham*. He said it was, that the Masters should advance 50 *l.* a-piece, towards a Demand in the Court of *Chancery*; and in case we would do it, my Lord *Macclesfield* would make Mr. *Lightboun* pay his 500 *l.* We, who were then present, seemed to agree, that if my Lord would make Mr. *Lightboun* pay his 500 *l.* we would pay our 50 *l.* a-piece. In the Evening, when we attended my Lord *Macclesfield*, his first Application was to Mr. *Lightboun*, and as soon as we came, he said to him, Mr. *Lightboun*, I am surprised you have not paid your 500 *l.* as the rest have done, I wonder at it; and he used some hard Expressions, that I wonder he could stand it, I could hardly have done it; but Mr. *Lightboun* did stand it, and refused to pay it, and gave his Reasons for it, and said he had given them over and over again.

Mr. Sol. Gen. What Reasons were laid before you to pay it?

Mr. *Tho. Bennet*. The Reasons laid before us by my Lord *Macclesfield* were, that there was a Deficiency in *Dormer*'s Office, which he was afraid would break out; for here was a Demand of a Sum of Money by one, for whom he had been spoken to by a Person of very great Distinction. I did not know who it was then, but I afterwards understood it was Mr. *Lockman*, that was the Person that was to have the money; and he asked, if we did not think it for our Interest to make such a Person our Friend?

Mr. Sol. Gen. Was there any thing more said?

Mr. *Tho. Bennet*. My Lord *Macclesfield* said, that in case this money was not paid, and some method found to make up the Deficiency of Mr. *Dormer*, he believed it might occasion a Parliamentary Enquiry, which might hurt him very much; but, said he, I believe it will hurt you, Gentlemen, much more.

Mr. *Lutw*. Were there any of the Masters that asked him any questions, how he apprehended it would come into Parliament?

Mr. *Tho Bennet*. Yes, Mr. *Holford* asked him the question, Can your Lordship imagine, in what method this may come into Parliament? My Lord answered, Upon the meeting of every Parliament, Committees were chosen by the House of Commons, and among the rest there was a Committee of the Courts of Justice, and he thought it very likely, that That Committee might take this under Consideration.

Mr. Sol. Gen. What was said upon the Masters refusal to raise the 1000 *l.*?

Mr. *Tho. Bennet*. After Mr. *Lightboun* refused to pay towards the 1000 *l.* my Lord then said he would make up that.

Mr. Sol. Gen. Was there any Talk of *Dormer*'s Deficiency?

Mr. *Tho. Bennet*. There was some Discourse about making up Mr. *Dormer*'s Deficiency. Several of the Masters were against it. No Scheme could be found that would make it up. I said upon that Occasion, that it was a bottomless Pit, and Mr. *Edwards* had not given Satisfaction to any of the Masters what the deficiency was.

Sir. *George Oxenden*. Was there any mention made at this meeting of the Statute of *Edward* VI.?

Mr. *Tho. Bennet*. My Lord Chancellor said, He did not know but our Offices might come within the Statute of *Edward* VI: And, if that should be so resolved by Parliament, we must forfeit our Offices; and, therefore had we not better do something than forfeit our Offices?

Mr. Serj. *Pengelly.* My Lords, we beg leave to call Mr. *Lockman*, to whom this 1000 *l.* was paid, and to ſhew your Lordſhips the Declaration that was made by the Earl of *Macclesfield* at that Time.

Mr. *Lutwyche.* We beg Leave firſt to read the Order in the Cauſe of *Harper* and *Cate.*

[*The Order is proved.*

(Mr. *Ralph Paxton* reads.)

Sabbati quinto Die Decembris, Anno Regni Georgii Regis undecimo, inter Jana' Harper vidua' Quer' Thoma' Caſe Clericu' & Sara' Maria' uxor' ejus, Henricu' Halſey, & alios Defendentes.

UPON opening of the Matter this preſent Day unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. *Sollicitor General* and Mr. *Williams*, being of Counſel for the Plaintiff; and Mr. *Benjamin Jackman*, in the Preſence of Mr. *Talbott*, of Counſel for the Defendants: The Caſes. It was alledged, That it being, by the Order made on the hearing of this Cauſe (*inter alia*) ordered and decreed, That the Sum of 500 *l.* Pounds, Part of the Marriage Portion of the Plaintiff, received by *Thomas Harper*, Clerk, her late Huſband, ſhould be made good to her with Intereſt from his Death, at the Rate of 5*l. per Cent. per Annum*, together with her Coſts of this Suit, to be taxed by *Dormer*, then one of the Maſters of this Court, out of the ſaid *Thomas Harper*'s Eſtate (for which, and other Purpoſes in the ſaid Order, ſo much as ſhould be neceſſary of the ſaid *Thomas Harper*'s Eſtate was to be ſold to the beſt Purchaſer that could be got for the ſame, with the Approbation of the ſaid Maſter:) And the ſaid Maſter having, by his Report, (made purſuant to the ſaid Order, and) dated the 12th of *December*, 1716, certified the Sum of 557 *l.* 16 *s.* 5 *d.* to be due to the Plaintiff for Principal and Intereſt, beſides Coſts. And the ſaid Defendants having been ſerved with a Writ of Execution of the ſaid Decree, the ſaid Maſter, by his Report dated the 9th of *November*, 1717. allowed the ſaid *Jackman* the Purchaſe of three Houſes at *Kenſington* (Part of the Premiſſes directed to be ſold) at the Sum of 260 *l.* And the ſaid Maſter's Report being afterwards abſolutely confirmed, the ſaid *Jackman* obtained an Order of the 19th of *December*, 1717. whereby it was ordered, That the Writings belonging to the ſaid Eſtate, purchaſed by the ſaid *Jackman*, ſhould be deliver'd to his Counſel, and that the Tenants of the ſaid Eſtate ſhould attorn to him, on bringing his Purchaſe Money before the ſaid Maſter. And the ſaid *Jackman* did accordingly, on the 24th of the ſame *December*, bring his ſaid Purchaſe Money before the ſaid Maſter, as by his Certificate of that Date, now read, appears, and the Tenants attorned to the ſaid *Jackman*: But the Defendants have ever ſince, by trifling Pretences and Excuſes, put off the executing proper Conveyances to the ſaid *Jackman*. Although the ſame have been long ſince ſettled and allowed by Mr. *Edwards*, one of the Maſters of this Court, the ſaid Mr. *Dormer*'s Succeſſor, as by the Affidavits of *Joſeph Herring* and *Thomas Atwood* appears. It was therefore prayed, that all Parties may forthwith execute Conveyances of the ſaid Houſes to the ſaid Mr. *Jackman*, or as he ſhall appoint: And it was on the Plaintiff's Behalf prayed, that the ſaid Purchaſe Money may be paid to her, towards the Satisfaction of what is due to her, by virtue of the ſaid Decree: Whereto the Counſel for the Defendants had Caſes alledged, that they are intitled to the Reſidue of the ſaid *Tho' Harper*'s Eſtate, after ſuch Payments as are directed by the ſaid Decree to be made out of the ſame, are made, and the Defendants *Caſe* and his Wife were always ready to join in executing the ſaid Conveyances, upon an Application being made of the ſaid *Jackman*'s Purchaſe Money towards what is due to the Plaintiff; but being apprehenſive of a Deficiency of Mr. *Dormer*'s Eſtate to anſwer the Monies brought before him, purſuant to the Orders of this Court; and conceiving they ought not to be Sufferers, though ſuch Deficiency might appear, and the Delay being occaſioned by the Purchaſer, and not by the Plaintiff, and the ſaid Maſter not having ſettled the ſaid Conveyances, they did therefore ſcruple to execute the ſaid Conveyances, until the ſaid *Jackman*'s Purchaſe Money ſhould be applied to the Purpoſes in the ſaid Decree; but are willing, if the Court ſhould think proper, on Payment of the ſaid 260 *l.* Purchaſe Money to the Plaintiff, and the ſaid *Tho' Harper*'s Eſtate being diſcharged of ſo much, to execute the ſaid Conveyances. Whereupon, and upon hearing of the ſaid Affidavits of the ſaid *Joſeph Herring* and *Thomas Atwood*, and an Affidavit of Notice to the Defendant *Halſey* read, and what was alledged on both Sides; his Lordſhip doth order, that it be referred to the ſaid Mr. *Edwards*, to examine, whether the ſaid 260 *l.* was depoſited with the ſaid Mr. *Dormer* for the Benefit of any particular Perſon, and whom, and what was the Occaſion of the Delay, that the ſaid Coveyances were not executed, and the ſaid 260 *l.* Purchaſe Money paid out before the Years 1720, and whether there is likely to be a Loſs of any Monies depoſited with the ſaid Mr. *Dormer?* And, upon the ſaid Maſter's Report, ſuch further Orders ſhall be made as ſhall be juſt.

Mr. Serj. *Peng.* My Lords, this Order was made in *December* laſt: It is a Direction to Mr. *Edwards* to ſee, whether there was like to be any Loſs of any Monies depoſited with Mr. *Dormer*: We pray that Mr. *Lockman* may be ſworn.

(Mr. *Lockman* ſworn.)

Mr. Serj. *Peng.* We beg Leave that Mr. *Lockman* may be aſked, Whether he attended upon the Earl of *Macclesfield* at any Time relating to a Sum of Money, and where?

Mr. *Lockman.* I received an Order from the Earl of *Macclesfield* upon Mr. *Edwards* for 1000 *l.* but not being able to receive it of Mr. *Edwards*, I went to *Kenſington* to wait upon the Earl of *Macclesfield*, and told his Lordſhip the Neceſſity I had for this 1000 *l.* which belonged to Mrs. *Chitty*, but the Benefit of it was made over to me; that I had the Misfortune to be backwards in my Affairs, and had ſome *South-Sea* Contracts to make up, and had made a Compoſition of my Debts, for which I had about three Weeks to pay it in, and therefore I deſired the Favour of his Lordſhip to order me the Payment of this 1000 *l.* His Lordſhip was pleaſed to tell me, that if I attended him in Town, and applied to him there, I ſhould have the Money paid. Upon which I waited upon his Lordſhip in Town: and when I had the Honour to ſee his Lordſhip, he told me, That he had enquired into the Affair relating to that Money upon which the Order was made; that it was in Mr. *Dormer*'s Office, where there was a Deficiency; that he could not yet bring all the Maſters to ſettle that Matter; but if I could come a few Days after, he would ſee what he could do for me. Thereupon I attended ſeveral Days, and went to *Weſtminſter-Hall*, and ſpoke to Mr. *Cottingham*, and he ſaid great Pains had been taken by my Lord, but he had not yet been able to bring any Thing to bear, but he did not doubt but in a little Time he could bring it to bear to his Satisfaction; there had been ſome Motions made by Serjeant *Cheſhire*, &c. which had frightened the Maſters from raiſing Money; but if I attended in a few Days, he would do what he could for me. I waited ſome Days, and at laſt I took the Freedom to wait upon my Lord *Macclesfield* at his own Houſe in *Lincoln's-Inn-Fields*, and I told his Lordſhip I had attended many Days in Town, and had neglected my Duty and Service; that the next Day was the laſt Day appointed to pay my Compoſition, and having depended upon this Money, I had made no other Proviſion. Whereupon his Lordſhip ſaid, he had taken a great deal of Pains, and had ſpoken to the Maſters, and that I ſhould attend his Lordſhip next Day at *Weſtminſter* at Ten, and he would ſee what he could do for me; but that there was none of the Eſtate of Mr. *Dormer* left. I waited upon his Lordſhip accordingly the next Day at *Weſtminſter*. His Lordſhip called me into his Room, and told me that Mr. *Cottingham* ſhould pay me the 1000 *l.* but he believed there would come no more, that this would be the laſt of the Money, or the laſt Sum that Mrs. *Chitty* would receive; and that if ſhe had nothing elſe, I might, by marrying her, in Expectation of a Fortune, make myſelf worſe than I was.

Mr. *Dodington.* I deſire Mr. *Lockman* may be aſked, What the whole Sum was that was paid in?

Mr. *Lock.* I took it to be about 10,000 *l.*

Mr. Serj. *Peng.* I deſire he may be aſked, If the Earl of *Macclesfield* gave any further Reaſons why it was like to be the laſt Sum?

Mr. *Lock.* The Earl of *Macclesfield* did not at that Time give me any Reaſon; but the Day before, when I had the Honour of ſeeing his Lordſhip, at his Houſe in *Lincoln's-Inn-Fields*, and once before that, his Lordſhip told me that the Maſters in Chancery were apprehenſive of loſing a great deal of their Privileges, and Profits of their Places; and therefore ſome of them were not willing to advance any Money.

Mr. *Weſt.* My Lords, I beg Leave to aſk Mr. *Lockman*, whether he received any Direction or Intimation as to the keeping of this private, the telling, or not telling it?

Mr. *Lock.* I did receive no Intimation at that Time; afterwards, when the Sollicitor met me, he aſk'd me, Pray, ſays he, Mr. *Lockman*, have you received the 1000 *l.* you ſollicited for? Yes, I have received it. Pray, who then paid it you? I told him Mr. *Cottingham*; ſays he, Mr. *Cottingham* denied it to me. Upon that I met Mr. *Cottingham* ſome Time afterwards in the Court of Requeſts. He told me I ſhould ſay nothing of it: Beſides this, I received no Intimation to keep it ſecret.

Mr. *Weſt.* What did he ſay to you then?

Mr. *Lock.* He ſaid at firſt meeting me, You can't fare well, but you muſt cry out Roaſt-meat. I, being not well acquainted with that Phraſe, did not know what he meant. I did not know that I had ever eat Roaſt-meat or boil'd-meat with him either; ſo I told him, if that was in relation to his paying me the 1000 *l.* it was only what was due, and I hoped there would be Care taken to anſwer the Remainder. He anſwered, He could not tell what the Conſequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of *Macclesfield.* Sir, I deſire to know of you, whether you did not repreſent yourſelf to me to be in the utmoſt Diſtreſs if this money was not paid to you, that in ſuch Caſe you muſt be ruined?

Mr. *Lock.* I remember I told his Lordſhip, that this money I had borrowed of Mrs. *Chitty*, that I had ſettled a Compoſition with my Creditors, and wanted this money to ſatisfy them; that it muſt be paid the next Day; and if I did not then pay it, it would be a great Damage to me; but I preſſed his Lordſhip more, as I depended upon his Lordſhip's Promiſe, and that was the Reaſon I preſſed it the more.

E. of *Mac.* I deſire he may be aſked, Whether I ever promiſed to pay him at any Time before that?

Mr. *Lock.* When I went to wait upon your Lordſhip at *Kenſington*, your Lordſhip promiſed me it ſhould be paid; that, as ſoon as you came to Town I ſhould apply to your Lordſhip, and you would give Orders, and it ſhould be done.

E. of *Mac.* Whether he did not look upon it, that I did this out of Compaſſion to him?

Mr. *Lock.* I took it as Part of a Sum of money due, and I did not look upon it as Charity, or out of Compaſſion.

E. of *Mac.* I deſire to know, Whether he did not intreat it of me as an Act of Compaſſion to him?

Mr. *Lock.* I don't underſtand the *Engliſh* Terms, I did not uſe the Word Compaſſion; I begg'd that your Lordſhip would be ſo good as to order me the money.

E. of *Mac.* I deſire to know, Whether the firſt Time he applied to me I promiſed to pay the money?

Mr. *Lock.* Your Lordſhip promiſed the Order ſhould be given to the Maſter, and that I ſhould be paid.

E. of *Mac.* When was that Promiſe?

Mr. *Lock.* When you promiſed to order the Maſter, and I ſhould have the money.

E. of *Mac.* How long before?

Mr. *Lock.* I can't very well remember; becauſe the Sollicitor waited ſeveral Times upon the Maſter, and the Maſter told him there was nothing. I went to the Maſter's Houſe, and then to the Rolls, and there I ſaw him; and he told me there were no Aſſits in his Hands of Mr. *Dormer*'s.

E. of *Mac.* I deſire to know, Whether he did not deſire a further Sum, after this 1000 *l.* was paid by Mr. *Cottingham*, and how much?

Mr. *Lock.* My Lord, I aſk your Lordſhip's Pardon, I don't remember I then aſk'd any other Sum. When I ſaw your Lordſhip afterwards, I aſked your Lordſhip, if it was not poſſible to have another 1000 *l.* You was pleaſed to tell me, there could be no more paid.

E. of

E. of *Mac.* Did not you solicit for a further Sum, till Mr. *Cottingham* chid you?

Mr. *Lockman.* Mr. *Cottingham* was a little angry when I press'd him. I went out of Doors, Mr. *Cottingham* followed me. I stood in the Yard, Mr. *Cottingham* came out, and told me, he had an Order from my Lord Chancellor to call the Masters to a meeting, and see what could be done. I said, still this is uncertain; how shall I do, if I have not this Money? It will be a great Prejudice to me.

E. of *Mac.* I desire to know, whether he did not ask a further Sum of 500*l.* or 570*l.*?

Mr. *Lock.* There was an Order, on a Letter of Attorney from Mrs. *Chitty*, for that Sum. But never, after I was at your Lordship's House at *Kensington*, did I ask if I could have a thousand Pounds more.

E. of *Mac.* When was that 500*l.* paid?

Mr *Lock.* I don't know.

E. of *Mac.* I desire to know, whether, between the Time you say you was promised the 1000*l.* and the Time of paying it, you did not desire to have the Sum of 574*l.* advanced for Mrs. *Chitty*'s Use?

Mr. *Lock.* When your Lordship had told me that 1000*l.* was all that could possibly be obtained, I made no further Sollicitations.

E. of *Mac.* How long was it that you came to *Kensington*, to ask me for that 1000*l.* before the other 1000*l.* was paid?

Mr. *Lock.* Three Weeks before.

E. of *Mac.* Then after that Time you never demanded any more?

Mr. *Lock.* After your Lordship had told me that was all that could be obtained, then I desisted from asking any more.

E. of *Mac.* And that was about three Weeks before the Time you received the Money?

Mr. *Lock.* I believe between a Fortnight and three Weeks, or thereabouts.

Mr. Com. Serj. I desire he may be asked, whether he can be certain as to the Expression, whether this was the last Money that was like to be paid, or that my Lord would pay?

Mr. *Lock.* It was, as I remember, in these Words: If the Lady hath no other Fortune than what is in *Chancery*, in the Master's Hand, this will be the last of it.

Mr. Sol. Gen. We desire Mr. *Atwood* may be called.

(Mr. *Atwood* sworn.)

Mr. Serj. *Peng.* My Lords, we desire Mr. *Atwood* may be asked, whether he was in Court at the Time a Motion was made upon an Order in a Cause between *Harper* and *Cate*.

Mr. *Atwood.* My Lords, I was at the late Lord Chancellor's House, where, about the 5th of *December* last, the Motion was made. I was Sollicitor for Mrs. *Harper* in the Cause. The Occasion of it was, There was an Estate decreed to be sold, and the Money was to be paid into the Master's Hands, who was Mr. *Dormer*: The Money was accordingly paid, and the Conveyances approved of by the Counsel, and a Fine agreed upon; but at last the Parties would not execute, unless the Money was paid them; objecting there would be a Deficiency in *Dormer*'s Office: Therefore they mov'd that they might not be obliged to execute the Conveyance, till the Money was applied and paid to the Plaintiff. My Lord Chancellor was pleased to declare thereon, that he had heard there would be a Deficiency of Mr. *Dormer*'s Effects; but it had never judicially come before him; and what Knowledge he had of it was only as publick news, and referred it to Mr. *Edwards* to examine, whether there was likely to be a Deficiency, or not. I was near two months before I could get this Order passed; and then the Impeachment came on. The Register told me, he was afraid this Order would do some Mischief. When I had got the Order, I was told by several People about the Town, that Mr. *Dormer*'s Effects were very defective; and that my Lord Chancellor had directed a Composition to be made with one *Wilson*, who was a Banker; and had directed Mr. *Hiccocks* to compound for Half-a-Crown in the Pound, and that others had twenty Shillings. Lord Chancellor had directed an Enquiry to be made whether any Deficiency. I was advised to put in these Words: *By what Means*; because I was told then, it was by reason of compounding that Debt with *Wilson*; but the Register would not let them stand.

Mr. Serj. *Peng.* The making of the Order, in this Case, confirms the Evidence of Mr. *Atwood*, that his Lordship declared he had heard of it no otherwise than as publick News; because by this Order he directs Mr. *Edwards* to enquire, whether there was likely to be a Deficiency, or not, although it had been so well known to his Lordship some Years before.

Mr. Serj. *Probyn.* He says there are Words struck out of this Order; I desire to know, whether those Words were not added by himself to the Order?

Mr. *At.* Yes, they were added by me before it passed.

Mr. Serj. *Prob.* When?

Mr. *At.* After I had the Order from the Register.

Mr. Serj. *Peng.* When was that?

Mr. *At.* It was near two months before I could get the Order passed.

E. of *Mac.* Had you the Order passed before the Impeachment?

Mr *At.* Yes, I believe I had.

E. of *Mac.* Had you it passed before this matter came into Parliament?

Mr. *At.* I don't particularly know; I believe it was before your Lordship was impeached.

E. of *Mac.* Whether was it after I had parted with the Seals?

Mr. *At.* I believe after.

E. of *Mac.* How long was it before you added those Words?

Mr. *At.* Two or three Days after I had got the Order.

E. of *Mac.* When was it the Register struck out those Words?

Mr. *At.* I can't say, I believe it was before the Impeachment. The other Side had let those Words be in; but yet the Register struck them out.

E. of *Mac.* Was it after I had ceased to be Chancellor?

Mr. *At.* I believe it was.

E. of *Mac.* Was any thing said, at that Time, of the Accident of *Wilson*'s breaking, and *Poulter*'s going off?

Mr. *At.* I do remember your Lordship said *Wilson* was become Bankrupt, and that he had Money of Mr. *Dormer*'s; and you said something of a Person that was sued by *Wilson*, and of a Recovery against him; and of an Action brought for an Escape; and you concluded, upon the Whole, that all you knew of the Matter was only as publick News. This was after you had given an Account of the matter of *Wilson* and of the Marshal.

Dr. *Sayer.* I desire he may be asked, whether my Lord did not express a Doubt, how these matters might come out?

Mr. *At.* I don't know what his Lordship was pleased to doubt of.

Mr. Serj. *Prob.* I desire Mr. *Atwood* would recollect himself, whether there was any Notice taken, how this might come out, when the Report of the Masters should be made?

Mr. *At.* I don't remember any thing tending to that.

Mr. Com. Serj. Whether he took any *Memoranda* of these Words, and when?

Mr. *At.* No, I took no *Memoranda* of them, till I was summoned to attend the Committee.

Mr. Com. Serj. I desire Mr. *Atwood* may give a Reason how he comes to forget Facts, and remember a Form of Words?

Mr. *At.* I don't remember all the Facts that have been asked.

Mr. *Robins.* Whether my Lord did not mention a particular Sum that was owing from *Wilson* to *Dormer*?

Mr. *At.* I believe my Lord did mention a Sum, and I believe it was 18,000*l.*

Mr. *Robins.* Whether he did not mention that *Wilson* had brought an Action of Escape against the Marshal?

Mr. *At.* Yes; that *Wilson* had brought an Action of Escape against the Marshal.

Mr. *Robins.* Whether he did not mention, that *Wilson* had recovered a Judgment against the Marshal?

Mr. *At.* Yes, that *Wilson* had recovered a Judgment.

Mr. *Robins.* Whether there was any thing said of the Escape of *Poulter*?

Mr. *At.* Yes; my Lord did mention, that there was an Action brought against the Marshal for that very Escape.

Mr. Com. Serj. Whether my Lord, having mentioned these Particulars, he did not from thence infer, he could not then tell how matters might come out?

Mr. *At.* I do not remember any thing of that.

Mr. *Lutwyche.* My Lords, I shall only make one short Observation. The Lord *Macclesfield* saith in his Answer, that he doth not believe that he had any Discourse with the Masters about the Payment of this 1000*l.* I submit it to your Lordships, whether there are not four or five Witnesses to it? We have now done with the Sixteenth Article.

Mr. Sol. Gen. We shall proceed to our Proofs on the Seventeenth Article. And it will be necessary to lay before your Lordships three or four Orders, for the Proof of this Article.

Mr. *Ralph Paxton*, being called, appeared, and proved the several Orders following, which were then all read.

An Order, dated 18 *January*, 8° *Georgii Regis.*

Another, dated 8 *March*, 8° *Georgii Regis.*

Another, dated 5 *July*, 8° *Georgii Regis.*

Another, dated 22 *December*, 9° *Georgii Regis.*

Jovis decimo octavo Die Januarii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones Infant' per Eliza' Jones Vidua' prox' Amit' & dicta' Eliza' Jones Quer', Thoma' Jett Arm' & Petru' Wise, Defendentes.

UPON opening of the matter, this present Day, unto this Court, by Mr. Serjeant *Cheshire*, of Counsel with the Plaintiff *Jonathan Jones*, in the Presence of Mr. *Ketlebey*, of Counsel with the Plaintiff *Elizabeth Jones*; and the Defendant *Wise*, and Mr. *Horsely*, of Counsel with the Defendant *Jett*. The Counsel for the Plaintiff *Jonathan Jones* alledged, That *Jonathan Jones* deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth*, by his Will, devised one Moiety of his Estate, which was wholly personal, after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One-and-Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wise*, Executors in Trust for the said Plaintiffs, who duly proved the said Will. That the Plaintiffs having brought their Bill in this Court, to have an Account of the said Testator's Estate, for a maintenance for the Plaintiff *Jonathan*, during his Infancy, and a Performance of the said Will: Upon the Hearing of this Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth*'s Moiety was forthwith assigned to her; and the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. And the said Master was to assign a Maintenance for the said Plaintiff, for the Time past; and was also to consider what was proper to be allowed for his Maintenance for the future. That the said Master, having proceeded to take an Account of the said Testator's Estate, it appeared, that so much thereof was raised by the Sale of *Bank* and *South-Sea* Stock, and brought before the Master, as amounted to Five Thousand Nine Hundred and Eighty-five Pounds, Three Shillings, and Four Pence; one Moiety whereof, after Payment of her Share of the Costs of this Suit, belongs to the Plaintiff *Elizabeth Jones*, and has been accordingly paid to her; and the other Moiety belongs to the Plaintiff *Jonathan Jones*, and is now in the Hands of Mr. *Edwards*, one of the Masters of this Court, who succeeded the said Mr. *Dormer*, and to whom the Reference in this Cause hath been transferred. That the Plaintiff,

Jonathan Jones, hath now attained his Age of One-and-Twenty Years, as by Affidavit and Certificate appears, and is intitled to receive his Moiety of the said Monies, after Deduction of his Share of the said Costs. And having contracted some considerable Debts for his Maintenance, and otherwise, during his Infancy, for which he is threatened to be arrested, in case the said Debts are not speedily paid: It was therefore prayed, that the said Master may, out of the Monies in his Hands, pay to the Plaintiff, *Jonathan Jones*, the Sum of Four Hundred Pounds, which, upon reading the said Affidavit and Certificate, *Elizabeth Jones*, and the Defendant, *Wife*, who consented thereto, and the Counsel for the Defendant, *Jett*, who did not oppose the Payment thereof, is ordered accordingly.

Jovis octavo Die Martii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones & Eliza' Jones Quer', Thoma' Jett Arm' & Petru' Wise, Defendentes.

UPON opening of the Matter, this present Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serjeant *Cheshire*, being of Counsel for the Plaintiff, *Jonathan Jones*, in the Presence of Mr. *Ketlebey*, of Counsel for the Plaintiff *Elizabeth Jones*, and for the Defendant, *Wife:* It was alledged, that *Jonathan Jones*, deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will, devised one Moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One-and-Twenty Years, together with the Produce thereof; and made the Defendants, *Jett* and *Wife*, Executors in Trust for the said Plaintiffs; and the said Defendants duly proved the said Will. That the Plaintiffs exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will. And upon the hearing of the Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth*'s Moiety was to be forthwith assign'd to her; and the other Moiety was to be placed out at Interest by the said Master for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared, that so much was raised by the Sale of the *Bank* and *South-Sea* Stocks, and brought before the said Master, as amounted to Five Thousand Nine Hundred and Eighty-five Pounds, Three Shillings and Four-pence, one Moiety whereof, after Payment to the Plaintiff *Elizabeth Jones*'s Share of the Costs of this Suit, belonged to her, and had been accordingly paid to her; and the other Moiety belonging to the Plaintiff *Jonathan Jones*, and was in the Hands of Mr. *Edwards*, one of the Masters of this Court (who succeeded the said Mr. *Dormer*). That the Plaintiff, *Jonathan Jones*, has attained the Age of One-and-Twenty Years, as by Certificate and Affidavit appears, and is entitled to receive his Moiety of the said Money, after Deduction of his Share of the said Costs: And he had contracted for a Post in the Army, which, with his Equipage, will amount to Two Thousand Pounds, which he is advised will be very advantageous for him to purchase; and therefore it was prayed, that the said Master may pay to the Plaintiff, *Jonathan Jones*, out of the Money in his Hands, a Sum not exceeding Two Thousand Pounds, to be laid out in the Purchase of a Commission, and for other Purposes. Whereupon, and upon hearing of the Plaintiff, *Elizabeth Jones*, and Defendant *Wife*'s Counsel; and hearing an Affidavit of Notice of this Motion to the Defendant *Jett* read, and what was alledged by the Counsel on both Sides: It is ordered, that the said Master do, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Jones*, the Sum of Two Thousand Pounds; the Plaintiff, *Elizabeth Jones*, and the Defendant *Wife*, having subscribed the Register's Book, signifying their Consent thereto.

Jovis quinto Die Julii Anno Regni D'ni Georgii Regis octavo, inter Jonathan' Jones & Eliza' Jones, Quer', Thoma' Jett Arm' & Petru' Wise, Defendentes.

UPON opening of the Matter this present Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serj. *Cheshire*, being of Counsel for the Plaintiff, it was alledged, That *Jonathan Jones* deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will devised one Moiety of his Estate (which was wholly personal), after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One-and-Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wise*, Executors in Trust for the said Plaintiffs, and the said Defendants duly proved the said Will. That the Plaintiffs exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will; and upon the hearing of the Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties, and the Plaintiff *Elizabeth*'s Moiety was to be forthwith assigned to her, and the other Moiety was to be placed out at Interest by the said Master for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared by several Certificates from the said Master, that so much thereof was raised by the Sale of the *Bank* and *South-Sea* Stocks, and brought before him, as amounted to Five Thousand nine Hundred and eighty-five Pounds, three Shillings and Fourpence; that one Moiety thereof, after Payment of the Plaintiff *Elizabeth Jones*'s Share of the Costs of this Suit, hath been in pursuance of several Orders of this Court paid to her, and the other Moiety, which belonged to the Plaintiff *Jonathan Jones*, was paid over to Mr. *Edwards*, one of the Masters of this Court (who succeeded the said Mr. *Dormer*). That the Plaintiff *Jonathan Jones*, having attained his Age of One-and-Twenty Years, and being intitled to receive his Moiety of the said Money, after Deduction of his Share of the said Costs; and he having contracted for a Post in the Army, which, with his Equipage, will amount to two Thousand Pounds, he did, on the eighth Day of *March* last, apply to the Court for that Money, and it was then ordered, that the said Master should, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Jones*, the Sum of two Thousand Pounds, the Plaintiff *Elizabeth Jones*, and Defendant *Wife*, having subscribed the Register's Book, signifying their Consent thereto; that pursuant to the said Order, the said Master paid the said two Thousand Pounds, and there now remaining in his Hands of the Plaintiff *Jonathan Jones*'s Share of the said Money, about the Sum of six hundred and forty-two Pounds. That the said Plaintiff *Jonathan Jones*, having present Occasion for the said Money, hath executed a Letter of Attorney to the Plaintiff *Elizabeth Jones*, his Mother, dated the Five-and-Twentieth Day of *May* last, impowering her to receive all Monies due to him from the said Master, and the Interest thereof, for the Purposes therein mentioned. It was therefore prayed, that the said Master may pay to the said Plaintiff, *Elizabeth Jones*, the Remainder of the Money which is in his Hands, belonging to the said *Jonathan*'s Share, pursuant to the Letter of Attorney executed for that Purpose, which, upon hearing of Mr. *Horseley*, of Counsel for the Defendant *Jett*, and what was alledged on both Sides, his Lordship held reasonable, and doth order the same accordingly.

Sab'ti vicesimo secundo Die Decembr' Anno Regni D'ni Georgii Regis nono, inter Prideaux Sutton Cler' & Anna' Uxor' ejus Mercy Sheld.n Spinstr' & Egidiu' Lawrence gen' Extor' Winifred Sheldon Spinstr' Defunct' Quer', Elizam Chitty & Job'em Russell & al' per Billa' ad revivend' & Supplement' Defend'.

WHEREAS the Defendant *Elizabeth Chitty*, on the 11th of this instant *December*, preferred her Petition to the Right Honourable the Lord High Chancellor of *Great Britain*, shewing, That the Plaintiff and *Winifred Sheldon*, since deceased, having executed their Bill for an Account of the Estate of *Ralph Sheldon*, who died in the *East-Indies*; and to have their Shares and Proportions thereof, pursuant to his Will: It was on the hearing of this Cause, the Eight-and-Twentieth of *May*, One thousand seven Hundred and Fifteen, declared, That the Defendant, *Elizabeth Chitty*, was intitled to one Third of the said Estate, under the Will of the Testator *Sheldon*, her second Husband, in her own Right, and to a Moiety of the other two Thirds in Right of, or as surviving the Children she had by the said *Sheldon*, who were dead, and that the other Moiety of the said two Thirds belonged to the Plaintiffs, or those whom they represented and decreed the same, after just Allowances to be paid and distributed accordingly; and Sir *Robert Nightingale*, Bart. since dead, having by his Answer admitted to have in his Hands Ten Thousand Four Hundred and Seventy Pounds three Shillings and Sixpence, Part of the Testator's Estate: It was ordered, That he should carry Ten Thousand Pounds thereof before Mr. *Dormer*, then one of the Masters, to be by him placed out at Interest on Government, or such other Security as he should approve of for the Benefit of the Parties to whom the said should belong. In pursuance whereof the said *Robert Nightingale* carried the said Ten Thousand Pounds before the said Master, who placed the same out at Interest, and on the Nine-and-Twentieth of *July*, One Thousand Seven Hundred and Nineteen, tho' the said Ten Thousand Pounds, with the Interest, which had been received by the said Master, amounting to Eleven Thousand three Hundred and Fifty-nine Pounds seven Shillings and Threepence, the said Master, by his Report, certifyed, That he had placed Eleven Thousand three Hundred Pounds, Part thereof, out on the Land-Tax, for the Year One Thousand Seven Hundred and Nineteen, at four Pounds *per Cent.* and that the Nine and Fifty Pounds Seven Shillings and Threepence remained in his Hands; that on the third of *August*, One Thousand Seven Hundred and Twenty, the Plaintiffs, by Petition, applied to his Lordship, That the Master might pay them some Money to carry on this Cause, and for their other Occasions; upon hearing whereof they were ordered Six Hundred Pounds out of the Money in the Master's Hands, which they have received accordingly. That the Defendant *Elizabeth Chitty* had, ever since the Death of her late Husband *Josiah Chitty*, wanted Money, not only to defend the said Cause, but also for her Support, and other necessary Occasions, and that neither she, nor her late Husband, had received any Part of the Principal or Interest before the Master, nor any other Part of the Testator's Estate, except some Jewels, which were delivered up by the Trustees of the Testator's Will in *India* to her and her late Husband, which, or the greatest Part thereof, she claimed as her *Paraphernalia*, but that she had no Benefit or Advantage thereof, her Husband having sold and disposed of them in his Life-time. Therefore, *and for that the Money in the Hands of Mr.* Edwards, *one of the Masters of this Court, who succeeded the said Mr.* Dormer *in his Office, were considerably encreased by the Interest which had been received by him*, and for that the said Mrs. *Chitty* was, as aforesaid, entitled to two Thirds of the said Testator's Estate, except what should be decreed thereout to her Children by her first Husband, who were entitled to one Moiety of their Father's Estate, which was possessed by the said *Ralph Sheldon*, and for that she was obliged to maintain them, it was prayed, that the said Mr. *Edwards* might, out of the Money in his Hands, and which should be paid in upon the coming in of any of the Securities taken for the same, pay unto the Defendant Mrs. *Chitty*, such Sum of Money as his Lordship should think fit, to enable her to carry on the said Cause, and for her immediate Support, and other Occasions. Whereupon all Parties were ordered to attend his Lordship on the then next Day of Petitions. And whereas the said Plaintiffs, on the 18th Day of this instant *December*, also preferred their Petition to his Lordship, shewing, *inter al'*, That they were, thro' their great Occasion for money, forced to apply the greatest part of the money ordered them as aforesaid, towards their Support; and that the said Cause had been long depending, and very expensive, and was likely to undergo great Travail before the said Master, before the said Account could be taken, so that they

they had great Occasion for more money, not only to carry on the said Cause, but also for their Support, and other necessary Occasions; and therefore praying that the said Master might also out of the monies in his Hands, and which should be paid in, upon coming in of any of the Securities taken for the same, pay unto the Plaintiffs, or their Sollicitors, such Sums of money as his Lordship should think fit, to enable them to carry on the said Cause, and for their immediate Support and other Occasions; and the matter of the said Petition being ordered to come on with the Defendant *Chitty*'s Petition; and Counsel on both Sides this Day attending accordingly. Whereupon, and upon hearing both the said Petitions read, and what was alledged by the Counsel on both Sides, his Lordship doth order, That the said Mr. *Edwards* do, out of the money in his Hands, pay unto the Defendant, Mrs. *Chitty*, the Sum of Six Hundred Pounds, and also unto the Plaintiffs One Hundred Pounds a-piece; and it being now alledged, that *John Wyvill*, Esq. having exhibited his Bill against the said *Giles Lawrence*, for Payment of a Legacy of Two Hundred Pounds, bequeathed to him by the Will of the said *Winifred Sheldon*: It was on the hearing the said Cause, the first Day of *December*, One Thousand Seven Hundred and Twenty-one, decreed, That the said Mr. *Wyvill* should be paid the said Legacy and Interest, together with the Costs of that Suit, out of the Assets of the said *Ralph Sheldon*. It is further ordered, that the said Master, do, out of the Money in his Hands, pay the Plaintiff, *Lawrence*, the further Sum of Three Hundred Pounds, to enable him to satisfy the said Decree.

Mr. *Lutwyche*. Pray, shew Mr. *Edwards* those Orders.

[*The Orders shewn to Mr.* Edwards.

Mr. *Lutwyche*. My Lords, we desire that Mr. *Edwards* may be asked, whether he hath paid any money in that Cause?

Mr. *Edwards*. Here are two Causes, which is it you mean, that of *Jones* and *Jett*?

Mr. *Lut*. Yes, that of *Jones* and *Jett*.

Mr. *Edw*. The money ordered, by those several Orders, hath been paid by me.

Mr. *Lut*. I desire to know, whether Mr. *Edwards* can inform your Lordships, whether it is the whole money, or but in part?

Mr. *Edw*. It is the whole money in the Cause.

Mr. *Lut*. I desire he may be asked, whether the money was paid out of Mr. *Dormer*'s Effects, or out of his own?

Mr. *Edw*. Out of Mr. *Dormer*'s Effects.

E. of *Macclesfield*. My Lords, Mr. *Edwards* is a little mistaken, please to put the Orders in; here are three Orders in one Cause, and one in another; I desire to know, whether in both Causes the whole money was paid out?

Mr. *Edw*. In that between *Jones* and *Jett*, the whole money was paid out; in the other, between *Sutton* and *Sheldon*, the whole was not paid, but only Part.

Mr. Serj. *Pengelly*. We beg leave to ask Mr. *Edwards*, whether he did not pay the whole that was ordered by those several Orders?

Mr. *Edw*. Yes, my Lords.

Mr. *Lut*. Mr. *Edwards* did tell your Lordships before, that all the money, arising by Mr. *Dormer*'s Effects, was paid out and gone.

Mr. Serj. *Peng*. My Lords, we have gone through these three Articles that have been opened, and we shall call no more Proof to them.

(*Then the House adjourned to* Monday *next at Ten o'Clock in the Forenoon.*)

The FOURTH DAY.

MONDAY, *May* 10.

The Lords being seated in their House, and the Managers being come, and the Earl sitting on a Stool, as before, and his Counsel and Sollicitors at the Bar, the Serjeant at Arms made Proclamation for Silence, as also another Proclamation, That all Persons concerned were to take notice, that Thomas *Earl of* Macclesfield *now stood upon his Trial, and they might come forth in order to make good the Charge.*

L. Ch. Just. *King*. GEntlemen of the House of Commons, you may proceed.

Mr. *Plummer*. My Lords, I am commanded by the Commons, to assist in maintaining their Impeachment against *Thomas* Earl *of Macclesfield*; and when I consider how necessary it is for the Honour of his Majesty's Government, that an impartial Examination should be made into the Behaviour of this Earl, while he enjoyed the High Office of Chancellor; I am persuaded, that every good Subject must with Pleasure observe in what Manner this Prosecution is carried on; it must be a Satisfaction to them, to see the Commons placing a Confidence in your Lordships Justice, and proceeding in the Legal Parliamentary method by Impeachments, and your Lordships meriting that Confidence, by laying aside all useless Ceremonies, and making the Prosecution practicable and easy. A harmony between the two Houses of Parliament always to be wished for, and which alone can bring Impeachments to a happy issue, and deter great Offenders from oppressing their Fellow Subjects.

My Lords, In former Reigns, Prosecutions of this kind have met with other Obstructions, and the Crown has often interposed its Authority to save a Favourite Minister; but his Majesty, who has no other Views but the Welfare and Happiness of his People, and who is always attentive to their Interest, was the first who took notice that the Earl of *Macclesfield* had abused the Trust and Confidence reposed in him. And who can (without the deepest Sense of Gratitude) consider the Conduct of his Majesty in this Affair, who immediately dismissed him his Service, and left him to the Justice of an injured Nation? And the Earl of *Macclesfield* himself will have this Advantage by it, that his Name will be delivered down to Posterity, as a monument of his Majesty's Paternal Goodness to his People. The immense Liberalities, the great Honours, the high Dignities conferr'd on him by his Majesty, will be so many marks of his Royal Munificence to the Earl, while he appeared to be his Worthy and Faithful Servant. And Posterity will with due Veneration observe, that neither the greatest Favour, the nearest Access to his Sacred Person, nor any former merits towards Himself, and his Royal Family, could, in his Majesty's Reign, shelter the Highest Officer of the Crown from Justice, who, presuming on those Advantages, would venture to oppress his Majesty's Loyal and faithful People.

My Lords, The particular Province assigned me in this Prosecution, is to make good the 18th Article, wherein I shall have the Assistance of a Gentleman, who will amply supply all the Defects or Omissions I shall be guilty of.

As this Article has been read by your Lordships Clerk, I shall not misspend your Time in a needless Repetition of it; but will observe, that the Substance of the Charge contained in it, Is a wilful Neglect of the high Trust reposed in the Earl of *Macclesfield*, as Chancellor, That he did not restrain the Masters of the High Court of *Chancery*, from trafficking with the Suitors money and Effects, but did permit and encourage that Practice, tho' he was advised to put a Stop to it, and fully informed of the Dangers, which were then likely to ensue, and which have since actually ensued, to the great Loss and Injury of the Suitors of the said Court.

My Lords, As this wilful Neglect is highly criminal in itself, so it is greatly aggravated by the unjust and corrupt Views which induced him to be guilty of it, and the pernicious Consequences which have necessarily attended it; and, my Lords, since you have heard the Evidence that has been given on the former Articles, of the exorbitant Sums of money which he exacted for the Disposal of the Offices of Masters in *Chancery*, even ofter *Dormer*'s Failure, we don't dout but your Lordships are convinced, that he left the Masters that unreasonable, unlimited power over the Effects of the Suitors of the Court, with no other View, but as a bait and incitement to others to purchase those Offices (when Vacancies should happen) at the same, or greater Prices.

As I have stated the Charge contained in this Article, in as clear a manner as I am able; I beg leave, my Lords, to make some Observations on the Earl's Answer. He begins with an absolute Denial of his knowing how the Masters kept or disposed of the money and Effects belonging to the Suitors of the Court. This Answer, my Lords, was a Surprize to the Commons, as well because such an Ignorance would have been criminal in the Person, who ordered such prodigious Sums of money into their Hands, and who should be supposed to have had some Care of the Suitors; as also, because We have the clearest Proofs imaginable, that he did know it, and it has already been proved by the Examination of several of the Masters before your Lordships. But what Want can we have of Proofs? when the Earl of *Macclesfield* himself in his farther Answer to this Article confesseth it, by saying, That after Mr. *Dormer*'s misfortune, he thought of several Methods, and several Proposals were made to him by Persons he consulted on that Occasion, to prevent any Inconvenience on the like Accident, for the future. Pray let us consider, What was Mr. *Dormer*'s Misfortune? What was this Accident? Why, truly, Mr. *Dormer* had trafficked with the Suitors Money and Effects, and had lost near 30,000 *l*. And this the Earl of *Macclesfield* knew, and this made him think how to prevent such Inconveniencies for the future. My Lords, here is one of those Inconsistencies the Commons take Notice of in their Reply, and on which (without any farther Proofs) they might safely demand your Lordships Judgment.

But to consider his Answer farther; he says, he believes it will not be held criminal in him, not to have established any of the Proposals that were made to him by the Persons he consulted on that Occasion: Some Things were proposed that he thought impracticable, some insufficient, and some inconsistent with that compleat Regulation he hoped to make: The Objects he proposed to himself were, to make good Mr. *Dormer*'s Deficiency, to secure the Suitors from any future Loss, and to make several Regulations relating to the Offices of the Masters: And he thought these would be best done together; nor had he perfected the Scheme of any of them to his own Satisfaction.

My Lords, I am unwilling to make any Observations on this Part of his Answer; it is in itself so gross, I am afraid, if I took it in Pieces, I should appear ludicrous, which I shall take great Care to avoid on so solemn an Occasion.

But I appeal to your Lordships, if a Person was to read this Answer, who was not acquainted with the Times of these Occurrences, whether he must not imagine that the Earl of *Macclesfield* had quitted the Great Seal within some very short Time after Mr. *Dormer*'s Failure? Whereas it has appeared to your Lordships, that Mr. *Dormer* went away from that Office in the Year 1720. and that the Earl of *Macclesfield* continued Chancellor till *January* last, which is more than four Years after; during all which Time (by his own Confession) he knew the Affairs of the Masters of the Court of *Chancery* to have been in great disorder, and to have wanted several Regulations: But, because he could not think of a Scheme perfectly to his mind to answer all his Designs, he therefore has done nothing. This Answer must be left to your Lordships Judgment, but I am afraid, my Lords, the letting the Masters go on, without any Check, was the Scheme the most to his Satisfaction, and most effectually obtain'd the ends he really propos'd to himself, which were the making an exorbitant Gain by the Sale of their Offices, which must have fallen in their Price, if a Stop had been put to their trading with the Suitors money.

My Lords, he farther answers, That he remembers no Proposal that he thought would take it totally out of the Power of the Masters to dispose of the Securities or Effects, or effectually secure the Cash. I can't omit taking Notice of the wording this Paragraph; and I believe your Lordships will agree with me, that the Words HE THOUGHT, TOTALLY, and EFFECTUALLY, are thrown in with great Caution. My Lords, We think we can prove to You, that a Proposal was made to him, that would have taken it out of the Power of the Masters to have disposed of the Securities and Effects, and would have secured, in great measure, the Cash; and this Evidence the Earl of *Macclesfield* must be well aware of, for He has it in his Hands as well We; and I foresee the Strength of his Defence, in this Point, lies in the Caution of his Answer: But, my Lords, if any Proposal was made to him, which would have cured the greatest Part of the Evils the Court laboured under, I am sure your Lordships

Lordſhips will hold it criminal in him not to have made uſe of it, and the rather, becauſe he ſubſtituted no other in its room.

My Lords, he admits he took no Security of the Maſters, and ſays, he was never aſked ſo to do. My Lords, we will prove that he was aſked ſo to do, and that taking Security was Part of the Propoſal I have mentioned. In this Place he takes notice of his Predeceſſors, who (as he ſays) were wiſer Men than himſelf, and who took no Security of the Maſters. My Lords, we don't accuſe his Predeceſſors, nor are we obliged to juſtify them; but if I may be permitted to give my own private Opinion, it is, that if ſuch Misfortunes had happened in his Predeceſſor's Days, and ſuch Application had been made to them, they were ſo wiſe, they would have applied a proper Remedy: His not doing ſo, under theſe Circumſtances, We look on as a plain Permiſſion, and ſtrong Encouragement to the Maſters to traffick with, and employ the Suitors money for their own Gain and Profit. And it muſt appear ſo in a ſtronger Light, when your Lordſhips are acquainted that Mr. *Lightboun*, who is himſelf a Maſter in *Chancery*, was the Perſon who made the Propoſal, and who muſt (by my Lord's not uſing it) plainly ſee, that my Lord was reſolved to lay no Reſtraint on them, which might have tempted Mr. *Lightboun* himſelf to have made an ill Uſe of that Power: But as he profeſſed to my Lord Chancellor his Abhorrence of the Maſters abuſing their Truſt, by alienating the Suitor's Effects, and deſired my Lord to put a Stop to that Practice; ſo it appeared by his Accounts given in before the Judges, that he had appropriated the ſpecifick Securities of the Suitors to every particular Cauſe. And, my Lords, we look on it as a great Aggravation of the Crimes contained in this Article, which I have now gone through, that my Lord *Macclesfield* ſhould continue to act with ſuch mean, low Views, as were unbecoming a Maſter in *Chancery*, when he had the Aſſiſtance of a Maſter, who behaved himſelf with a Prudence, Integrity, and Reſolution, which would have been becoming the Lord Chancellor.

Mr. *Cary*. My Lords, it is my Province to aſſiſt the Gentleman that ſpoke before me, in ſupporting the Charge of the Commons in the 18th Article, which he has open'd with ſo great Force and Perſpicuity, that it is unneceſſary for me to give your Lordſhips more Trouble upon it, than by making an Obſervation or two on the moſt material Parts. The Beginning of this Article ſets forth, *That the Earl of* Macclesfield *very well knew, or was informed that the Maſters did, or that it was in their Power to diſpoſe of, and employ the Suitors Money and Effects.* To which he is pleaſed evaſively to anſwer, "That he never knew how the Maſters "kept, or diſpoſed of the Money and Effects belonging to the Suitors "of the Court." The contrary of this will be abundantly proved, in the Manner the Gentleman has already ſtated it.

But were it not, my Lords, ſo ſtrong in Proof, the Guilt to me appears ſelf-evident; 'tis much the ſame whether he knew it, or knew it not; his Lordſhip may take the Alternative. What! did he, Lord Chancellor, ſupreme Director of the Court, the great Truſtee of *England* (who order'd the Money into the Maſter's Hands, who ordered it out of their Hands), did he know nothing of their Power over it? Was he the only Man in *England* that knew *nothing* of their Deficiency? And if he was, my Lords, Is that Ignorance an Excuſe or Aggravation? But we ſhall prove to your Lordſhips, that he not only was told of this Traffick with the Suitors Money, but was foretold the Conſequences of it; the Danger of future Loſſes was pointed out to him, and Propoſals for preventing 'em were given him in Writing.

And who was it, my Lords, that made theſe Propoſals? Who gave him this Warning? One of the Maſters of the Court, one intereſted in the Traffick of the Suitors Money, a Gameſter at the ſame Table with the impeached Earl. Advice from ſuch a Hand muſt be ſincere and unſuſpected; nothing but Juſtice, or a ſtrong Apprehenſion of their common Danger, could have extorted it; nothing but the blindeſt Avarice could have prevented the Compliance with it: But what ſtill renders this Conduct more amazing is, that the impeached Lord had not the Advantage of a ſingle Propoſal only, and from a ſingle Maſter; but of ſeveral Propoſals, and from ſeveral of 'em. Mr. *Kynaſton* will inform your Lordſhips, *That he and other Maſters waited on the Lord Chancellor, and propoſed to give Security in Land, or Money, for their Caſh, and to make their Truſt leſs by putting the Securities in two Maſters Names, or in the Names of the Parties and one of the Maſters*; with which he then appeared pleaſed, tho' he afterwards did nothing in it, and expreſs'd his Diſlike of the Propoſal. Yes, my Lords, the Propoſal was too reaſonable to be refuſed, and too ſelf-denying to be followed. So far was the unfortunate Lord from following it, or acting in any manner conſiſtent with it, that ſoon after the Failure of Mr. *Dormer*, after theſe Propoſals were made to him, he ſells the Offices of ſeveral Maſters at moſt exorbitant Prices. And was this what my noble Lord ſets forth in his Anſwer, *as one of the Expedients he thought of, after* Dormer's *Misfortune, for preventing any Inconvenience, on the like Accident, for the future?* Was this the only Method of Cure the noble Earl brought to ſuch Perfection, as to venture to put it in practice?

My Lords, the Gentlemen, embark'd in the ſame Bottom with this unhappy Lord, ſaw the ſhip ſinking, and propoſed throwing over-board Part of their unjuſtifiable Gains to prevent their general Wreck; but the impeached Earl does not only boldly ſteer on the ſame courſe, but takes in Lading, more Weight of Guilt, if not in defiance of the Danger, certainly in the neglect of it.

And how, my Lords, does his Anſwer excuſe this Conduct? He admits that ſeveral Propoſals were made on that Occaſion; but *ſome he thought impracticable, ſome inſufficient, ſome inconſiſtent with that complete Regulation he hoped to make.* And becauſe ſome were inſufficient, ſome inconſiſtent, and not anſwering the full Idea of Perfection propoſed by his Lordſhip, muſt therefore nothing be attempted? Muſt we have no Relief, becauſe we deſpair of an abſolute Cure? Muſt no Remedy be applied to a dying Perſon, becauſe it is not certain it will reſtore him to his perfect Strength? Thus far, indeed, is certain, It is much better to do nothing, than to continue ſuch Methods as firſt brought the Diſtemper upon him. We muſt therefore leave it with your Lordſhips to judge, whether the Inconſiſtency of the Propoſals, with the Earl's private Views, was not the true Reaſon of their being thought impracticable and inſufficient? And what thoſe Views really were, the whole Tenor of our Evidence has, and will ſhew: Views beneath the Dignity of his high Office, and far below a Member of this auguſt Aſſembly.

My Lords, the Commons farther charge this unhappy Earl, *That he not only knew, but conniv'd at, and encourag'd this deſtructive Traffick:* And in Anſwer to this he ſays, "That he gave no Permiſſion nor Encourage-"ment to the Maſters of the Court, to employ or traffick with the Sui-"tors Money." We have ſhewed your Lordſhips he knew it, and knew it in the moſt affecting Manner, by the Ruin it had produced. We need not ſhow you that he had Power to prevent it. And ſurely, my Lords, to know it, and not prevent it, in his Situation, was to permit it. And as his not preventing it was a Permiſſion, ſo his Example was an Encouragement. And when the Maſters ſaw him (the greateſt Object in the Compaſs of their View) taking every indirect Method to make the moſt of *his High* Office; ſure, they muſt think that Example (joined to the Neceſſity he *himſelf* laid them under by the exorbitant Prices he exacted) a ſufficient Encouragement to authorize them in the like Practices *in theirs.* The Examples of great Men, my Lords, are Encouragements; and the Aſſembly I ſee before me is an illuſtrious Proof they ought to be ſo, and will do Honour to thoſe who follow them: And from the Influence thoſe Examples have, and ought to have over the reſt of Mankind, it has been ſuppoſed, that the only Paſſage to Honour was through the Temple of Virtue; but, my Lords, though there be but one Paſſage to it, there are many from it; and ſo many are the Frailties of human Nature, that the Building would be imperfect, without a Back-door to let out whatſoever ſullies or pollutes it: A Door, my Lords, your Anceſtors have opened to former Lord Chancellors.

But we ſhall call our Evidence, and ſubmit the whole, with the greateſt Security and Satisfaction, to your Lordſhips Judgment.

Mr. *Plummer*. I deſire Mr. *Lightboun* may be called.

(*Mr.* Lightboun *being called, 'appear'd.*)

Mr. *Plummer*. I deſire Mr. *Lightboun* may inform your Lordſhips, whether he had any Diſcourſe with my Lord Chancellor, about putting the Offices of Maſters of *Chancery* into a better Regulation?

Mr. *Lightboun*. My Lords, in order to anſwer this Queſtion, it will be neceſſary for me to repeat ſome Part of the Account I gave when I was laſt at your Lordſhips Bar. I then acquainted your Lordſhips, that in the Beginning of the Summer, in the Year 1722, the Lord *Macclesfield* having directed me to attend him, told me that he had heard I had not contributed my 500 *l.* towards making up Mr. *Dormer*'s Deficiency, as the other Maſters had done; that he did not expect I would have ſtood out, and was ſorry to hear of it, as he had a more particular Regard to my Conduct than any of the reſt, becauſe I was the only Maſter of his immediate Choice; and on his Lordſhip's telling me that it was firſt propoſed by the Maſters, and not by his Lordſhip, I told him I was not willing to comply with it, and thought it a dangerous Expedient; that it might be hereafter looked upon as an Undertaking one for another, and therefore I would not come into it; and that as this Accident had happened to Mr. *Dormer*, the like might happen again to others, and might be the Ruin of us all, if ſuch a Conſtruction were put upon it. My Lord was pleaſed to ſay, it was the only Expedient he could think of for making good the Deficiency. I told him I had as much at heart the doing of that as any body; and that if a proper Expedient could be found out to pay Mr. *Dormer*'s Deficiency, and prevent the like Accident among us for the future, for putting the Offices on ſuch a Foot, that the Maſters might execute them with Honour to the Court and themſelves, and with Safety to the Suitors, I ſhould be glad to contribute to ſuch Regulations. His Lordſhip ſaid, he ſhould be glad if any ſuch Thing could be thought of; and aſked me, if I could think of any Method by which that might be done. I told him I believed I had; at which he expreſſed great Satisfaction; and we being then ſtanding, his Lordſhip deſired I would ſit down. He then aſked me, in what Manner it was that I propoſed the Suitors ſhould be made ſafe: I told his Lordſhip that I apprehended it was impoſſible to expect, that the Maſters could give a Security adequate to ſuch a Truſt; that there were many Inſtances of great Officers, whoſe Truſt was ſo great as to be above giving ample Security, particularly the Tellers of the *Exchequer*, and the Treaſurers of the *South-Sea* and *Eaſt-India* Companies: but if a competent Security were taken, and ſuch I apprehended might be given, I hoped it would anſwer the Intent, and give Satisfaction, ſince ample Security for ſo great Truſt could not be expected. I then told his Lordſhip, that if the Cauſes of Mr. *Dormer*'s Misfortunes were conſidered, they would be found not only to proceed from ſquandering or miſapplication of the Caſh, but from Power over the Securities in his Hands; for that the Money could not be ſo much, but the Securities amounted to a greater Sum. He ſaid it might be ſo; but how to prevent it he would be glad to know. I told his Lordſhip, that if the Securities, for the future, were to be taken in the Names of the Maſter, and one or more of the Parties, the Suitors would be ſafe. It was then obſerved, but whether by my Lord, or me, I do not remember, that an Objection might ariſe to this Method, for that if either the Maſter or the Party ſhould die, (the Truſt would ſurvive; and) thereby either the Court loſe its Power over the Security, or the Maſter's ſole Power over it be reſtored; but, to prevent that, I propoſed that they might be taken in the Name of two or three, or more of the Maſters, with or without the Perſons intereſted, as the Court ſhould think proper; and that it was hardly to be imagined that all the Maſters would betray their Truſt, and riſk their Fortunes to oblige any one, by ſuffering him to traffick with the Securities of the Court, taken in their joint Names; eſpecially if Care was taken, that ſuch Maſter as was to be joined, or be a Check upon another Maſter, ſhould have a Third to be a Check upon him. My Lord *Macclesfield* objected, That there was a great Number of *South-Sea* and *India* Bonds, and other Securities, payable to the Bearer, that could not be in the Names of any particular Perſons, and ſo could not be ſecured in that manner; and that it would be troubleſome to lock them up. To which I replied, I knew no Occaſion for putting out Money on *South-Sea* or *India* Bonds, or ſuch Securities, ſince there were other Securities

ſufficient

sufficient, which might be under a proper Restriction, and which were not partable, but are transferrable in Books at the *Bank*, or elsewhere, *viz. Stocks, Bank-Annuities, Civil-List Annuities, Four per Cent Annuities, Land* and *Malt-Tallies, and Lottery Orders*, which were assignable by Indorsement; and that, if these Securities were taken in the Names of several Persons, it would be impossible for any one Person to dispose of them, without the Knowledge and Consent of all. My Lord expressed great Satisfaction at this Proposal; and then asked me, in what manner Mr. *Dormer*'s Deficiency would be provided for? I then acquainted his Lordship, that there was always a considerable Cash in each Master's Hands; and that if some Part of that was placed out at Interest, in the Name of all the Masters, it would be no Injury to the Owners, if it was ready when called for; and the Produce would raise a Fund to pay Mr. *Dormer*'s Debt; and that it was very likely the Lords of the Treasury might, on such an Occasion, give us the Preference, and let us choose a proper Part of the Loans on the Land and Malt-Tax, to lend the Money upon; that if any Master wanted any Part of the Money he had placed out on that Occasion, to answer the Suitors Demands, such Securities were easily converted into Money. I was unwilling to fix any Sum for each Master to advance; but believe I did mention 3, 4, or 5000*l.* for his Lordships Consideration; and took Notice that would amount to 40 or 50,000*l.* and would, in due Time, raise a Sum of Money sufficient to answer the Deficiency of Mr. *Dormer*. My Lord made some Doubts; but said, he would be exceeding glad to give his Assistance; but was afraid he could not properly order the Suitors Money to be laid out, but for their Benefit whose Money it was. I said, I thought that might be done without any Order, if his Lordship approved it, and the Masters all came into it, and placed it out in all their Names; and that at any Time, by disposing of the Security taken for it, the Money might be raised, when wanted. My Lord made some Doubt, whether it could well be done; but was pleased with the Proposal: And many other Things were said, which I cannot, at this Distance of Time, recollect. I had, my Lords, two Views in it, but won't be positive that I mentioned them to my Lord, I apprehended it would not only raise a Fund to pay Mr. *Dormer*'s Debt; but that it would divest each Master of the Power over 5000*l.* of the Suitors Money, which he had in his Hands. I also took Notice, that if some small Security was taken from the Masters, but am not certain that I mentioned any Sum; but believe I might say 5000*l.* and that such a Security, with our Offices, valued at about 5000*l.* a-piece, would, with the Money placed out for the Payment of Mr. *Dormer*'s Debt, be a Security for the Money in our Hands, were we but divested of the Power over the Securities, which was four Parts in five of the Trust: And tho' 15,000*l.* will not answer the Money which a Master may some times have in his Hands; yet where a Man gives a Security for 14 or 15,000*l.* he'll scarce run away for 20,000*l.* This I thought might be of Service to the publick, and desired my Lord to consider of it: And his Lordship said, that something might be grafted on this Plan; and desired me to put it in Writing. I told his Lordship I did not know, whether this Scheme might be agreeable to every Body; that I came into the Office but very lately; and that it was necessary for me to have a good Correspondence with my Brethren; and that I was afraid, if it should be known that I proposed any thing without their privity, I should be used more unkindly among them than I had already been; and therefore hoped his Lordship would not let them know that it was my Proposal, nor shew them any thing of mine in Writing; and took my Leave of my Lord at that Time. The other Masters knew I had been with my Lord; but I did not communicate the Occasion of my going to him, or the Proposal; but I sounded the rest of the Masters, how any Proposal of this Kind was agreeable to them: Most of them were averse to it, particularly that of divesting them of the Securities; because that shew'd a Distrust of them, and, they said, would diminish the Reputation of the Office. They were against placing out any such Sum as 5000*l.* some were rather willing to contribute annually, then to pay such a Sum of Money down: And finding them averse to it, I was a little cautious how I put this Proposal into Writing. It was near a Month before I set about it; and then did it by way of Letter, in which I took Notice in the Beginning, that it was in obedience to his Lordship's Command.

Mr. *Plum.* I beg Pardon for interrupting the Witness; I desire he may be asked, if he did not send that Letter to my Lord *Macclesfield?*

Mr. *Light.* I wrote a Letter, to the same Purport or Effect with what I had proposed, except in some Instances which I found other Masters averse to, and was cautious of carrying it too far; and believe, instead of 5000*l.* to be placed out, I only mentioned 2000*l.* or such other Sum as should be agreed on. And though I mentioned a larger Sum, when I was with my Lord, and a smaller by Letter, I left that to my Lord's Direction, as his Lordship should think necessary. I don't remember, or believe, that I took Notice in my Letter of the small Security I proposed to be taken, the rather, because the Masters differed much in their Thoughts about that: Some of them were for giving none; therefore I said nothing of it. I thought that was my Lord's Province more than mine; but I stuck the more closely to that of placing out of the Money for Payment of Mr. *Dormer*'s Deficiency, and taking the Securities in several Masters Names. And when I had writ the Letter, I sent it to my Lord about *June*, or *July*, 1722, by my Clerk, who told me he delivered it to my Lord's Servant.

Mr. *Plum.* I desire to know, if he kept any Copy of that Letter?

Mr. *Light.* I kept the original Draught, which I apprehend I writ the Letter from. I can't say it is an exact Copy; because in transcribing, I might alter Words which I disliked, and put in others; and therefore I am not sure it is a true Copy; it may vary in Form, but not in Substance.

Mr. *Plum.* I desire he may be asked, whether ever he spoke to my Lord about it, and that my Lord acknowledged the Receipt of this Letter?

Mr. *Light.* My Lords, I think I did say, in the Presence of some of the Masters, when my Lord talked of taking Security in several Masters Names, that if his Lordship would look into the Letter I writ to him at such a Time, he would find that Proposal made: I don't remember my Lord made any Reply, he did not deny it. But not long before *Christmas*, my Lord did mention this Letter to me, upon this Occasion: When I was passing my Accompt before the Judges, and the Directors of the *Bank*, I had told them of this Letter; which his Lordship, having heard of, asked me, what I had said about it? I told his Lordship, I had acquainted them with the Contents of the Letter I wrote: Says He, I have that Letter by me.

Mr. *Plum.* I desire Mr. *Lightboun* may produce the Letter.

Mr. *Light.* My Lords, I have not the Letter.

Mr. *Plum.* The original Draught you mention.

[*Mr.* Lightboun *produces the Draught.*

Mr. *Plum.* Is that your own Hand-writing, and the Substance of the Letter you sent to the Lord Chancellor?

Mr. *Light.* It is my Hand-writing, and the Substance of that Letter.

Mr. *Plum.* I desire it may be read.

[*Mr.* Baily *reads the Draught.*]

My Lord,

IN Obedience to your Commands, I here lay before your Lordship my Thoughts upon the Affair you were pleased to mention, when I had last the Honour to wait upon your Lordship; and must own, that a Provision, for the Demand upon Mr. *Dormer*'s Office, might answer our present Purpose: But, with great Submission, I think it concerns the Honour of the Court of *Chancery* to find out some proper Expedient to prevent the like Accident for the future: And I beg Leave to observe, *that the great Difficulty, which this Gentleman has brought upon himself and the* Court, *proceeds not only from his Squandering or Misapplication of the Court-Cash in his Hands (were that all, his Estate and Office would much more than have answer'd the Demand), but I am afraid it is too obvious, that his Power over the Government Securities, that had been transferr'd to, or brought before him, or upon which he had placed out the Money of the Suitors of the Court in his own Name, has been the Occasion of this great Deficiency, which I hope may be provided for, and the Credit of the Court retrieved and supported, by every Master's advancing* 2000*l. or such other Sum as shall be agreed on, out of the Cash of the Court in his Hands; which being placed out at Interest, the yearly Income thereof, together with the Produce of Mr.* Dormer's *Estate, will answer the Demands that may be expected on his Successor; and will, in due Time, make good the Debt upon the Office,* provided the Money that has already, or may hereafter be raised, from his Estate, or any other Way, for that purpose, be forthwith apply'd to discharge such Demands as carry Interest, or be invested in such Securities as have been disposed of by Mr. *Dormer*, belonging to the Suitors, to answer the same and the accruing Interest, which I hope the *Gentleman that succeeds him has already taken care of, if not, the Demand will rather encrease than diminish*

And having before observed, from whence this great Deficiency has arose, I submit it to your Lordship, whether the taking all Government Securities for the future, in the Name of two or more Masters, may not prevent the like Misfortune hereafter: And *the Deposit to be put out to Interest, to raise a Fund for the Payment of Mr.* Dormer's *Debt, together with our Office, wou'd, in a great Measure, be a Security for the Cash with which we should then only be intrusted.*

I expect it will be objected, against the Deposit, that some Masters may not always have that Sum in their Hands; but *I will venture to say, 'tis scarce probable that can happen, if the Money be directed as usual, to be brought before the Masters, both by* Your Lordship *and the Master of the Rolls, without which the Masters can't think themselves much interested in the Event of Mr.* Dormer's *Affair.*

It may also be objected, that the Alteration proposed, in the future taking Government Securities, will shew a Distrust, and cause Reflections upon the Masters; but I shall think it a Happiness, to be divested of a Power never to be used, without the greatest Violation of the Trust reposed in us that can well be imagined; and I think it evident, that it had been a much greater, if we had never been intrusted with it; and as this Variation may be begun by ourselves, without any public Direction or Alteration in future Orders, I think it will rather turn to our Reputation than Disadvantage, and will certainly ease the minds of the Suitors, which ought to have some Consideration in this Affair. I am unwilling to trespass longer on your Lordship's Time; but if *I have the Happiness to have offered any thing thought practicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall, with Pleasure, contribute, as becomes me, to facilitate any Undertaking* of this Kind; and that I have as much at Heart the Reputation of the Office I had the Honour to be placed in by your Lordship, as any of my Brother Masters. But as we have different Views, it is not surprizing that we think not alike; which makes me fear that nothing of this Kind will be approved of, unless recommended by your Lordship; and am,

My LORD,

Your Lordship's

Most obedient Servant,

J. LIGHTBOUN.

Mr. *Plum.* What Date is it?

Mr. *Light.* I did not expect when I wrote this Letter, that I should have been called upon to give any Account of it, and did not put any Date to it; but to the best of my Knowledge, it was in *June, July,* or *August,* 1722; but it is from Circumstances I recollect that, rather than from any Remembrance I have of the exact Time.

Mr. *Lut.* I only desire that Mr. *Lightboun* may recollect the Time, when he first mentioned this to my Lord *Macclesfield,* and this Letter was taken Notice of to him?

Mr. *Lightboun.* Indeed, my Lords, I cannot do that, I believe it was at a meeting of ſeveral of the Maſters, at my Lord's Houſe. I often had the Honour to be admitted to him, with or without other Maſters. His Doors and Ear were always open to me; and I was often troubleſome to his Lordſhip: But I cannot recollect the Time, when this was firſt mentioned.

Mr. *Plummer.* I think he ſays the Maſters might have different Views. I deſire he would explain himſelf, what he meant by that?

Mr. *Light.* I meant by that to put my Lord in mind of what I had ſaid, when I had the Honour to be with him laſt, when his Lordſhip told me, that the Propoſal of a Contribution came from the two ſenior Maſters; I then ſaid that their Deſign was only to ſkin over this Wound, till they could get out: That one of them had ſlipp'd his Neck out of the Collar already, and another was about getting out. I told his Lordſhip, that, as I was but lately come into the Office, I propoſed to ſpend my Days, or wear myſelf out in the Service of the Court. Therefore, that their Deſign was to get out, and mine to continue in, was what I meant by different Views.

Mr. *Plum.* Mr. *Lightboun* hath given your Lordſhips an Account of his Propoſals and Arguments uſed with my Lord Chancellor; I deſire to know, whether he uſed any other Inducements to perſuade my Lord to make ſome Orders relating to the Maſters?

Mr. *Light.* It was a long Time before I heard any more of this Affair. As they were quiet, without any Application to me for the 500*l.* or to come into any Contribution, which I was reſolved againſt; ſo I did not think it prudent for me to make any Buſtle amongſt my Brethren. I thought I had done my Duty, I had given my Opinion when it was required, and I did not ſtir in it till the Maſters apprehended themſelves very much aggrieved, by the Variation the Maſter of the Rolls was pleaſed to make in the Practice of the Court, by directing all the Money of the Suitors to be brought before his Uſher, and ſometimes to be put out by him without the Maſters Approbation, which not only deprived the Maſters of any Advantage from thence, but of thoſe Fees that were due to them, on the receiving and placing out at Intereſt, or paying it out again; and, as I took it, it no Way anſwered the End, nor was for the Benefit or Security of the Suitors: Becauſe if the Truſt was too great, and the Suitors Property not ſafe in eleven Men's Hands, much leſs was it ſafe in the Hands of one. Therefore I apprehended there was Reaſon for Complaint. On this Account we had ſeveral Meetings; I was always ready to come into any Repreſentation to my Lord, in hopes that Grievances of all Kinds might be looked into, and, I believe, often complained to my Lord of theſe Matters. We went to my Lord Chancellor, and acquainted him of our Grievances; my Lord deſired us to put them into Writing; we all readily concurred in that: Accordingly we drew up our Complaints of theſe, and other Incroachments on our Offices, by Way of Repreſentation, which was delivered to my Lord Chancelror, and after my Lord had had it ſome Time, and nothing done, we frequently importuned my Lord to conſider the declining State of our Offices; and I concluded that would bring the other matters on the Stage, without which, nothing effectual could be done. My Lord ſaid he would have a Conference with the Maſter of the Rolls, and the Maſters, in order to debate theſe matters; and I did not doubt, but, upon that Occaſion, the Deficiency of *Dormer*'s would come out, and that ſomething might be done for us, conſiſtent with the Honour of the Court, and the Suitors Safety. But that Conference was delayed; the Grievances in all Reſpects grew greater; we grew more troubleſome to my Lord Chancellor; my Lord then ſaid there was a Neceſſity of redreſſing all the Grievances; he mentioned the Maſters giving Security, that of taking Securities for the Suitors in other People's Names, and continuing the Maſters in the Enjoyment of their Offices, as they had uſed to have them, and ſaid it would be beſt to do all together. With this we were put off for ſome Time, but, on further Sollicitation, my Lord ſaid, he was now determined to do ſomething in this Affair, and his Lordſhip deſired a more particular Account of the Grievances complained of by the Maſters, and their Reaſons, and the Inconveniencies to the Suitors that accrued from the new methods, which the Maſter of the Rolls had turned the Buſineſs of the Court into; and that the Matter, both with reſpect to the Suitors and the Maſters, might be fully underſtood, his Lordſhip preſſed, that ſomething of that Kind might be drawn up in Writing and laid before him, and he would make Orders proper to make a thorough Reformation in the Court: And I remember his Expreſſion to me was, it would ſave him much Trouble, if what was drawn up by the Maſters, not only contained the Things which they had Grounds to complain of, but was put into the Form of Orders neceſſary to be made for him to conſider of, and alter, and add ſuch others as he had prepared or thought neceſſary. And ſoon after, a ſecond Repreſentation was prepared, and was delivered to my Lord. And after his Lordſhip had had it ſome ſhort Time there was a Meeting at my Lord Chancellor's, where the Maſter of the Rolls and the Maſters were preſent, and, at that Time, there was a good deal of Diſcourſe about the Money. But when the Maſter of the Rolls began the Topick of his Juriſdiction, excluſive of the King's Commiſſion, Heats aroſe, and little was done at that Meeting. I think ſome Perſons of Quality came to ſpeak with my Lord, and that broke it up. I was ſoon afterwards with my Lord, and I aſked his Lordſhip what he intended to do: He ſaid he was ſorry Matters were got to that Heighth, but that he found if the Maſters would give up the Judicature, they might be made eaſy in their Demands, and Things put upon the old Foot, and the Suitors made ſafe too. Upon that Occaſion, I did take the liberty to ſay, if there was a judicial Power in the Maſters by Virtue of the King's Commiſſion, as it was his Majeſty's Prerogative to grant, we could not give it up; and that, for my Part, I would not exchange or barter it for the Cuſtody of the Suitors Money. I believe my Lord propoſed, at this Meeting, to have had the Aſſiſtance of the Maſter of the Rolls in making theſe intended Orders; and I recollect, that after the Deficiency of this laſt Repreſentation, which I was preſent at, I heard that my Lord had ſhewn it to the Maſter of the Rolls before the Meeting, which I took amiſs, my Lord deſiring it for his own private Uſe: Upon which I went to him in order to withdraw it, and told him it was done in ſuch Haſte, that all the Maſters had not conſidered it; but whether I alledged to him, or He to me, I don't remember, but it was ſaid, that it was very proper the Maſters ſhould all ſign it; and I think I carried it back to the Maſters, and that we all ſigned it; and then it was delivered back to my Lord. And, I believe, upon the Face of that Repreſentation it will appear, that it was drawn up at my Lord Chancellor's Requeſt.

The firſt Repreſentation was chiefly confined to ſuch Grievances as affected ourſelves, the ſecond is more at large; I don't know whether his Lordſhip will produce it. Some Things in it may ſeem to bear hard upon his Honour, the Maſter of the Rolls, and may give Offence; but it will be conſidered, that it was written at a time when there were great Differences between the Maſter of the Rolls and the Maſters: Nay, I think I may ſay, the whole Court of Chancery was in a State of War.

Mr. *Plum.* I deſire he may be aſked, if he ever laid before my Lord Chancellor the Expectations of the World; that he would reform theſe Abuſes and Grievances?

Mr. *Light.* I have often mentioned that to my Lord, and preſſed it rather more and oftener than became me. I was aſhamed to be ſo troubleſome, and I was ſurpriſed that my Lord did not do ſomething in it; tho' I ſoon found, and have often told one or other of the Maſters and others, that my Lord would do nothing in it. However, I continued to perſevere in preſſing it; and expreſly mentioned the great Inconveniencies the Court would be run into for want of a proper Regulation, and with what an ill Grace we could apply to his Succeſſors to redreſs theſe Grievances, in Caſe his Lordſhip grew weary of the fatigue of Buſineſs, and quitted the Great Seal; that they would tell us, we had long acquieſced under them, and that his Lordſhip not having ſo much as looked into them, they would not care to meddle or interfere in it. I preſſed it home to his Lordſhip, and thought he made Doubts and Difficulties where there were none. Indeed I thought in this his Lordſhip wanted his uſual Reſolution, and almoſt ventured to ſay ſo. I know not whether it is very proper to mention it, but I did take the Liberty to tell his Lordſhip, that if he did not redreſs theſe Grievances, unleſs my Lord *Lechmere* ſucceeded him, I deſpaired of ſeeing them ſettled on any better Foot. I hope my Lord will pardon my mentioning his Name.

Mr. Serj. *Peng.* My Lords, we have done with Mr. *Lightboun.*

Mr. Serj. *Prob.* I deſire he may be aſked, when the firſt Application was made by the Maſters to redreſs their Grievances?

Mr. *Light.* I really can't tell. I went ſo frequently to my Lord, that I cannot diſtinguiſh one Time from another; I believe other Maſters that went ſeldomer can tell better; but I believe it muſt be a Year and a half, or two Years ago, or more: I cannot tell the Time.

Mr. Serj. *Prob.* I deſire he may be aſked, whether there was any ſecond Application, before the Repreſentation was put into Writing?

Mr. *Leightboun.* Immediately upon the Maſter of the Rolls's varying the Method of the Court, and directing the Money to be paid in to the Uſher, the Maſters went to my Lord Chancellor's, which I believe muſt be before *Chriſtmas*, 1722. I believe Mr. *Holford* remembers it better; and that from Time to Time, I have often told him that my Lord Chancellor would do nothing in it.

Mr. Serj. *Prob.* I deſire to aſk him, when that Meeting was between the late Lord Chancellor and the Maſter of the Rolls?

Mr. *Lightboun.* That I belive was the Beginning of laſt Summer.

Mr. Serj. *Prob.* We deſire he may ſay who was then preſent at that Meeting with the Maſter of the Rolls?

Mr. *Light.* My Lords, At that meeting with the Maſter of the Rolls the Lord Chancellor was there, had the Great Seal before him; and the two ſenior Regiſters were there, with Pen, Ink, and Paper before them, in proper Habits; the Maſter of the Rolls, and all the Maſters in their Gowns; and the Secretary was there, and the Maſters all hoped the Orders were to be then pronounced; but I can't remember that the Regiſters ſet Pen to Paper. The Uſher was likewiſe there.

Mr. Serj. *Prob.* I deſire he may, if he can recollect it, give a particular Account of what paſſed at that meeting.

Mr. *Light.* The Maſters inſiſted they had a Right by Cuſtom to have the Money brought before them, where there was any Reference to a Maſter, whether it was by Orders made upon hearing, or by Interlocutory Orders, or if there was a Direction in that Order, by which the Money was brought in for the Payment, or Application of it; in theſe Caſes they alledged, that the Money had, time out of mind, been brought before the Maſter, to whom the Reference was directed; and they did admit that where Money was brought againſt Bills of Interpleader or Interlocutory Orders, where there was no Reference to a Maſter, the Money had uſually been directed to be brought into Court, in Order to be kept till it could be determined whoſe it was, or to what Uſe it was to be applied? And there they admitted the Money was formerly kept by the Uſher. This I apprehended was inſiſted upon by the Maſters as their undoubted Right, and it was expected an Order would have been then made declaring it ſo.

Mr. Serj. *Prob.* I deſire to know what further paſſed relating to Facts only, without any Account of his own Expectations?

Mr. *Light.* Some Debate aroſe about the Maſter of the Rolls's Judicature, ſtarted I think firſt by himſelf.

E. of *Mac.* I deſire to put Mr. *Lightboun* in mind of ſome Things, and firſt to aſk him, whether upon that Application they had made to me in relation to the Alteration or Variation, as he calls it, in the Practice of the Court, by the Orders made by the Maſter of the Rolls, whether I did not require them to lay Precedents before me, that I might be ſatisfied how that matter ſtood?

Mr.

Mr. *Lightboun.* Your Lordship did; but it was long before that meeting. I believe a Year and more.

E. of *Macclesfield.* Whether there had not been like Directions, that the Usher should lay Precedents before me?

Mr. *Light.* I don't know of any such Directions to him, but I remember my Lord Chancellor called for his Precedents, and wondered he had not brought them, if he had any for his Purpose.

E. of *Mac.* I desire Mr. *Lightboun* may recollect whether the Question was not put to the Usher with relation to the Usage of the Court, to put the money into the Masters Hands, in all Cases where the money was brought into Court, to be disposed of, either to be put out at Interest, or paid to Creditors, or Legatees, whether he had any one Precedent to the contrary?

Mr. *Light.* I remember he had none, and I apprehended the Usher did not make out any Sort of Claim to keep such money.

E. of *Mac.* I don't ask what the Usher made out, but what Questions were asked him about the Usage and Precedents?

Mr. *Light.* I believe they were asked for, and I am sure he then produced none.

E. of *Mac.* Pray, recollect, and consider; did I speak to him as to one that had not any Precedents to produce; or did I make mention as if he had brought Precedents, and ask him if he could say, that among those Precedents there was one to the Purpose, to make out that the Usage was not so?

Mr. *Light.* I say your Lordship blamed him for not bringing these Precedents. I believe your Lordship asked him, if he could bring any Precedent to the Point? And, to the best of my Remembrance, he said he had none, or gave no satisfactory Answer, but such as I thought evasive; but I cannot remember particularly what your Lordship and he said to each other.

E. of *Mac.* This is a very indifferent Account; since Mr. *Lightboun* hath so good a memory, I desire to know whether the Usher was not told, that his Precedents had been read, and possibly I might have overlooked some that were material; and therefore desired him to shew whether there was among them any one Precedent, that related to money brought in in these Cases?

Mr. *Light.* He produced none.

E. of *Mac.* Did it not appear that he had produced Precedents before, and they had been read, and that possibly I might have overlooked some of them?

Mr. *Light.* On your Lordship's mentioning of it, I do recollect something did appear, that your Lordship had seen his Precedents, and did expect he should have brought more.

E. of *Mac* I desire he may be asked, whether he did pretend he could produce more?

Mr. *Light.* My Lords, I cannot be particular in that.

E. of *Mac.* I desire to know whether he did not own that he had no such Precedents?

Mr. *Light.* In answer to that, my Lords, I cannot say positively he did or did not; for I believe I have seen some few Orders of antient Dates, that were Precedents of money being brought into the Ushers Hand's, in order to be disposed of after hearing. But there were but few of them.

E. of *Mac.* My Lords, I desire Mr. *Lightboun* may be asked, whether the Registers were not asked about the Practice of the Court, and if in all their Observation and Experience the money in the Cases before-specified was ordered to the Usher?

Mr. *Light.* They were, my Lords.

E. of *Mac.* And what Answer did they make?

Mr. *Light.* They answered, that the money, after hearing, and on interlocutory Orders, where the Application was directed, had been usually ordered to the Masters.

E. of *Mac.* I desire Mr. *Lightboun* may be asked, whether it was not after this, that the Master of the Rolls began to speak with relation to the Judicature, and how that was introduced?

Mr. *Light.* I have forgot the Circumstances and manner of its being introduced by the Master of the Rolls. But I remember one Expression of his Honour's, That he would have the Masters consider how proper it was for them to insist upon a Judicature, which would impower them to order money into their own Hands. But how he introduced that Discourse, I don't know; but I saw the Lord Chancellor had not a mind that Topick should be touched upon, and that the Master of the Rolls brought it in much against his Lordship's Inclination; but how I don't remember. If your Lordship puts me in mind, I may recollect.

E. of *Mac.* The Usher, was not he apprized of this meeting?

Mr. *Light.* Yes.

E. of *Mac.* Did the Master of the Rolls give any Opinion relating to this matter of the money being paid to the Usher?

Mr. *Light.* He insisted on his own Judicature, and both introduced and stuck to that Discourse.

E. of *Mac.* Do you remember his saying, that the Masters mu st ot expect Favour at the Rolls, if they contended for Jurisdiction?

Mr. *Light.* My Lords, I do not.

E. of *Mac.* You spoke of my Irresolution: Was it not with respect to the Dispute between you and the Master of the Rolls?

Mr. *Light.* I could not tell where it stuck, there was some Difficulty made of determining that matter; but your Lordship did not communicate to me your Reasons why you did not proceed upon that, or any other of the Masters Affairs.

E. of *Mac.* I presume, Mr. *Lightboun*, you did not, every Time you came to me, speak to me of the Affairs wherein the Masters thought themselves hurt?

Mr. *Light.* No, my Lord, I did not.

E. of *Mac.* You sometimes spoke to me about the money, and at other Times relating to the Master of the Rolls; I desire to know, when you applied to me with respect to the Disputes with the Master of the Rolls, and the Innovations made on your Offices; if it was not upon that you found me irresolute?

Mr. *Light.* Your Lordship always said, it was proper to settle all at one Time, that some Security should be given by the Masters, and something done to make it reasonable to expect it from them; which was to establish the Masters in their just Rights; and upon that Occasion your Lordship mentioned taking Securities in different Persons Names, and upon that Score the old Proposal of mine was revived.

E. of *Mac.* I have no further Question to ask.

Mr. Serj. *Pengelly.* My Lords, we desire Mr. *Holford* may be called.

(Mr. *Holford* called.)

Mr. Serj. *Peng.* My Lords, we desire Mr. *Holford* may be asked, whether at any Time, and when, he heard of a Proposal made by Mr. *Lightboun*, and whether it was made publick?

Mr. *Holford.* My Lords, a good while ago, I believe two or three Years, Mr. *Lightboun* and I had a great deal of Discourse about the Condition and Circumstances the Court of Chancery was then in; and about the Confusion that was like to happen by the unfortunate Accident that had happened to Mr. *Dormer.* We did talk of a great many Things that were proper to remedy it. A great many were the same that are mentioned in the Letter that hath been read. I think I told him, it was very right, especially as to the matter of the Securities, which was the greatest Power a Master was trusted with; for as the Securities were above three Parts in four of the whole Trust, if there could be a Way found out to secure that, it would be a taking away three Parts in four of our Trust; and consequently would not leave so great a Power in the Masters; but as long as they were taken in the Name of one Person, and no trust declared, he could dispose of those Things, and nobody could hinder it. Therefore I thought it proper to be taken in two or three Names. I believe when it was proposed to be in two Masters, it was mentioned there might be a third, and then no Harm could happen to the Suitors, unless Corruption ran through the whole Office. I remember some Time after, that Mr. *Lightboun* did shew me the rough Draught of this Letter, which he said he had sent to my Lord; and we read it over together at my House: I told him it was very right, and that he had put it upon as good a Foot as upon the first Consideration it could be put upon: That every new method was liable to Inconveniencies; but, for my Part, I thought it looked fair, in that, as the matter of the Securities, the money in the Masters Hands was left pretty much to the Direction of my Lord Chancellor.

Mr. Serj. *Peng.* I desire he may be asked, whether these Proposals that were made were agreeable to him, so far, that if they were directed by my Lord Chancellor, he would have submitted to them?

Mr. *Holford.* Yes, my Lords, I should have readily submitted to them.

Mr. Serj. *Peng.* I desire he may be asked, whether he remembers any Discourse of these Proposals before my Lord Chancellor in his Presence?

Mr. *Holford.* I don't remember I ever had the Honour of speaking to my Lord Chancellor about any of them; nor to have been at any meeting where they were spoken of before my Lord Chancellor.

Mr. *Lutwyche.* My Lords I desire he may be asked, whether he can recollect when he had this Discourse with Mr. *Lightboun*, and when this Draught of the Letter was shewn him?

Mr. *Holford.* About two Years ago; some time after it had been written, and sent to my Lord, Mr. *Lightboun* told me, says he, I have writ to my Lord to the Effect of what we talked of; and I will shew you the Letter; and he pulled out the Copy, and shewed it me.

E. of *Mac.* Was you at that meeting which Mr. *Lightboun* hath mentioned, when the Masters and the Matter of the Rolls were there? And what passed, as near as you can remember?

Mr. *Holford.* My Lords, I think it was upon Midsummer-day, if I remember right, and the Masters, the Ushers, the Registers, and the Master of the Rolls, were all there. My Lord Chancellor declared there had been some Disputes in the Court of Chancery, and he had called them together to adjust those Disputes, especially in relation to the money of the Court. I believe the Usher was called upon to know whether he had any Precedents to offer in Justification of his own Right, or of what he claimed as a Right; and the Usher, I think, said at that Time, he had no more than he had already delivered to his Lordship; I believe his Lordship said those Precedents were not much to the Purpose; the Usher said he had no more, and delivered no more; and after some Discourse, there were several People spoke, the Usher insisting there were some Precedents to the Purpose. Then a Dispute arose about the Jurisdiction of the Master of the Rolls; and so the Affair broke up at that Time. I think nothing more was done.

Mr. Serj. *Peng.* My Lords, we desire that Mr. *Kynaston* may be called.

(Mr. *Kynaston* called.)

Mr. Serj. *Peng.* My Lords, we desire that Mr. *Kynaston* may give your Lordships an Account, whether he knows of any Proposal made to the Earl of *Macclesfield*, relating to the securing the Effects of the Suitors?

Mr. *Kynaston.* Yes, my Lords, I do; there were several meetings among the Masters privately before they came to an Agreement. I think they all did agree, that they would go to my Lord *Macclesfield*, and propose to him to give Security, and to settle the matter of the Securities, so that it should not be in the Masters Power to dispose of them. I remember it was agreed upon, that it should be so represented to my Lord, and I believe all, or most of the Masters, went to my Lord *Macclesfield*, and did propose it to my Lord. I am very positive some Proposals were laid before him. Some proposed to get People to be bound with them, but there might be some Difficulty in that; others proposed that they should give Land-Security; but it was thought likewise that might meet with Difficulties in relation to the Title.

Mr. Serj. *Peng.* Was there any Proposal made as to the Securities in their Hands?——Mr. *Kynaston.* Yes.

Mr. Serj. *Peng.* In what manner was it proposed that the Securities should be taken?

Mr. *Kynaston.* I am not positive, but it was to this Purpose; that they should be put in one or two of the Masters Names, and of the Persons concerned. I am not certain how that was, but it was something of that Kind.

Mr.

Mr. Serj. *Probyn.* My Lords, I beg leave to aſk this Witneſs when this was?

Mr. *Kynaſton.* I do not remember the time exactly; I believe it was ſome time about *Chriſtmas* was twelve Month.

Mr. Serj. *Pengelly.* My Lords, We ſhall call no further Witneſſes upon this particular Article; but beg leave to refer to your Lordſhips Recollection what paſſed Yeſterday, from the Examination of all the Maſters, relating to the Encouragement and Inducement that proceeded from my Lord *Macclesfield* to the Maſters, to perſuade them to make up *Dormer*'s Deficiency, if their Offices ſhould be eſtabliſhed on their old Foot; which ſufficiently proves the Notice the Earl had of their trafficking and dealing with the Money belonging to the Suitors of the Court. In the next place, we ſhall lay before your Lordſhips an Order, made by the Earl of *Macclesfield*, of the 17th of *December*, 1724. Tho' as to the ſeveral Propoſals made to his Lordſhip by the Maſters, he doubted of the power he had to make any Order, yet when it was too late, or after the loſſes had happened, when the Affair of this great Deficiency appeared, then doth he make an Order, that looks with ſome Care, but with this Introduction, that it was not uſual for the Maſters to give Security; tho' it appears to your Lordſhips that they had offered it, and were willing to do it.

(Mr. *Ralph Paxton* proves the Order.)

Clerk reads, *Ordo Curiæ Jovis Decimo Septimo Die Decembris*, 1724.

WHereas his Majeſty has been pleaſed to appoint a Committee of ſeveral Lords and others, of his moſt Honourable Privy Council; to make ſome Inquiries concerning the Court of Chancery, and particularly concerning the Monies of the Suitors of that Court, in the Hands of the Maſters or other Officers of that Court, and to conſider which way the ſame may be beſt ſecured; and the Lord Chancellor having at their Deſire ordered the ſeveral Maſters to give in their reſpective Accompts, which they accordingly did; and Mr. Baron *Gilbert*, Mr. Juſtice *Denton*, and Mr. Juſtice *Raymond*, and likewiſe Sir *Nathanael Gold*, Mr. *Thompſon*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank, having been appointed and deſired by the ſaid Committee, to inſpect and examine the ſaid Accompts, and who have proceeded ſo to do, and after having been ſeveral Times attended by the ſaid Maſters, have made a Report thereof to the ſaid Committee of Council; whereby it appears, that, tho' all the Maſters of the ſaid Court have produced before them all the Securities and Certificates of their having the Stock and Annuities in their Names; which, upon their Accompts, they appear to be chargeable with as belonging to the Suitors of the Court, and much the greater Part of the Maſters have brought before the ſaid Mr. Baron *Gilbert*, and other Perſons above named, their Caſh or Securities eaſily convertible into Money, Certificates of Stock, and Annuities ſufficient to make good the Balance of their Accompts: Yet upon the ſaid Report it appears that there are yet conſiderable Deficiencies of Monies, which were in the Hands of ſome Maſters, who are dead; and that ſome of the preſent Maſters have not produced the Balance of their Caſh, nor given a ſatisfactory Account how the ſame is to be made good, and it not having been uſual for the Maſters of the ſaid Court to give Security for the Money in their Hands, the ſaid Committee thought adviſeable, that till this Affair could be more maturely conſidered, and proper methods eſtabliſhed for Security of the Suitors of the ſaid Court, the Effects herein after-mentioned, which have upon this Occaſion been produced, ſhould be at preſent ſecured in the manner herein after-mentioned, and recommended to the Right Honourable the Lord Chancellor, to take ſuch Order therein as ſhould be proper; all which being communicated to all the ſaid Maſters, and the ſaid Report now read in the preſence of them all, except Mr. *Kynaſton*, who is indiſpoſed, and thereby prevented from attending; and upon hearing what was alledged by the ſaid Maſters, are the Facts of the ſaid Report, ſo far as concern their reſpective Securities in their Hands and Power, and the Balance of Caſh in their Hands not being controverted, his Lordſhip therefore doth think fit, and ſo order, that the ſaid Maſters, Mr. *Holford*, Mr. *Lovibond*, Mr. *John Bennet*, Mr. *Godfrey*, Mr. *Lightboun*, Mr. *Conway*, Mr. *Edwards*, Mr. *Thomas Bennet*, Mr. *Elde*, and Mr. *Thurſton*, all now preſent, and likewiſe Mr. *Kynaſton*, do forthwith prepare and ſend to the Bank of *England*, every one a Cheſt with one Lock, and Haſps for two Padlocks; the Key of the Lock to be kept by the Maſter, and the Key of one of the Padlocks by Mr. *Smith*, and Mr. *Malthus*, two of the Six Clerks of this Court, or one of them, and the Key of the other by the Governor, Deputy Governor or Caſhier of the Bank; and that all the Bonds, Exchequer Annuities and Orders, and other Securities given in upon their ſaid Accompts, as Securities belonging to the Suitors of this Court, or as the proper Securities of the ſaid Maſters, towards making good the Balance of their reſpective Caſh; and likewiſe the Bank Notes and Caſh ſo given in, and not ſince paid to, or laid out for the Suitors of the Court, be depoſited in the ſaid Cheſts, under the Inſpection of Mr. Baron *Gilbert*, and the other perſons appointed, as aforeſaid, to inſpect the Maſters Accompts, or of ſome of them; and that then the Cheſts be locked up, and left in the Cuſtody of the Bank of *England*; but ſo to be kept, as that the Maſters may have eaſy Acceſs thereto, to comply with the Orders of this Court, till further Order may be taken concerning the ſame; and whereas the Maſters have in their ſeveral Accompts given in Particulars of Stock, and of Annuities, transferrable in the Books of the ſeveral Companies, ſtanding in their Names, which belong to the ſeveral Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Balance of Caſh in their Hands may be made good or ſecured; it is further ordered, that they do each of them forthwith deliver into the reſpective Company, a Declaration in writing, wherein ſuch Stock in each reſpective Company, or the Annuities there transferrable, as by their reſpective Accompts, appear to belong to the Suitors of the Court, and likewiſe the Stock and Annuities by them reſpectively propoſed toward making good, or ſecuring their Balance of Caſh, or ſo much thereof, as ſhall equal the Balance of their ſaid Accompt; in Caſe they have in their Names more than ſufficient for that Purpoſe, it ſhall be declared to be upon Truſt, to attend the Orders of this Court; and the ſaid reſpective Companies are to take care, that proper Entries be made thereof in their Books, ſo that ſuch Stock or Annuities be not transferred, but by Order or Leave of this Court; and the ſaid Maſters, upon performing the Order above, are to take proper Certificates, ſigned by Mr. Baron *Gilbert*, and the other Perſons appointed as aforeſaid, to inſpect the ſaid Accompts, or ſome of them; and by the Perſons keeping the Keys of the ſaid Cheſts, of the Particulars of the Bonds, or other Securities, Caſh and Notes, depoſited and locked up in ſuch Cheſts, as aforeſaid, and Certificates ſigned by the ſame Perſons, and by a proper Officer of the Bank, that ſuch Cheſts are depoſited in the Bank, and Certificates ſigned by the proper Officers of the reſpective Companies, of the Declarations made as aforeſaid, by the reſpective Maſters, and of the Entries thereof; and it is further ordered that the *Goldſmiths* Notes, produced by the ſaid Maſters, in giving in their Accompts, be by them turned into Bank Notes, and ſo depoſited as aforeſaid; and the ſaid ſeveral Maſters are forthwith to give Mr. Baron *Gilbert* Poſt-Accompts of their Receipt and Payments, ſince the former Accompts, and a Copy hereof is to be deliver'd to Mr. *Kynaſton*, he not being now preſent; and another Copy left at the publick Office of the Maſters, with their Clerk there, for their more eaſy Recourſe thereto, in order to their exact Compliance therewith.

EDW. GOLDESBROUGH,

Deputy Regiſter.

Mr. Serj. *Pengelly.* By this Order your Lordſhips will obſerve, that ſome of the inſuperable Difficulties were ſurmounted, and ſome of the Evils cured; and tho' that Method will not take it totally out of the Power of the Maſters, yet why the noble Lord could not have proceeded ſo far before, is left to your Lordſhips Determination; we ſhall not call any further Witneſſes on theſe Articles, we apprehend we have fully made them out. The honourable Gentleman who opens the next Article will proceed.

Lord *Morpeth.* My Lords, It falls to my Lot, to open to your Lordſhips the 19th Article of this Impeachment, and, it being ſome time ſince it was read at your Table, 'twill be neceſſary for me ſhortly to recollect it.

The Article charges, 'That his Majeſty having, in *November* laſt, 'directed an Inquiry into the Accounts of the Maſters, to the Intent 'that proper methods ſhould be taken for the Security of the Suitors, 'the Earl of *Macclesfield*, being then Lord Chancellor and one of 'the Privy Council, in order to obſtruct the ſame, and to prevent a 'parliamentary Inquiry into the Condition of the Offices of the 'Maſters did, in the firſt Place, adviſe the Maſters to aſſiſt each other 'with Money and Effects; and for their Encouragement, repre'ſented to them, that it would be for their Honour and Service to ap'pear able and ſufficient, and that if they made a bold ſtand now, it 'wou'd prevent a Parliamentary Inquiry. In the next Place, That the 'Earl perſuaded ſeveral of them, to make falſe Repreſentations of their 'Circumſtances to his Majeſty, by adding a Subſcription to their Ac'counts, that they were able and willing to anſwer the Effects in their 'Hands, tho' the Earl then knew, or had good reaſon to believe the 'contrary; and that ſeveral of the Maſters, according to the Earl's ad'vice, did ſupply others with Money and Effects, to make a falſe Shew, 'and Appearance of their Abilities.'

Your Lordſhips take notice, that the time mentioned in the Article is *November* laſt; at which time, and for ſome Years before, the Kingdom had rang of the Abuſes and Corruptions of the Court of Chancery, with little hopes of Redreſs, but from the Juſtice of Parliament: The Earl cou'd not but foreſee, that the Period was then drawing near, when the Cries of the Oppreſſed, and the univerſal Diſſatisfaction rais'd againſt his Adminiſtration, wou'd ſome way or other force its Relief.

This Cry for Juſtice having reach'd his Majeſty's Ear, He was pleas'd to direct the Inquiry mention'd in the Article, and whilſt this was depending, the impeached Lord finiſh'd that Scheme of Iniquity he had carried on ſo long without Controul.

The Facts charg'd in this Article contain in themſelves the vileſt Deceit and Treachery; heighten'd and aggravated by the wicked Purpoſes for which they were contrived; Firſt, To have miſled the Council-Board into a groundleſs Belief of the Maſters Sufficiency to anſwer the Suitors; and on this Foundation he built a more impious, but more fatal Project, the preventing a Parliamentary Inquiry.

The Anſwer given by the Earl to this Article deſerves a particular Notice: He ſays, 'That upon great Conſideration of *Dormer*'s Defi'ciency, and the Danger there might be of further Inconveniencies 'with relation to the Suitors Effects, of ſome Diſputes in the Court, 'and of ſome Practices of the Maſters, which he thought ought to be 'reformed, he was convinced, it was a work of too great Conſequence, 'for him ſingly to attempt; and being highly ſenſible of his moſt ſacred 'Majeſty's paternal Goodneſs, did preſume humbly to beſeech his Ma'jeſty, as the Fountain of Juſtice, to depute ſome of his Privy Council 'to take the Matters into Conſideration.'

My Lords, Seven Years, and more had paſs'd ſince he was made Lord Chancellor, three Years, ſince *Dormer*'s Deficiency, without one honeſt Thought, for any thing that has yet appear'd, or one ſincere Step taken by him, for the Honour of the Court, or the Safety of the Suitors, if the Examination order'd by his Majeſty did ſpring from his Lordſhip's Requeſt, his real Intention, in deſiring it, will be beſt known from his former Conduct, and from the Uſe, we ſhall prove, he intended to have made of that Inquiry; his paſt Behaviour has already appear'd to your Lordſhips to have been a Series of Extortion and Oppreſſion, conſtantly attended with the vileſt and meaneſt Artifices to keep it ſecret; the King's paternal Goodneſs was moſt notoriouſly abuſed, by him, who was intruſted to diſpenſe it; and

that

that Fountain of Justice polluted, which he now dares to name in his Defence.

I think myself justified in charging this Part of his Defence as an Act of high Dissimulation before your Lordships; and a presumptuous Attempt to cover his own Guilt under his Majesty's sacred Name, and the Orders he was pleased to give for that Inquiry. The Earl has, indeed, acknowledged one Truth in this part of his Answer, 'That the great Deficiencies and Danger to the Suitors, and the Practices of the Masters (which 'he does not name, but says) ought to be reform'd, had convinc'd him, 'that the Reformation of them was a Work too great for him, singly, to 'attempt.'

My Lords, the many Prostitutions of the Dignity of the great Office, which have been proved upon him, had doubtless greatly wounded the Honour and Authority of the Court itself; and the Earl had bound himself so fast to those Masters, whom he had admitted by the Bands of Corruption, which he had not Power to break through, that nothing which tended to the Honour of that high Court, or the Advantage of the Suitors, cou'd be expected from his Hands.

The next Passage of his Answer is a wretched Mixture of the most abject Flattery of such of your Lordships as attended that Committee, to whom, I believe, his Lordship very truly declares, he was entirely subservient; and of false Praises of himself, for the great Services he contributed to that Enquiry: However, after this Introduction, the Answer goes on and declares, 'That he is greatly surprized, to find himself charged with 'obstructing the taking those Accounts, which he had thus desired 'might be taken, and had promoted with all his Power.'

This is a poor Evasion and Affectation of Innocence; and the more surprising, to come from his Lordship, whose misconduct had so notoriously been the Occasion of that Inquiry. And the Charge is not, as he he insinuates for obstructing the taking the Accounts, but for procuring false Accounts and Representations to be laid before the Council, by which means that Enquiry might have been frustrated.

But he proceeds in his Answer to a Declaration, the most astonishing of all others, 'That he never thought of preventing a Parliamentary Inquiry, any otherwise, than by making it unnecessary, and procuring to the 'Suitors a full Redress of all their Grievances, and rectifying whatever he 'found amiss; and that he looked upon to be his Duty, and begs leave to 'say it here, once for all, in Answer to all the Insinuations of that kind 'contained in any of the Articles.'

By the last Words, the Earl, in a very summary manner, pronounces his own Acquittal; but your Lordships will observe, that the Article charges him, in plain Words, with actual advising the Masters to misrepresent their Accounts, in order to prevent a Parliamentary Inquiry, and that, if they made a bold stand now, it might prevent one: His Lordship answers, that he never thought of preventing it, otherwise than by procuring full Redress, *&c.*

By this he confesses, he did think of preventing the Inquiry of Parliament.

He has not dared to deny the Facts charged, from which this Design was manifest, because he knew they would be fully proved: But the Subterfuge he flies to, *viz.* that he did intend to prevent it, by rendering it unnecessary, is impossible to be believed, tho' the Commons shou'd offer no Proofs at all to this Part of the Article; unless his Lordship imagines that he is able to carry on the Imposition so far, as that the concealing from his Majesty the true Condition of the Suitors, by the methods he was then practising with the Masters, should be taken by your Lordships to be the means of procuring them full Redress; and it is self-evident, that if his Contrivance had taken place, the immediate and full Relief of the Suitors, which was his Majesty's gracious Purpose, had thereby been wholly defeated: The Commons, therefore, may insist upon it, that this flagrant Circumstance is established by his own Confession, especially since your Lordships find, that in the following Parts of his Answer, the Earl declares, 'That Mr. *Holford* having subscribed his Accounts, with 'a Declaration of his Abilities, and Readiness to answer the Suitors; and some of the Masters having used Expressions, as he thought, 'not so proper, others of them having made no Conclusions at all; he 'did advise them all to write the same Words under their Accounts 'as Mr. *Holford* had done, and did tell them, in great Sincerity and 'Friendship, that, at a Time when so many Men's Mouths were open 'against them as insolvent, it would be for their Honour and Interest 'to make it appear that they were able.'

Thus far the Answer is a full Confession, that he advised all the Masters to add Mr. *Holford*'s Conclusion to their Accounts.

His Lordship says, he was induced to do this from their assuring him they were able; this Assertion will appear to be notoriously false: however, if it had been true, his Lordship, it seems, took their bare Words for it, at the same Time that he declared to them, that so many Men's Mouths were open against them as insolvent: But here, unhappy Man, he flies again for Sanctuary to the Integrity of his own Heart, and assures your Lordships, 'That he never thought of a Contrivance to have them deceitfully appear to be really what they were not;' tho' this Declaration of the Innocence of his Mind stands also in direct Contradiction to the Fact he had just before confessed; and in the very next Lines he again confesses, that some of the Masters, pursuant to his own Directions, did withdraw to add the same Words to their Accounts, as Mr. *Holford* had done to his; which he carried to the Council without looking into them; and, when they were read there, the Masters, it seems, were honester Men than the Earl expected, or would have had them to be; for, notwithstanding his Advice, all of them did not make these Subscriptions to their Accounts.

To the other Charge in the Article, of his advising them to stand by one another and appear able, his Lordship has given a particular Answer, 'That an Order being made upon the Masters, to produce their Securities and Cash, and the Masters complaining of the short Time to produce such great Sums, he confesses he did say, that he required them to 'bestir themselves; and might say, that some of their Brethren might 'perhaps be able to let them have Money, till they could raise it another way.'

The Excuse he offers for this Advice is a very unjustifiable one; it is, That the Masters declared to him, that they had not the Suitors Effects ready, which, by the Duty of their Offices, his Lordship knew they ought to have had, but had Effects sufficient to raise the whole, if they could have had more Time. By his own Account of this Matter 'tis plain, that the Masters did at that Time disclose to him one of the Practices, which 'twas his Duty to have reformed; and yet your Lordships see what Consideration he had of it; even at this Juncture he advised them to supply one another, which they accordingly did, and the Deceit prevailed, till the Order for carrying the Securities and Cash to the Bank made the Discovery.

Perhaps, my Lords, I have dwelt too long on the Earl's Answer; but, I think, it will appear to your Lordships to betray such a Confusion of Mind, as nothing but the heaviest Pressures of Guilt could have produced, and is a stronger Conviction of him than a thousand Witnesses.

I will, in the next Place, give some short Account of our Evidence to this Article. The Masters themselves will prove the Earl's Directions, either given by his own Mouth, or by his Secretary's, when they were required to make up their Accounts to be laid before the King in Council, that they should stand by one another, and give the best Account they could, to prevent a Parliamentary Inquiry, and that they need only to produce or shew Bank or Goldsmiths Notes; and that it was a critical Juncture, and that the Strong should assist the Weak, and that they must make a Stand, and defeat the Designs of their Enemies.

We shall further prove his Lorship's express Directions to the Masters, to add the same Conclusion to their Accounts, as Mr. *Holford* had done to his, which was, that they were able and ready to answer their Balances: tho' the Earl did not so much as ask any of them whether they could make it good, and some of them declared the contrary; and at that Time also he told them, that it would be for their Honour and Service, and that it would look well to the Council to appear able and willing.

We shall also prove, that this false Advice of the Earl was followed by several of the Masters, in both Respects; and that afterwards, when the Suitors Effects were to be carried into the Bank, several of them who had before appeared able, now proved deficient in great Sums, and Bank and Goldsmiths Notes, and other Effects, to a great Value, with which several of them had been accommodated, and which they had produced to the Persons appointed to examine the Accounts; and which, as appears by the Reports on your Lordship's Table, they had sworn to be their own, and not lent them for the Purpose of accounting, now vanished, and a Deficiency appeared of fourscore thousand Pounds and upwards, which still continues.

This Evidence will fully maintain our Article, and, if any Proof is necessary, will sufficiently clear up the Earl's Intentions.

My Lords, the Part which still remains to me is such, as I own myself utterly unable to perform; I mean, to aggravate this Offence in such Manner as it deserves; the amazing Scene this Article has opened, must not be judged of singly, and by itself; nor can it be accounted for but as the Offspring of a Mind thoroughly debased, and flowing from the most incurable Corruption: And tho' they have issued from that Source, as from an unexhaustible Fountain, yet it can't be denied, but as the Earl's Thirst for Lucre grew stronger upon him, with that his Invention also has constantly improved into some new Device or Management for securing his exorbitant Advantages by preserving the Secret. 'Twas a remarkable Law in one of the wisest of the *Grecian* Governments, arising from their Dread and Abhorrence of a corrupt Judge, *That no Man bred up to Merchandize should be admitted into any Office of Judicature, till he had quitted that Employment for at least ten Years*; and the Reason was, because the Fingers of Merchants had been too much used to Traffick.

The Earl's Administration, in the highest Seat of Justice in this Kingdom, has appeared to your Lordships to have been one continued pyratical Trade; during the Course of which, from Time to Time, as Opportunities have offer'd, he has prey'd alike upon Masters and Suitors; his craving Appetite was in no Sort check'd by the approach of Death itself; and the Hand of a dying Chancellor, as he express'd himself to one of the Masters, was open'd to receive that unjust Gain he had so plentifully fed upon in full Health: To which, and his other Misbehaviours, your Lordships now see, that not only the Ruin of many, even of the Masters, but the Dishonour, Distress, and Confusion still remaining in that part of the publick Justice must be imputed; and how groundless and unaccountable soever the repeated Assertions in the Earl's Answer, that the Masters freely and voluntarily parted with their Money to him, now appear to be; yet, from the Unwillingness and other conscious Circumstances, with which he has since, at several Times, refunded some Part of his extorsive Gains, tho' the Guilt is not lessen'd, his Lordship is thereby self-condemn'd.

The Fund out of which he has raised his unwarrantable Profits, ought to have been held by him as sacred and inviolable, being deposited in the Sanctuary of his own Court: His Extortions therefore must be judged of, not as private Violations of Property, but as a Pillage taken from the Treasure of the Publick; the Livelihood of the Widow and Fatherless under the Protection of the Law in a Court of Justice; great part of it, perhaps, dedicated to Charities: And how far your Lordships may, in this Respect, consider it as a sacrilegious Plunder, is left to your Judgment: However, the Injuries done to distressed, ship-wreck'd Sufferers, have been always esteemed the highest Barbarity.

But the Methods the Earl has used, from Time to Time, to excuse and cover his Crimes, tho' they were the natural Refuge of an obstinate, unrelenting mind, yet are more heinous than the Crimes themselves. Your Lordships can't forget the Oath of his Office, which he has set forth at large in his Answer; he was sworn *to do Right to all manner of People, poor and rich, according to the Laws and Usages of the Realm, and not to do or suffer the*

Hurt of the King, if he could hinder it; if not, clearly and expreſly to make it known to him, with his true Advice and Counſel. 'Tis ſurprizing to find his Lordſhip to have ſo utterly abandoned all Regard to this ſolemn Obligation, as the whole Courſe of his Behaviour fully demonſtrates. You have alſo heard the Oath he cauſed to be adminiſter'd to the Maſters, immediately after he had ſhared with them the Eſtates of the Suitors; by which Oath *they were likewiſe ſworn neither to do Hurt to the King, nor to do any Fraud to the Hurt of any of the People*; and it has appeared in what manner they have ſince been practiſed and tampered with by the Earl himſelf, in order to conceal and ſuppreſs the Knowledge of the Grievances of the Subject, which he had procured; ſometimes they were threatened, at other Times cajoled and ſeduced, but always deceived; and this Artifice, diſcloſed by this Article, was his laſt Shift. When he ſaw the Storm began to ariſe, he deliberately contrived to turn the fatherly Goodneſs of his bountiful Maſter to the Deſtruction of his People, and, by this moſt unparallel'd Attempt, to have rendered the Throne itſelf the Shelter of his Iniquities, and acceſſary to his Oppreſſions; but 'twill now appear, that this was conducted to another Point, to ſkreen himſelf from the Juſtice of Parliament.

My Lords, there have been Crimes ſo unexampled, and of ſo horrid a Nature, that the Malefactors have been tried at midnight, and immediately drown'd, and the Journal Books burnt, in Compaſſion to Mankind, that the Memory of the Proceeding being deſtroyed, the Crime itſelf might not be propagated.

The Offences of the impeached Lord are ripened to a Fullneſs ſurpaſſing all Belief, too big indeed for the ordinary Hand of Juſtice; but the Commons of *Great Britain*, whoſe Enquiry he vainly flattered himſelf he could prevent (though the Terrors of it had long lain upon his Breaſt), have by this Time, I preſume, convinced his Lordſhip; and his Example will, I hope, convince the World, that no Offender, how great or ſubtile ſoever, can eſcape their Juſtice, of which this publick Proceeding will be an eternal Monument, as well as of the Shame of the unfortunate Earl.

The Lord *Bacon*, one of his Predeceſſors, made a frank Submiſſion to your Lordſhips Anceſtors upon the Accuſation of the Commons, and taking Comfort to himſelf from his Afflictions, uſes theſe Words, 'That 'hereafter the Greatneſs of a Judge or Magiſtrate ſhall be no Sanctuary 'or Protection to him againſt Guilt; and that, after his Example, it was 'like that Judges would fly from any Thing in the Likeneſs of Corrup'tion, though at a great Diſtance; which tends to purging the Courts 'of Juſtice, and reducing them to their true Honour and Splendor.' He did, indeed, urge it as no ſmall Excuſe for himſelf, that Bribery and Corruption, the Vices of which he ſtood impeached, were the Vices of the Times; but the Commons rejoice to find, that the Earl, now before your Lordſhips in Judgment, has no Ground to claim the ſame Excuſe.

The Admonitions left by that penitent, great Man, and the juſt Puniſhment he underwent, have, I believe, conduced to prevent the like Evil for near an hundred Years, though they had not an immediate Effect: For an eminent Hiſtorian of thoſe Times has recorded, that ſome time after his Sentence in Parliament, meeting the Earl of *Middleſex*, then Lord Treaſurer (whom he had Ground to ſuſpect to have been inſtrumental in his Diſgrace), in Diſcourſe with him, he recommended it as a Rule to be obſerved by the Earl, and all great Officers, to

Remember a Parliament will come.

And the ſame Author further obſerves, That though the Lord *Bacon* had not the Spirit of Divination, and though the Treaſurer deſpiſed and laughed at his Advice, yet, within two Years after, the Treaſurer alſo was condemned in Parliament for Bribery, Extortions, Oppreſſions, and other grievous miſdemeanors.

I will conclude with one Obſervation more: It may, my Lords, be too juſtly apprehended, that the moſt dangerous Symptoms of a declining Commonwealth do then appear, when men in the higheſt Stations in Government, eſpecially thoſe which concern the Adminiſtration of Juſtice, ſhall be ſo far loſt to all Senſe of Virtue, as to be guilty of ſuch odious Crimes as thoſe now charged upon the Earl; yet we promiſe ourſelves, that your Lordſhips Juſtice, in the Puniſhment of thoſe Crimes, will afford us a hopeful Proſpect of a reviving State; and that whenever the Crimes and miſdemeanors of this unfortunate Earl ſhall hereafter be mentioned, it will be remembered at the ſame time, for the Honour of your Lordſhips, and the Benefit of the whole Nation, that he received a Condemnation ſuitable to his Guilt.

Mr. *Snell.* My Lords, I would gladly have been excuſed *this Service*, becauſe I have been extremely indiſpoſed, ever ſince I received the Commands of *the Houſe of Commons*, and becauſe I am otherwiſe truly ſenſible of my Inability to execute thoſe Commands in the manner they ought to be executed. But theſe Reaſons being thought inſufficient by *others* to prevail for my Abſence, it is no longer a Matter of Choice, and I muſt comply with the Duty *impoſed* upon me. Your Lordſhips, therefore, will be pleaſed to conſider (as the Truth is), that what I have to ſay is only the Product of a few Hours, and that it is impoſſible for me, in ſo ſhort a Time, to offer any *Obſervations*, any *Arguments*, but ſuch as will appear crude and indigeſted on this *great and important Subject.*

The *Earl* then *at the Bar* ſtands under *an Impeachment of all the Commons of* Great Britain, *of high Crimes and Miſdemeanors in his late Office of Lord High Chancellor*, and though *the Charge* againſt him in *the Article* now under your Lordſhips Conſideration be of a different Nature, yet in every Circumſtance it is as highly *criminal* as any of thoſe that have gone before it. The Accuſation hitherto has generally run upon *Corruption in the Sale of Offices, Extortion*, and *a Series of foul Practices* to cover and conceal *the Deficiency in* Dormer's *Office*, which had drawn upon him *an univerſal Cry* for Redreſs. All the little Arts that had been played over and over again upon *the Maſters*, either by applying to their Hopes, or Fears, as Opportunity offered, had proved ineffectual; and ſome other Expedient muſt be found out, ſome new Stratagem invented, to quiet the Clamours *of the injured Suitors*. Theſe Clamours had juſtly ariſen from a Suppoſition of the *Maſters Inſolvency*, and no method could be ſo likely to ſerve his Turn to appeaſe them, as one that would make *the Maſters ſeem* to be inſolvent. He therefore ventured to adviſe them to aſſiſt one another, to repreſent their Circumſtances in a falſe Light, by ſubſcribing their Accounts as Mr. *Holford* had done; and thus he propoſed to deceive *the Suitors*, and to make *the Maſters* appear to the World able to anſwer the monies and Effects in their Hands: But this laſt Effort was as unſucceſsful as his former. For if *the Maſters* were able and ſufficient, what Reaſon could he have for his Apprehenſions of a *Parliamentary Enquiry?* If they were not able, he had indeed Reaſon for *ſuch Apprehenſions*, which leaves your Lordſhips no Room to doubt, but that *this Advice* was given with a View only to keep the Affair out of Parliament; and the conſtant Anxiety he laboured under to ſecure that *main Point*, does more than *decypher* the Secret of the whole Tranſaction.

Now, my Lords, this extraordinary Step could not proceed from any Doubt *the Earl* could have, whether the Parliament was able and willing to redreſs theſe Grievances and Inconveniencies, or whether it would contribute its Aſſiſtance to the Relief of *the Suitors:* No, my Lords, he knew very well that the Parliament was the proper Place for redreſſing *Abuſes in the Courts of Juſtice.* He was ſenſible too, that it had always interpoſed with *Accuſations* and *Impeachments*, and that *ill Actions* had, in no Age, met with Favour there. He could have no Hopes that his Ambiguity of Expreſſion, his Dexterity in playing upon Words, in wreſting their proper Senſe and meaning, could ſtand him in any Stead; or that all his Subtilty could be a match for the Wiſdom of the Legiſlature: But, perhaps, he might imagine, that *a Committee of Council* might be wrought upon, and miſled by Appearances, at leaſt ſo far as to *protract the evil Day:* and who could tell what Time or Accident might bring about? Another *Act of Grace* might come, and expunge the whole Score.

I ſhould have congratulated your Lordſhips and the Houſe of Commons, and even the *accuſed Earl himſelf*, if the *juſt Apprehenſions* he conceived of *a Parliamentary Inquiry* had raiſed in him a *Compaſſion* equal to the *Sufferings of the Suitors:* If it had begot a Repentance of his former miſdeeds and Crimes, and a Reſolution of future Innocence and Uprightneſs: But your Lordſhips find it had a very different Effect; it only produced a vile Contrivance to guard himſelf againſt Puniſhment for what was paſt, and to make it more difficult hereafter to detect him in *the ſame Practices.* This is *a Behaviour*, my Lords, which is ſo far from deſerving your *mercy*, that it calls aloud for your *Indignation* as well as *Juſtice.* This is a *Circumſtance* which is not only a high Aggravation of his Guilt, but a great Indignity to the Authority and Honour of Parliament; which, I hope, will never be *eluded* by the Artifice of the *moſt cunning and ſkilful*, nor *controuled* by the *Influence* of the moſt *powerful and favoured Miniſter of State.*

But if the *impeached Earl's Actions* may be allowed to be any Proof of his Intentions, the Fact ſtated in this Article goes further, and implies *a bold and deſperate Attempt* to miſlead his Majeſty, and to obſtruct his gracious Endeavours to find out proper methods for ſecuring the money and Effects of *the Suitors*, which is an Inſtance on one Hand of his *Baſeneſs* and *Ingratitude* to *his Sovereign*, to whom he *owed every Thing*; on the other, of his *Injuſtice* and *Barbarity* to thoſe *of his Fellow-ſubjects*, whom he had *injured*, whom he had oppreſſed, during the whole Courſe of his *Tyrannick Adminiſtration.*

What, my Lords, muſt have been the Conſequence, if *this Contrivance* had paſſed? And it would have paſſed upon a Prince of leſs Diſcernment than his Majeſty. Whenever it had been diſcovered, all the Obloquy would have been thrown upon *his ſacred Perſon*, as if he had been engaged in *a Confederacy* to *ſkreen* that Guilt which he was labouring to *detect.* But *the Earl's avaricious Temper* had ſet ſo wrong a Bias upon his Actions, that *the means* by which he propoſed to ſhelter himſelf, and to conceal his Depredations, have brought upon him (what he ſo long dreaded) this *juſt and neceſſary Proſecution.*

As to *the Earl's Anſwer* to *this Article*, I hope I may be excuſed the Liberty of ſaying, that it is either *vain, evaſive*, or *falſe.*

He begins with enumerating the many Inconveniencies and Abuſes, which he thought neceſſary to be reformed in the Court of Chancery, and with aſſuring your Lordſhips of his good Intentions to contribute to the Reformation of them; but your Lordſhips will beſt judge of this pretended Zeal, and of the Sincerity and Candour with which it is urged, by conſidering the conſtant Tenor of his Actions, by examining whether he can produce any Inſtance of his having endeavoured to correct theſe Abuſes, or to remove theſe Inconveniencies. Now, I don't find, thro' his whole Anſwer, nor have I heard it aſſerted, that he ever attempted any Thing of that Kind. On the contrary, it is too apparent, that many of them took their Riſe while he preſided in Chancery.

In the next Place, my Lords, he arrogates to himſelf the merit of *that Enquiry*, which his Majeſty had directed to be made by a *Committee of his Privy Council*; and inſiſts, that it was the Effect of his Application.

How true this Aſſertion is, ſome of your Lordſhips may know. But the Part he acted in *that Enquiry* might have obliged him to Silence, or at leaſt have reſtrained him from boaſting of his Conduct. The *Commons* charge him directly with obſtructing the methods then propoſed for ſecuring the Property of *the Suitors*; and it is not a ſufficient Anſwer to ſay, that *this Enquiry* was begun at his Inſtance, and that he preſſed *the Maſters* to bring in their Accompts: For all this may be true, and yet he might give them *the Advice* I have already mentioned, and complained of to your Lordſhips. Surely, my Lords, it is a Juſtice due to his Majeſty, to obſerve, upon this *vain-glorious Part* of *the Earl's* Anſwer, that whatever Share he had in ſetting *this Enquiry* on Foot, all the *good Fruits* to be hoped for from it are the Reſult only of his Majeſty's *Paternal Care* of his People.

He further ſays, That *he never thought of preventing a Parliamentary Enquiry, any other way than by making it unneceſſary, and by procuring the Suitors a full Redreſs of all their Grievances*, &c.

This is another Instance of his Disingenuity: For *the Grievances* complain'd of, could no where be redress'd but in Parliament; and therefore nothing more can be understood by the Words [*Any other Ways, than by making it unnecessary*] than by making it SEEM unnecessary; which is a poor and mean Prevarication.

Nor is there any Credit to be given to what he urges in Excuse for his *Fraudulent Proposal* to *the Masters*, viz. *That while the Accompts were taking, all the Masters, at least all that he saw, except Mr.* Kynaston, *had declared that they had Effects sufficient to answer their whole Accompts*, &c.

For we shall prove to your Lordships by Mr. *Thomas Bennet*, and Mr. *Kynaston*, that it is *false*, unless you'll suppose them *perjur'd:* For they are very positive, *That the Earl never ask'd them whether they had Effects to answer, or not, or were able to pay in their Cash-Balance:* Nay, they are *sure they did not tell him so, because in Fact it would have been false if they had.*

Besides, your Lordships will have the concurrent Testimony of almost all *the Masters* to prove, that (while they were making up their Accompts to lay before the *Committee* of *Council*) they were directed by *Cottingham* and *Dixon* to assist one another *in making a Shew of their Abilities*; and that some of them, *viz.* Mr. *John Bennet*, Mr. *Godfrey*, and Mr. *Conway*, complied with *this Direction*, which we must ascribe to *the Earl himself*, as being given by his *Two Chief Agents and Ministers.*

Who is it, my Lords, that has been guilty of the Crimes laid in *this Impeachment?* It is *a Peer of Parliament! A Lord High Chancellor of Great Britain!* And how precarious must be the Property, how deplorable the Condition of the Subjects of this Kingdom, if such Crimes should not be punish'd in *so exemplary* a manner, as to *carry down Terror* to all *succeeding Chancellors?*

My Lords, If I have express'd myself with too much Acrimony on this Occasion; if what I have said has any way offended the *Impeached Earl*, I hope he will do me the Justice to believe, that I meant it only in Detestation of his Crimes, and not in *Disrespect to his Person.* For I assure him, I should have been heartily sorry for the Misfortune he has brought upon himself, if it had proceeded from *Ignorance* or *Neglect*, and not from *an insatiable Appetite* after *illegal Gains*, which he is pleased to mis-call *Voluntry Presents*, and for which I must ever entertain *the utmost Abhorrence.* I will therefore conclude with a Word of Advice out of the Scripture for his future Conduct, *That he shall receive no Gift; for a Gift blindeth the Wise, and perverteth the Words of the Righteous.*

Mr. Serj. *Peng.* My Lords, we beg leave that Mr. *Thomas Bennet* may be examin'd, and that he may give your Lordships an Account of what pass'd, after this Inquiry directed by his Majesty begun? What Order and Direction the Masters receiv'd from his Lordship in the Execution of that Inquiry?

Mr. *Tho. Bennet.* My Lords, I think, on the 3d of *November* last we receiv'd an Order from my Lord Chancellor, to make up our Accompts. It was a very particular Order, express'd abundance of *Items*, and Columns, in what manner those Accompts were to be made up. The Masters had a meeting on this occasion; and a great many, if not all of them, agreed, that the making up of the Accompts in that manner as my Lord Chancellor had directed, was impracticable in so short a Time; for we were directed to do it forthwith. It was represented by some of the Masters to Mr. *Cottingham*, and I believe by him to my Lord Chancellor, that it was impossible to do it in so short a Time, and it would take up a Month or two, or more. I did not know what other People could do: I had begun to make up my Accompts; I could have done it in a short Time, having been in but a little while: Others, indeed, that had been in twelve Years, and must have given an Accompt of the whole Proceedings of that Time, could not do it. I was inform'd by my Brother, that he could not have done it in a Year: But soon afterwards I was told, that the Order was dispens'd with by my Lord Chancellor; and all we were to do, was to make up an Accompt of the Balance of the Money and Securities that were in our respective Offices distinctly, the Money and Securities in Two Distinct Columns, only the Sum total at the Bottom. This Order the Masters all comply'd with, as appears by their Accompts: And between that and the 9th Day of *November* following, we had several Messages from my Lord Chancellor by Mr. *Cottingham* to dispatch these Accompts; for they were much wanted, being to be laid before the Committee of Council. On the 10th of *November* we had express Orders to appear at my Lord Chancellor's House with our Accompts ready. All the Masters, except Mr. *Conway*, were there.

Mr. Serj. *Peng.* I desire he may be ask'd, if there was any other meeting before that of the 10th of *November?*

Mr. *Tho. Ben.* I think there were some meetings at Mr. *Edwards*'s House by Mr. *Cottingham*'s Direction before, and after that at my Lord's House. At those meetings, at one of them, I particularly remember, (which was the most material of all) Mr. *Cottingham* brought Mr. *Dixon* with him, and introduced him, saying, we need not be afraid of Mr. *Dixon*, for he brought him there by my Lord's Direction, because he himself was deaf, and could not well hear what was said. Upon that he began his Message, and said, Our Accompts were then laid before the Council just at that Time: But, said he, suppose my Lord Chancellor or the Council should expect that the Bonds and Securities should be inspected, would you be willing that any Officer from him should inspect your Books and Securities? The Masters answer'd, They were ready and willing to do it; I don't remember any body that oppos'd it. The next Question Mr. *Cottingham* ask'd was, Whether we could produce the Balance of our Cash, and shew that we had the Money? To that all the Masters spoke in general, that they were under a great Concern and Surprize, and desir'd to know what Mr. *Cottingham* meant by that? Whether it was only to produce the Money, or the Money to be taken from us? And whether there was any Danger of that? Says Mr. *Cottingham*, you are only to produce the Balance of Cash, and shew it. We asked, whether we should produce it in Goldsmiths Notes, or Bank Notes? Says he, I believe Goldsmiths Notes will serve: You are to shew the Balance of your Cash; but I think Bank-Notes will do better. Upon that Mr. *Lightboun* said, I don't know what the Consequence of this may be. Suppose when we have produc'd these Notes they should be detain'd from us, I am afraid most of the Goldsmiths Shops about *Temple-Bar* would be shut up the next Day, and Inquiry would be made, what Holday it was? and Thousands of Families might be ruin'd by this Transaction. Mr. *Cottingham* propos'd, You may stand by and assist one another. Mr. *Kynaston* said, I find, we are like to be sacrific'd, and given up; for my Part, I will neither borrow nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Masters were in geat Concern. Mr. *Cottingham* and Mr. *Dixon* went back to my Lord Chancellor, and staid about an Hour and half, and then return'd to us, and said, my Lord was very busy, and dismiss'd us; and so we went home.

Mr. Serj. *Peng.* When was the next meeting?

Mr. *Tho. Ben.* I don't remember; we had several meetings. I don't remember when the next was.

Mr. Serj. *Peng.* What pass'd on the 10th of *November* in the Presence of my Lord *Macclesfield*, at his House?

Mr. *Tho. Ben.* When we came to my Lord Chancellor's House, upon the 10th of *November*, all the Masters then present carry'd up their Accompts: Two or three had not their Accompts ready, my Brother and Mr. *Conway* had not theirs; but all that were ready carry'd them up to my Lord, and, according to Seniority, delivered them to his Lordship. The first was Mr. *Holford:* He had added to his Accompt, a Letter, I don't remember the Words, or that it was read; but I remember a Subscription, which my Lord Chancellor read, and that he said it was very good, and he lik'd it very well; and, I think, he laid it down upon the Table. The next Master gave his Accompt, and so all the rest. My Lord look'd them all over; some of the Masters he objected to. I remember I had written at the Bottom of my Accompt, as near as I can remember, *I am ready and willing that the Bonds and other Securities in my Hands, may be inspected by such Person as your Lordship shall appoint.* My Lord, after looking them all over, said he lik'd Mr. *Holford*'s Subscription, and, says he, I wish you would all make use of that: For it would be for your Honour and Service, to make yourselves appear able and sufficient to answer the Effects in your Hands. Somebody ask'd my Lord, what might be the meaning of this Commission being appointed by his Majesty? This, says he, I apprehend, will prevent a Parliamentary Inquiry.

Mr. Serj. *Peng.* We desire that Mr. *Bennet* may repeat the Expression my Lord made use of to persuade them to subscribe, as Mr. *Holford* had done?

Mr. *Tho. Ben. That they might appear able and sufficient.* I think those were the Words.

Mr. Serj. *Peng.* My Lords, I desire he may be ask'd, whether my Lord had at that time made an Enquiry of the Masters, whether they were able and sufficient?

Mr. *Tho. Ben.* I can only answer for myself. My Lord did not ask me, whether I was able and sufficient; but only directed me to write that Subscription that Mr. *Holford* had done; and I did go down and write, in effect, that Subscription. I did subscribe thus: 'My Lord, I have all 'the Securities standing in my Name, as in the within-mention'd Ac-'compt are specified; as also the Tallies, Orders, and Bonds in my 'Custody; and as to the Money, I am ready to give your Lordship Sa-'tisfaction, that I am able to answer it to every Person that is entitled 'thereto.' The Words, *to a Demonstration*, which are in Mr. *Holford*'s Subscription, I omitted, because I could not make it out to the Lords of the Council.

Mr. Serj. *Peng.* My Lords, We beg leave to produce these Accompts, and shew to your Lordships that Subscription of Mr. *Holford*, that was to be followed by the other Masters, and the first Subscription of Mr. *Bennet.*

Mr. *Onslow.* Pray, tell my Lords, if you can remember, was there any other Expression made use of at that Time?

Mr. *Tho. Ben.* The Expression was, it would be for our Honour and Service to appear able and sufficient.

Mr. *Onslow.* No other Words?

Mr. *Tho. Ben.* And it would be a means to prevent a Parliamentary Enquiry.

Mr. *Onslow.* Was there nothing mentioned relating to a Stand?

Mr. *Tho. Ben.* I don't remember that then; Mr. *Cottingham* said something of that at a meeting at Mr. *Edwards*'s.

[*The Subscription shew'd to Mr.* Bennet. *And proved by him to be Mr.* Holford's *Hand.*]

Mr. Serj. *Peng.* My Lords, we beg leave that this Subscription may be read, which was to be follow'd by all the Masters.

[*Clerk reads.*]

'I have all these Securities standing in my Name, as in this Accompt 'is specified, and will procure Certificates from the proper Offices, that 'I have, and had them before the Account, if your Lordship requires 'it. And as to the Money, I am ready to give your Lordships Satisfac-'tion, to a Demonstration, that I have it in my Power to answer it to 'every Person, that shall appear to be intitled to it, and who can give 'me a legal Discharge.'

Mr. Serj. *Peng.* We beg leave to read Mr. *Tho. Bennet*'s First Subscription, that my Lord was not satisfy'd with.

[*Clerk reads.*]

'My Lord, I am ready and willing the Securities, in the foregoing Ac-'compt mentioned, shall be inspected by such Person or Persons as your 'Lordship shall be pleas'd to appoint.'

Tho. Bennet, 10th *Novemb.* 1724.

Mr. Serj. *Peng.* Your Lordships observe, there is nothing in this Subscription as to the Cash, and the producing it. Now we beg leave to see the subsequent Subscription.

[*Clerk reads.*]

'10 *Nov.* 1724. My Lord, I have all the Securities standing in my 'Name, as in the within-mention'd Accompt are specify'd; as also the Tallies,

'Tallies, Orders and Bonds in my cuſtody. And as to the Money, I 'am ready to give your Lordſhip ſatisfaction, that I am able to anſwer 'it to every Perſon that is entitled thereto. *Tho. Bennett.*'

Mr. Serj. *Pengelly.* Your Lordſhips obſerve, he hath left out the Words *To a Demonſtration*, becauſe he thought that he could not ſo clearly make it out. I beg leave to mention, that theſe Accompts and Subſcriptions, thus alter'd, were actually delivered in, and laid before the Council, and are the Original Accompts.

Mr. Serj. *Probyn.* My Lords, I would aſk Mr. *Bennett*, when this Propoſal was offer'd to him, that he ſhould ſubſcribe as Mr. *Holford* had done, whether he made any Excuſe, or pretended he was not able to do it?

Mr. *Thomas Bennett.* No, I did not; I did as the reſt of the Maſters did.

Mr. Com. Serj. I deſire he may inform your Lordſhips when this was?

Mr. *Thomas Bennett.* I think, it was the 11th or 12th of *November*; I can't be poſitive as to the Day.

(*Mr.* Kynaſton *called.*)

Mr. Serj. *Peng.* My Lords, we deſire that Mr. *Kynaſton* may give your Lordſhips an Account, whether he was preſent at this Meeting on the 10th of *November*, and what paſſed there relating to their Accompts?

Mr. *Kynaſton.* Yes, my Lords, I was there the 10th of *November.*

Mr. Serj. *Peng.* What paſſed at that Time at the Earl of *Macclesfield*'s?

Mr. *Kynaſton.* I think I came there before the reſt of the Maſters, or only two or three were there before me. We gave my Lord an Account, that we had drawn out our Accompts of the Securities and Caſh, and the Balance in each Maſter's Hands. Soon after the reſt came. My Lord firſt received Mr. *Holford*'s Accompt, being the Elder Maſter. A Letter at the End of his Accompt was read: My Lord ſeem'd to be affected with, and to approve very well of it. There was ſome Writing at the End of it relating to the Ability. My Lord ſaid, it would do very well to have ſomething to the ſame purpoſe at the End of the other Maſters Accompts, and mentioned to us to go down and write it; accordingly we did go down, and moſt of us, if not all, did write to that Purpoſe.

Mr. Serj. *Peng.* Can you recollect what Expreſſions the Earl of *Macclesfield* uſed, to recommend it to the Maſters?

Mr. *Kyn.* My Lords, I can't juſtly recollect; I think it was, It would look well before the Council, and prevent a further Enquiry, or a parliamentary Enquiry, I am not poſitive which: But that I underſtood to be the meaning of it.

Mr. Serj. *Peng.* What was it that would look well to the Council?

Mr. *Kyn.* What Mr. *Holford* had writ at the Bottom of his Accompt, *That they were ready*, &c.

Mr. Serj. *Peng.* My Lords, I deſire he may be aſk'd, whether there was an Enquiry made by the Earl of *Macclesfield* as to his Ability or Sufficiency?

Mr. *Kyn.* No; I am ſure as to myſelf; and I don't know as to any body elſe.

Mr. Serj. *Peng.* I deſire he would inform your Lordſhips, what Subſcription he had firſt made, and what was added, or what Advice was given?

Mr. *Kyn.* I had writ before: 'My Lord, the Perſon I employed to write 'out this Accompt, has only gone thus far as to the Number of the 'Bonds. I have brought the Bonds with me, and deſire you'll appoint 'any Perſon to inſpect them, and the other Securities I have here given 'an account of.'

Mr. Serj. *Peng.* What was writ afterwards? This is wrote with a different Ink from that before: *And as to the Money, I am ready to pay it to the Perſons entitled thereto.* That is with a different Ink.

Mr. *Kyn.* I believe, upon looking upon it, I went down with the reſt, and writ that in the Parlour in my Lord's Houſe.

Mr. Serj. *Peng.* I deſire he may be aſked, whether he, or any other of the Maſters then received any Explanation how this Sufficiency or Ability was to appear?

Mr. *Kyn.* Not then, I don't remember any thing of it.

Mr. Serj. *Peng.* Or at any other Time?

Mr. *Kyn.* Some time after this, this was the 10th of *November*, and I believe, between that and the 16th, when we were to attend the Judges, the Maſters were ſummon'd to meet at Mr. *Edwards*'s Houſe: I underſtood it was a Summons from my Lord *Macclesfield*; and when we were here, there came Mr. *Cottingham* and Mr. *Dixon.* I don't remember all the Diſcourſe; but they were telling us what was to be done: Firſt, we were to produce our Securities, and there would be no great Nicety in producing them: And then, next, we were to produce the Balance of Caſh: And I remember, on that, Mr. *Cottingham* ſaid, You muſt ſtand by one another, and aſſiſt one another. Bank-Notes, ſaid he, will be beſt; but if you can't get them, then Goldſmiths Notes; you muſt get one or other to produce and ſhew.

Mr. *Lut.* I deſire he may be aſked, what he thought he meant by the Propoſal of getting Goldſmiths Notes, or Bank Notes?

Mr. *Kyn.* I did take the meaning in the worſt Senſe to be, for the Maſters barely to make a Shew of them; and that made me complain; and I ſpoke warmly, and ſaid, I ſaw what the Deſign was; and whoever borrow'd any money on that Occaſion was a Knave, and he that lent it was a Fool.

Mr. *Lut.* I deſire he may be aſk'd, whether there was any Recommendation by Mr. *Cottingham* or Mr. *Dixon*, and in what particular Expreſſions thoſe Recommendations were made?

Mr. *Kyn.* I believe, Mr. *Lightboun* expreſs'd himſelf, That if they borrow'd Goldſmiths Notes, and they were detained, the Goldſmiths Shops would be ſhut, and People would be enquiring what Holiday it was.

Mr. *Lut.* I deſire he may be aſked, what was ſaid about making a Shew? If Mr. *Cottingham* own'd what was the meaning of thoſe Words?

Mr. *Kyn.* I don't remember: They were pretty warm, and ſaid they would go to my Lord *Macclesfield*, which they did, and return'd again.

Mr. *Plummer.* My Lords, I deſire he may be aſk'd, whether it was generally underſtood among the Maſters, that giving of Bank-Notes and Goldſmiths Notes was to be underſtood borrowing?

Mr. *Kyn.* I underſtood it ſo myſelf, and I believe ſeveral others did; Mr. *Lightboun*, and Mr. *Holford*, and ſome of the others did ſo, by what they ſaid.

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Mr. Serj. *Peng.* My Lords, we have done with this Witneſs.

Mr. Serj. *Prob.* My Lords, I deſire to aſk this Witneſs the ſame Queſtion that I aſk'd the other; and that is, whether at the time when this Propoſal was made to him, that he ſhould ſubſcribe as Mr. *Holford* had done, he made any Objection to it?

Mr. *Kyn.* No, I did not make any Objection to it. I had been there firſt, and with my Lord, and at the farther End of the Room, that I remember leſs what happened at that time, than other People did.

(*Mr.* Lightboun *called.*)

Mr. Serj. *Peng.* My Lords, we deſire that Mr. *Lightboun* may give an Account of what paſſed at this meeting, relating to the bringing in of the Accompts?

Mr. *Lightboun.* What meeting? That at Mr. *Edwards*'s, or that at the Earl of *Macclesfield*'s?

Mr. Serj. *Pen.* That at Mr. *Edwards*'s.

Mr. *Light.* I was at Mr. *Edwards*'s about that Time, at ſome meeting when our Accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had ſo many meetings about that time at Mr. *Edwards*'s, that I don't remember exactly, which was before, and which after. I remember, at the meeting when Mr. *Cottingham* and Mr. *Dixon* both were there, there was ſome Diſcourſe relating to the producing of the Securities, and of the Balance of the Caſh. I then aſked, Whether we ſhould produce it in Bank Notes, or Goldſmiths Notes; and I underſtood, it was hinted that the Goldſmiths that we had dealt with, would aſſiſt any Maſter that wanted money, but by whom it was ſaid I can't recollect. The Anſwer I made to that was, that I ſhould be ſorry that any Maſter ſhould borrow Notes of a Goldſmith, and that they ſhould be ſtay'd or ſecured when produc'd, which I apprehended would be done; and next morning ſeveral Goldſmiths would be forc'd to ſhut up their Shops, and it would look like a Holiday in *Fleet-ſtreet.*

Mr. *Lut.* Do you remember any Thing concerning a Net?

Mr. *Light.* I don't remember the Expreſſion of a Net.

Mr. *Lut.* What Application was made to any of the Maſters to carry in their Accompts, and to whom?

Mr. *Light.* My Lord *Macclesfield* one morning ſent for me, and deſired me, that when the Accompts were brought into the Council, I would be thereabouts; that if there was any occaſion to clear up or explain any thing, or give farther Satisfaction to the Council, I might be ready. I told his Lordſhip, I would give no Satisfaction about any one's Accompts but my own. But if his Lordſhip pleaſed that I ſhould attend, I would be thereabouts; and if his Lordſhip pleaſed, I would have another Maſter with me: I nam'd Mr. *Holford*, and my Lord deſired me to acquaint Mr. *Holford* with it, which I did; who ſaid, he was ready to go with me to anſwer any Queſtions that ſhould be aſk'd, ariſing on the Peruſal of his Accompts.

Mr. *Lut.* What did he deſire you to attend for?

Mr. *Light.* To reſolve any Queſtion or Difficulty that ſhould ariſe before the Council. After this, Mr. *Cottingham* told Mr. *Holford* at Mr. *Edwards*'s, that my Lord deſired that two of the Maſters ſhould attend the Council with the Accompts of the whole, and that Mr. *Holford*, being the ſenior Maſter, ſhould be one, and he was to chooſe whom he would have go along with him; and I having given Mr. *Holford* Intimation before of my Lord's Inclination, Mr. *Holford* deſired me to go with him. I told him, I did not care to carry in any other Accompts than my own; as I had not concerned myſelf in other Maſters Accompts, I would not then begin; I would not carry any but my own, and nobody elſe ſhould carry mine; I would not be a Repreſentative of the Body. Upon that, Mr. *Holford* recollected himſelf, and ſaid, Nor he neither; he would carry no Accompts but his own. I ſaid, the Accompts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr. *Lut.* Your Lordſhips will obſerve, the Perſons thought moſt proper to appear for the reſt of the Maſters, Mr. *Holford*, and Mr. *Lightboun*, were ſo apprehenſive of the Maſters being deficient, that they did not care to appear for them. I deſire Mr. *Lightboun* may be aſk'd, what paſs'd on the 10th of *November*, when the Accompts were deliver'd to the Earl of *Macclesfield?*

Mr. *Lightboun.* My Lords, upon the 10th of *November* my Accompt was not ready at the time I was to deliver it. I rather choſe it ſhould not be ready; becauſe I did not care that it ſhould be carry'd in by any body but myſelf. However, I waited at the proper Time; and when we came there, Mr. *Holford* deliver'd in his Accompt, and a Letter he had writ to his Lordſhip, and fix'd to his Accompt, which was there read. My Lord ſeem'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, delivered in their Accompts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finiſh them, and attend his Lordſhip with them at the *Cock-pit* by eight of the Clock. Accordingly I did, and ſent it in to his Lordſhip.

Mr. *Lut.* What paſs'd farther relating to their ſigning of the Accompts?

Mr. *Light.* I know nothing of it; for I went away to finiſh my own.

Mr. Serj. *Peng.* My Lords, we deſire that Mr. *John Bennet* may be call'd.

(*Mr.* John Bennet *appeared.*)

Mr. *Lut.* My Lords, we deſire that Mr. *John Bennet* may be ask'd, whether he was at this meeting at Mr. *Edwards*'s Houſe, and what paſs'd at that time?

Mr. *J. Bennet.* My Lords, I was at that meeting at that time, when Mr. *Cottingham* and Mr. *Dixon* came in, and told us they came from my Lord Chancellor; and Mr. *Cottingham* ſaid, he had brought Mr. *Dixon* with him, becauſe he was deaf, and could not well hear. Mr. *Cottingham* ſaid, he had two Queſtions to propoſe; firſt, whether we were willing that all our Bonds, and other Securities in our Cuſtody, ſhould be inſpected by him or any other? All of us were willing, and agreed to that. The ſecond was, whether we were willing, or would produce the Balance of Caſh in our hands before the Council? To this the Maſters made a Stand, and ſaid,

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The Cash was considerable; and it could not be presum'd that they kept it lock'd up in Chests or Trunks in their own Houses; that was the way to have our Throats cut: But we believ'd we could do it in a reasonable Time. To which Mr. *Cottingham* said, Can't you produce it in Bank Notes or Goldsmiths Notes? Bank Notes, said he, will be best; but do it in Goldsmiths Notes, if you can't get Bank Notes. To which Mr. *Lightboun* said, If we produce them in Goldsmiths Notes, and there should happen to be a Net thrown over 'em, and they should be secur'd, the Goldsmiths might be oblig'd to shut up their Shops, and People would be enquiring what Holiday it was; and it might be a great Damage to those Goldsmiths.

Mr. *Lutwyche.* I desire he may be ask'd, whether any thing was said of assisting one another?

Mr. *J. Bennet.* Mr. *Cottingham* press'd us very much to help and assist one another, as far as we were able.

Mr. *Lutw.* Whether was any other Expression made use of by him?

Mr. *J. Ben.* I don't remember there was: But he repeated it several times, that we should stand by, and assist one another with Cash.

Mr. *Plummer.* My Lords, I desire to ask this Witness, if, in pursuance of the Advice given by Mr. *Cottingham*, he did assist any of the Masters, or was assisted by any of them?

Mr. *J. Ben.* One of the Gentlemen did assist me with Cash, which is lock'd up in the Chest: I gave him Security for it. And as to my assisting any Body, Mr. *Conway* inform'd me, he had a Real Security for 9000 *l.* and begg'd, if I could, that I would assist him with 5000 *l.* and in two or three Days I should have it again: I told him, I had in my Accompt mentioned my Cash, and that I had offered to make up the Balance by my Real Estate, and so could not assist him with any Cash. He ask'd me, if I had any Bonds by me? I told him I had 2000 *l.* Bonds; and if he could engage to bring them back to me in two Days, he should have them: And upon lodging a Bag of Writings with me, which he told me was a real Security for 9000 *l.* I accordingly did lend him them, and he brought them back again to me in two Days Time.

Mr. *Plum.* I desire he may be ask'd, what his Inducement was for lending the Bonds?

Mr. *J. Bennet.* The real Inducement was the real Security which was given me: But it had been recommended by Mr. *Cottingham* too.

Mr. *Plum.* I desire to know whether he open'd the Bag, to see what the Security was, or took it by Content?

Mr. *J. Ben.* No, I did not open it; Mr. *Conway* assured me it was so.

Mr. *Plum.* What use did he make of those Bonds?

Mr. *J. Ben.* Indeed I don't know.

Mr. *Lutw.* My Lords, I desire he may be ask'd, whether those Bonds belong'd to the Suitors of the Court?

Mr. *J. Ben.* They were brought in by the Suitors of the Court after my Accompt was deliver'd in, and I must give them in my Post-Accompt: Therefore, said I, I must have them again in two Days time.

Mr. Serj. *Peng.* I desire he may be ask'd, whether this was after he had given in his own Accompt?

Mr. *J. Bennet* Yes, it was after I had given in my own Accompt of my Money Securities, and the Accompt of my Estate.

Mr. Serj. *Peng.* I desire to know what Subscription Mr. *John Bennet* made to his Accompt at first, and what afterwards?

Mr. *J. Bennet.* I came to my Lord *Macclesfield*, just after the Gentlemen had been delivering in their Accompts; and they were below, writing their Subscriptions to their Accompts. I had then made no Subscription to my Accompt; they told me what my Lord had recommended to them to write; and I had one of them laid before me. I took my Pen and Ink, and varied it in some measure, and made the Subscription in this manner: 'I have all the Securities in my Name, as specified on the 'other side; and all the Bonds and Orders are in my Custody; and I am 'ready to satisfy your Lordship, that I am able to answer the money to 'every Party, that is entitled, or shall have a right to receive it.

J. Bennet.'

(*Mr.* Lovibond *called.*)

Mr. *Lutw.* My Lords, I desire he may be asked, whether he was present at this meeting (that hath been so often mentioned) at Mr. *Edwards*'s?

Mr. *Lovibond.* My Lords, I was there but a very little while.

Mr. *Lutw.* I desire he may be asked, while he was there, whether any thing was proposed, and by whom, for the Masters to lend one another Money or Notes?

Mr. *Lov.* There was Mr. *Cottingham* and Mr. *Dixon*; and one of them said, that the Masters should stand by one another, and recommended it to them to assist one another with Bank Notes or Goldsmiths Notes.

Mr. Serj. *Peng.* To what Purpose?

Mr. *Lov.* Neither of them said to what Purpose.

Mr. Serj. *Peng.* What was the Discourse about that Time?

Mr. *Lov.* The Discourse was about the Accompts, and how every Man's Balance was to be made up.

Mr. Serj. *Peng.* I desire to know, during that Time, whether Mr. *Lovibond* observ'd that Mr. *Cottingham* or Mr. *Dixon* went to my Lord Chancellor?

Mr. *Lov.* Yes, my Lords, they both went, and I came away, and did not stay till they return'd.

Mr. Serj. *Peng.* I desire to ask, Whether Mr. *Lovibond* did not lend some of the Masters some money?

Mr. *Lov.* I lent some money to Mr. *Bennet.*

Mr. Serj. *Peng.* How much was it?

Mr. *Lov.* It was 10,200 and odd Pounds.

Mr. Serj. *Peng.* I desire to know, whether Mr. *Lovibond* was present upon the Delivering in of the Accompts on the 10th of *November* last?

Mr. *Lov.* Yes, my Lords, I was.

Mr. Serj. *Peng.* I desire he would look upon that Subscription he at first made upon that Accompt, when he delivered it in.

Mr. *Lov.* It is here.

Mr. Serj. *Peng.* Read it.

Mr. *Lov.* reads. 'All which before-mention'd Particulars I am 'ready to answer on demand, or to give Security so to do, whenever 'requir'd.

H. Lovibond.'

Mr. Serj. *Peng.* I desire he may be ask'd, whether my Lord *Macclesfield* made any Objection to any Part of that Subscription, and what Part in particular?

Mr. *Lov.* He made an Objection to the latter Part of it, because that might imply that my Effects were not ready.

Mr. Serj. *Peng.* Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Mr. *Lov.* My Lord *Macclesfield* mention'd, that Mr. *Holford*'s Conclusion of his Accompt was most proper; and I had best alter it to that, and make that the Form; accordingly I did, I went down Stairs, and altered it as it now stands.

Mr. *Lutw.* Read this Subscription.

(*Clerk reads.*)

'All these Securities standing in my Name, as in this Accompt is spe-'cified, I am ready to procure Certificates from the proper Offices, that 'I have, and had them before this Accompt, if your Lordship requires it; 'and as to the money, I am ready to answer it upon Demand to every 'Person entitled thereto, and who can give me a legal Discharge.

November 10th, 1724. *H. Lovibond.*

Mr. *Lutw.* My Lords, I beg leave to make one Observation upon this: I would not trouble your Lordships with observing upon every one of them; but there is something very particular and remarkable in this Case of Mr. *Lovibond*'s. Mr. *Lovibond* had said, as the Truth of the Case was, when he delivered in his Accompt, and this Subscription, that he was able to produce or give Security, &c. That would have look'd before the Council as if the money was not ready to be produced, it was only giving Security; and for that Reason this Alteration is to be made, to make it look as if he had the actual Balance in his hands.

Mr. Serj. *Prob.* My Lords, we desire he may be asked, whether, at the Time that he wrote this Subscription, he was not able to produce the Balance?

Mr. *Lov.* My Lords, I did in my Conclusion offer it; and I could have done it the next Day.

Mr. *Strange.* I desire he may be ask'd, whether he could have done it out of his own Estate or Effects?

Mr. *Lov.* I could have done it out of my own Estate.

Mr. *Strange.* Did not you mention the Sum of 10,000 and odd Pounds lent? I desire to know, whether you took real Security for it?

Mr. *Lov.* Yes, I have a real Security.

Mr. *Strange.* In Land?——Mr. *Lov.* Yes, in Land.

Mr. *Plum.* I desire he may be asked, if my Lord *Macclesfield* asked him any Questions about his Ability?

Mr. *Lov.* No, my Lord did not ask me any Questions about my Ability.

Dr. *Sayer.* I desire he may be asked, whether at that time he did not believe, that all the Masters were sufficient and able to make good their Accompts?

Mr. *Lov.* I did believe so, from what Discourse I heard pass among themselves. I had no Knowledge of their Affairs, or of their Estates.

(*Mr.* Edwards *called.*)

Mr. Serj. *Peng.* My Lords, I desire Mr. *Edwards* may give your Lordships an account of what passed at this meeting at his House?

Mr. *Edw.* My Lords, I received a message from Mr. *Cottingham*, to know if I would give Leave for the Masters to meet at my House? To which I consented. Some came before Mr. *Cottingham*, and asked me if I knew what this meeting was about; I could give them no Account of it. Mr. *Cottingham* soon after came, and the rest of the Masters. Mr. *Cottingham* said, he had two or three matters to lay before them; One was, whether we were willing that our Bonds and Securities should be inspected by my Lord Chancellor, or by any Person he should appoint? Every body consented hereto. I think, another thing was, My Lord Chancellor thought it proper, we should carry our Accompts to the Council: There were some objected to that, and we thought it not proper; and the Conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the Council.

Mr. Serj. *Peng.* Was that all that was offer'd at that meeting?

Mr. *Edw.* Really I don't know but that there was a third thing mention'd. I can give you but a very imperfect Account of this meeting; and that for this reason; it was not thought proper that my Servants should come in, and they oblig'd me to go often out, which I did; and afterwards I heard the chief Substance of this meeting. And I remember, that after I had heard the main matter, I said, Gentlemen, the chief Consideration is to get your money ready as soon as you can; I think the intent is plain to get the money away from you.

Mr. Serj. *Peng.* Whether do you remember any Advice that was then given, relating to the making up the Balance?

Mr. *Edw.* No, my Lords, I do not remember: I heard something afterwards by the Masters, about producing Notes; but if any thing was mention'd about it, it was when I was out of the Room.

Mr. Serj. *Peng.* Whether on the 10th of *November* you was present at the Earl of *Macclesfield*'s?

Mr. *Edw.* Yes, my Lords, I was.

Mr. Serj. *Peng.* Look upon that Accompt and Subscription.

(*Mr.* Edwards *looks upon it.*)

Mr. Serj. *Peng.* I desire he may be asked, what Subscription he first made when he gave it in, and whether any Alteration or Addition was made by him afterwards?

Mr. *Edw.* Some of the Masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my Accompt before I came there: So I went into a Room, and writ this that was first writ: '*My Lord*, I am ready and willing the Securities in the fore-'going Accompt mention'd shall be inspected by such Person or Persons 'as your Lordship shall be pleased to appoint.

H. Edwards.'

Mr. Serj. *Peng.* What other Subscription was made after that?

Mr. *Edw.* After I had made this Subscription, I carried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subscription, did not seem to approve of it: But he thought Mr. *Holford*'s more proper, and desir'd me to alter it, that all might be as Mr. *Holford*'s was.

was. I then went out of the Room, and tranſcribed the Subſtance, if not the Words of Mr. *Holford*'s upon my Account, and then I delivered it to my Lord again.

Mr. Serj. *Pengelly*. Read that Subſcription.

Mr. *Edwards* reads.] 'The ſeveral Sums of money and Securities men-'tion'd in this Account, are what have come to my Hands ſince I was ad-'mitted a Maſter, ſeparate from what were in the Hands of Mr. *Dormer* 'during the time he was a Maſter (the account whereof, by reaſon of the 'Shortneſs of time, I have not been able to ſettle; but will as ſoon as 'poſſible), and for which I am ready to procure Certificates from the ſe-'veral Companies and Offices, if your Lordſhip requires it. And as to 'the Money, I am ready to pay it to every Perſon lawfully intitled there-'to, having a proper Diſcharge for the ſame.'

Nov. 10. 1724. *H. Edwards.*

Mr. Serj. *Probyn*. My Lords, if they have done with this Witneſs, I deſire he may be aſked, if he was not ready to pay his Balance according to his Subſcription?—Mr. *Edwards*. Yes, I was; I could have paid it in a Week ſooner than the time required.

[*Mr.* Conway *called.*]

Mr. Sol. Gen. My Lords, I deſire that Mr. *Conway* may give your Lordſhips an account, whether he was at this meeting?

Mr. *Conway*. My Lords, I was preſent at the firſt meeting at Mr. *Edwards*'s Houſe, when Mr. *Cottingham* deliver'd my Lord Chancellor's Command, that we ſhould provide and prepare our Accounts: But nothing more happen'd during the time of my ſtay at that meeting: I went away immediately. At the ſecond meeting Mr. *Cottingham* and Mr. *Dixon* were there: Mr. *Cottingham* had a great Cold; and, as I remember, there were two Propoſals made: The firſt was in relation to our Bonds and Securities; and the ſecond was in relation to the Money and Caſh. After every Maſter had deliver'd his Opinion to theſe Points, Mr. *Cottingham* and Mr. *Dixon* went to wait upon my Lord Chancellor with an account of what the Maſters had ſaid; and before they came back, I was gone.

Mr. Serj. *Peng.* I deſire he may be aſk'd, whether at that time, when it was propos'd to the Maſters to produce their Caſh, they ſaid they were able to do it?

Mr. *Conway*. Every Maſter deliver'd his Opinion as he thought fit. Mr. *Lightboun* merrily ſaid, If we produced Goldſmiths Notes, and they ſhould be ſecured, the Goldſmiths Shops would be ſhut up, and People would be enquiring what Holiday it was. Mr. *Kynaſton* made ſome Obſervations; every one ſpoke as they thought fit.

Mr. Serj. *Peng.* I deſire he may be aſked, whether they all declared, they were able and ready to make good their Accounts?

Mr. *Conway*. I think they all did.

Mr. Serj. *Peng.* Whether to produce their Effects or their Caſh?

Mr. *Conway* I am not ſure, whether it was mentioned Caſh or Effects; we made no Diſtinction at that time between Caſh and Effects.

Mr. Serj. *Peng.* I deſire he may be aſked, whether he himſelf declared, that he was able and ready to produce his Effects?

Mr. *Conway*. I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects.

Mr. Serj. *Peng.* Whether there was any, and what Advice or Inſtruction given, relating to their aſſiſting of one another?

Mr. *Conway*. No ſuch thing happened while I ſtaid there.

Mr. Serj. *Peng.* I deſire it may be aſked, whether Mr. *Conway* at any time afterwards borrowed any money of any of the Maſters, and of whom?

Mr. *Conway*. The firſt time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the ſame time, without borrowing a Farthing from any Perſon: Before the Securities were gone through, and the Account of my Effects taken, it was obſerved, that the ſame was liable to Objection, as conſiſting of Land, Mortgages, Bonds and Notes, and things of that kind. And before I went, I was told, that ſome of the Maſters had taken an Oath; I deſired to know what that Oath was? It was anſwered, that it was a voluntary Oath; and I ſaid, I could only ſwear, that I had Effects to anſwer, and that I would endeavour to turn thoſe Effects into Caſh; and ſo withdrew.

Mr. Serj. *Peng.* I deſire he may be aſked, whether he borrowed any money?

Mr. *Conway*. Some time after this I waited upon Mr. *Godfrey*; and before I came away, he aſked me if I had any Bonds? I told him I had; then pray, ſays he, let me have what you can ſpare, and ſend them immediately: Whereupon I went Home, and ſent him 5000 *l.* *India* Bonds. Some Days after that, I expected Mr. *Godfrey* to return me the Favour; and I carried to him Effects to (as I apprehend) the Value of 6 or 7000 *l.* or more; and I deſired him to lend me Bonds, and he ſeemed unwilling without the Security; and he kept the Security.

Mr. *Lutw.* He hath not anſwered to thoſe Queſtions, whether he borrowed money, and what Sums?

Mr. *Conway*. Mr. *Godfrey* lent me upon the Bonds 9000 *l.* and Mr. *Bennet* 2000 *l.*

Mr. *Lutw.* Only to purſue this Queſtion, I deſire to know, whether the Securities were turned into Money, or into Notes?

Mr. *Conway*. Yes, my Lords, they were turned into Notes.

Mr. *Lutw.* I deſire he may be aſked, whether they were lock'd up, or he did take them back again?—Mr. *Conway*. I took them back again.

Mr. *Lutw.* What became of them afterwards?

Mr. *Conway*. Some of them I paid off, others I returned to the Perſon that had advanced me money on thoſe Bonds.

Mr. *Lutw.* I take it, he ſays, he had the Effects that produced thoſe Notes from Mr. *Godfrey* and Mr. *Bennet*; therefore I deſire to know, what became of thoſe Notes after he carried them back from the Judges?

Mr. *Conway*. I returned them to the Perſon that had advanced me the Notes on thoſe Bonds.

Mr. *Lutw.* Who was that?

Mr. *Conway*. The Goldſmith, Mr. *Rogers*, at *Temple-Bar*.

Mr. *Plummer*. I deſire to know when he returned thoſe Bonds again?

Mr. *Conway*. In a few Days after.

Mr. *Lutw.* My Lords, it may be neceſſary to examine how it was that he perſuaded the Goldſmith to let him have thoſe Notes?

Mr. *Conway*. I gave him Bonds for them.

Mr. *Lutw.* Whether were thoſe the Bonds that you had from Mr. *Godfrey* and Mr. *Bennet*?—Mr. *Conway*. They were.

Mr. *Lutw.* Whether they were not delivered to the Goldſmith in the Nature of a Pledge for thoſe Notes?—Mr. *Conway*. Yes, they were.

Mr. *Lutw.* What became of the Bonds?—Mr. *Conway*. I return'd them.

Mr. *Lutw.* To whom?—Mr. *Conway*. To Mr. *Godfrey* and Mr. *Bennet*.

Mr. Serj. *Peng.* When he carried back the Notes to the Goldſmith, at that time, whether he took up the Bonds?—Mr. *Conway*. I did.

Mr. Serj. *Peng.* As I apprehend, he ſays, he had lent Mr. *Godfrey* 5000 *l.* *India* Bonds, and in return he expected that Mr. *Godfrey* ſhould aſſiſt him; I deſire he may be aſked this Queſtion, whether the 5000 *l.* in *India* Bonds he ſupplied Mr. *Godfrey* with, was after or before he produced his Caſh to the Committee?—Mr. *Conway*. After.

Mr. Serj. *Peng.* Was it before *Godfrey* had done it?

Mr. *Conway*. After he had produced his Securities.

Mr. Serj. *Peng.* Was it before or after he had produced his Caſh?

Mr. *Conway*. It was after he had produced his Securities, and before he had produced his Caſh.

Mr. Serj. *Peng.* My Lords, we think it will be very neceſſary to lay before your Lordſhips a General State or Account of the total Deficiency; to ſhew how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the ſeveral Offices amount to; and we apprehend, that we are able likewiſe to give an Account of ſome additional Deficiencies that have been diſcovered ſince. I apprehend, there was at that time near 100,000 *l.* Deficiencies.

Mr. Serj. *Probyn.* I deſire he may be aſk'd, whether at that time, when he wrote the Subſcription, he was able to pay the Balance of his Account?

Mr. *Conway*. I was, in Effects I had, and I ſaid no otherwiſe.

Mr. *Sandys*. I deſire he may be aſked, if my Lord *Macclesfield* aſked him as to his Ability?—Mr. *Conway*. No, my Lords, he did not; to my remembrance he did not. I deliver'd my Account to Mr. *Cottingham*.

Mr. Serj. *Peng.* I deſire he may be aſked, what Deficiency there remains upon his Office; whether he can recollect how much it is?

Mr. *Conway*. My Lords, I believe it is 13,000 *l.* my Charge, of which I can take off ſomething in my Poſt-Account.

Mr. Serj. *Probyn.* I deſire he may be aſked, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway*. Yes, my Lords, I am.

Mr. Serj. *Probyn.* Whether he hath made any Conveyance of any Eſtate as a Security for it?—Mr. *Conway*. I have.

Mr. Serj. *Peng.* I deſire he may be aſked, whether any thing, or how much, hath been rais'd out of that Eſtate?

Mr. *Conway*. It is made ſo very lately, that I don't know that any thing hath been raiſed ſince: It is but a few Days ago that it hath been made.

Lord *Lechmere*. My Lords, I would be glad to know, as there is a Balance of 13,000 *l.* whether he ſtands indebted to any other Perſons but to the Suitors of the Court, and to whom?—Mr. *Conway*. No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Lutw.* I ſhould be very glad if Mr. *Conway* could extricate himſelf out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Eſtate, that is to be made good?

Mr. *Conway*. It is to be made good by an Eſtate in Land.

Mr. *Lutw.* I deſire to know, whether that Eſtate is ſettled, whether it was not ſettled upon his marriage?

Mr. *Conway*. It was never ſettled on my marriage. I was Tenant in Tail, and my Wife and Son joined with me in levying a Fine.

Mr. *Lutw.* Whether it is not ſettled by Will?

Mr. *Conway*. I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joined with me.

Mr. *Onſlow*. What Intereſt had your Son in it?

Mr. *Conway*. No Intereſt, as I apprehend; but I thought it was neceſſary he ſhould join, to take off all Difficulties and Objections to the Title.

Mr. *Onſlow*. Whether there are no Annuities charged upon that Eſtate, and what they are?

Mr. *Conway*. There are no Annuities charged on that Eſtate.

Mr. *Onſlow*. No Payment to the Mother?

Mr. *Conway*. There is, out of another Eſtate.

Mr. *Onſlow*. What are the rents of the Eſtate you have ſecured for the Payment of this money;—Mr. *Conway*. Between 5 and 600 *l.* a-Year.

Mr. *Onſlow*. Is that your Computation, or is it let at ſo much now?

Mr. *Conway*. I can't ſay it is all let ſo; there are ſome Demeſnes.

Mr. *Onſlow*. What are the Rents of that Part of the Eſtate that is let?

Mr. *Conway*. I take it to be 500 *l.* a-Year.

Mr. *Onſlow*. What, let at 500 *l.* a-Year?

Mr. *Conway*. Yes, or thereabouts.

Mr. *Onſlow*. Do you reckon the whole Eſtate to be worth 500 *l.* a-Year?

Mr. *Conway*. No, I don't reckon in the whole Eſtate, but only that which is conveyed for the ſecuring of this money.

Mr. *Onſlow*. Then I deſire to know what are the Rents of this Eſtate as it is let?—Mr. *Conway*. I take it to be 500 *l.* a-Year, or thereabouts, that is applied for, and as a Security to anſwer my Deficiency.

L. *Lechmere*. This 13,000 *l.* Balance is due to the Suitors, which he ſays is ſecured by this Eſtate: I would be glad to know how the Deficiency came, and what is become of this 13,000 *l.* that is due to the Suitors?

Mr. *Conway*. The Occaſion of it was, my coming into the Office coſt me to my Predeceſſor 6000 *l.* I paid beſides 1500 *l.* upon my Admiſſion, and 500 *l.* Contribution towards making good Mr. *Dormer*'s Deficiency.

Mr. *Onſlow*. How was the reſt of the Debt contracted? You have mention'd but about 8000 Pounds.

Mr. *Conway*. I believe I might, upon Account of my Brother, borrow 1500 or 2000 *l.* to ſatisfy his Account to the Crown.

Mr. Serj. *Pengelly*. Out of what Caſh did you repay it?

Mr. *Con.* I believe it might be out of the Office.

Mr. *Onſlow*. What is become of the reſt; how did you apply the Remainder?—Mr. *Con.* The Remainder; I can't tell but I might have ſo much due among my Acquaintance; I believe I may.

Mr. *Onſlow*. Did you then lend your Acquaintance out of the Suitors Money?

Mr. *Con.* I believe I might at Times lend Friends out of the Caſh that remained dead and uſeleſs, and becauſe I apprehended it was ſecure.

Mr. *Onſlow*.

Mr. *Onslow*. You say, you have lent to several of your Acquaintance out of the Suitors Cash; I would have you name any one Person to whom you have lent any of the money of the Office?

Mr. *Con*. I remember a noble Person, if it is proper to mention his Name, to whom I have lent 2600 *l*. he is now dead.

Mr. Serj. *Probyn*. I don't know whether your Lordships will not be pleased to confine the managers to examine only to the particular Articles they are now on.

Mr. *Onslow*. We are now upon the Article of the Deficiencies, and the Question hath been asked by the Counsel for the noble Lord, whether this Deficiency can be made up by Mr. *Conway*? Therefore it is proper to know, whether this Deficiency is likely to be made up, and to know where the money is, and therefore I would ask who this six-and-twenty hundred Pounds was lent to?

Mr. Serj. *Prob*. My Lords, I submit it whether that Question be proper, because Mr. *Conway* hath given Land Security to make good this Deficiency; and therefore it is not material for your Lordships Judgment, to enquire how this Deficiency happened.

Mr. *Lutwyche*. I am very sorry to lay before your Lordships the Reasons and the Order upon which he was committed. I apprehend it extremely material upon this Point, and ariseth from what the Counsel for the noble Lord have entered into themselves; for they have asked, whether he was able to make good his Deficiency: Now is it not proper for us to ask the particular Circumstances to find out the Truth, whether he is so or not? Therefore I beg leave to ask one Question, not waving the other, whether he hath assigned over all his Debts that he could to make good his Deficiency?—Mr. *Con*. I have assigned over all my real Estate.

Mr. *Lutw*. Whether he hath assigned over this 2600 *l*. due to him?

Mr. *Con*. That is applied.

Mr. *Lutw*. Applied, How?—Mr. *Con*. Applied amongst my Causes.

Mr. *Lutw*. Did he lend a Nobleman a Sum of money, and apply it to a Cause?

Mr. *Con*. That Sum of money you were pleased to enquire after, I applied to a Cause.

Mr. *Onslow*. He said he lent a Sum of money, &c. I desire he may be asked, who this 2600 *l*. was lent to?

Mr. *Con*. I was applied to by a Nobleman to lend him the Sum of 2600 *l*.

Mr. *Onslow*. By whom was you applied to?

Mr. *Con*. By my Lord *Bulkeley*, and accordingly it was advanced to him, and it is since applied in a Cause.

Mr. *Onslow*. Applied, How?

Mr. *Con*. Applied in a Cause, with the Approbation of the Parties.

Mr. *Onslow*. Hath it been repaid?—Mr. *Con*. No; it is applied in a Cause of a Suitor, and now it remains as Security.

Earl of *Abingdon*. I am so nearly related to that noble Lord that is mentioned, that I must do that Justice, as to put Mr. *Conway* in mind, as I did Mr. *Hiccocks* before, that if any Question is asked him, which may personally subject him to any Penalty, or, as he hath the Bar-Gown, may concern his Client, he ought to be left to his Discretion, whether he will or will not answer.

Lord *Lechmere*. A Person is not obliged to answer any Thing that may criminally affect him; but where the Enquiry is after a Debt, in order to explain his Oath as to this Sufficiency, which is the matter of Debate, surely that is material, and ought to be answered to; and I desire to be informed, whether this 2600 *l*. which he said was lent this noble Lord out of the Suitors money, was repaid to him by my Lord *Bulkeley*, and when?

Mr. *Con*. It is not repaid. It is applied in a Cause; the Parties have approved of it as a Security.

Lord *Lechmere*. When was this money in the Hands of my Lord *Bulkeley* applied to the Benefit of any Suitor, and by what Order or Authority?

Mr. *Con*. It is some time since, some months ago, five or six months ago.

Lord *Lechmere*. Was this by any Order of the Court of Chancery?

Mr. *Con*. No, my Lords, by the Approbation of the Parties.

E. of *Mac*. My Lords, if you please to give me Leave, I would suggest something that possibly may help towards the better understanding him. If my Guess be right, this relates to his Post-Accompt. He hath said his Charge is 13,000 *l*. And he hath said, he could discharge 2000 *l*. or more, of that Balance by a Post-Accompt; now I apprehend this he is speaking of now, is that Article of the Post-Accompt. I don't know if I guess his meaning right, but I desire he may inform your Lordships, in case it be otherwise.

Lord *Lechmere*. It may be for your Information to know who are the Persons to whom this is applied; that it may be known whether it is in the Post-Accompt or not?

Mr. *Onslow*. My Lords, we desire first to know what Security my Lord *Bulkeley* gave?——Mr. *Con*. He gave a Bond and Judgment.

Mr. *Onslow*. Who is it you have applied the Security to?

Mr. *Con*. It is in the Cause of *Faulconberg* contra *Faulconberg*.

Mr. *Onslow*. Do you reckon this Part of the 13,000 *l*. now deficient?

Mr. *Con*. No, I do not reckon it in that Sum.

Mr. *Onslow*. Your Lordships will please to recollect, that his Deficiency is 13,000 *l*. We ask him how that Deficiency came; he hath given your Lordships an Account of 10,000 odd hundred Pounds; and first said the Residue was in the Hands of his Acquaintance, and named 2600 *l*. money of the Suitors to be in the Hands of my Lord *Bulkeley*; now he saith this last Sum is not Part of the 13,000 *l*. Therefore now I would ask, how the Remainder of his deficient money was applied, or how the Debt happened?

Mr. *Con*. If my Lords will please to give me leave to explain it: As to the Remainder of the 13,000 *l*. you have been pleased to reckon 10,000 odd hundred Pounds to be made out; then there is 2100 *l*. odd money I have laid out in Land, which I have since conveyed, which makes 12,000 odd hundred Pounds; and the rest I have in Bonds and Notes, which I have to make up the Residue.

Mr. *Lutwyche*. I desire he may be asked, whether he hath those Notes, and they are ready? I desire to know, whether they have not been paid into Court to make up his Deficiency?—Mr. *Con*. No, I humbly hope to have it allowed me on my Post-Accompt, being applied in the foresaid Cause with Approbation of the Parties.

Mr. *Onslow*. We have done with him; and leave him to your Lordships Observation.

(Mr. *Thompson* called.)

Mr. Serj. *Pengelly*. My Lords, we beg leave, that Mr. *Thompson* may give your Lordships an Account, upon the Inspection and Examination of those Accompts, how much the Deficiency of the several Masters amounted to?——Mr. *Thompson*. So much as the several Masters stood charged with by their own Accompts, and did not lock up or produce proper Securities for, I account a Deficiency; and by this Rule I have collected the Deficiencies of the several Masters, from the Reports made to the Committee of Council.

Mr. *John Bennet*'s Deficiency amounts to *L*. 17,541 : 15 : 10.

Mr. *Conway*'s Deficiency in his Cash only amounts to *L*. 10,039 : 4 : 4½, but Mr. *Conway*, while his Accompts were under Examination, sold 2000 *l*. South-Sea Annuity, and 3500 *l*. South-Sea Stock; and of the Money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than *L*. 2593 : 9 : 3. so that his Deficiency is increased by the Sum of *L*. 3550, somewhat more or less, according to the Price he sold at.

Mr. Serj. *Prob*. Was what he sold Part of the Suitors Security?

Mr. *Thompson*. Yes,——Mr. *Knaston*'s Deficiency amounts to *L*. 26,908 : 11 : 3½.

Mr. *Thomas Bennet*'s Deficiency amounts to 9075 *l*.

The Total of the Deficiency of the present Masters is *L*. 67,114 : 11 : 5¼.

The Charge that remained upon Mr. *Borret*'s Office, amounted to *L*. 56,050 : 10 : 1½: But Mr. *Bennet* and Mr. *Godfrey*, the Masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left would produce 44,000 *l*. and upwards; so that I compute the Deficiency of Mr. *Borret*'s Office at *L*. 12,050: 10: 1½.

The total Charge upon Mr. *Dormer*'s Office, when he resigned to Mr. *Edwards*, amounted to *L*. 49,604 : 11 : 11; but Mr. *Edwards* has paid, in Discharge of that Sum, the Sum of *L*. 23,725 : 15 : 9½. so that the Deficiency of Mr. *Dormer*'s Office amounts to *L*. 25,878 : 16 : 1½.

Mr. Serj. *Peng*. Whether in that is Mr. *Wilson*'s and Mr. *Poulter*'s Security included in *Dormer*'s Accompt?

Mr. *Thompson*. Mr. *Dormer*'s Deficiency I take to be *L*. 25,878: 16: 5½; and the whole Deficiency I take to be *L*. 105,043 : 17 : 8¾. And if any Securities or Sums of Money belonging to the Suitors are omitted in the Masters Accompts, such Securities and Sums are not included in this Estimate.

E. of *Mac*. Have you had before you the Administrator, either of Mr. *Borret* or Mr *Dormer*?——Mr. *Thompson*. No, my Lord.

Mr. Serj. *Peng*. My Lords, we shall beg leave to call one Witness to give your Lordships an Account of another Deficiency of 2000 *l*. upon Mr. *Conway*, which is not charged in his Accompt. We desire that Mr. *Saunderson* may be called.

(Mr. *Saunderson* sworn.)

Mr. *Lutwyche*. We desire that Mr. *Saunderson* may give your Lordships an Account of any money in Mr. *Conway*'s Hands, and how much it is, that is not brought to Accompt?

Mr. *Saunderson*. My Lords, I was concerned as a Solicitor in a Cause in Chancery, between Sir *Erasmus Norris* and *Alexander Norris*; soon after the Accounts were brought into the Register's Office, I went to look and see if Mr. *Conway* had charged himself with a Sum of money paid in in that Cause. I found by his Account that it was not charged. I had drawn up the Account, and given a Copy of it to Mr. *Conway*, which he did not deny, but he said, there was not so much by 1 or 200 *l*. Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omission not to mention the Cause or Sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him why he did not insert how much it was as he thought it? He said, because he would pay in all.

Mr. Serj. *Prob*. We desire he may be asked, how much the whole money in that Cause was?——Mr. *Saunderson*. *L*. 2274 : 8 : 11. besides Interest from Lady-Day last was Twelve-month.

Mr. Sol. Gen. My Lords, this is the Sum of the Account we had to lay before your Lordships of the Deficiencies, notwithstanding the Masters represented themselves as able to pay the whole. We would not represent it to your Lordships that this will certainly be the Loss, because some of the Masters have given Security for some Part; though we apprehend the Security given will not be sufficient for half.

E. of *Mac*. I desire to ask Mr. *Thompson*, whether this Charge he makes upon Mr. *Borret*'s Office be a Charge taken from the Office, or only an Account taken from Mr. *Meller*?——Mr. *Thompson*. This Charge was taken from the Vouchers which Mr. *Meller* produced.

E. of *Mac*. Are there any Payments allowed made by Mr. *Borret* in his Life-time?——Mr. *Thompson*. A great many.

E. of *Mac*. Who gave you an Account of that?

Mr. *Thompson*. Mr. *Meller*, my Lord.

E. of *Mac*. But I speak of the money paid by Mr. *Borret* himself, not what Mr. *Meller* paid. Have you any Account what Mr. *Borret* paid out himself?

Mr. *Thompson*. The Account we had of this was from one Mr. *Parker*, as I think his Name was, who was Clerk to Mr. *Borret*. He produced several Receipts for the Sums paid: And the Masters in Chancery, who had the Care of Mr. *Borret*'s Effects, allowed the Books and Papers produced by Mr. *Parker*, to be the Books and Papers belonging to Mr. *Borret*'s Office.

E. of *Mac*. As to the Effects belonging to Mr. *Borret*, who gave you the Account of them?—Mr. *Thompson*. Mr. *Bennet* and Mr. *Godfrey*.

E. of *Mac*. Do you know who is Administrator to Mr. *Borret*?

Mr. *Thompson*. I have heard that Mr. *Paxton* is.

Mr. *Nicholas Paxton*. Yes, my Lords, I took out Administration to Mr. *Borret* about the middle of *April* last.

Lord *Lechmere*. I desire to ask Mr. *Thompson*, whether the Computation he hath made of the several Deficiencies, amounting to an hundred and five thousand Pounds, is taken from the voluntary Accompts of the Masters delivered in, or whether any of the Suitors were concerned in those Accompts, or have been parties to such Computations?

Mr. *Thompson*. From the Masters voluntary Accompts only.

Mr. Serj. *Peng*. I beg leave to ask one Question, which arises from the Question, which the Lord within the Bar hath been pleased to ask, whether Mr. *Godfrey* and Mr. *Bennet* were not the Masters that appeared, and were

were employed under the Earl of *Macclesfield* at that Time, and had the Custody of the Effects of Mr. *Borret?*

Mr. *Thompson.* Mr. *Bennet* and Mr. *Godfrey* were the Persons that appeared to us to have the Care and Custody of Mr. *Borret*'s Effects.

Lord *Lechmere.* As to the Nature of these Deficiencies, I think he says, these Deficiencies arise upon the Cash Balance. Then I would be glad to know, whether in the Accompts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Balance arise upon the whole Balance, or are appropriated to any particular Suitors concerned in those Balances?

Mr. *Thompson.* No Part of the Cash Balance is appropriated to any particular Suitor.

Mr. *West.* My Lords, the Commons have now produc'd a very long, and as they apprehend, a very full and convincing Evidence, in maintenance of the Impeachment by them exhibited against *Thomas* Earl of *Macclesfield*, for High Crimes and Misdemeanors; and I am commanded to acquaint your Lordships, That they do not intend to trouble this House with any further Examination. But, my Lords, the Commons, considering the Length and Variety of the several Facts and Circumstances that have been offer'd, are of Opinion, It may be of Service to that Cause, in which their Zeal for public Justice has made them to engage, that the whole of what they have insisted upon or produc'd, shou'd in such manner, as I am able to obey their Commands, be shortly recapitulated and presented in one View to your Lordships Consideration.

The Charge in general, and the several Articles of it, have been fully open'd by those Gentlemen who preceded me upon this Occasion. The Witnesses who have been examined, and the other Evidence that has been read, have been fully considered, so far as they relate to those Particulars, that were the immediate Occasion of their being produc'd; I shall not therefore waste Time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole Evidence that has been given; but shall endeavour to reduce this long and various Examination to some general Heads, that may express the Substance of the general Articles, and then remind your Lordships of what I can recollect to have been most materially offer'd in Support of them. To this End, my Lords, I beg leave, in the first Place, to observe that strict Union and Connection there is between the Crimes of which this Earl stands charged. Your Lordships cannot but remark, that the Articles mutually support, and almost prove each other; so that if any one be admitted to be proved, it is difficult, if at all possible, to doubt the Truth of the rest.

A wicked and corrupt Design, and View to raise and procure to himself excessive and exorbitant Gain and Profit, was the fatal Principle from which all this Mischief sprung. It was this that prompted the Earl of *Macclesfield* to extort those large Sums of Money, which he received from the several Persons whom he admitted to the Office of Masters of the Court of Chancery. The *gratifying this Avarice* engaged his Lordship to neglect every other Consideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Persons of small Abilities, and every way unqualified for the Discharge of so great a Trust.——*This* oblig'd him to connive at, and permit the fraudulent Practice of paying the Excessive Price of their Places, out of the Money belonging to the Suitors of the Court.—*That* again, forc'd him to suffer, or rather to encourage the purchasing Masters to traffick and game with the Estates of the Suitors.—There was no other way by which these liberal Purchasers cou'd reimburse themselves.—And *this Circumstance*, even after it was apparent the Suitors were likely to lose a great Part of their Effects, reduc'd him to the unhappy Necessity of refusing to take those measures that were necessary to prevent that Practice for the future. And when the fatal Effects of this unbounded Liberty, which he permitted the Masters to enjoy, began to appear, then was he compell'd to become a confederate with the deficient Masters, to prevent its being known to the World.—From *hence* sprung the unequal Composition with *Wilson:* The partial Orders for the Payment of Money: The private Contribution to answer the most pressing Demands: And from *hence* his own Liberality to *Lockman.* But when all these Methods prov'd ineffectual, and he found the Cries of the Widows and Orphans had reach'd his Majesty, then, my Lords, did the Lord High Chancellor of *Great Britain* combine with these Masters, advise and persuade them to make false Representations of their Circumstances and Accompts, in order to deceive his Majesty, to frustrate his most gracious Intentions for the Good of his Subjects, and to prevent (what he most fear'd) a Parliamentary Inquiry.

These, my Lords, are the malignant Consequences of that Corruption of which the Earl of *Macclesfield* is accus'd; and which the Commons apprehend to be perfectly consistent with the whole *Tenor of his Actions*, during the Time of his being Chancellor.

The Commons began their Evidence with that Oath, which it was prov'd the Earl had taken, in consequence of the Statute of the 12 *Ric.* II. and which was administered in the usual and accustomed manner. I should not have reminded your Lordships of this Circumstance, if it was not for that unaccountable Attempt, to quibble away the Sanctity of an Oath, and to represent it as a meer Ceremony and Form, for no other Reason, but because it was read to him in *French*, and when he kiss'd the Bible, his Lordship and the Clerk said nothing to each other. They afterwards gave other Evidence, relating to such Profits as he had made of the Office of Chancellor, which he did not admit in his Answer. But I do not apprehend it necessary to mention them particularly to your Lordships.

The first general Head of Accusation against the Earl is, That he *Corruptly; Illegally, and Extorsively insisted upon, and received great Sums of Money, for the Admission of several Person into Offices, relating to the Administration and Execution of Justice.*

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his taking 100 Guineas from *T. Bennet* for permitting him to resign his Office of Clerk of the Custodies, and for procuring a new Grant of that Office to *Hugh Hamersley.*

The Commons chose to begin with this Article, not because they thought the Sum taken so considerable, as to have any great Influence upon the Judgment your Lordships may give upon this Occasion; but because the Fact discovers the Man, and fully explains what manner of Mind he must be endu'd with, who could stoop to an Action so low and sordid. This Article does of itself lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordship in his Answer gives himself a very different Character, and offers to

produce a Catalogue of his own Generosities. What Argument there would be in this, when produc'd, I cannot comprehend. I will therefore endeavour to save your Lordships that Trouble. I can admit even more than is desired: Instead of being Generous, I will suppose his Lordship (far from the Truth) to have been profuse: Yet still would it prove nothing: For surely, it is not a new Character in History, that even Squanderers should be rapacious.

To prove the Particulars of this Article, the Resignation of *Bennet* and the new Grant to *Hamersley* were both prov'd. And as to the Payment of the Money, Mr. *Cottingham*, who was Secretary to my Lord *Macclesfield*, and who, thro' the whole Course of the Evidence, appears to have been his great Agent and Confidant: He owns the Receipt of the hundred Guineas, and swears he paid 'em to the Earl, within a Day or two after he receiv'd them. He also owns the Consideration, for which this Money was paid, That it was for permitting *Bennet* to surrender his Place.—Were there no Evidence but *Cottingham* alone the Commons think they have sufficiently prov'd this Fact: But the Evidence of *T. Bennet* puts it beyond Contradiction, and makes it manifest, that the hundred Guineas were in a manner extorted.—He swears, soon after he was admitted a Master, he was desirous to part with his Place of Clerk of the Custodies; and to that End apply'd to *Cottingham* for my Lord *Macclesfield*'s Favour, and acquaints him with the Person, to whom he desired the new Grant should be made: *Cottingham* upon this speaks to my Lord, and some short time after tells Mr. *Bennet*, that neither my Lord nor himself knew *Hamersley.* Your Lordships may remember that the Earl, by his Cross-Examination, seemed to endeavour at some small Triumph upon this Circumstance. My Lords, it is not so wonderful, that *Cottingham* should not speak Truth, there is no giving Evidence to the Tone of the Voice, nor the Air and Manner in which a Conversation is carry'd on; more especially, if it be considered, that *Cottingham* was a Man who doubtless upon these Occasions would not have known his Father without the Mediation of Gold. *Bennet* was surpriz'd at this Speech, as well he might, when *Hamersley* lived next Door to *Cottingham.* However, *Cottingham* at last explain'd the Mystery, by letting him know, a Present *was expected by the Earl*, and *Cottingham* himself own'd, he did say the Earl *insisted upon a Present.*

Mr. *West* was here interrupted by the Earl of *Macclesfield*, who said, that *Cottingham*'s Words were not, That he insisted upon, but that he expected a Present. Upon which Occasion Mr. *Onslow* represented warmly to the Lords, that the Behaviour of the Earl was Irregular, and that the Managers ought not to be broken in upon while they were speaking. And then Mr. *West* went on.

My Lords, It is my Duty to represent the Actions of this Earl in the strongest Light; and the strongest Light is the justest Light. Upon Recollection I do not think the Word I us'd to be of Force equal to the Fact. My Lords, the Expectation of a Chancellor, communicated by a Secretary, to a new made Master, *is more than to insist.* But be that as it will; *Bennet*, in answer to these Expectations, represented the Hardship of being oblig'd to pay Money upon this Occasion, when he had so lately paid a very large Sum to the Chancellor; and by way of Argument told him, that when he came into the Place himself, he paid nothing; and his Brother told him, that Lord *Cowper* upon the like Occasion had taken nothing, because as that noble Earl said, nothing was due. At last, my Lord *Macclesfield* and his Secretary, being both inexorable, *Bennet* agreed to pay the 105*l.* After this Agreement was made, *Cottingham* acquainted his Lord with the Bargain, and then told *Bennet*, that the Earl agreed to it: But withal, that it was a great Favour he would take so small a Sum; and *Cottingham* at the same Time made this very remarkable Declaration, That if Mr. *Bennet*, would bring the 100 Guineas, he need take no further Trouble, for the Chancellor would apply to the King for leave for him to resign, and would take Care of the other necessary Steps. And accordingly the Bargain was executed in that manner. For Mr. *Bennet* knew so little of the intermediate Proceedings, that he has told your Lordships he knows not how, or by whom the Warrant came into the Hands of the Clerk of the Patents.

It is difficult not to feel some Indignation rise at the bare relating this meanness! Mean it would have been in any Man: But for a Peer of *Great Britain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor *so oblig'd and so dearly bought*, to prostitute so many illustrious Characters, in so low a manner as to become a Broker for the Hire of 100 Guineas, is astonishing! But, my Lords, when I consider that this Earl was at the same Time one of the Lords Justices of the Kingdom, in a Commission to execute some of the Functions of Majesty itself, I want Words to express such a Transaction in its proper Colours.

My Lords, I have mentioned the Evidence relating to this Point something the more particularly, because the Proof comes up to the express Words of the Statute of the 12 of *Ric.* II. and proves, as I apprehend, beyond Contradiction, that the Earl of *Macclesfield* disposed of this Place *for Gift and Brokage.*

Before I quit this Article, I beg leave to observe to your Lordships, that my Lord *Macclesfield* in his Answer insists upon it to be the Right of the Chancellors to accept Presents; and therefore owns he did in this Case *accept a Present.* But then he avoids, as he every where else does, the naming any particular Sum that *he accepted.* I would willingly ask, why this Precaution, if what he did was lawful and right? I would also observe, that there is something strangely equivocal in that Part of his Answer, where he denies he insisted on 100 Guineas, or any other Sum. This Answer both explains his extorsive Method of proceeding and almost demonstrates the Practice of it. For it is very remarkable his Lordship does not deny he insisted upon a Present in general, but only that he did not insist upon any particular Sum.

My Lords, your Lordships will find by the Course of the Evidence, that this Artifice of not naming a particular Sum was not peculiar to this Instance; but my Lord *Macclesfield*, whenever a Master's Place, or any other Place was to be sold, carefully avoided fixing the Price by demanding a certain Sum. No,—It was more gainful to set every Thing up to the best Bidder, and resolve never to dispose of any Office, till the sanguine Purchasers, by bidding on each other, were artfully screw'd up voluntarily to offer a Present, as his Lordship gently phrases it; but as the Commons think, they have prov'd the Fact to be, a *Corrupt and Exorbitant Price*, equal to the avaricious Wishes of the Seller.

The next Instance to which the Commons call'd Evidence, was the illegal Sale of several of the Offices of Masters in Chancery. Now, my

Lords, (not to be too minute in mentioning the Evidence) it is manifest from the Oath of Office, which they take, from the Commission granted to the Masters in Conjunction with the Judges, and from the Evidence given by Mr. *Meller*, relating to that subordinate Jurisdicton which they exercise, *That these Offices do relate to the Administration and Execution of Justice.*

My Lord *Macclesfield*, in his Answer to this Part of the Charge, industriously is silent as to the particular Sums which he received, altho' your Lordships will observe, that Payment of the individual Sums, charged in the Articles, has been proved by the Persons themselves who paid the Money. *Kynaston* and *Bennet* are express as to the Payment of 1500 Guineas each; Mr. *Elde* is positive as to his carrying to the Earl 5000 Guineas in a Dutch Basket; and Mr. *Thurston* swears, he left 5000 Guineas with Lady *Macclesfield*. Now, my Lords, as the Earl insists that it was a known Perquisite of the Great Seal to accept of Presents upon the admitting new Masters; why does he not own the Receipt of the several Sums with which he is charged? If it was a known and establish'd Perquisite, doubtless the Sum payable would have been as known and established. And this Consideration I apprehend to be the Reason of his Lordship's Caution. He could not but feel the Absurdity of his own Argument, and yet I will admit as much as his Lordship or his Counsel can desire upon this Occasion. His Predecessors possibly may have accepted small Gratuities from new Masters, *after* their Admission. Therefore *He* may publickly, and without any other Consideration, *sell* them to the best Bidder for the most he could get. My Lords, the Argument would have been just as good, during the Time that it was usual for the Gentlemen at the Bar to give New Years Gifts to the Chancellor, to prove he might have sold his Favours, and boldly suffered no one to plead before him, who would not farm his Practice, and pay the full Price of what it might be worth.

To support this *Imagination* of its being a common Perquisite of the Great Seal, my Lord *Macclesfield* does in his Answer aver, that every one of the Masters I have named, did *voluntarily, and of their own Accord*, send a Present to his Lordship *on Occasion* of their respective Admittances. How far it was a Present the Evidence I shall mention to your Lordships will fully explain. At present, I beg Leave to observe the Equivocalness of these last Words, *On Occasion of their several Admittances.* This was not accidental, but calculated on purpose to make the whole appear like a common and usual Perquisite. As the Words stand in the Answer, the natural Construction is, that these Masters *voluntarily* made the usual Present to his Lordship *after* they were admitted to their Offices: And yet the critical Sense of the Expression does not exclude the Payment of the money, even by way of Bargain, *before* their Admission. For even in that Case, the money may as truly be said to have been paid on *Occasion of their Admittance.* I should not have mentioned this Part of the Answer, if it was the only Instance of his Lordship's deviating from Truth. I should have imagined it to be an Oversight, of either his Lordship or his Counsel. But by the Observations that have been made by the Gentlemen who opened the several Articles; Contradiction, Equivocation, and (I wish I could not say) Untruth shine in every Part, and appear to be the predominant Qualities of the whole. My Lords, I mention this, not only as an Aggravation, but even as a Proof. For what Cause must it be that reduces a Man of the Abilities this Earl is known to possess, and of the Character *He* did once enjoy, to make use of such mean, such contemptible Arts? Arts! Unworthy a great man; unpractised by an innocent man, and, I doubt not, will prove useless to the Guilty.

The Fact upon the Evidence appears to be thus, *Kynaston*, *Bennet*, *Elde* and *Thurston*, all concur in this Circumstance, That they paid their money before they were admitted into their Offices. Mr. *Cottingham* also owns that he received the money of Mr. *Kynaston* and Mr. *Bennet*, and carried up the Basket of Mr. *Elde*, before any of them were sworn. All these Persons likewise agree, and *Cottingham* confirms their Testimony, that they apply'd to him as the proper Person to recommed them to my Lord *Macclesfield*, and to be informed of what Sum they must offer, in order to render themselves acceptable to his Lordship. The Evidence of *Kynaston* proves it to be a direct Bargain, for he swears, when he acquainted *Cottingham* of his having agreed with *Rogers* for the Purchase of his Place, that he offer'd but 1000 *l.* as a Present to the Chancellor: Upon which *Cottingham* said, He would not mention to my Lord any Sum under 1500 *l.* and when *Kynaston* agreed to give that Sum, *Cottingham* again represented that it must be Guineas, upon which the 1500 Guineas were paid.

Mr. *Bennet*, he says, that when he had agreed with Mr. *Hiccocks*, he also applied to *Cottingham* to know what Sum was necessary to be paid the Earl. *Cottingham* agreed that a Present was necessary, but he would not name the Sum. Upon this, after *Bennet* had consulted with his Brother and Mr. *Godfrey*, he again went to *Cottingham*, and offered 1000 Guineas; but *Cottingham*, dissatisfy'd with this, shook his Head, and said, *He would not go to the Chancellor with that Sum; a great deal more had been given, and he hoped he would not lower the Price. Bennet* however still press'd *Cottingham* to offer the 1000 Guineas; to which *Cottingham* replied, There was *no haggling with the Chancellor; and that if he would not give more, he might be absolutely refused, and lose the Place. Bennet*, struck with this Reply, agreed to give the 1500 Guineas, tho' *Cottingham* graciously told him, he need not bring it in money, for Bank Bills would do as well. I cannot help observing, that there was a strange Caution used as to the Payment of this money, altogether inconsistent with the Nature of an established Fee, or regular Perquisite. Mr. *Bennet* sent his Clerk to take out the Bills in a feign'd Name, and for this Reason, because otherwise they could not so easily be parted with. *Cottingham*, it seems, was something jealous of a man, who had the Confidence to persist so long in offering but 1000 Guineas, and therefore the first Word he said to him, when he repaired to the Chancellor to be sworn in, *Have you brought the Money? Bennet* answered like a man, who perfectly well knew the Family, He should not have ventur'd to have come without it. Upon this the money was paid, the Master was sworn, and the whole Bargain fully executed.

These kind of Bargains were now become so much the Subject of common Discourse, that the Earl thought it necessary to be something more cautious, and even *Cottingham* was not now to be so much in the Secret as formerly. Mr. *Elde* applied to the Chancellor himself, and without any Ceremony offers his Lordship 5000 Guineas for this judicial Office. The Earl, it seems, was not at all offended with this Liberty, but answered with the engaging familiarity of a great man; *Thee and I must not make Bargains. I will treat thee in a different Manner from others.* My Lord *Macclesfield* was as good as his Word, for upon this *Elde* went to the Secretary, and offered him 5000 Guineas, and he reported to his Lord what passed: So that *Cottingham* was not dismissed this Service at once; and the matter was so far agreed, that Mr. *Elde* went in a Chair to the Earl's House, with his Basket in which he swears, he put 5000 Guineas, and delivered it to *Cottingham*, who carried it up to his Lord: But at the same Time he swears, he did not know what was in it. Upon this *Elde* was introduced, and sworn into his Office. Your Lordships will observe that the BASKET was no Part of the *Bargain*, and therefore the *scrupulous Earl return'd it back to him empty.*

The last Person examined as to this Point, was Mr. *Thurston*, and *He* also was treated in *a Manner different* from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine enough to expect he should have the Place. But, my Lords, before he was recommended, Mr. *Thurston* likewise apply'd to *Cottingham*, and offer'd 5000 Guineas. *Cottingham* said he would report; but he was not trusted to return an answer.—In the mean Time Care was taken by the artful spreading of Rumours, That Mr. *Thurston* should hear the Chancellor intended to give the Place away to another Person. Alarm'd at this, and seeing all other methods of Recommendation avail'd nothing, he applied to my Lady *Macclesfield*; and after using several Arguments to no Purpose, *As that his Name had been printed in the publick News to be the succeeding Master; That Persons applied to him for the Business of the Office; and that his Reputation and Character depended on his Success:* He at last told her he did not expect to have the Place for nothing, and therefore he left Bills for five thousand Guineas upon the Table, and so retired. These he found were the best Arguments, and the best Recommendation; for within two or three Days after he was sworn into the Office. This new Way of Proceeding, deceived even *Cottingham* himself so much, that he even scrupled to take his own Fees. I know not whether I ought to mention any other Particulars; but by the Questions put to the Witnesses, when they were cross-examined, it seems as if his Lordship would persuade you, that this was entirely a Transaction between Mr. *Thurston* and my Lady *Macclesfield*, and in which he was in no wise concerned. If your Lordships can believe that the Earl intended really to give away this Place for nothing, the Earl will be fortunate: For Mr. *Thurston* himself own'd, he did not think he should have had the Place, if he had not left the money.

I have repeated this Part of the Evidence more fully to your Lordships, because, as I apprehend, it clearly explains the Earl's artful methods of Extortion, and also proves that in this whole Proceeding, *The Money, instead of being voluntarily given, was unjustly extorted, and that instead of being a Present or usual Perquisite, it was an illegal and corrupt Bargain and Sale of Offices, relating to the Administration and Execution of Justice.*

The last Thing I shall mention to prove this Point is an Evidence, to his Lordship, most unexceptionable, I mean the Earl of *Macclesfield* himself; for, my Lords, consider once more his Answer in Relation to this very Point. What Caution! What Equivocation! What Confusion of Mind! That could make him even forget the Time of his own Impeachment. What other Circumstances of Guilt! That during the Course of this Trial have been visible to your Lordships.—Bank Bills taken out in feign'd Names, the Secrecy with which the money was paid, the dead Silence as to the Price agreed: One five thousand Guineas in a Basket; another five thousand Guineas left on a Toilette; and lastly, His own Declaration to the Masters almost in a Body; How much they, how much himself might be affected: I submit to your Lordships what Inference is to be drawn from all these Particulars. The Commons are persuaded all flowed from this Principle, That his Lordship, the Masters, the Seller, and the Buyer, were all conscious that the whole Transaction was illegal and corrupt.

Before I quit this Head of the Charge, I must take Notice of that Part of his Lordship's Answer, wherein he hopes that the receiving Presents on such Occasions is not criminal in itself, or by the Common Law of this Realm; and that there is not any Act of Parliament whatsoever, by which the same is made Criminal. I hope his Lordship intends that the Words, *Or by the Common Law of this Realm* should be understood as Explanatory of the Expression, *Criminal in itself*; otherwise it supposes a a very strange Distinction. For surely an Action cannot be conceived to be *Criminal in itself*, and at the same Time *not contrary to the Common Law of this Kingdom.* Is it possible for any one to imagine, that Corruption in the Officer is not the necessary Consequence of being obliged to purchase his Place? This is *in Terminis* the Reason of the Statute of *Edw.* VI. Is it possible for any one to imagine, that Oppression of the Subject must not be added to this Corruption? Or, can the Man, who sells these Places, with no other View than to satisfy his own Avarice, retain his Integrity, and be a severe or competent Check upon the Actions of those Officers, to whom he has sold? And that is the Reason of the Judgment reported by *Moor*, viz. *That the Sale of Offices is* Malum in se, *and therefore fineable.* But when, to what I have now said, I add the Consideration of the Oath enacted by the *Statute* 12. *Rich.* II. (his Lordship will be pleased to add his own Opinion and Apprehensions), I do not conceive it possible to doubt, but that the *Sale of Offices relating to the Administration of Justice, is criminal in itself, criminal by the common Law, and criminal by Act of Parliament.*

Moor, 781. *Stockwith* and *North.*

The next Point to which the Commons gave Evidence, is the necessary Consequence of what I last mentioned: I mean the admitting Persons to the Office of Masters, who were of mean Substance, and every way unqualified for that Trust. The Evidence given of the Deficiency, now in several of those Offices, is so full and uncontestable, that I shall avoid the Repetition of it, and only just name Mr. *Thompson*, and refer your Lordships to the Report made to the Council, the Orders of the Court of *Chancery*, and the other Papers now upon the Table. Their being deficient at this Time is a violent Presumption, and that, in Point of Law, is some Degree of Proof, that they were of small Substance at the Time of their Admission. How else is it to be conceiv'd that Masters, who have been so short a Time in their Offices, should be so much in Arrear? *Kynaston* was admitted but in *August* 1721, and in 1724 there appears a Deficiency of 26,908 *l.* *T. Bennet* is admitted but in *June* 1723, and in little more than a Year there is a Deficiency of 16,075 *l.* And it is remarkable,

markable, that both these Masters have sworn, all they were owners of in the World, was not sufficient to have paid the vast Prices they gave for their Offices. Yet these Men were chosen out to be trusted, one with near 50,000 *l.* and the other with near 100,000 *l.* of the money belonging to the helpless and the miserable. By the skill my Lord *Macclesfield* shew'd the other Day, in endeavouring to prove a Man illegally worth 1000 *l.* or 1500 *l.* who had own'd himself to be worth nothing; your Lordships may see it was not want of Knowledge how to make an Inquiry, that made his Lordship neglect it. It was because he never once concern'd himself, whether they had Substance or not. The Sum he himself was to receive, *was his only Consideration, and therefore his only Care*; for as Mr. *Bennet* has expressly declared he never once asked him, either before or after his Admission, any one Question in order to be inform'd of his private Circumstances.

And yet, my Lords, these are the Men whom his Lordship, as Mr. *Waller* has particularly sworn, thought fit in open Court, and while he was sitting in the sacred Seat of Truth and Justice, to declare *Men of as great Fortune, Abilities and Skill, as had ever sat in that Court.* I much more readily concur in the Truth of the other Part of his Lordship's Declaration, and proved by the same Witness, *That he had great Satisfaction in the having admitted most of the Masters himself.* The Reason Mr. *Waller* gave, in Answer to some quibbling Questions of his Lordship's, for his particularly remembring this remarkable Speech, is clear and convincing to every Man; *That the Astonishment he was struck with at the Hearing made him to remember it.* And happy would it be for his Lordship, was it possible ever to be forgotten!

But what could make the Earl of *Macclesfield* break out into this Panegyrick? A Reason so mean, and at the same Time so gross, that I almost wonder even his Lordship would venture to act upon it in Public. A Day or two before this happened, a Master died, and a new Purchaser was to be invited.

I have just now mentioned the Satisfaction his Lordship had in the Sale of these Offices. The Effect of which was, that the Earl connived at and permitted the unjust Method that was practised, for the purchasing Masters to pay the Price of their Offices out of the money belonging to the Suitors of the Court. This Practice the Commons charge to have been notorious, and the Evidence produc'd to your Lordships proves that it was so. *Godfrey*, *Conway*, *Kynaston*, and *Bennet* swore, that this Circumstance induc'd them to become Purchasers; and indeed as to them, the Fact proves itself, even tho' they had not sworn it to be so. For they have both own'd, they were not able to buy without it; nay, they were so low that even the fifteen hundred Guineas, they paid the Earl himself, was out of the Suitors money. And thus far the Earl of *Macclesfield* himself has own'd in his Answer. But alas! That would prove nothing, if it was not accompanied with a Fact, that cannot be disbelieved; *My Lords, He has repaid the Money!*

After this, I think, I need not repeat the Evidence so minutely as to explain the particular method in which this Fraud was transacted: The whole seems obviously calculated for no other End or Purpose, than to induce Persons of small Abilities to become Purchasers, by facilitating and making easy the method of Payment. And indeed it was so easy, that I wonder his Lordship did not meet with Persons, who would agree to give one half of the money for an opportunity of running away with the other; and if they had, I do not see but his Lordship's Defence would have been just as good as it is now. Such a Price might with as much Reason be called a Perquisite, as his condescending to take but five or six thousand Guineas, when no one would give more. It is true my Lord *Macclesfield* does in his Answer say, that he was ignorant of this Practice. But I apprehend his Lordship to be as much mistaken in this, as he has been in other Particulars: For, my Lords, it appears by Mr. *Bennet*'s Evidence, that he not only knew of this Practice, but endeavoured to conceal it.

It happened, that when this Mr. *Bennet* delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; *Item, In the Hands of Persons of Ability and Honour*, 9075 *l.* My Lord *Macclesfield*, at sight of this Particular, asks him the Reason of it; Mr. *Bennet* explains it, That as to 1575 *l.* he meant his Lordship, and as to the Residue, Mr. *Hiccocks*, of whom he bought, had detained so much of the Suitors money in his Hands, by way of Payment for his Place, and at the same time he complained to his Lordship of the Hardship with which he had been us'd. The Consideration that induced him to give so large a Price, was his being immediately to receive a very large Cash; and yet the first time he waited on Mr. *Hiccocks* for that purpose, he could get but 1500 *l.* and that upon the hard Terms of giving a Receipt for 9000 *l.* During this Conversation, *Bennet* swears the Earl said, with some Concern, *That his Accounts were made up the worst way in the World, for every Body would now judge, that what he paid for his Office came out of the Suitors Money, and that what had been so much suspected would be now discovered, and what he himself had taken so much Pains to deny, whenever he was asked the Question.* After this his Lordship and *Bennet* enter into a serious Consultation, how to make up this Affair. The Chancellor bids him go to Mr. *Hiccocks*, to try what he would do. But it seems he could not be brought to do more, than to lend 2000 *l.* which *Bennet* absolutely refused, and insisted upon its being *given him, or not at all.* He reported this to the Earl, who displeas'd at it, said, *Hiccocks* should pay 2000 *l.* and that he himself would repay the 1575 *l.* but it should be in such a manner, as that *Bennet* should not know in what manner it was done. Most profound politics this! *Bennet* afterwards told your Lordships, that he found the Earl intended to trick him out of this money; for several Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordships certainly observ'd, that my Lord *Macclesfield* was very much offended with Mr. *Bennet*'s Evidence, and therefore took care to cross-examine him most accurately. But that Fatality which constantly attends Guilt, was so strong upon him, that the Answers given by this and almost every other Witness, to the Questions propos'd by the Earl, and his Counsel, evidently, as I apprehend, destroy his own Answer, and confirm our Accusation. But, my Lords, it is not only the Answers of the Witnesses, but even his Lordship's own Questions that afford Evidence against him. For to what part of the Charge am I now speaking? Why to that, wherein he is accus'd of knowing and endeavouring to conceal the Practice of paying the Purchase out of the Suitors money. And what does his Lordship ask! *Did not you at this Meeting tell me, that if* Hiccocks *would pay* 2000 *l. you then would make up the rest yourself?* By his Lordship's own Confession, therefore, *Bennet was* with the Earl upon this Occasion; they *did* talk upon the Subject, *Bennet* has inform'd your Lordships. *Hiccocks* retaining the Suitors money *was* part of the Conversation. Else why should he pay 2000 *l.*? His Lordship *did* concert how to make up this Affair, and consequently how to conceal the whole. To this Question of the noble Lord's, *Bennet* answers consistently with what he had said before, *That he did not say, if Mr.* Hiccocks *would pay* 2000 *l. that then he would stand the rest.* And the Reason he gives is good, *He was not worth the Money.* Your Lordships remember the other part of the Dialogue. I shall only add, that the Earl being angry at this Evidence, asks Mr. *Bennet*, *And how could you, as an honest Man, offer to buy a place, when you were not worth the Purchase Money?* I submit to your Lordships, whether it was not as honest for him to buy without Money, as for his Lordship to sell without Right.

I have now stated to your Lordships the Fact, as to this scandalous Practice. And I think it can never be thought reasonable to suppose the Earl of *Macclesfield* only ignorant of what every one else knew: Or that he did not know of what he endeavour'd to conceal. And if it is certainly true, that the Office of Chancellor is an Office of the highest Trust, it is as true, that every wilful Neglect of what is necessary to be done, in order to discharge that Trust, is criminal. It cannot be doubted, but that this Practice was unjust and fraudulent upon the Suitors of the Court. It cannot be doubted, but that the Earl of *Macclesfield* knew of this Practice. It cannot be doubted, but that the Chancellor was the proper Person, because, in Fact, he was the only Person, who could, *ex Officio*, either remedy or prevent this Abuse. What ought to be the Consequence of these Premisses, the World will learn by your Lordships Judgment.

Hitherto, my Lord's Avarice, *uncorrupted Avarice!* has been the only Principle of this Earl. In what follows, your Lordships will perceive Apprehension and Fear begin to mingle in all his Actions; and for this Reason the Bankruptcy of *Dormer* was to be concealed, that the Clamours of the World might be hushed. It has appeared in Proof to your Lordships, that upon *Dormer*'s absconding, the Deficiency in his Office amounted to upwards of 52,000 *l.* for the Account upon the Table, which reduces the Balance to 49,000 *l.* was made up long after the Masters had been obliged to contribute their 500 *l.* each.—When *Dormer* run away, it is natural to imagine, that even this Chancellor should have turned his Thoughts to the Security of the Suitors: Not because it was his Duty so to do, but as Mr. *Dormer* was a Master whom he had not had the Satisfaction to admit himself, he might with the more Security have given himself the Show, at least, of acting vigorously in relation to his Affairs. By the Evidence that has been given, it appears his Lordship's Behaviour was quite the Reverse; my Lord *Macclesfield*, instead of being sollicitous for the Good of the Suitors, was apprehensive only of the loss that might happen to himself, by sinking the Price of Places, and thereby defeating that gainful Trade he carried on in the Sale of them. But this Thought was attended with another Consideration, that this open Acknowledgment of the Bankruptcy of one Master might induce the World to suspect the Abilities of the rest, and as he best knew what Care, what Circumspection he had used upon their Admission, so he was determined to prevent an Incident of that kind. With these Views, therefore, every Step that was taken was mysterious, and the Deficiency itself with the utmost caution kept secret; so secret, that at last some of the Masters themselves, his own Masters, for that very Reason, refused to contribute any farther towards it. *It is a bottomless Pit*, says one; *We know not what it is*, says another.

The first Step the Earl took was to direct Mr. *Regers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer* for his Return into *England*, assuring him, in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignment and Discovery of his Estate and Effects. Upon this *Dormer* returns, and executes an Assignment; but I do not find he was ever examin'd upon Interrogatories, or that any of his Creditors attended, in order to enquire into the Truth of his Discovery. Your Lordships observe, that the Promise of liberty was conditional; but *Dormer*, and the Earl, tho' for very different Reasons, were equally afraid of this Commitment; and therefore his Lordship took care not to direct any Proceeding, that might lay him under a Necessity of doing it. If there was nothing else in the Case, this Behaviour was sufficiently gross. But, my Lords, it was still worse; for Mr. *Lightboun* has acquainted your Lordships, that soon after *Dormer*'s Failure, he waited on my Lord *Macclesfield*, and told him, that he suspected the Account given in by *Dormer* was not Fair and Just; and that therefore he ought to be committed for example's sake. This Witness added another Circumstance, that justifies what I have before suggested to your Lordships, as the Reason of the Earl's Conduct. He says, that in this Conversation with his Lordship, he intimated and gave broad Hints of his suspecting the abilities of some of the other Masters; he represented that the Year 1720 had been a very fatal Year, and might affect the Masters as well as other People; that what had been might be, and several other matters of this Nature. Your Lordships remember the manner in which this Evidence was given, there was an air of Probability and Truth that appeared in it; he own'd indeed, when the Noble Earl ask'd the Question, for fear, I suppose, lest your Lordships should want Proof of there having been such a Discourse, that he did not name any Master in particular whom he suspected. He did not know how far an action might lie, and if known, it would make him unacceptable to his brethren, and himself might be made uneasy in his Office, and several other Reasons of that kind; and therefore he chose to express himself in general Terms. Your Lordships will observe that the Earl was very early in this Resolution, some way or other to patch up this affair of *Dormer*'s, so far at least, as to make it last his Time: For Mr. *Kynaston* has informed your Lordships, that when he was in Treaty with Mr. *Cottingham* to be admitted Successor to Mr. *Borret*, he objected this very Deficiency of *Dormer*'s as a Reason why the Chancellor should not insist upon so large a Sum, since the Consequence of it must naturally lessen the Value of the Office. But he made light of it, and said, it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, said he never would have bought the Office, if he had not been assured the Deficiency would have been made good. Here your Lordships may also remember, that my Lord *Macclesfield*, by cross-examining this Gentleman,

Gentleman, laboured to prove, that the Masters had actually agreed, in all events, to make good *Dormer*'s Effects. Mr. *Edwards* said, *he could not say 'twas actually agreed, he hoped they would, and by Conversation he had had imagined they were inclined so to do*, &c. Upon this the Earl asked, *From whom then had you those Assurances that it would be done?* His Lordship (ever fortunate in his Questions!), I believe, was not well satisfied with the answer; for says *Edwards*, *I had them from* Cottingham *and* Godfrey. Their Names and Qualifications are well known to your Lordships.

The next Step that was taken, relates to the Composition of a Debt of 24,046*l.* due from one *Wilson* a Banker, to the Estate of Mr. *Dormer*. This Composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my Lord *Macclesfield* does in his answer say, that it was done in the proper and usual manner: Your Lordships will judge of the Truth between us. The Commons, to prove their Averment, have produced the original Instrument of Composition, by which it appears that this Debt of 24,000*l.* was to be discharged for the Sum of 1463*l.* in money, and an Assignment of 10,000*l.* or a proportionable part of what should be recovered of a desperate Debt of 22,600*l.* due from one *Poulter* (who also is a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus; Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Chancellor that *Wilson* proposed a Composition, but apprehended he had not Power to conclude any such Agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of Petition for that Purpose. *Edwards* followed this Advice, and petitioned. Upon which the Earl referred the matter to Mr. *Hiccocks*, who made his Report, which being annexed to another Petition, the Composition was confirmed. In the Answer which the Earl gave to the second Petition, these Words are inserted, *Of which give Notice forthwith*; To what Purpose these Words were inserted, I cannot comprehend, unless it was to deceive the poor Master, who trusted him, into Ruin, by craftily laying a Ground-work for throwing the Blame of the whole upon him, unless he could divine to whom this Notice was to be given. For his Lordship took care not to give any Directions, as to what Persons, or in what manner it should be done.—During this whole Transaction *Wilson* was never examined upon Interrogatories; No one Creditor ever summoned to attend; the Character of *Poulter* perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened; No Knowledge of *Wilson*'s Affairs, but what he communicated himself; the first Proposal he made was accepted; no Consultation with any other of *Wilson*'s Creditors; and to shew how useful that might have been, it has been proved to your Lordships, that *Wilson* has paid several of his Creditors their whole Debt.

This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtless he imagin'd, that tho' more vigorous measures might secure more money, yet they might at the same Time make the Circumstances of the Court too publick; for, at the same Time, his Lordship took abundant Caution to prevent any of these Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of these Facts appears upon any Record or Register whatsoever; the whole was a private and clandestine Transaction between his Lordship, two or three Masters, and the Bankrupt himself. Your Lordships have a Certificate from the proper Officers for what I now say, *That none of these Petitions, Reports, or Orders, were ever regularly drawn up, or filed.*

My Lords, this Caution, this Secrecy, this Mystery, is a strange Way of proceeding for Justice and Equity; but, if the contrary be supposed to have been his Intentions, the Whole is of a Piece, natural and consistent.

Permit me, my Lords, once more to observe upon his Lordship's Cross-Examinations. And, First, He very nicely examin'd *Edwards*, as to what he had receiv'd by virtue of this Composition; and certainly it receives a wonderful Justification from Mr. *Edwards*'s owning that he receiv'd in *October* last 1000*l.* The next Point he examin'd to, was his Lordship's Diligence in securing *Dormer*'s Effects. The Commons brought Evidence to shew, that some of *Dormer*'s Estate had been conceal'd, and, for aught I know, it may be true, that one *Goodfellow*, by his Lordship's means, did give the Administrator (appointed since his Lordship's Dismission) the first Notice of it. The Fact is, that a Parcel of old Hops, 500*l.* the worse for keeping, were not long since sold for the precise Sum of 100 Guineas. To which I shall only say, that I wonder his Lordship chose to recall *that Sum* into your Lordships Memory.

My Lord *Macclesfield* hitherto might possibly meet with the Approbation of those Masters, on whom he vouchsafed to smile: Both he and they seem to have considered themselves as in an Interest separate, and quite opposite to that of the Suitors. *His* View was to keep the Circumstances of the Court secret, and to prevent any Thing that might happen to lessen his Profits in the Sale of Places: *Theirs* was to retain the money of the Court in their Hands, and for that Reason to hush any publick Clamour that might occasion the taking it away. I think I am not mistaken in this Conjecture, because I find his Lordship himself was of the same Opinion: For this was the great Artifice and Machine, which his Lordship employ'd, to terrify them into a Contribution of 500*l.* each, towards supplying the Deficiency of *Dormer*'s Office. To shew how much this Custody of the money was in the Masters Thoughts, your Lordships will be pleased to remember, that all the Masters own'd, that it made a very considerable Article in what they call'd the Profits of their Places. Mr. *Holford* (on whom the only blemish I know, is the misfortune he has had of being a Master) acknowledg'd, in answer to a Question proposed by a noble Lord, *That he understood it so; for he never propos'd to lock the the Money up, but to employ it for his own Use.* In fact, it was what the Masters bought, and what the Chancellor sold; or rather, Widows, Orphans, Lunaticks, the Wards and Suitors of the Court were the wretched, unhappy merchandize, in which the Earl of *Macclesfield* thought fit to deal. When *Kynaston* was to buy, he swears that *Cottingham*, or *Rogers*, or both, recommended it to him as being the Senior Office, and therefore the best. And *Cottingham* himself own'd the first Day of this Trial, that he had acknowledg'd to a Committee of the House of Commons, that he said to Mr. *Kynaston*, *You have purchased a very good Office; for there is a great deal of Money in it.* But, my Lords, the Thing proves itself: Consider the Nature of the Office, the attendance and labour that is required; deduct the unlawful Interest made of the Suitors money; how can the honest Fees (even supposing it lawful to sell) be worth 6, 7, 8, or 9000*l.* I leave this for my Lord *Macclesfield* to explain, and shall at present take it for granted, that the Masters esteem'd the Custody of the money to be Part of their Bargain.

That there was, in fact, a Contribution by the Masters of 500*l.* each, is evident from the Receipts now upon your Lordships Table; and Mr. *Holford* fully explains the method that was taken to draw them into it. He received, soon after the Report of *Dormer*'s Bankruptcy, an Order from Mr. *Cottingham* to prepare and bring in his Accompts to the Chancellor; soon after that, it was intimated to him, that a Contribution of 500*l.* was necessary towards supplying the Deficiency of *Dormer*: Upon which he paid his money, and his Accompts (tho' ready, as he swears expressly) were never afterwards called for.

Lightboun was another Master, who received Orders to prepare his Accompts; but not paying his money, *Cottingham*, some short Time after *Dormer* broke, ask'd him if he had not heard of the Proposal to contribute 500*l.* *Lightboun* own'd he had: *Cottingham* then said, 'twas necessary to raise some money to go on, and that, if he contributed, possibly the money might be repaid. Still *Lightboun* was inflexible, and said it was a dangerous Step, and he would not pay the money. Upon this Refusal, he inform'd your Lordships, that he was look'd upon as a very troublesome Fellow among the Masters, and little Arts were us'd to make him uneasy in his Office: But when this likewise prov'd ineffectual, the Earl himself, at last, condescended to talk with him, and, in the beginning of the Year 1722, he was taken into his Lordship's Study; and the Earl told him, he was sorry to hear he did not pay; desired him to consider the Consequences, and how dangerous it was, not to take care of *Dormer*'s Affair. Upon this, *Lightboun* still refus'd to pay, saying, he did not know how far a Contribution of this Kind might be construed to be an Undertaking of the Masters to answer one for the other: At the same Time he boldly and honestly represented to the Chancellor, how cautious his Lordship ought to be: that this method was no Cure for the mischief; and that as to its being propos'd by the Senior Masters, 'twas no Argument to him, and ought to raise some Jealousy in his Lordship, since they were visibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of selling their Places at great Rates; and a great deal more to this Purpose; and concluded with a peremptory Refusal to contribute.

However, as the other Masters paid their money, the Earl was not discourag'd, but depended upon it that some Time or other (as he told Mr. *Edwards*) he should be able to force Mr. *Lightboun* to comply; and therefore, as he thought, the had by this means contriv'd a Fund to answer any Demands upon Mr. *Dormer*'s Office, he went on, just as if there had been no Deficiency at all. By the Orders that have been read to your Lordships, and by the Evidence of Mr. *Edwards*, who paid the money, it appears that he made several Orders for the Payment of money, without any Regard to that due Proportion all the Suitors of the Court were entitled unto. His Lordship in his Answer says, It was not incumbent upon him, *ex officio*, to declare an Average. If it was not his Duty, my Lords, for God's sake, whose Duty was it? This is too gross to be a Sin of Ignorance. A Barrister of but a Term's standing knows, nay, it is obvious to the lowest Capacity, that where several Persons have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the same Foot, and be paid in an equal Proportion. Mr. *Lightboun*, Mr. *Edwards*, both represented to him the Hardship of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, losing his whole Debt. The Reason, therefore, of this otherwise absurd Proceeding cou'd only be, that the Declaration of an Average wou'd publish that Deficiency to the World, which he had us'd so many Stratagems to conceal.

I cannot conclude this Part of the Evidence, which relates to that Criminal Design the Earl carried on of concealing this Deficiency, and of deceiving the Suitors of the Court, without reminding your Lordships of one other Instance of this noble Earl's great Regard for Truth and Veracity. Mr. *Atwood*, who was the Solicitor in the Cause of *Harper* and *Case*, in which the Deficiency of *Dormer* being mentioned, the Earl took occasion to declare, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This, my Lords, was after he had paid 1000*l.* towards it himself. After what I have said, I shall not attempt to aggravate this Prostitution of the Seat of Justice. But this did not satisfy his Lordship: That his Dissimulation might for ever remain upon Record, he thought fit to pronounce an Order, that is now upon your Lordships Table, and dated no longer ago than in *December* last; in which he directs the Masters to enquire, whether there was any Deficiency in *Dormer*'s Office; and whether the Suitors were likely to lose any Part of their Money, or not.

Your Lordships know the Contract that was made between the Chancellor and the Masters: I therefore shall not waste your Time in mentioning Evidence to prove, that they, who gave such vast Prices for the Custody of the money, did not neglect the Opportunity of employing it for their own Use. The Proof is but too visible: They who are rich, confess it; and they who are poor, dare not deny it: It was the necessary Consequence of his Lordship's Extortion; and that put it out of his Power to take those Measures that were necessary to prevent that Practice. The misfortunes of the *South-Sea* Year were so universal, that surely any Man of even common Sense would have been upon his Guard: *My Lord* Macclesfield *knew*, that these Masters gain'd with the Suitors money themselves, or for an extravagant Interest lent it to those who did: *He knew* that this was the Occasion of *Dormer*'s Deficiency: *He knew* that the other Masters had it still in their Power to do the same; therefore he permitted it: He took no measures to prevent it; therefore he encouraged it.

But what could engage this Earl (whose Understanding is no wise question'd), after so fatal a Year, thus to risque his own Character; and what perhaps he values more, his own Fortunes not only upon the Understanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, *as the Borrower is to the Lender, so a corrupt Chancellor is the Servant of his confederate Officers.* He durst not put a stop to their Practices (tho' his own Estate was embarked with theirs), lest Resentment and Revenge should make 'em discover the infamous Secrets, with which they were entrusted.

How

How durſt he demand Security from thoſe whom he admitted, knowing they were able to give none? Surely, my Lords, no Reaſon, but ſuch as I have now mention'd, cou'd induce his Lordſhip to neglect (and a long neglect amounts to a Refuſal) the obliging theſe Maſters to give Security, or elſe to call them to a ſtrict Account, as to their Caſh and Securities, after he had been inform'd by Mr. *Lightboun*, that ſome even of the Maſters were to be ſuſpected. But Mr. *Lightboun* this Day went farther; he repreſented the Danger of truſting Men with ſuch vaſt Sums: That this Credit had been the Occaſion of all the Loſſes in the Court, and therefore propos'd a Scheme of Security, to prevent any Loſſes for the future. The Chancellor did not abſolutely reject this Propoſal; that was too groſs *even for himſelf:* He therefore deſires Mr. *Lightboun* to put it in Writing: 'Tis done; and his Lordſhip moſt carefully kept it by him for two Years, without taking any notice of it. But, my Lords, there is one Circumſtance in this Neglect, that in Equity (and ſurely a Chancellor will not decline to be try'd by that Rule) makes his Lordſhip anſwerable for a very large Sum in one Caſe only, without entering into any the other Conſequences of his Crime. Mr. *Kynaſton*, your Lordſhips remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my Lords, this very *Kynaſton* did, in the Year 1722, propoſe to his Lordſhip to give Land, or other Security, for the Effects with which he was entruſted. I know his Lordſhip will object what this Gentleman has before ſworn, in relation to his own Circumſtances: But what is it to the Suitors, whoſe Land it is, provided it be pledg'd for their Safety? *What Anſwer, my Lords, muſt we give to our Fellow-Subjects, thoſe unhappy People, who are undone, I will not ſay by* Kynaſton's *and the other Maſters Deficiency, but his Lordſhip's own wilful Neglect?* I will not take up any more of your Lordſhips Time upon this Head. In what I have already mention'd, it is proved, notwithſtanding what the Earl in his Anſwer ſays to the contrary, that he knew the Maſters converted the money of the Suitors to their own Uſe. And he himſelf owns, that he did not inſiſt upon any Security from them. In a late Order of his own making, he has recited it not to be uſual in the Court of Chancery for the Maſters to give Security; and therefore in his Anſwer covers himſelf under the Practice of his Predeceſſors. My Lords, the Reaſonableneſs and Neceſſity of Security depends upon the Greatneſs of the Truſt committed, and the Qualities of the Perſons intruſted. In Dr. *Eddisbury*'s Caſe, tho' there was a Stop, yet there was no loſs, for his Eſtate prov'd ſufficient to anſwer all Demands. And therefore his Lordſhip's Argument, in my Apprehenſion, amounts to this, That becauſe his Predeceſſors did not inſiſt upon Security from Perſons who wanted none, therefore he might juſtly entruſt thoſe who were able to give none.

My Lords, I am come to the laſt Head of our Charge, and your Lordſhips will now ſee the Earl of *Macclesfield* abandon'd to all his Fears! Even Avarice forſakes him! The Dread of a Parliamentary Inquiry ſits heavy on his Mind; and I firmly believe, he now repents his having illegally taken this Money, becauſe he parts with it to prevent, if poſſible, that Puniſhment he moſt juſtly deſerves for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is now bent how to ward off their coming into Parliament.

The firſt Inſtance of this appears in the Caſe of Mrs. *Chitty*. The Fact is thus: An Order was made for the Payment of 1000*l.* to her, Part of a Sum upwards of 11,000*l.* belonging to her, and which had been paid into the Hands of Mr. *Dormer*. She, it ſeems, aſſigns this Order to a very importunate Solicitor, one Mr. *Lockman*, who, as he has told your Lordſhips, diligently purſu'd the Chancellor from *London* to *Kenſington*, from *Kenſington* to *Weſtminſter-Hall*, and the Court of *Chancery* itſelf. He repreſented to his Lordſhip the Circumſtances he was in; that he had compounded ſome *South-Sea* Contracts, and abſolutely wanted, and inſiſted upon his Money to compleat his Agreement, and ſet himſelf at Liberty. The Chancellor, finding himſelf ſo preſs'd, was at laſt forc'd to promiſe him, that he would take care to get the Money paid. Upon this he ſummons a meeting of the Maſters, in order to perſuade them to pay the Money by a Contribution of fifty Pounds each; and in the mean while it had been given out among them, that ſuch a Contribution was expected. *Cottingham* himſelf, as Mr. *Lightboun* ſays, told it to him, and at the ſame time made a freſh Demand of the old Sum of 500*l.* and aſk'd him what Anſwer he would ſend to the Chancellor? *Lightboun* prudently replies, he would deliver his Anſwer himſelf; and in the mean while he applies to the other Maſters, tells them the ill Conſequences of what they had done, and works them all up to a Reſolution not to comply with this freſh Demand. He deſires 'em not to give the Chancellor falſe Hopes, but to ſpeak their Mind freely. And thus prepared, they all repair to his Lordſhip's Houſe. I need not upon this Occaſion repeat the Names of the Witneſſes, for all the Maſters preſent concur in giving the ſame Teſtimony. His Lordſhip began the Conference with aſking Mr. *Lightboun*, in a very angry Tone and Manner, why he did not pay his 500*l.*? Who reply'd, he had often told his Lordſhip the Reaſon, and that he neither cou'd nor wou'd pay, and was confirm'd in his Reſolution, by his having ſince heard all, or moſt of his Brethren repent of their Compliance. The Earl, without regarding *Lightboun*'s Reaſon, propos'd the Neceſſities of the Court to the other Maſters, in relation to this 1000*l.* The Maſters not ſeeming willing to comply, he us'd many Arguments to perſuade 'em to it: He deſires 'em to conſider the conſequences; the occaſion preſſes, and Clamours grow ſtrong; and if this Affair was not taken care of *Dormer*'s Deficiency muſt break out; and therefore what he propoſed was the only way to prevent a Parliamentary Inquiry. Upon this *Ligh boun* interpos'd, and ſaid, If it was ſo, he could not help it: That he had rather loſe the keeping of the Money and Securities, than hold it upon thoſe Terms. The Chancellor reply'd, But that is not the worſt: Suppoſe the Houſe of Commons ſhould in a Committee of Juſtice reſolve, that your Offices relate to the Adminiſtration of Juſtice; that the buying them is contrary to the Statute of *Edward* VI. and therefore forfeited. Conſider (ſays he) tho' it may affect me, as to the Diſpoſal of theſe Places for the future, yet it will affect you much more in the Loſs of your Places; and therefore, upon the whole, deſired them to agree to the Contribution. My Lords, the Maſters were Proof againſt his Lordſhip's Eloquence, and *ſeriatim* refus'd to comply. Upon which the Earl was ſtruck, and with a vaſt concern ſaid, Then, I will pay it myſelf. What Guilt, what Fear, muſt this noble Earl be ſenſible of, thus to part with that Money he had ſo ſacrific'd his Honour to get! In this manner the Earl parted with his Maſters, and *Lockman* returns again to the Charge; and at laſt, meeting the Chancellor in the Room behind the Chancery Court he got a Promiſe from him, that Mr. *Cottingham* ſhould pay the 1000*l.* But at the ſame Time his Lordſhip (I ſuppoſe to get rid of ſo troubleſome a Suitor) adviſ'd him not to engage with the Widow *Chitty*; for if her Money in the Court of *Chancery* was all her Fortune, that Sum was all ſhe was like to have. Soon after this, *Cottingham* paid the Money. But it ſeems he forgot to deſire *Lockman* to keep the Secret; ſo he told it about ſo much, that *Cottingham* meeting him rebuk'd him for it, ſaying, *Can't you fare well, but you muſt cry Roaſt-Meat?* Your Lordſhips undoubtedly remember, that the Earl endeavoured to ſhew, by croſs-examining, that he had generouſly given this 1000*l.* to Mr. *Lockman*, out of mere Charity and Compaſſion to his miſerable Circumſtances. *Lockman* reply'd very reaſonably, that his Circumſtances were not ſo low as to want his Charity; for he might have diſcounted the Order; and he did not think it a Favour that he was paid his own.

The Evidence I have now laſt mention'd to your Lordſhips, even without the Aſſiſtance of other Proof, almoſt maintains the whole Charge. By the Teſtimony of a Cloud of Witneſſes his Lordſhip here confeſſes the Sale of Offices, and owns that Sale to be illegal: He acknowledges his being acquainted with *Dormer*'s Deficiency; and at the ſame Time endeavours to conceal it: He in a manner confeſſes his own Guilt, pronounces Sentence upon himſelf, and therefore propoſes methods to prevent a Parliamentary Inquiry.

But, my Lords, there is ſtill more behind: There is not only a Connection among the Articles, but the Crimes charg'd in 'em riſe upon each other. Hitherto his Deceit has extended only to the Subject, but now he attempts the Throne itſelf. His Majeſty graciouſly directed an Inquiry to be made into the Diſorders of the Court of Chancery. His Lordſhip knew that this dutiful Houſe of Commons would not interpoſe in the Affair, till his Majeſty's Commands were obey'd, and therefore he now ſummons all his Arts and Skill to ward the Blow, and deceive his Majeſty into a Belief, that the World had taken a falſe Alarm; and that the Circumſtances of the Maſters were much better than they were repreſented to be: That they were able to anſwer all Demands; and that conſequently the Suitors of the Court were not in any Danger. His Agents are ſent among the Maſters, to encourage them to ſtand by each other; that they ſhould make a bold ſtand, and defeat the Deſigns of their Enemies. He himſelf becomes their Counſellor, and adviſes, and (without Inquiry or Regard to either Truth or Juſtice) he perſuades them to make ſuch a Subſcription to their Accounts, as might miſlead the Council in any Report they ſhould make to his Majeſty.

All his Thoughts, Counſels, and Meaſures are now ſwift and precipitate. Your Lordſhips have heard Evidence of the ſeveral Diſcourſes of *Cottingham* and *Dixon*; the meeting of the Maſters at Mr. *Edwards*'s, and the laſt Conference with the Chancellor himſelf; all within two or three Days of each other, and all tending to the ſame End of deceiving the King, and preventing the Parliament. My Lords, all the Maſters concur in the meeting at the Chancellor's Houſe; when, it ſeems, his Lordſhip, upon conſidering their ſeveral Accounts, declared his Approbation of Mr. *Holford*'s Subſcription; and without any the leaſt Inquiry into their Abilities and Circumſtances, he adviſ'd them all to make the ſame Subſcription as Mr. *Holford* had done.

Your Lordſhips have likewiſe heard it prov'd, that the Maſters, in order to make a Shew, were adviſ'd to aſſiſt and ſtand by each other. *Bennet* and *Conway* are both Inſtances of this Counſel's being put in Practice; and—But why ſhould I abuſe your Lordſhips Patience with particularly recapitulating the Evidence that has been this Day given? I obſerv'd the Attention with which it was heard, and any thing I can ſay, will only weaken that Impreſſion it muſt naturally have left on your Lordſhips mind. I ſhall therefore conclude the Whole with an Obſervation from the Parliament Roll of *Henry* IV. *Complaints and Subſidies belong to the Commons, Judgments belong to the Lords, and Redreſs is the Glory of the Crown.*

My Lords, The Commons have now diſcharg'd their Duty; they have declar'd their Grievances, explain'd the Crimes, and produc'd the Offender. They are aſſur'd the King will, of his Fatherly Goodneſs, grant a juſt Redreſs, and apply a proper Remedy; and they doubt not but your Lordſhips will pronounce a righteous Judgment.

Then the Houſe adjourned to Wedneſday *next, at Ten of the Clock in the Forenoon.*

Wedneſday, May 12. *The fifth Day.*

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence, as alſo another Proclamation, That all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtood upon his Trial, and they might come forth, in order to make good the Charge.

L. C. J. *King*. Gentlemen, You that are Counſel for the Earl of *Macclesfield*, may now proceed.

Mr. Serj. *Probyn*.

May it pleaſe your Lordſhips,

I HAVE the Honour to be Counſel for the Noble Lord within your Bar, the E. of *Macclesfield*, who ſtands impeach'd for High Crimes and Miſdemeanors in the Name of all the Commons of *Great Britain*.

My Lords, When I conſider the Importance of this Charge, in reſpect to the Noble Earl impeach'd, the great Experience and wiſe Conduct of the ſeveral Gentlemen of the Houſe of Commons, who are intruſted to manage the Proſecution, and the great Variety of Arguments they have uſed to enforce and aggravate their Charge, it is with the utmoſt Concern that I preſume to appear before your Lordſhips in his Defence; not but that I am well aſſured of the Truth and Juſtice, the Strength and Fullneſs of the Defence which may be made in his behalf, but out of real Conſciouſneſs of my own Inability to diſcharge ſo great a Truſt.

Unequal to it I ſhould have been, had the longeſt Time been allowed me to prepare myſelf; but I ſhall now appear much leſs capable, having ſo very little, ſo few Days Notice of your Lordſhips Pleaſure in appointing me for that Service.

If therefore I ſhall be ſo unhappy, as to offer any Thing in this Caſe leſs proper, or correct, than might otherwiſe be expected from me, I hope I ſhall obtain your Lordſhips greater Indulgence.

The Offences, which are charged to be committed by the Noble Earl impeach'd, are contained in many Articles, no leſs that twenty-one in the whole; but the Gentlemen of the Houſe of Commons have been pleaſed to wave ſeveral of them, and, I hope, when your Lordſhips have heard

us, and our Evidence, you will be pleased to acquit him of all the rest.

These Articles have been conceived with the greatest Caution, and opened with the greatest Art, heighten'd with every Circumstance that may induce Resentment, and urged against the Noble Earl impeach'd with a particular Zeal, well becoming the great Concern which those Gentlemen always shew for what they apprehend the Public Service, and the faithful, vigorous Discharge of the great Trust reposed in them by the House of Commons.

The impeach'd Earl is pursued back from his late Resignation of the High Office of Lord Chancellor, through every Stage of Public Life; and, with inquisitive Eyes, they have also view'd and pry'd into even his most private Transactions, so as not even the least Indiscretion has passed unobserved.

Some Actions, which in themselves are truly innocent, and are declared to be so by the constant, uniform Practice of all the Great and Honourable Persons that have gone before him, are here represented as highly culpable.

Others which, we humbly apprehend, are not only innocent, but commendable and meritorious, even his personal Acts of Charity are imputed to him as Crimes.

But in one Respect I must beg leave to congratulate the impeach'd Earl, and think it is his great Felicity, that in this so public an Examination, so strict and rigid a Scrutiny into his whole Conduct, at least ever since he was first advanced to the Great Seal, there is not one Objection made, one Instance given of Corruption, Partiality, or Oppression, in his own personal Administration of Justice; and therefore, I hope, I may well conclude (since it is admitted by the Prosecutors themselves), that he has deny'd Justice to no Man, he has delay'd Justice to no Man, he has sold Justice to no Man.

The principal Objection that seems to be rely'd on by the learned Managers, and the only one which, I humbly apprehend, can any Way affect the impeach'd Earl in the present Case, is, that possibly he may have been too easily led into a good Opinion of some Persons, who in the Eye of the World appeared to be Men of good Substance, and fair Reputation, Persons that were recommended to him by others of undoubted Honour and Credit; that he has admitted these Persons into Offices of great Trust and Profit under him; and they have at length been found not to have deserved the good Opinion which he at first had been persuaded to entertain of them.

Some of these Officers have been negligent, others unfaithful in the Discharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron.

And, in regard the principal Complaints against the noble Earl are founded upon the Disposition of the Offices of Masters in Chancery, therefore it has been thought necessary (in the Preamble of the Articles exhibited) to represent the Masters in Chancery as Offices of very great Trust, sworn to serve the King and his People, and associated to the Lord Chancellor by particular Commissions, for his Assistance in the due Administration and Execution of Justice.

My Lords, what Use Masters in Chancery might formerly be of, and what Assistance to the Lord Chancellor they might antiently give, I know not; but at present they seem to be of very little Advantage to him in the Determination of Causes in Court.

They sit indeed in Court, at proper Distances, on each side the Chancellor, and sedulously attend his Motions, but never pretend to advise or interpose in Judgment.

They have likewise the Honour to be named in Commissions of Association to the Lord Chancellor; but the whole Body are not always named in such Commissions, but only such particular Persons as his Majesty is pleased to think fit: And this appears from one of the oldest Commissions that has been produced and read before your Lordships, I think it was the Commission granted to *Robert Southwell* and others, the 9th of *October*, 4 *Edw.* VI. wherein there were not more than four or five of the Masters named; tho' I believe in the latter Commissions their Names are usually all inserted. But what Power or Authority is given them by this Commission? None at all, that they can execute of themselves in the Absence of the Master of the Rolls, or some of the learned Judges named therein; for the Judges and the Master of the Rolls are only included in the *Quorum*.

But, my Lords, Commissions of this Kind are not uncommen: Clerks of Assize, and other Officers, are named in the Commissions of Association to the Judges of Assize, in their respective Circuits, yet act as ministerial Officers only under them.

And I humbly apprehend, that in this Case it has been sufficiently proved before your Lordships, by a Gentleman (that was once a very good Master in Chancery) that they now pretend to exercise no judicial Authority whatsoever.

They examine and state such particular Matters and Facts as the Court is pleased to refer to them for its better Information, and which the Court itself has not Time to look into; they settle Accounts depending between the Suitors of the Court; they look into, and take Counsel's Opinions upon Titles of Estates bought and sold by Order of the Court; and they tax Costs.

This seems to be their principal Concern; and yet in this they are not absolute Judges, they determine nothing finally; for when they have made such Enquiry as the Court directs them, they only certify their Opinions of the several Matters referred to them by way of Report, which Report is not conclusive to the Parties; for either of the Parties that thinks himself aggrieved by such Report, may take Exception to it; and the Court, on hearing such Exception, will controul the Master's Report, and determine as they think just. And in case the Parties themselves do not controvert the Matter reported, but totally acquiesce and submit to it, yet is not the Master's Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Sanction from the Order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the Reputation of these Offices, in order to make it more penal to have any Present or Compliment made to the Great Seal, upon the Admission or Resignation of the Masters.

Another Observation was made by one of the learned Gentlemen of the House of Commons, in relation to their general Charge, which is this; They charge, that the Earl, in or about *May*, One thousand seven hundred and eighteen, by the great Grace and Favour of his Majesty, was constituted Lord Chancellor, and did thereupon take the usual Oath for the due Execution of that Office, and such other Oaths as have been accustomed; in order, as I conceive, to insinuate that he had acted contrary to, or in Violation of, some particular Oath which had been administer'd to him.

The Earl in his Answer admits, That on the fourteenth of *May*, One thousand seven hundred and eighteen, he took the Oath of Office as Chancellor, which is set forth in his Answer; that at the same Time he took the Oaths of Supremacy and Allegiance, but no Oath of Office, except that above set forth.

To this Part of the said Earl's Answer, the learned Managers are pleased to object, That the Oath prescribed by the Statute of *Richard* the Second, had been frequently administer'd to the noble Earl, but that he had forgotten that Oath in his Answer, as well as in his Conduct and Practice.

And to prove this Fact, Mr. *Eyre* (one of the Officers of the Exchequer) was produc'd, on whose Evidence it did appear (as we apprehend the Fact truly is) that when the Honourable Privy Council are annually assembled in the Court of *Exchequer*, to prepare a List of Names of proper Persons to be presented to his Majesty, for his Choice of Sheriffs for the Year ensuing, and the Judges then also attending, one of the Officers of the Court reads over the very Words of the Statute of *Richard* the Second in *French*; and then the Bible is presented to the noble Lords, and others of the Privy Council, and also to the Judges present, which they kiss, and then proceed to the Nomination of the Sheriffs for the several Counties in *England*.

My Lords, I must observe that upon this Occasion no formal Oath is administer'd in pursuance of this Act of Parliament; nor any Entry or Record made of any Oath taken by all or any of the Persons present.

The Words of the Act of Parliament are, That the Chancellor, Treasurer, and other great Officers therein named, the Justices of the one Bench, and of the other, the Barons of the Exchequer, and others, who shall be called to ordain or make Justices of Peace, Sheriffs, or other Officers therein named, or any other Officers or Ministers of the King, shall be firmly sworn that they shall not ordain, name, or make such Officers for any Gift or Brokage.

This Act of Parliament doth direct an Oath to be administer'd, tho' the precise Form of the Oath is not prescribed.

But the Act of Parliament itself can't be called that Oath which itself directs; nor the reading or hearing that Act of Parliament read, be called the administring or taking that Oath: The Oath must be something distinct from the Act of Parliament which directs it.

Therefore, my Lords, I humbly submit it to your Lordships, that the reading of this Act of Parliament, upon this particular Occasion, is rather used as a particular Exhortation or Admonition to that August Assembly, how they ought to demean themselves in that single Instance of their Duty (the Choice of Sheriffs), than to have an universal Obligation in respect to the Nomination of all other Officers in general.

If this was intended to be administer'd as an Oath of Office, then being once taken by any Person in Office, it need not be taken again, during the same Person's Continuance in the same Office; but this Act of Parliament is annually read over upon the Return of every Election of Sheriffs, and seems to be particularly applicable to that Duty.

Sheriffs are indeed very great Officers, have whole Counties under their Influence and Jurisdiction; and therefore very singular Care ought to be taken in their Nomination.

The Chief Justices and Judges present upon that Occasion, use the same Ceremony of *Kissing the Book*; and if this should be interpreted an Oath, it would be of great Extent, and the Consequence of that must be, that the best Offices should have no Candidates for them; for the latter Part of the Oath, directed by this Act, is, That none, who pursueth by him, or by other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other.

So, if this be consider'd as an Oath, every one of the great Persons that have taken it, must be indispensably obliged not to give any Office to any Person that have even ask'd, or made Application by himself, or any one in his Behalf, for that or any other Office whatsoever.

If this Construction, which is now contended for, was admitted, a great many Persons might be thought guilty of Perjury, who themselves never apprehended it; and how far the Guilt of this Perjury may be extended, is not easy to determine.

But, my Lords, it is not the noble Earl's Intention to incur the Censure of quibbling himself out of the Obligation of an Oath, or the Letter of an Act of Parliament; we beg leave to insist, that in whatever Light this Transaction is taken, it can't be construed to be the taking an Oath within the Intention of the Charge contain'd in the present Articles, which is, That he took the Oath of Office, and such other Oaths as have been of Right accustom'd.

This Charge, my Lords, must be confined to some reasonable Time, wherein these other Oaths charged must be supposed to be taken: I apprehend it can relate to such Oaths only, as the noble Earl took at the same Time, when the general Oath of Office was administer'd to him.

And the Earl, by his Answer, certainly understood it in this Sense; otherwise, to make a compleat Answer to so general a Charge, he must have been under a Necessity, to have set forth all the Oaths which he hath taken in his whole Life-time; at least, since his first Oath as Chancellor.

He took the Oath of Office as Chancellor the fourteenth of *May*, one thousand seven hundred and eighteen; this Proceeding in the *Exchequer* is proved to be in *November* following: Who would understand that this Charge intended to couple two Transactions together, that in themselves were so distinct and remote?

Having thus endeavoured to remove these Objections, which seem to be no Part of the Charge, but only used as introductory to it, I shall now proceed to the Charge itself.

The first and general Charge is, That the said Earl, not regarding the Obligation of his Oath, or the Duty of his Office, but, entertaining wicked and corrupt Designs and Views to procure himself exorbitant Profit, by divers unjust and oppressive Practices, whilst he continued in the Office of Chancellor, did illegally, corruptly, and extorsively take and receive to his own private Use great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

This is insisted on by the Gentleman, who first spoke, as an Offence of the deepest Dye, which strikes at the very Root and Foundation of all Civil Government; and, to render it more odious, it is introduced as an Act of the

the higheſt Ingratitude to his Majeſty, as well as injurious and oppreſſive to his Subjects. To demonſtrate this, it is repreſented, that upon the ſaid Earl's being appointed Lord Chancellor, in *May* One thouſand ſeven hundred and eighteen, his Majeſty was pleaſed, of his Grace and Bounty, to beſtow upon him the Sum of fourteen thouſand Pounds in Money, and to grant him ſeveral other yearly Penſions and Payments, which another Gentleman (in obſerving the Evidence given on this Head) was pleaſed to ſay, did, together with the uſual Salary, Fees, and Profits belonging to the Office, amount unto near ten thouſand Pounds *per Ann.* and this was ſtrongly urg'd as enough to ſatiate the Appetite of the moſt Avaricious, and prevent any illegal and corrupt Extortions of other Sums from his Majeſty's Subjects.

To this, My Lords, we hope your Lordſhips will think the noble Earl has put in a very plain and ſatisfactory Anſwer.

That he had, for ſeveral Years before his Advancement to the Great Seal, the Honour of ſerving his Majeſty in the Office of Chief Juſtice of the Court of *King's-Bench*; and as a Reward for good and faithful Services in that high Office, his Majeſty, out of his Royal Grace and Favour, upon the 10*th* of *March*, One thouſand ſeven hundred and fifteen, was pleaſed to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him a Penſion of twelve hundred Pounds *per Annum*, and to declare his Royal Intentions of giving the ſaid Earl's eldeſt Son an Office of conſiderable Profit, when Opportunity ſhould offer.

That in *May*, One thouſand ſeven hundred and eighteen, his Majeſty was pleaſed to appoint him Lord Chancellor; on the 14*th* of the ſaid Month of *May*, he took the uſual Oath of Office, and at the ſame Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office as Lord Chancellor, he enjoy'd the uſual Salary, Fees, and Perquiſites, which Mr. *Pynſent* (who was called as a Witneſs to this Particular) proved to be about eleven or twelve hundred Pounds *per Annum*.

That his Majeſty alſo granted to him the Salary of four thouſand Pounds *per Annum*, during his Continuance in that Office; which was not particular in his Caſe, but conſtantly granted to, and enjoyed by all his Predeceſſors.

That to this, his Majeſty was further pleaſed to ſign a Warrant to him for fourteen thouſand Pounds, as mention'd in the Articles; whereof two thouſand Pounds was the uſual Allowance to other Lord Chancellors, or Keepers, towards the Expences in entering upon the Office; and the reſt was his Majeſty's Royal Munificence, and received as ſuch.

The Noble Earl likewiſe admits, that his Majeſty was alſo pleaſed to grant his only Son, then going to travel, a yearly Penſion of twelve hundred Pounds, determinable upon his Majeſty's granting him one of the Offices of Teller of the *Exchequer* for Life; which was accordingly granted; and he came into the Poſſeſſion of it, in One thouſand ſeven hundred and nineteen, whereby that Penſion determined; ſo that the yearly Payments to his Lordſhip were but ſix thouſand four hundred Pounds *per Annum*, beſides the Penſion of twelve hundred Pounds to his Son, which ſoon after determined upon his coming into Poſſeſſion of his preſent Office.

This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly preſume, this can't be thought exceſſive, conſidering the great Fatigues, Difficulties, and Expences, that neceſſarily attend the Execution of this high Office: Perhaps other Offices might be found, that are leſs difficult in the Execution, and yet ſuperior in Profit.

But, my Lords, the Objection does not ſeem to turn that way; but rather, that this Noble Lord, not contented with theſe ſeveral Inſtances of Royal Grace and Bounty, illegally, corruptly, and extorſively took and received other great Sums from other Perſons to his own Uſe.

This the Noble Earl expreſsly denies, and ſays, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Deſign or View, or even a Wiſh, to raiſe to himſelf any exorbitant Gain or Profit, much leſs to extort Money by any unjuſt or oppreſſive Methods whatſoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greateſt Trouble and Surprize; he never ſuſpected a Crime of this Sort, ſo contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to ſhew that this is without any Foundation of Truth, the preſent Circumſtances of his Family and Fortune (when laid before your Lordſhips) will abundantly demonſtrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, he is repreſented.

As he has received large Bounties from his Majeſty, he has been abundantly liberal to Perſons that were proper Objects of Charity; and his Purſe has been always open to ſuccour and relieve the Diſtreſſed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and extorſively take and receive to his own private Uſe great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Inſtances given of this corrupt taking of Money refer to the ſeveral Sums mentioned in the five Articles, which the Gentlemen of the Houſe of Commons were pleaſed firſt to enter upon, and which relate to the ſeveral Sums of Money received from the four Maſters in Chancery, mentioned in the fifth, ſixth, ſeventh, and eighth Articles, and the Clerk of the Cuſtodies mentioned in the ninth.

If the Charge contained in theſe ſeveral Articles be a Crime, it muſt appear to be ſo in its own Nature; to be an Offence at Common Law; or made ſuch by ſome Act of Parliament. I ſubmit it to your Lordſhips, that taking a Preſent, or taking Money from Perſons upon their Recommendations or Nominations into Offices, though they do concern the Adminiſtration or Execution of Juſtice, is not a Crime in its own Nature; it is no Act of Immorality; it is no Act of Injuſtice to any Man; for no Perſon has any particular Right to theſe Offices, but his Advancement muſt be owing to the Favour or Friendſhip of him who has the Right and Power of Nomination: And if the Office itſelf be valuable, ſo is the Right of Nomination to it, and may be eſteemed as Part of the Eſtate of that Perſon to whom it belongs. And if we conſider it in this Light, I think it can't be denied but that every Man has a natural Right to diſpoſe of his own Eſtate or Intereſt, his own Friendſhip or Favour, upon what Conſideration he pleaſes: It is his own, and therefore he has a Right to make any juſt and legal Advantage of it.

From hence, my Lords, I would beg leave to infer, that the taking a Gratuity or Sum of Money from any Perſon, upon his Nomination to one of theſe Offices, is not criminal in itſelf, if ſimply conſidered, and diſtinct from the Good or Evil Conſequences that poſſibly may attend it.

And, in the next Place, I humbly ſubmit it to your Lordſhips, that it is not a neceſſary Conſequence, that every one that buys an Office, muſt and will behave himſelf either unfaithfully or corruptly in it. Inſtances may be given, and thoſe very ancient ones, of Offices of Juſtice, Offices of the higheſt Character in the Adminiſtration of Juſtice, that have been purchaſed, and purchaſed from the Crown.

In Mr. *Madox*'s Hiſtory of the Exchequer, *Page* 43. we find that *Richard Fitz-Allured*, in the Time of King *Stephen*, fined fifteen Marks of Silver, that he might ſit with *Ralph Baſſet* to hold the King's Pleas; and in Page 743. of this Book it appears, that *Ralph Baſſet* was the King's Juſticier. Here we ſee one of the Juſtices of the *King's-Bench* purchaſing his Office for fifteen Marks in Silver.

And in the ſame Page of the ſaid Book it appears, that, in the ſeventh Year of King *John*, *Walter de Gray* gave the King five thouſand Marks *pro habenda Cancellaria Domini Regis tota vita ſua, & pro habenda inde Charta Domini Regis.*

Theſe, my Lords, are great Inſtances what the ancient Uſage was, in purchaſing even the higheſt Offices of Juſtice.

Inferior Offices were doubtleſs diſpoſed of in the ſame manner; and if this had been thought Criminal, we ſhould have had ſome Inſtances in our Law-Books, wherein they would have appeared to have been adjudged ſo.

I beg your Lordſhips leave to conſider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of *Edward* VI. which has been taken Notice of by ſome of the learned Managers.

By the 5th and 6th of *Edw.* VI. *c.* 16. it is Enacted, *That if any Perſon or Perſons ſhall at any Time thereafter bargain and ſell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which ſhall in any wiſe touch or concern the Adminiſtration of Public Juſtice; All and every ſuch Perſon and Perſons that ſhall ſo bargain and ſell, or take any Money, Fee, or Reward, for ſuch Office or Offices, ſhall not only loſe his Right, Intereſt and Eſtate in ſuch Office or Offices, but alſo every Perſon and Perſons that ſhall give or pay any Sum of Money, Reward, or Fee, ſhall be adjudged a diſabled Perſon in the Law, to have, occupy, and enjoy the ſaid Office or Offices.*

This is the Purport of this Act of Parliament, ſo far as it relates to the Offence charged in theſe Articles; and I apprehend it cannot be extended to the preſent Caſe.

Here are no prohibitory Words that Perſons ſhall not bargain and ſell Offices, nor any Words declaratory that they could not do ſo before, by Common Law.

And all Penal Laws are to be conſtrued favourably for the Benefit of the Subject, and not extended beyond the Letter.

But, on the contrary, by the many Proviſoes after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and ſold without Offence; and many Offices are authoriſed and intended, by the expreſs Proviſoes of this Act, to continue to be bought and ſold for the future.

For by the firſt Proviſo in this Act, it is declared not to extend to any Office of Inheritance; which is an expreſs Declaration that Offices of Inheritance were to be bought and ſold even after the Act ſhould take place.

The ſecond Proviſo I apprehend is ſtronger to our Purpoſe; for by that it is declared, 'That this Act ſhall not extend to any Contract made or agreed before the firſt of *March* then next, but all ſuch Bargains and Contracts to be good, as if the Act had never been made.'

And, my Lords, there is yet a further Proviſo, 'That this Act, or any 'Thing therein contained, ſhall not extend, or be prejudicial, or hurtful 'to any of the chief Juſtices of the King's Courts, commonly called the 'King's Bench and Common Pleas, or to any of the Juſtices of Aſſize, as 'now be, or hereafter ſhall be, but that they and every of them may do in 'every behalf, touching and concerning any Office or Offices to be given 'or granted by them, as they, or any of them, might have done before 'the making of this Act, any Thing therein contained to the contrary 'thereof notwithſtanding.'

What is that which theſe great Officers of Juſtice might have done before the making this Act? They might have given, granted, bargained, or ſold the reſpective Offices under them in ſuch manner as they thought fit; and by this Proviſo they may continue to do ſo ſtill.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that ſhall buy or ſell Offices, not contained in any of the ſubſequent Proviſoes; that is, the Contract made between the Buyer and Seller is declared void: The Party ſelling loſes his Eſtate and Intereſt in the Office; and the Party buying is render'd incapable to hold and enjoy it.

In *Caſtle*'s Caſe, *Cro. Jac.* 644. it was adjudged, That when a Statute appoints a Penalty for the doing a Thing which was no Offence before, and appoints how it ſhall be recovered, it ſhall be puniſhed by that means, and no other.

Therefore, my Lords, in the preſent Caſe, ſuppoſing that the Preſents proved to be ſometimes made to the impeached Earl, upon the Nomination of Maſters in Chancery, can be interpreted a ſelling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Puniſhment than what the Act itſelf directs; and this the Noble Earl has already ſuffered by his Loſs of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only of forfeiting the Nomination to the Office for the future; and no other Penalty or Puniſhment ought to be inflicted by virtue of this Act of Parliament; and conſequently the Offence, as now charged againſt the Noble Earl, and the Facts, as proved before your Lordſhips, cannot ſubject him to any Puniſhment or Judgment, that can be prayed in this Proſecution, upon the preſent Articles of Impeachment.

But, my Lords, there is another Anſwer, which the Noble Earl has been pleaſed to make to this Part of the Charge againſt him, and which I hope your Lordſhips will have great regard to.

It is the Example of the many great and learned Perſons who have executed this high Office before him.

The Precedent is too ancient, for us to diſcover when it was firſt made;

and

and I humbly submit it to your Lordships, that the immemorial, constant Usage and Practice of it in all Ages since, will sufficiently establish the Reasonableness and Justice of the Precedent.

The same Objection, which is now made against the Noble Earl impeached, in this particular Instance, might undoubtedly have been insisted upon against every one of his Predecessors.

And I doubt not we shall be able to prove, that these Officers have made Presents to the Great Seal, as frequently and constantly as the several Vacancies have been supplied.

This noble Lord has only followed the Example of his Predecessors; he has trodden in their Steps: And I must beg leave to say, There must be something peculiar in his Case, if the same Paths, which led them to Honour and Immortality, shall betray him to Infamy and Disgrace.

This Objection, my Lords, some of the learned Managers of the House of Commons were well aware of; and therefore they have endeavour'd to distinguish the present from the preceding Cases.

They admit it to be true, that small Sums have been formerly given to, and accepted by former Chancellors, upon Admissions into these Offices, by way of Compliment or Present, and this without a Crime: But then they urge, that the Sums now complain'd of are exorbitant; they are bargain'd, haggled for, and given unwillingly by the Purchaser; and that there is a great difference between a Present given, and a Price bargain'd for and paid.

My Lords, I can't deny but that this Distinction is just: A Present implies a voluntary Gift of something less than the Value of the Thing given, or promised, for which that Present is to be made; a Price, the full Value of the Thing contracted for.

And I think the Earl's present Case is exactly within this Distinction, and justifies the Earl's Answer in this respect.

The Present which Mr. *Kynaston* made to the Earl, upon his Admission, was One thousand five hundred and seventy-five Pounds. The Price he paid Mr. *Rogers* for the Purchase of his Office, was no less than six thousand Pounds.

The Present which Mr. *Thomas Bennet* made to the said Earl, upon his Admission, was One thousand five hundred and seventy-five Pounds. The Price he paid Mr. *Hiccocks* for the Purchase of his Office, was seven thousand five hundred Pounds.

Mr. *Elde*, upon his Admission into the Office, upon the Death of Mr. *Fellowes* (the former Master) made a Present to the late Chancellor of five thousand two hundred Pounds. But when his Lordship consider'd the Greatness of the Sum, he returned him all but eighteen hundred Pounds: When at the same time Mr. *Lucas* offered six thousand Pounds for the same Office.

Mr. *Thurston* has also proved, that he left Bank-Notes to the amount of five thousand two hundred and fifty Pounds, sealed up in a Letter at the Earl's House, before his Admission, upon Mr. *Borret*'s Death. But when the Lady, to whom the Letter was directed, discovered how great the Sum was, she, without any Application made to her for that Purpose, returned all but two thousand Pounds.

And this, my Lords, was done before the Seal, before *Michaelmas*-Term last, before the Masters were ordered by the Privy-Council to give in their Accounts; and when the present Prosecution was not in any sort apprehended: And it is likewise proved, That Mr. *Lucas*, upon this Occasion, renewed his Offer of Six thousand Pounds for the Office; and Mr. *Thurston* was admitted for a less Sum of money.

These, my Lords, we humbly hope and insist, are not Instances of a corrupt Mind, an avaricious, rapacious Temper, such as some of the Gentlemen Managers have been pleas'd to represent them. On the contrary, we humbly hope, that, upon the Evidence already given, it plainly appears, that these Payments were not Sums of money extorted and unwillingly paid by the Gentlemen who were admitted into the several Offices that have been mentioned, but Presents voluntarily made, and press'd upon the Earl impeach'd, with such Application and Earnestness that shews, that, at the Time they were offered, the Persons offering thought they were not equal to the Value of the Favour they expected. And their Importunity was so great, that Mr. *Thomas Bennet* one of the present Masters, that has been so often examined, would endure no delay, but impatiently press'd to be sworn into his Office, at a time when the late Chancellor was sick, and by his Physician thought to be dying. This may rather be said to be extorting a Favour from the impeached Earl, than money from Mr. *Bennet*, ev'n upon his own Evidence.

My Lords, We do humbly insist, That as the noble Earl within your Bar was not conscious of any Crime in accepting these Presents, so he is justified in so doing, by the Example of many successions of great and learned Men, who have done the same in the like Case. And should this now be adjusted Criminal, what Numbers of very good and just Men must be involved in the Imputation of this Guilt? It must necessarily spread an universal Cloud of Infamy and Reproach over the Ashes of many just and upright Sages of the Law, whose Memories have hitherto been preserved as venerable and sacred; Men who despised Riches, and abhorred the remotest appearance of Bribery, and never were, nor were suspected to be Corrupt: yet these Men thought it a just Duty, owing to themselves and Successors, to adhere to the known and just Rights, the ancient established Fees and Perquisites of their Offices; and believ'd it as justly due to them as the Salaries which were annexed to their said Offices.

My Lords, We shall beg Leave to shew that this has been the ancient Usage and constant Practice of all Ages; and the several great Persons, who successively have presided in the greatest Courts of Law and Equity, from the earliest Times to the present, have disposed of the several Offices in their Gift, as they became vacant, for money.

Frequent Instances of this kind will be produced before your Lordships, in our Evidence.

My Lords, I would not be understood to mention this, so as to insist that the Actions or Examples of the greatest Persons will alter the Nature of Good and Evil, or give a Sanction to any Action that in itself is really Criminal; but only as an Argument (and I apprehend it a very strong one) to prove, that it was the concurrent Opinion of all those Great Persons that have taken Presents, upon their Disposition of Offices, that it was not criminal to do so.

The Opinion and Judgment of so many learned Persons must have very great Weight in a Case of this Nature: And if in strictness it can't be said to justify the Action, it will certainly very much Extenuate the Guilt.

In the next place, the Gentlemen are pleased to proceed to shew, That Masters in Chancery, being, as before represented, very great Officers in that Court; the noble Earl within the Bar, for his own corrupt Gain, has admitted Persons into that Office that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for such Prices.

This, my Lords, is urged as the greatest Inconvenience, That Men who have no Substance of their own should be trusted with such large Sums of other Persons Money.

It is insisted, That honesty, Probity, and good Substance, are absolutely necessary for the Suitors Security; yet Inferior Persons have been put in by his Lordship, who had little or no Substance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors money; and that this was known, connived at, and encouraged by the noble Lord that then presided in the Court of Chancery. This therefore could only be with a view to enhance the Price of those Places: For what would not People hazard, who had nothing of their own to lose? If any Profit could be made, it was their own; if any Loss, the Suitors; for no Security was given to answer the Effects in their Hands.

My Lords, It must be confess'd, that this way of Arguing has a very popular Appearance, and finds an easy Access to every Ear.

The Court of *Chancery* must be admitted to be the greatest Court of Justice in the Kingdom; And it must be also admitted, That the Business of that Court has of late Years increased, in Proportion, more than any other Court; and consequently, much greater Sums of money are now deposited in the Hands of the Masters of that Court, than formerly.

This may possibly make it to be wished, that some better Method might be found out, for the Suitors Security, than has been formerly used.

But in what Manner this Reformation is to be made, is beyond the Power, or at least the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one presiding Judge to vary it: If any ill Consequence to the Suitors attended such an Alteration, he that made the Alteration would certainly be answerable for the Consequences of it; for every Suitor will then say, Why was the ancient Practice vary'd? He that made the Alteration surely did it for his own Advantage; and then every Argument that in the present Case is only colourably made use of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts against Precedents, against ancient, concurrent, uniform Precedents and Practices, is without excuse, and justly to be suspected of some particular View, in the Language of the present *Articles*.

The Earl of *Macclesfield*, when he was first intrusted with the Great Seal, found the Suitors Money in the Custody and Care of the Persons who were then Masters of the Court, and without any Security given or demanded for it.

He consider'd that his Predecessors were a Succession of Great and Honourable Persons, of equal, if not greater, Sagacity and Learning, Probity and Experience, than any that ever had sat in any Court; they found the Masters in possession of the Suitors money upon the same Establishment, and they left them so.

Was it proper or prudent for him to oppose his single Opinion to the united Judgment of so many wise and great Men that had gone before him? Surely, no. Inconveniencies had been seen before, and Deficiencies had happened, and those Deficiencies had been supply'd by a voluntary Contribution of the other Masters then in Being. Why was not Security then demanded? And why not all the other Masters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, possible to be done, at least upon the single Authority of one Lord Chancellor. And that therefore is a good Excuse for the Omission or Neglect in that Particular in the present Case.

But, my Lords, It is now objected, That as the Sums of Money in the Masters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Masters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Persons to be admitted Masters, upon Vacancies and Resignations. And therefore another part of the Charge against the Honourable Earl impeach'd, is, That he appointed Persons to be Masters of the Court, that were not proper or sufficient either in Substance, Knowledge, or Probity.

These are said to be all essential Requisites in the Character of every good Master; but grosly neglected in the present Case: And a Reason is given, or (if I may presume to say) rather invented, in the present Case, that it was the Advantage of the Earl impeach'd, to put in such unqualified Persons; because such Persons would be drawn in to give larger Prices for their Places, and consequently it redounded to the Earl's Advantage.

My Lords, I must beg leave to observe, that in the Evidence that has been given, there has not been any one Instance proved (or at least, that I can recollect) that any of these Masters were really insufficient in any of the Particulars objected to, at the Time of their respective Admissions into their several Offices; or, at least, that the noble Earl impeached then knew that they were Insufficient, or had any reason to suspect it: They were all Gentlemen of good Families, well Educated; each of them a Barrister at Law (which, I submit to your Lordships, is not the least expensive Education), and had all visible Fortunes, and appeared as Persons in very plentiful Circumstances.

Even Mr. *Conway* and Mr. *Thomas Bennet* (who are the Persons intimated to be the least qualified in Point of Fortune and Substance) had at that time very good Estates in their Possessions; Mr. *Bennet* had then also a very valuable Office, Clerk of the Custodies; had married a Lady of considerable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir *John Bennet*, tho' a younger Son; and the whole Family then seemed to be in a very prosperous Condition. Mr. *Thomas Bennet* has proved to your Lordships, that he was worth twenty thousand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever informed of any Incumbrances upon his Estate (tho' now, he says, there are great ones), or that his Circumstances were less at the Time of his Admission, than in the Year 1720. Surely then the late Lord Chancellor

Chancellor had at that time no reaſon to ſuſpect his being unqualified in Point of Subſtance.

Mr. *Conway* had alſo then a very good, viſible Eſtate in Land, an Eſtate of Four or Five hundred Pounds a-Year; had been Receiver-General of ſeveral Counties in *Wales*, had diſcharged his Office punctually, and produc'd his *Quietus* to the Lord Chancellor before Admiſſion.

Mr. *Kynaſton* had, at the time of his Admiſſion, an Eſtate of Four hundred Pounds a-Year in Land, Timber of very conſiderable Value, and a Perſonal Eſtate of two or three thouſand Pounds; and moreover, was a Gentleman of a very good Family, and unblemiſhed in his Character.

Mr. *Thurſton*, I think, the Gentlemen of the Houſe of Commons don't object to in any reſpect. None of their Reputations, in reſpect of their Probity, have been called in queſtion, 'till their late Misfortunes: And as to their other Perſonal Endowments, their good Senſe and Judgment, I need only refer to your Lordſhips own Obſervations, upon their ſeveral Examinations in the preſent Trial.

But, my Lords, great Streſs ſeems to be laid upon the Maſters paying for their Offices out of the Suitors Money; or replacing the Money ſo paid out of the Suitors Money.

Suppoſe that was the Practice amongſt the Maſters; does it appear to your Lordſhips, that the impeached Earl had any Notice, or the leaſt Information given him of this Practice? Or if he had known it, how could he poſſibly have prevented it? Certainly, no other way, than by ordering all the Money immediately out of their Hands. And then another Difficulty would have occurred, how that Money ſhould have been diſpoſed of? Pub'ic Societies would not ſubmit to be under the immediate Direction of the Court of Chancery; and no private Perſon could be truſted with ſo great a Sum, or give Security for it.

The Maſters of the Court are in nature of Caſhiers; they ſubſiſt upon Truſt and Credit; and no Security can be expected to anſwer the Quantity of Caſh in their Hands, more than in the Caſe of a common Banker. People will truſt Men in Credit with the Cuſtody of a Thouſand Pounds; when, if they propoſed to borrow an Hundred Pounds on Security, would ſcruple to let them have it. But the Objection is carried yet farther: It is ſaid, if Security could not be expected, why were not their Books inſpected, upon one's transferring to another, and Schedules taken of their Effects?

To this it muſt be anſwered, That the Lord Chancellor has not Leiſure to attend this Duty perſonally. And what other Perſon can be appointed more fit to be truſted (as an Inſpector of the going-out Maſter's Accounts) than his Succeſſor, who is to ſtand charged with all the Money and Securities, and the whole Effects transferred?

Can any Obligation incline a Man more ſtrongly to Care and Exactneſs in Buſineſs, than private Intereſt? And his own private Intereſt will oblige him not to make himſelf accountable for more than he actually receives, and has transferred to him. And when the ſucceeding Maſter has examined the Effects of his Predeceſſor, by proper Schedules approved of by himſelf, they are then transferred to him by a General Order of the Court, and he becomes accountable for what is ſo transferred.

This, my Lords, we humbly ſubmit, has been the ancient Uſage and Practice of the Court in theſe Caſes; and that the ſame Method was uſed by the preſent Earl Impeached, the ſame Care taken, as had been formerly in the like Caſes by any of his Predeceſſors.

But, my Lords, I would beg leave to ſubmit it, That ſuppoſing it to be poſſible that greater Care might have been taken by the late Lord Chancellor, in inſpecting the Schedules and Transfer of the Effects of Maſters to their Succeſſors; Does it appear that the Suitors of the Court have been any way injured or prejudiced by that pretended Neglect? Or, would the greateſt Care, the greateſt Exactneſs in this Particular, have given the Suitors any greater Advantage or Security? Certainly not at all: For let the Effects of the preceding Maſter be never ſo carefully and juſtly Examined and Scheduled, and after that transferred, and actually delivered to the ſucceeding Maſter; has not the new Maſter, to whom theſe Effects are thus carefully and juſtly delivered, the ſame power over them, to manage and diſpoſe at his pleaſure, as he would have had, in caſe ſuch Transfers had been made with leſs Caution and Exactneſs, as in the preſent Caſe?

If any corrupt Agreement had been made by any new Maſter, upon coming into his Office, and previous to this Transfer, to have repaid or replaced any Sum of Money, before borrowed by him, either for the purchaſe of his Office, or any other Occaſion; could not he have complied with this, and paid it out of the Suitors Money or Effects, the very next Moment after they were transferred to him? And would the previous Care and Caution in any degree obſtruct or prevent his ſo doing? I apprehend, not at all; for as ſoon as the Maſter is in poſſeſſion of the whole Money and Effects, he may return any part that he pleaſes to his Predeceſſor, by virtue of an Agreement before made for that purpoſe; which would be as much to the prejudice of the Suitors, as if what was ſo returned to the Predeceſſor, after a Transfer made, had been retained in the firſt Inſtance by the Predeceſſor, and never actually delivered over to his Succeſſor.

Therefore, my Lords, this Security, as projected, is but imaginary; and gives the Suitor no greater Advantage than he had before; and conſequently this ought to be no Ingredient of Complaint againſt the Impeached Earl.

But, in the next place, it is ſtrongly urged, that tho' the Noble Earl during his High Offices, might not have Leiſure to attend little Occurrences, or regard ſmall Neglects; yet the Going-off of Mr. *Dormer* ſhould have awaken'd him; ſome Care ſhould, upon that Accident, have been taken. If what had paſſed before was only Supineneſs, this was a wilful Neglect; and not enquiring into the State of his Affairs, and ſecuring his Perſon and Effects for the Suitors, was concurring in Defrauding the Suitors.

My Lords, this was indeed a remarkable Occurrence: The Going-off of Mr. *Dormer* was unforeſeen, and unſuſpected: His perſon was withdrawn, and out of the power of the Court; but all imaginable Care was taken to ſecure his Effects.

The two Senior Maſters immediately were directed to enquire into his Effects, ſecure his Chambers, and put a ſtop to all Transfers in his Office. What more poſſibly could be done in this Emergency, his perſon being out of the power of the Court?

A propoſal is made on his Behalf, That if the then Chancellor would engage that his Liberty ſhould be ſecured to him, he would return, and diſcover and aſſiſt to get in his Effects. This is thought reaſonable, and for the Suitors Benefit, and accordingly complied with; and thereupon the unhappy Man returns, and not only makes the beſt Diſcovery of his Effects, but delivers all in his power for the Benefit of the Suitors. Could any thing be more Advantageous to the Suitors, or contribute more to their Intereſt than this?

The Impeached Earl had indeed promiſed his perſon ſhould not be impriſon'd; and it would have been the higheſt breach of Faith to have departed from it. Had not that promiſe been made, Mr. *Dormer* had not return'd, nor any Diſcovery been made by him; but by this means they had the Benefit of the beſt Diſcovery that could be had, and the beſt Aſſiſtance the Noble Earl could give them. He never deny'd or diſcouraged any Application that was made by or for the Intereſt of the Suitors in that reſpect, nor endeavour'd to conceal the true State of his Effects, and the Condition of his Office. And as to the Expreſſions inſiſted on to delude the Suitors, by ſaying, as has been objected, That Mr. *Dormer* was only gone to take the Air, and would ſoon return; tho' theſe Expreſſions have been much inſiſted on, in the Arguments againſt the Impeached Earl, I do not remember that they have been mentioned in the Evidence.

And, my Lords, to ſhew that the Impeached Earl did all that was in his power to render what Aſſiſtance he could give the Suitors; when a new Maſter was to be appointed; he left the Diſpoſition of the Office to the Direction of the other Maſters: And Mr. *Edwards* gave no leſs than Five thouſand Pounds for that Office of Mr. *Dormer*'s, which was wholly apply'd towards the making up his Deficiency. By this Enquiry, *Dormer*'s Real Eſtate was ſecured to the Suitors; and it was expected by the Earl himſelf, and by Mr. *Edwards*, who ſucceeded Mr. *Dormer*, that the reſt of his Deficiency, which was then uncertain, would have been ſupplied by the other Maſters, provided they could be continued in their Offices upon the old Eſtabliſhment.

It may not be improper to obſerve further in this Caſe, That Mr. *Dormer*'s Deficiency does not appear to have happen'd through any Extravagance of his own, or by his Miſapplication of the public Money: He employ'd Mr. *Wilſon*, then a Perſon in good Credit, as his Banker, and entruſted him with his Caſh. *Wilſon* had Dealings with *Poulter* in the fatal Year 1720. *Wilſon* was reduced, and ſtopped Payment; his Debt to Mr. *Dormer* was then Twenty-four thouſand and forty-ſix pounds; this Mr. *Dormer* aſſigns to Mr. *Edwards* his Succeſſor in the Office; it was all that Mr. *Dormer* had, all therefore that he could reſtore, and more than could be got in: For, Mr. *Edwards* applying for this Money, found Mr. *Wilſon* not able to pay the whole Debt, and thereupon a Propoſal is made of a Compoſition.

The Maſters conſidering this, thought proper to petition the Lord Chancellor, that it might be referred to the Senior Maſter, Mr *Hiccocks*, to examine and report, Whether it was for the Benefit of the Perſons entitled, that a Compoſition ſhould be accepted.

The Maſter to whom this Queſtion was referred, Reports it Reaſonable; and an Order is made, upon a ſecond Petition preferred, That the Compoſition ſhould be accepted.

This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be deſired on the Earl's Part; no Evidence of any Deſign or Endeavour to conceal the Deficiency: All or moſt of the Maſters conſulted upon this Compoſition, and conſented to it: And as for thoſe that were not Parties to it, they are not bound by it.

But it is objected, That this Tranſaction was Private and Clandeſtine between the Maſters and the then Chancellor; not carried on in the uſual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

My Lords, we hope this cannot affect the Noble Lord within the Bar; it is the Duty of the Chancellor to pronounce Orders in Court; but it is the Care and Duty of the Solicitors or Clerks in Court to ſee them Drawn up, Entered and Regiſtered, in proper Time and Form.

The Subſtance of the Order is pronounced by the Court: The Form is the Act of the Regiſter; and the Chancellor can't have Leiſure to attend the Entries of all his Officers.

Fourteen hundred Pounds was paid in upon this Compoſition; One thouſand Pounds has been brought in ſince, out of *Poulter*'s Effects: ſo much has been ſecured at all Events by this Compoſition, and the Suitors have received the Benefit of it. Have the Gentlemen on the other Side ſhewn, that without this Compoſition, any thing could have been ſecured to the Creditors in general, or that any other Creditor has obtained more advantageous Terms? It was ſaid, indeed, that other Creditors had received their full Demands: But I ſubmit to your Lordſhips, that no Proof has been made thereof, only an uncertain Hear-ſay of ſmall Sums ſent, to give him new Credit after his firſt Abſconding. But when the Compoſition was made, a good Debt was ſubſiſting to *Wilſon* from *Poulter*, and Judgment obtained againſt him, and he committed to the *King's-Bench* Priſon in Execution. The Marſhal ſuffers him to Eſcape: thereupon an Action is brought, and Judgment obtained againſt the Marſhal, for his Eſcape; and at length the Marſhal is run out of the Kingdom, to avoid making a proper Satisfaction.

What a Series of evil Accidents concur to increaſe this Misfortune, and prevent the juſt Deſign of the Earl to do the Suitors all the Juſtice in his Power! But to whom has he been defective, if all prudential Steps have been taken? It is hard that he ſhould anſwer for the Conſequence, that he could not, it was not in his Power to prevent.

But, my Lords, in the 15th *Article*, it is objected to the Impeached Earl, That to carry on his unjuſt Purpoſes, in concealing *Dormer*'s Deficiency, in *February* one thouſand ſeven hundred and twenty, he ordered the Maſters to bring in their Accounts of their Caſh, Effects, and Securities; not with a real deſign to Examine the Accounts, and ſecure their Effects, but to terrify them into a Contribution; and threatned that the Caſh ſhould be taken out of their Hands if they did not comply; by which means he got nine of the ſaid Maſters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no farther proceedings were had upon their Accounts.

My Lords, One would have thought that theſe Proceedings, which ſo plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice.

In *February*, 1720, the late Lord Chancellor (finding Mr. *Dormer*'s Deficiency like to be greater than at first it was apprehended) was willing to look into the State of the Accounts of the other Masters, to guard against the like Misfortune; and at the same time proposes to them to advance Money to help to pay Mr. *Dormer*'s Deficiency. Five hundred Pounds apiece is raised by nine of them, and applied accordingly; the last of these five hundred Pounds paid in *August*, 1721. And upon the 7th of *November*, 1721, a second Letter is written to hasten these Accounts, and every Argument used that could be thought likely to induce them to it: But the Labour proved too difficult, and the Pursuit was forced to be given over 'till a more convenient Time and Opportunity should present. What was done in this Instance also, I beg leave to say likewise, was following the Example of another Great Man, in the Method he took in the Case of Dr. *Eddisbury*, and that has some Circumstances less favourable than the present: Dr. *Eddisbury* was always in Town, or at least within the Reach or Power of the Court, and yet his Person was not secured for many Years after his first Failure.

Upon the 29th of *January*, 7 *Annæ*, there is an Order entered in his Case, (the only one we can find on the File) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Masters: It recites, That Dr. *Eddisbury* had several Sums and Securities for money in his hands, and that several Orders had been made for money out of his Hands, which were not complied with; and that he declared himself not able to pay; and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the several Masters, and deliver in to the said Masters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had several Orders made upon him for money to be paid, not in Average, for some Time, and those Orders not complied with; and that he had not given full Examination, and had prevaricated with the Court; yet the last Extremity, the committing his Person, and ordering Payment in an Average, was not thought of, 'till it was certainly known, and he had actually confessed, that he had not Assets to pay the Whole.

In the present Case, Mr. *Dormer* was examin'd, discover'd his Estate, assigned the Whole in Trust for the Suitors, but died before the Enquiry could be perfected.

In Dr. *Eddisbury*'s Case, the other Masters contributed at first to supply his Deficiency, as they since did in the Case of Mr. *Dormer*: And this without doubt was so done, in hopes that his Effects, when fully discovered, would in time prove sufficient to answer all, or much the greatest part of the Suitors Demands: And thus far both Cases are parallel, and Orders made for Payments to the respective Suitors in general, as they applied for them. And no Average was directed in the Case of Dr. *Eddisbury*, 'till it appeared, even by his own Confession, that his Assets were not sufficient to make good the Suitors whole Demand: And when the *quantum* of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the present Case: But that could not possibly be done 'till the Value of Mr. *Dormer*'s Effects could be known and ascertained, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before-mentioned, it has not been possible to effect: And therefore, the not directing Payments in an Average, can't be reasonably objected to the present impeached Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of the Court, without any Prospect or Possibility of Advantage to himself. His Design was to procure every Suitor full Satisfaction for his Demand: And if nothing had happened to interrupt so just a Design, 'tis possible that his great Zeal for the publick Good, and his indefatigable Industry, might in due time have had their desired Effect.

But greater Powers have now interposed, and this Difficulty being found to exceed the single Authority of a Chancellor, may be thought to deserve the greater Power, Care, and Wisdom of the Legislature.

My Lords, What afterwards happened in the Case of Mrs. *Chitty*, is in part answered, in what has been observ'd upon the last *Article*; and, I humbly apprehend, that a plain Narrative of that Fact, will be a sufficient Answer to the objection that has been made in this respect. The Earl of *Macclesfield* having no certain Account what Cash of Mr. *Dormer*'s remain'd in his Successor Mr. *Edwards*'s Hands, made Orders for payment of Sums of money, from time to time, as Application was made in Court; and particularly to pay Mrs. *Chitty* One thousand Pounds, part of eleven thousand Pounds of her money which had been brought into Court in Mr. *Dormer*'s time. Mrs. *Chitty* assigns this to Mr. *Lockman*. Mr. *Lockman* applies to Mr. *Edwards*, the present Master, for payment, and is there disappointed of his money: Then he applies to the Lord Chancellor, and represents the pressing Necessities they laboured under, That the payment of one thousand Pounds to him at that Juncture of Time, would be of greater Service to him than the whole money could be at any future Day: That this Sum of money, if immediately advanced, would make his Creditors easy; and without it, he must inevitably be thrown into a Gaol.

This, my Lords, we shall be able to make out in proof (tho' Mr. *Lockman*, upon his Examination, denied it,) and the late Chancellor, out of pure Compassion and Charity to this Gentleman, and believing his Circumstances to be as he represented them, pays him the money out of his own Pocket; and, at the same time, or soon after, told him, that he must expect no more from him, but must wait till Mr. *Dormer*'s Effects could be got in, or the money could be advanced some other way.

What Objection can be reasonably made to this part of the impeached Earl's Conduct? To deliver a Suitor in Distress; to extend a charitable Arm to rescue him from the very Gates of a Prison just opening to receive him. If this be a Crime, and to be objected to him by the very person who now enjoys his Liberty, as the Gift of this noble Lord's generous but undeserved Bounty, I must not pretend to say that he has many Virtues.

On the contrary, I hope it will abundantly appear to your Lordships, even from this Instance; and from the whole Series of this noble Lord's Conduct, that he firmly believ'd that all the Suitors of the Court would, in due time, be made easy, and their whole Demands be made good to them. And had the whole Body of the Masters as chearfully concurred in this good Design, and contributed as generously to support the Honour of the Court, and themselves, 'tis more than probable that the Suitors would not long have had any just Occasion of Complaining, nor your Lordships the Trouble of this Prosecution.

It was for this End that the Masters were so often called upon to make a reasonable Contribution, and all Arguments made use of that would either persuade or terrify them into a Compliance, in making the Suitors easy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Most of the Masters, I think all but one, were convinced that this was a reasonable and just Proposal, and express'd a Readiness to come into it; and 'twas for this Purpose, that they were bid to consider of the Consequences of forfeiting their Offices, and of a Complaint in Parliament.

And for whose Benefit were these Arguments thus made and pressed upon the Masters? Who could profit by their Compliance, or suffer by their Refusal? Not the Chancellor himself: He had no other Interest to serve, no Inclination to gratify, but a just Zeal for the Publick Good, and a generous Concern for the great Loss that was like to happen to the Suitors of the Court, without his vigorous Interposition and Assistance.

This, my Lords, I humbly hope, appears to be the sole and just Principle upon which this noble Lord has founded all his Designs and Actions, to restore the Credit of the Court, which had been greatly injured by other Men's ill Conduct; to procure the Suitors in general the best Satisfaction that could be obtained; not partially preferring one to another, but endeavouring to do every Suitor full and equal Justice, in order, as their Complaints were brought before him.

As to the Expressions proved to be made use of by the impeached Earl, in the Case of *Harper*, surely they can have little weight.

Can it be imagined, that after so many Transactions had happened in the Court of *Chancery*, in relation to Mr. *Dormer*'s Misfortunes, and the great Losses that were like to happen to the Suitors thereby, the then Chancellor himself should be the only Person that had never heard of it; and even after such time as he had been endeavouring to find out Means to remedy so great an Evil? Could any Man of less Sagacity than he must be allowed to have, conceive that he could be credited, even in the Court wherein he presided, in saying (as it is now represented), That he was a perfect Stranger to the Affair of Mr. *Dormer*; that he had heard nothing of it, but as idle News, a flying Report, that might be true or false? No, my Lords, that certainly could not be his Intention, in speaking the Words that are said to be uttered by him on this Occasion.

But when a Purchaser, under the Decree of the Court, that had paid his money in to the Master, and required his conveyances to be executed, could not procure the Parties interested to execute, without actual Payment of the Purchase-money to them at the Time of the Execution, and that Money was sunk in Mr. *Dormer*'s Hands; this first brought the Deficiency of Mr. *Dormer* in Judgment before his Lordship; and it was the first time it came regularly before him in Judgment. Upon this he declared, That then it was a proper Time for him to make a strict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Persons about the Town, or upon any private Conversation or Information that he might have received, and possibly might have the Expression of common Talkers of News; but now, that it came judicially before him, he would thoroughly examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we shall prove to be the Occasion and Manner of the speaking these Words, by Persons that were then present in Court; and this happened but in *December* last was Twelve-month; and accordingly it was ordered to be put under the immediate Examination of Mr. *Edwards*, who succeeded Mr. *Dormer* in the Office, and who must therefore be admitted to be the most proper Person to perfect that Enquiry, and also becaufe he was the most concerned in the Consequences of it: But Time has been wanting to proceed as far as he intended in that necessary Work.

My Lords, Tho' by this time, it can't be pretended but the late Chancellor, as well as every other Person belonging to the Law, must know of Mr. *Dormer*'s Deficiency; yet, I believe, that none had then discovered, or even imagined how great it was; and that even his Lordship, and most other Persons, were persuaded, that whatever should appear to be wanting in his own Effects, would be supplied by the other Masters; or some other Method would be found out to prevent any real Loss to the Suitors; and in virtue of this Persuasion, Orders were made for Payment of money to the Suitors, as they apply'd for it, without directing an Average.

This is exclaimed against as contrary to all Equity; some to have all, and others to lose all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when these Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dormer*'s Effects would at all Events prove deficient, and that no way had been foreseen, whereby that Deficiency could have been supplied; I must admit this Objection would have been very strong: And, in that Case, to have order'd full Payment to those Suitors who first applied, and left nothing for those that came after, would have been a manifest Partiality.

But this is not the present Case. When the Court ordered the first Payments to be made, it does not appear in Proof (as I humbly apprehend), that there would at last be any certain Deficiency in Mr. *Dormer*'s Effects, or at least no pretence of judging how great that Deficiency was like to be. And consequently, the Payment of the whole Demand to the Suitors that first applied, does not necessarily infer that there would be any Loss to those which came after. His Effects, upon further Enquiry, might possibly come out to be more than were at first discovered; they might prove sufficient to answer all Demands: Or in case the Deficiency was not very great, a moderate Contribution from the other Masters, or, it may be, a reasonable Addition intended to be made to that by the Chancellor him-

ſelf, would have ſupplied that Defect. And that this was really intended, I apprehend that the Evidence already given does abundantly demonſtrate.

Another Objection has been made; That very great Sums of Money have been depoſited in the Maſters Hands without any Security; and that ſome Propoſals have been made to the Noble Earl, for ſecuring in ſome meaſure thoſe great Sums, and preventing the Maſters having too great Power over ſo great a Caſh.

Mr. *Lightboun*, one of the preſent Maſters, firſt mentioned the Propoſal: He had before communicated it to Mr. *Holford*. The Chancellor received it kindly; deſired him to reduce it into Writing; took Time to conſider of it, and frequently talked with him about it; always ſhewed an earneſt Deſire that this might be done, but thought the propoſed Scheme not effectual. Many Conſultations were had upon this Propoſal; at laſt, he ſummons all the Maſters of the Court, the Regiſters, the Uſher, and other Officers of the Court; obtains the Favour of the Maſter of the *Rolls* to join with him and them in the general Conſultation; and every one expected ſome effectual Reſolution would have been made upon this grand Affair.

But the Maſter of the *Rolls* then taking Notice that there were other Things in the Court that required a Reformation as well as this; and taking Notice that the Maſters in *Chancery* had lately aſſumed to themſelves a Power of Judicature in the Court, in Oppoſition to him; inſiſted, That this pretended Power of Judicature in the Maſters ſhould be given up by them, before he would enter into the Debate of the other Queſtion.

Mr. *Lightboun*, upon whoſe original Propoſal this great Aſſembly was convened, was the firſt, if not the only Perſon that oppoſed the relinquiſhing this new-aſſumed power, tho' he knew the Conſequence would be the Deſtruction of the other Propoſition which himſelf had made.

He preferred the Affectation of this Power of Judicature in his Office, more than the Intereſt of all the Suitors; and upon this, the great Expectation of this ſolemn meeting was diſappointed, and nothing done.

What could a Lord Chancellor do more, that has the Honour of the Court and Intereſt of the Suitors the moſt at Heart?

Mr. *Lightboun* himſelf tells your Lordſhips, that after this laſt Attempt proved unſucceſsful, he began to think there was but one ſingle Lord in the World that had ſufficient Spirit to undertake it.

But during all this Time, nothing had happened to give the late Chancellor any juſt Jealouſy or Suſpicion of the Deficiency of any of the other Maſters. They are proved to have often declared they were ſufficient; nay, they have themſelves ſworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl impeached ſincerely thought they were ſo; and therefore, when their Accounts were brought to him in order to be laid before the Council, in Obedience to His Majeſty's gracious Commands, he did all that was in his Power or Capacity to forward that good Deſign, and make it ſucceſsful: He ordered the Maſters to ſpeed their Accounts: And when they were brought before him, he obſerving that the Senior Maſter had under-written his Account in a full, and plain, and more direct Manner than the other Maſters had done, he told them, He liked the Form which Mr. *Holford* the Senior Maſter had uſed, and thought it a proper Precedent for the reſt. They all complied without Heſitation or Objection; no one pretended they had not ſufficient then in their Hands to make good their Balance; and accordingly ſubſcribed to it, That they were able and willing to make good their reſpective Balances; or to the like Effect.

Can it be imagined, That this ſo fair and candid a Tranſaction, intended for the Satisfaction of the Council, and the good Security of the Suitors, can by any means be interpreted an Impoſition upon His Majeſty, by the late Chancellor? It was for his Majeſty's Service that the Accounts ſhould be laid fully and truly before him in Council; and it muſt likewiſe be a great Satisfaction to His Majeſty, to find that his Subjects money in the Maſters Hands was ſecure, by ſeeing their Acknowledgment, under their Hands, that they were able.

The late Chancellor knew no more than any of the reſt of the Honourable Privy-Council, or His Majeſty himſelf, that this Declaration was falſe; and therefore it was equally an Impoſition upon Him and Them; but no Fraud, no Crime in the Chancellor himſelf; which is the Objection now made againſt him. And, indeed, many of the Maſters which have been now examined before your Lordſhips, have, upon their Evidence, Declared, That the Subſcriptions thus made to their Accounts, were true, and that in Fact they have given good and effectual Securities to anſwer the reſpective Balances of their Accounts.

How hard a Work this Regulation of this great Abuſe in the Court of *Chancery* was, the late Experience has ſhewn; and a total Reformation of it hereafter would have proved more difficult, without the prudent and cautious Preparation, which the Noble Earl within the Bar has made for it, and which in due Time he might have been able to effect.

Thus, my Lords, I have endeavoured (but very imperfectly, I am ſenſible, and confuſedly) to offer what occurs to me in the Impeached Earl's Behalf. I aſk your Lordſhips Pardon, and His, for taking up ſo much of your Time ſo unprofitably. What Omiſſions I have made, I doubt not, will be ſupplied by the ſeveral learned Gentlemen that are to ſpeak after me.

I have this very great Satisfaction, that before your Lordſhips, the merits of this, or any other Cauſe, will not ſuffer through the Incapacity of the Advocate on the one ſide, nor the Solemnity of the Proſecution on the other. When Facts are proved before your Lordſhips, no Obſervations can be equally inſtructing as your Own. And upon the Evidence given, your Lordſhips will undoubtedly form a juſt Judgment: A Judgment, I humbly preſume to hope, That the impeached Earl is Not Guilty of any of the Articles exhibited againſt him.

Dr. *Sayer*. My Lords, I am likewiſe of Counſel for the Noble Earl Impeached.

I am afraid it may ſeem ſomewhat improper, that I ſhould engage in a Proceeding of ſo much Difficulty, foreign to the profeſſion in which I am bred: But as the very great Obligations I have to the Earl, prevail on me ſo far to forget my own Unfitneſs, I hope they will, on your Lordſhips, to excuſe it.

The Articles exhibited by the Honourable the Houſe of Commons, charge him with *Corruption* and *Extortion* in the moſt odious Manner; and the learned Managers have heighten'd every Circumſtance with the greateſt Art and Eloquence; every ill Turn which his Actions, his Words, his very Omiſſions could be imagined capable to receive, hath been given; Suſpicions and Jealouſies have been raiſed; and every Conſideration forgot, which could interpret them in his Favour.

This, my Lords, was their Duty, as Managers; and tho', by ſome, undertaken with Reluctance, yet, I may venture to ſay, it has been perform'd by all with great Succeſs and Reputation.

But however unanſwerable their Eloquence may be, we hope to be able to defend the Earl againſt the Facts they have alledged; and ſhew, That they were either not done, or done with Innocence and Honour. Againſt *mere Imaginations*, nothing can ſecure him, but your Lordſhips Candour and Juſtice.

The Words *Orphans*, and *Widows*, and *Lunaticks*, have been employ'd to raiſe Tenderneſs and Compaſſion, and arm your Lordſhips againſt every Argument which we can offer. Well was it commanded by the *Jewiſh* Law, *Not to reſpect the Perſon of the Poor, in his Cauſe*; knowing the Diſpoſition of Human Nature, and the Neceſſity of guarding againſt this generous Weakneſs. This Caution ought particularly to be remembered by *Engliſhmen*, who are allowed to be more ſubject to an Exceſs of it, than thoſe of any other Nation.

The learned Managers have very rightly obſerv'd, how much your Lordſhips *Honour* is concerned in this Proſecution. My Lords, It was with the greateſt Satisfaction I heard them ſay it; for I am by it induced to think, that notwithſtanding the Zeal which has been expreſs'd, they will be much pleaſed to find *every Member* of your Lordſhips Body *Innocent*.

It appears from the Anſwer, and needs no Proof, That the Noble Earl was once *Lord Chief Juſtice of the King's-Bench*: And his Conduct in that great Station will, I hope, be ſome Defence.

I may appeal to thoſe Gentlemen who are now Managers againſt him, Whether they have not applauded him with Warmth? Whether they have not commended his *Zeal* and *Intrepidity* in the Cauſe of *Liberty* and *our Country*? His *ſteady Adherence* to *the Proteſtant Succeſſion*? His *uninfluenced Behaviour*? My Lords, I would aſk, Whether then they did not praiſe and love him? Whether they did not eſteem his being *placed* in that High Station (which he executed with Honour) their *Comfort*, their *Security*.

My Lords, I beg Pardon for replacing thoſe Times before your Thoughts, or for deſiring any to conſider, how an Accuſation againſt him, ſupported by *mere Refinements*, would at that Time have been regarded. My Lords, his experienc'd merit would then have ſilenc'd every Objection.

If there wanted any Evidence of the High Character he bore while in that Station, we might appeal to the *great Rewards* His Majeſty has beſtow'd upon him: *Thoſe very Graces* which have been *exaggerated* againſt him, are the nobleſt Teſtimony in his Favour. His Majeſty thought him worthy of the *Great Seal*, becauſe he had found him *faithful* in his *other* Truſts. His Majeſty approved him, becauſe his Subjects had: It was for their Sakes (the conſtant motive of his Choice) that he appointed him Lord Chancellor.

This once was the Earl's Character; this once his merit. Theſe were, nay, are ſtill our Obligations to him. My Lords, *experienc'd Worth* has a Right to greater *Confidence* and *Credit*: This is a Rule of Evidence, and of common Juſtice; and unleſs the moſt convincing Proofs are offered, your Lordſhips never can believe, that one who has done ſo greatly Well, can do ſo Baſely as is ſuggeſted by the Charge.

But ſuppoſing, upon *ſo very ſtrict* an Enquiry into the Conduct of any Great Man, *ſomething amiſs* was found (for the Greateſt are but Men, and muſt have Failings), yet is former merit not quite to be forgot. *Publick Services* are thought juſt Reaſons for *Remiſſion* of the higheſt paſt Offences, though done perhaps *merely* with a *View* of obtaining it: And ſhall thoſe done upon a more generous Principle, ariſing from *an honeſt, diſintereſted Heart*, deſerve a leſs Regard?

But, my Lords, that I may have the better Opportunity of obſerving, on the Evidence brought for the Commons, as well as on the Arguments offered, I ſhall beg Leave to follow the learned Managers in the method they took themſelves.

The Foundation of their Charge is, The *diſpoſing of ſeveral Offices for conſiderable Sums of Money*. This is the *Corruption!* This the *Extortion!* And, to aggravate the Guilt of this, and raiſe your Lordſhips Indignation, the Preamble ſets forth, "That in or about *May* 1718, the Earl was "appointed Lord Chancellor of *Great Britain*, and did thereupon take "the uſual Oath for the due Execution of that High Office, and ſuch "other Oaths as have been accuſtomed." And the ſubſequent Articles proceed to charge his Lordſhip *with Breach and Violation of his Oath as Lord Chancellor*. The learned Gentlemen who had the Conduct of the Evidence, juſtly ſenſible of the Expectation they had raiſed by this Aggravation, did *attempt* a Proof.

The Earl, in his Anſwer, had ſet forth at large, the Oath he took *as Lord Chancellor, when firſt appointed*; and had inſiſted, that he took *no other Oath of Office*. Was this the Oath the Earl had thus broke and violated? No, it was *not this*; but *one which, by the Articles, he is no where charged with ever having taken*. Upon the Choice of *Sheriffs*, it ſeems, the 12th of *Ric.* II. is annually, in *Old French*, read over by the Clerk; and all preſent at the Council kiſs the Bible. It is this Tranſaction with which they would affect the Earl. But, my Lords, it is notorious, that the Statute is ſo far grown obſolete, that in no other Inſtance, beſides this of *Sheriffs*, is it at preſent taken Notice of. And as the Oath upon this Occaſion muſt be abſolutely *confined* to the *Choice* of them; ſo is it evident, that the Statute itſelf never did, nor was intended to reach Officers of the Nature with theſe in queſtion; as I ſhall further obſerve. And, indeed, with the Oath directed, the Statute is ſo extremely rigid, that I muſt own, for my Part, I do not ſee any Service it can do Society in its full Extent. It may, perhaps, afford ſome *Protection* to a *Firſt Miniſter*, in laying him under the Obligation of an Oath, to put none into any Office who ſhall *purſue* or *ſolicit* by *himſelf* or by *other*.

However,

However, I can't help thinking that the learned Manager had but very small Pretence for the Reflection he was pleased to make, in saying, That *the Earl seemed to have forget this Oath not only in his Answers, but in his conduct*; when it appears that *he himself* had *forgot* how he had *charged* it in *his Articles*. If he will cast his eye back upon them, he will find that the Preamble makes mention of *no Oaths*, but what were taken by the Earl *upon his Majesty's Appointment of him to the Seal*; and the Articles charge him only with Violation of his *Oath, as Lord Chancellor*.

Having justified the Earl's *Memory* in this Point, I proceed to justify his *Conduct* in others; and I hope the Defence he has made by his Answer will have its Weight with your Lordships. The Earl has insisted, "That "the making Presents has been long used and practised in the Time of "his Predecessors; That such Presents have been reckon'd amongst the "antient and known Perquisites of the Great Seal; that the making and "accepting them has been notorious to all the World, and never before "looked upon as Criminal, or complained of as such." My Lords, this (as far as Proof is requisite) We shall make fully appear by great Numbers of Witnesses, who are able to speak to both the *Opinion* and *Practice* of the Earl's PREDECESSORS. To this it has indeed been said, that the Earl may be *Guilty*, tho' his Predecessors have *escaped uncensured or unpunished*. My Lords, the Examples we have followed are too Worthy to lead us into Guilt: But, my Lords, if the *Earl* has *only* done what *they* have done, and received what they esteemed an honest Perquisite; was the Practice in itself not quite so regular at first, yet, *Sunt tolerabilia, quæ consuetudo comprobat*—Usage (if antient) has so great Authority, that it makes the Common Law of *England*; and tho' with us it cannot repeal a Statute, or destroy its Force, which it does in other Countries, yet, my Lords, there is an Equity to be observed; and Reason as well as Humanity must inform your Lordships, that no man ought to be treated with the utmost Severity which an old Statute may direct; when great Examples may have *led* him to the Action, and a long Connivance of his Predecessors *promised him Security* from Censure.

But the Earl's Defence stops not here; he says, "He humbly hopes "that the giving or receiving Presents on such Occasions is not Criminal "in itself, or by the Common Law; and that there is not any Act of Parlia- "ment whatsoever, by which the same is made Criminal, or subject to "any Punishment." To this the learned Gentlemen have given but very general Answers. *Some* have by *Rhetorick*, instead of *Reason*, endeavoured to persuade your Lordships, that the Act itself is *highly Sinful*, and that the *Corruption* in *selling Offices* is greater and far more dangerous to Society than even *selling Justice itself: Others* have talked of Common Law, and Statutes, but have produced none, except those *of* 12*th* of *Rich.* II. and V. and 6 of *Edw.* VI. and a few Inferences drawn from them, which I shall speak more largely to immediately: And as *the Learning* and *Experience* of those Gentlemen are too great for any Law to *escape* their *Observation*, as is *their Honour* to *reserve* any for their *Reply*, I shall take it for granted, that since no other has been mentioned, there is no other.

My Lords, the Writers upon the Law of Nature have properly distinguished between *selling Justice*, and *Offices concerning the Administration of Justice*: and not as the learned Managers have done. With them the *selling Justice* is absolutely forbid, is absolutely *Corrupt* and *Immoral*. The *selling Offices* is matter of mere Policy, varied in different Governments, *prohibited* in some, *allowed* in others.

Among the *Romans* the Law in this Particular fluctuated and changed, and tho' the *Sale of Offices* was generally forbid, yet it received great Alterations, as the Emperors or the People were disposed: When Elections of the Magistrates were Popular, the *Suffragia*, or Votes of the People, were bought and sold; but as this Practice produced frequent Riots and Disorders, frequent Laws were made to restrain it, which are still extant, and Part of the Body of the Civil Law: However, all proving unsuccessful, the Emperors took Occasion from it to usurp upon the People, and name the Magistrates themselves: This Translation of Authority carried the Benefit to *Courtiers*, and other Men of Power, who took a Sort of *Brokage* for their Interest. *Theodosius*, the Emperor, so far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promised for *Procurement of any Place*. In process of Time the Emperors themselves participated and took a Share of this Advantage, which introduced a Distinction of *Suffragium Dominicum* and *privatum*. *Suffragium privatum, quod Aulicis dabatur*; and *Dominicum, quod Imperialibus rationibus inferebatur*. This Distinction, as well as the Practice, is very evident from the two *Novels* of *Justinian*, which were intended absolutely to prevent for the future all Sale of Offices. In *Novel* 161. it is said, *Ejusmodi Dominica suffragia magnum reddebant pecuniarum cumulum*; and in *Novel* 8. that by the Prohibition, *Quæstus immodicus imminuitur imperio*.

It is well known that in *France*, the Laws have varied in like manner. Sometimes the Sale of Offices was permitted, sometimes forbid; but at present, and for this last Century, it has been so far encouraged, that Officers retain the Right of Resignation even in *Succession*, and transmit it to their *Heirs*, in case they have paid the *Annual Tax* or Duty within the Year.

I mention this to shew what the Opinion has been of other Governments; that they have not esteemed this Practice so highly Criminal, or unreasonable; and as they have not, so neither have we: For notwithstanding what has been urged with so much Ingenuity; (according to my poor Apprehension) *that very Statute* of *Edw.* VI. so much insisted on, is the strongest Proof which can be given, not only that in particular Instances *the Sale of Offices* is now permitted, but that it *was in general* before that Statute, by the *Common Law of England*. This Statute in Sect. 2*d*. enacts, that "All Bargains, Sales, Promises, *&c.* shall be void." And yet by the Sect. 6*th*, it makes Provision, that "It shall not extend "to any Bargain, Sale, Gift, Grant, *&c.* concluded and agreed before "the First Day of *March* next coming, but that the same Bargain and "Sale so concluded and agreed, shall always remain, continue, and be "in such force, strength, and effect, as if this Act had never been had "or made." If *Bargains* and *Sales*, agreed before the First of *March*, are to *continue in such Force*, &c. as if this Act had never been made, the Consequence to me seems certain, that *those Bargains and Sales had Force*, and that they were before *Effectual and Legal*; for otherwise the Provision would be absurd and ridiculous.

The 7*th* Section of this Statute still goes further, and makes a perpetual Provision, that "This Act, or any Thing therein contained, shall not "in any wise extend, or be prejudicial or hurtful to any of the Chief "Justices of the King's Courts, commonly called the *King's-Bench*, or "*Common Pleas*, or to any of the Justices of the Assize that now be, or "hereafter shall be; but that they, and every of them, may do in every "Behalf, touching or concerning any Office, or Offices to be given or "granted by them, as they, or any of them, might have done before the "making of this Act."

If this Statute be *Explanatory* of what the Common Law was before, and as such it was insisted on, it is certainly impossible to doubt, but that by the *Common Law* the *Sale of Offices* was allowed: "The Chief Jus- "tices, *&c.* may (TOUCHING THEIR OFFICES) do as they "might have done before:" This Act is to *prevent* the *Sale* of *Offices*, and yet *not of their Offices:* They had been used to *bargain*, and *sell* them, and *still* may do it, for this Act is not to be in any wise *prejudicial*, or *hurtful*, to any of them. This is the plain Sense, this the very Language of the Provision.

But I humbly conceive that this Provision is not only an Evidence of what the *Common Law itself* was, but that the *Act of Rich.* II. (of which I before made mention) could never be intended to *reach Offices of this Nature*; for as the Act of *Rich.* II. directs an Oath, which the *Chief Justices*, &c. are expresly *required* to take, can it be imagined, without the greatest Extravagance of Fancy, that the Legislature should be so very forgetful, as to *guard* and *secure* to them a *Privilege* which they could never exercise without the highest *Perjury?*

This, my Lords, is the only Statute, which, as I apprehend, any way concerns the Charge brought against the Noble Earl: But does this Statute make the *Sale of Offices Criminal?* Does it direct a *Punishment*, or even by any general Clause *forbid* the Practice of it? 'Tis true the *Bargoins* are hereby made *void*, the Person who *sells*, does *lose* his *Right of Nomination*, and he who *gives* or *pays*, is to be adjudged *disable* in Law to have the Office. My Lords, these are the *Discouragements* which the Legislature then thought proper to lay such Bargains under, these the *only Penalties:* If the Earl has by his Conduct done what this Statute disapproves; if he has bargained and sold Offices, which your Lordships judge within the Statute, and the *constant Usage* of his Predecessors will not give *Protection*, the Statute points out your Lordships Justice. But, my Lords, this unfortunate Great Man, we think, has already more than *satisfied* this Law; he has *resigned the Seal*, and yet *stands Impeached* before your Lordships.

Offences are to be judged of by the *Penalties* and *Punishments* the Legislature has annexed; for in determining the Penalties, it determined the Sense it had of the Offence: When Penal Laws are made, it must always be supposed, that a Consideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Punishment directed was esteemed adequate and just: By this rate it is easy to guess what the Legislature thought of the Offence of selling Offices. And, indeed, it would have been (if I may use the Expression) unbecoming the Legislature to have *inflicted severer Penalties*, while by the same Law it *permitted* the *first Judges* in the Nation *to do* what it seemed to condemn in others.

When a Law is once past, the Transgressor of it is *subject only* to what that Law directs; to inflict a *greater* Punishment, would be deserting Law, and acting *arbitrarily*. This Observation will hold in every Instance, in Matters of *Common Justice*, as well as *Publick Policy:* To forbid to *Rob*, or *Murder*, is only to enforce what was *always* Law; to forbid *to sell Offices*, is to lay a *Political Restraint* on Acts indifferent. And yet in the former Case, to punish the Offender *beyond* the Law, would be *unjust* and *arbitrary*. Are Prohibitions *merely Political more Sacred?* Or is a Trespass against them more severely to be treated, than one against the Law of Nature, the Law of God? No; Your Lordships (I say it with Submission) are the Supreme Judges of the Nation; as such, the Supreme Judges *of the Law*; for *by the Laws* your Lordships always *judge:* It is the peculiar Blessing of our Nation, to have *known certain Laws* to be the *Guide* of our *Actions*, and the *Measure* of our *Punishments*; to secure to us *this* Blessing has been the *Labour* and the *Glory* of our Ancestors. For the Sake of *this*, the REVOLUTION is *beloved*; and for a steady Adherence to *this Sacred Rule*, his MAJESTY is esteemed the *Joy*, the *Safety*, the *Liberty* of his *People*.

I beg Pardon for dwelling so long upon this Subject; but the Honourable Gentlemen of the House of Commons having made the *Sale of Offices* the *Foundation* of their whole CHARGE, I thought it of some Consequence to prove to your Lordships, that it is no ways *Criminal* in itself: And, my Lords, if it be not *Criminal*, Where is the *Corruption?* Where the *Extortion?* Is it in the *Manner* of receiving Presents? How *that* was, the *Learned Serjeant* of Counsel with me has already given your Lordships an Account: An Account which, we hope, does sufficiently *justify* the Earl against the Imputation of *Haggling*, or of *screwing up the Candidates* to what they gave. But as these several Articles will be more fully spoke to when we come to produce our Evidence, I shall pass them over with an Observation or two. If the Earl had so great a *Thirst for Gain*, and was so *resolutely bent to amass such excessive Sums of Money*, it is to me very strange, that whenever his Opportunity offered, and he had the *free* and *full Disposal* of an Office upon a *Vacancy by Death*, he should always receive *a much less Sum*, than what, from the very Face of the Articles themselves, appears constantly to have been paid *by Master* to *Master*. Had the Earl *put the Office up to Auction*, or even *insisted* on a Price, Is it probable that he should *not* be *able* to obtain one *as great?*

However, as I pass, I can't help taking notice of the Circumstance with which the Article of Mr. *Thurston*'s admission is introduced, "That *Borrett* "died insolvent, greatly indebted to the Suitors, and the said Earl did, with- "out securing a just Satisfaction, admit him." Your Lordships must have observed, that the Earl is not so much as *charged* here with a *knowledge of this insolvency*; and, my Lords, *knowledge* only can *create* the *guilt*. If the Earl did not know it, can your Lordship censure him? If it be asked why he did not?

not? Mr. *Godfrey*, who was produced and examined by the Managers, has already given a full Anſwer: Mr. *Godfrey* was moſt intimate with the Affairs of *Borrett*, and as ſuch was directed by the Earl to inſpect them; he has depoſed, That he told the Earl, he thought *there would be no Deficiency in his Office*; this (your Lordſhips may remember) he ſaid was his *own* ſincere Opinion, and he gave good Reaſons for it. Mr. *Borrett* had a very good Income, reputed 400*l. per An.* beſides his Place; he had lately married a Wife of Fortune; his Family lived with his Father-in-law; and he himſelf a man of no Expence: My Lords, Mr. *Godfrey* told you, he was ſo fully in this Opinion, that when Mr. *Green*, the deceaſed's Uncle, made a demand of a debt, he was *greatly ſurpriſed, not imagining that he had owed one ſingle Farthing.* Whence this Deficiency (if there is any) none can tell: But, my Lords, that fatal Year of 1720 is not ſo long paſt, as to leave us quite without conjecture; a Year, my Lords, when the *Contagion* was ſo virulent, that ſcarce any *Virtue* was left *uninfected*; and thoſe who ſunk under it, remarkably deſerve our Pity, as ſad Inſtances of human Frailty: *To this Year*, the Maſters *owe* their whole *Diſtreſs*, and *to them* the Earl, tho' innocent, *this aggravated Charge:* But, my Lords, ſuppoſing a *Deficiency* in *this* Office, and *known* too by the Earl himſelf, what *Satisfaction* to the Suitors was from him expected? What could he poſſibly *ſecure?* There is but *one Method:* which, I hope, he will not, by the *Managers*, be thought *criminal* in *not* taking, ſince it is *that*, which *they themſelves* condemn as *illegal* and *corrupt.*

It may be expected, that I ſhould ſhew ſome Regard to the 9th Article: But as it is that which the learned Gentlemen made choice of to *begin* with, I apprehend *greater* Difficulties than I ſee; and therefore ſhall leave the Conſideration of it to thoſe, who are much more able to ſurmount them than myſelf: But I muſt aſk Pardon, that I can't reach a Diſtinction on which great Streſs has been laid: It has been obſerved by more than one, that, in this Caſe, the money was paid for the *reſignation*, and not for the *admiſſion.* Is there any real Difference, whether the *Buyer* or the *Seller* pays the *Compliment?* Muſt it not be ſuppoſed that it was conſidered in the Bargain, and part of it? Or is it imagined that a greater Hardſhip was in this Caſe done Mr. *Thomas Bennet*, by a ſeeming *Obſtruction* of his Inclination to part with an Office, when in fact the Earl could not *hinder* his reſigning it? For notwithſtanding the Obſervation made by a learned Gentleman, that the *Lord Chancellor* was the *King's Officer*, and therefore a Reſignation *to the Crown* was the ſame as *to him*; yet am I from his very great Abilities perſuaded to believe, that he is not ſo entirely a ſtranger to the *Thought* of that *high Office*, as not to be able to diſtinguiſh the *Crown* from the *Seal*, and to know that in many Inſtances of *Patronage* they are *different:* The *Lord Chancellor* being the *King's Officer*, a *Reſignation* to *him* may in ſome Caſes be equivalent in Law to one made to the *Crown* itſelf, but never *è contrario.* As to this particular Office, and indeed to many others of the like Nature, we ſhall make it fully appear, that tho' the *Officer* himſelf is in the *Nomination* of the *Crown*, yet has he always been under the *Recommendation* of the *Seal*, and has as conſtantly *paid Acknowledgment* to the *Lord Chancellor.*

Upon theſe Charges are built the whole of the following Articles: Every Expreſſion, every Action which could bear an ambiguity, has been collected to *form* a Crime. The Earl has *received* money for *his Offices*, his *Aim* is therefore *Gain by Sale of Offices*, an eaſy Inference; and whatever is after *ſaid* or *done*, or *vice verſa*, is at firſt *Suſpicion*, and then an *Evidence* againſt him.

But, my Lords, before I proceed to try Particulars upon this Head, I muſt beg your Lordſhips Patience to compute in general the very ſmall Advantage the noble Earl could propoſe by the *Scheme* the learned Gentlemen have *projected* for him: The *Office* of Lord Chancellor is *precarious*, and only *during Pleaſure*: The *King*, for his Subjects Welfare, *jealous* of every Miniſter, and *ready to remove* the greateſt Favourite upon the very firſt Offence; and upon this Contingency, what would the *Chance* of diſpoſing of a Maſter's Place be worth? A very trifle; I may boldly ſay, not ſo much as what he has *refuſed* the Opportunity of *gaining* upon *every compleat vacancy* he has diſpoſed of. And can your Lordſhips ſuſpect a Character *once ſo dear*, once allowed *ſo worthy*, of doing ſuch little Things, I ſhould ſay, ſuch baſe Things, for *no Advantage*, and yet to promote *this illegal and corrupt Gain on which his Heart was eagerly ſet?* The noble Earl is further charged "with having admitted ſeveral Perſons to the "Offices of Maſters, who were at the Time of ſmall Subſtance and Abi-"lity." Againſt this there lay an obvious Objection; Why Perſons of ſmall Subſtance? When the Earl *might have*, and indeed *always had*, when of his own Choice, others *of Sufficiency.* Wherefore, to make their Charge conſiſtent, a *fraudulent* method is ſuppoſed to be introduced, of *paying for their Places out of the Effects of the Court*; a Method *beſt ſuited* to *ſuch Perſons:* But your Lordſhips Juſtice muſt have led you to obſerve, that they *no where* ſo much as *inſinuate*, that the Earl *knew* them to have been as charged: They were ſenſible of the proper Caution he had taken, and (as it will appear in Evidence) that not only previous Inquiries were always made, and *none* admitted, who came not *well recommended*, or *perſonally known* to the Earl himſelf; but that when ſeveral Candidates have offered, his Lordſhip has been ſo unmindful of the *little Views* he is ſuppoſed ever to have acted with, that he has *conſtantly preferr'd* him he thought the *worthieſt*, tho' the *preſent* to the Earl was far *leſs* than what others gave him Expectation of. This ſurely, my Lords, will be enough to *vindicate* his *Care*; and tho' it ſhould appear, that he was *deceived* in any *ſingle Inſtance*; nay, tho' *the Man himſelf* ſhould be the *Evidence* of *his own Deceit and Fraud*, yet I hope, my Lords, *ſuch Perſon* will have his full Compliment of Credit, if he is *believed* in the Character he gives of *himſelf.* But to make ſome excuſe for the Earl's *good Opinion* of this Mr. *Thomas Bennet*, and his *Circumſtances*, I muſt obſerve, that it is evident from his *own Account* which lies upon the Table, that *when he was admitted*, he had an *Eſtate* of between 5 and 600*l. per Ann.* he had beſides *an Office* for Life of 250*l. per An.* he *kept* his *Coach*, and *then* lived in Reputation. However, I muſt confeſs, That in further Proof of his *great Integrity*, this Gentleman has depoſed, that *Part* of his Eſtate was then *Mortaged* for *more than it was worth.* I ſhould, upon this Occaſion, put your Lordſhips in mind of what happened upon this Gentleman's *Confrontation*, becauſe he has been *ſingular* in his Evidence on *more* Facts than *one*; but we ſhall take another Opportunity of diſplaying this *Worthy Perſon's Veracity*, that your Lordſhips may know *how much Regard* to pay to *him*, by ſeeing *how little Regard* he has for *Truth.*

As to the *Schedules*, the Neglect of which is made ſo *Criminal*, it would be enough to ſay, that the taking them could not prevent *the Fraud* complained of; for what would be the Difference in *deducting* the *Sum agreed on for the Purchaſe upon the transfer*, or *repaying it the minute after?* And if the new Maſter is *really able* and *ſufficient*, where is the *Injuſtice* done in either Caſe? But we ſubmit whether ſuch Schedules muſt not be made between Maſter and Maſter: For without them their Accounts cannot be ſettled; and as it is for the Intereſt of him who ſucceeds, ſo is it for the *Security* of the other who *reſigns.* But ſuppoſing the Practice to have been as charged, and their *Transfers* were not *compleat*, the only Conſequence I ſee is, that *both* Maſters are *bound*, and the Suitors have by it a *double Security.* It has happened ſo in the Caſes of both Mr. *Hiccocks* and Mr. *Rogers*; they imprudently *retaining* the Effects of the Court, for the Sale of their Offices, have thought it proper to petition the Lords Commiſſioners to *repay* the money: So that ſome good Fortune has attended this Practice, ill as it is; the Suitors have by it got ſo much money more, than what otherwiſe they would have had.

My Lords, when *Dormer*'s Affair (tho' ſufficiently unfortunate) is conſidered by your Lordſhips, I hope that the noble Earl will not be thought to have acted otherwiſe than as *became* his Character: Upon the firſt notice of the Misfortune, the Earl took all poſſible Care both to *ſave the Effects*, and *ſecure the Office*; he ſent the two ſenior Maſters to *ſearch his Chambers*, and to *ſtop the Transfers* of all Stock which ſtood in his Name in any of the Publick Companies. My Lords, had the Earl had that *Eye on Gain*, had he had *that Apprehenſion of Diſcovery* which is repreſented, he would ſcarce have taken *this laſt Step*, which muſt and did make a *Suſpicion* of the Office *publick:* When Mr. *Dormer* was returned, and upon *ſuch Terms* as the Managers themſelves can't ſay were unreaſonable to grant to one, whoſe Perſon was out of reach, and whoſe Effects and Accounts were in the greateſt Confuſion: His Liberty was all he aſked, and that upon Condition only of a *full Diſcovery* and *a fair Aſſignment of all he had.* I ſay, my Lords, when Mr. *Dormer* was returned upon theſe Terms, which we hope he has honeſtly performed, his Office was ſold, and every Thing done, *not to conceal*, but to *ſupply* the *Deficiencies.* I would not enter too minutely into the *Compoſition* with Mr. *Wilſon:* It will, I conceive, be a full and ſatisfactory Anſwer to the Charge, to obſerve, that as the Suitors were not *Parties* to it, they can no ways be *injured* by it. If the *Compoſition* be *precarious*, *trifling*, and *unjuſt*, the Suitors are ſtill *at Liberty* to proceed: If *more* could be had, they ſtill may have more; but till *more* is *recovered*, it muſt be admitted that the *little*, which is *gained*, is *owing* to the *Compoſition.* Had the Suitors been *Parties*, *the Order* ſo much complained of for its Irregularity would not have been made *without a Notice*; but as Mr. *Wilſon*, whoſe particular Intereſt it was to have them Parties, did not deſire it, we apprehend *the Order* to be in the *uſual manner.* My Lords, the Maſters (as is in Evidence) having in ſome meaſure *engaged themſelves* to make good the Deficiences, if any ſhould happen, the Earl could have no reaſon to doubt the Juſtice of the *Propoſal* of Mr. *Wilſon*, after Mr. *Hiccocks* had *reported* it, and Mr. *Edwards*, the *Succeſſor* in the Office, had *prayed* the Earl to *order him to accept it.*

It ſeems, my Lords, a very forced and unkind Conſtruction, which the Articles put upon the *Accounts* his Lordſhip had *required* of the Maſters; but the worthieſt Behaviour may be thus miſconſtrued. The Maſters themſelves had *made the Propoſal of contributing*, and it will appear that they all (except Mr. *Lightboun*) did pay their Money *voluntarily.* What occaſion then for ſuch Methods as are ſuggeſted to *terrify* and *oblige them to this contribution?* Is it in Proof that the requiring the Accounts did *influence one ſingle Maſter?* No, my Lords; but, on the contrary, you will find that the *Payment* by the Maſters did not prevail on his Lordſhip to deſiſt; for it will be in Evidence that the Earl *ſtill* perſevered, and that by the Earl's direction a *Letter* was wrote to the Maſters, *after* the ſeveral *Payments* were made, complaining of their Delay, and requiring their Accounts. The Earl, indeed, upon Repreſentations, did afterwards think the method *impracticable*, which he is the better juſtified in ſaying, becauſe the very *ſame method* has been *ſince* found ſo by *the Honourable Committee for inſpecting their Accounts; and* departed from *as ſuch.*

Upon this Subject of *Dormer*'s Deficiency, I muſt beg leave to remind you of what Mr. *Edwards* told your Lordſhips. He ſaid, "That they "were all of Opinion, that the Deficiency would be made up; and un-"leſs he had believed it, he would not have entered into the Office." If Mr. *Edwards*, who was ſo much concerned, was in this Perſuaſion, why might not the Earl too with Innocence? And, my Lords, this Perſuaſion, this Expectation, is, I humbly conceive, a very ſatisfactory reaſon why the Earl, had he been obliged to have declared an Average *ex officio*, *in common Caſes*, might be excuſed the doing it *in this.*

As to the Caſes of *Chitty* and *Harper*, when the Circumſtances which attend them, are laid before your Lordſhips, the Inferences drawn from each will appear equally unreaſonable: For the Earl can no more be ſuppoſed to have intended a *Concealment* of *Dormer*'s *Deficiencies by the Order* he made, *after* he had expreſsly mentioned *in open Court* the *ſeveral Accidents* by which they had happened, than he could by *the Payment of* 1000*l.* to Mr. *Lockman*, *when* he told him, "That it would be the laſt "Payment Mrs. *Chitty* was likely to receive, the reſidue being in great "danger from *Dormer*'s Deficiency." But when we prove to you the very great diſtreſs Mr. *Lockman* repreſented himſelf to be in, your Lordſhips will be convinced that the money was by the Earl advanced from *no other motive*, than *a generous and compaſſionate Regard to him:* This at *that time* was Mr. *Lockman*'s *own Senſe* of it; this he has *often ſince acknowledged*, tho' upon his Examination he was pleaſed to *claim* it *at his Right*, and *own no Obligation.*

I think

I think it will be (I should say, it is already) very full in Proof, that the Earl desired a *thorough Reformation* of *his Court*; and tho' Difficulties have obstructed it, yet surely, my Lords, it can't be imputed to any omission of his, in the light the Charge would place it. There were *Difficulties*, not only with Regard to the *Masters* and their *Accounts*, but to their *Jurisdiction* and *Privileges*: *Difficulties* of such a nature, that one of the Witnesses thought they required the *greatest Resolution* to *surmount them*. If the noble Earl had not a *Resolution quite sufficient*, it might perhaps be his Misfortune, but surely not his Fault. But what *Proposals of Security* the Masters could possibly make, which *they* esteemed *useful* or *convenient to themselves*, and the *Earl* should *refuse*, I can't conceive. I imagined from *the Scheme* on which the Charge is founded, that *their Interest* had been the *same*, had been *one*, and what served *their* purpose must have served *the Earl's*; and yet now we are told the contrary.

How the learned Gentlemen have made out the several *Deficiencies*, must be considered when we are upon their Evidence to that Article: I will only observe, that no *permission* or *encouragement* of the Earl's has been proved, by which they are *increased*; that *no Money* has been *compelled* into court, by any *Order he* has ever *made*, to *advance* their Offices, nor any *Countenance* given by *him* to any one *ill Practice*.

How far the Earl is guilty of *obstructing the inquiry his Majesty had directed*, or how far he was instrumental in *deceiving the Council-Board*, we submit upon their own Evidence: It appears, that at the meeting at Mr. *Edwards's* House, *all* of them *declared* they were *able* to answer their several Balances; and when the Subscriptions were Signed, *they* were *believed* to be as they had declared themselves: If they were, where was the *Fraud* in the Proposal *to assist each other?* Or how could it be understood *to make a false Appearance*, with Propriety of Language, or common Justice? But it is remarkable, that this *Advice*, however fair and honest, was not given by the *Earl*, but by Mr. *Cottingham*, and without his *privity* or *knowledge*, and *occasionally* in Conversation with the Masters: And as to the *Subscription*, which they *added*; Did the Earl use any Arguments to persuade them to it? Did he press them, or even *desire* them to Sign it? No, they themselves confess, that *he* but *barely recommended it*, *as being what their senior Master had made*, *and better in Form than some others*, *which were then produced*. He used no Arguments, he prest them not; and they, *honest Men* (as they themselves have deposed before your Lordships), made no Scruple or Objection to it. I beg Pardon: I should do Justice to Mr. *Thomas Bennet*, who I think had *his Scruple* to the Word *Demonstration*. So that if *false Representations* have been made, they who have *made* them are the *guilty*; *they* have *deceived* the Council-Board, and *not the Earl*; the Action was their own, free and unsolicited.

But, my Lords, not to detain your Lordships longer; one of the learned Managers seemed sensible of the force of *one* Evidence we have to offer in Vindication of the Earl from the Charge of *Avarice*; and therefore, without denying a *public Fact*, he was pleased by his *Eloquence* to try, whether he could not bring *Charity itself* under suspicion: Whether he could not *confound* the difference between the *most worthy Generosity*, and the *Luxury* and *Debauchery*, and *the Riots* of a *CATILINE?* What innocence is *secure* against the *Power* of *such* Eloquence? My Lords, had he not thought *this* a Defence against the *very Foundation* of the whole Charge, he would not have *surprised* us with such an Answer: He well knew that the Earl could have *Orphans* and *Widows*, *the poorer Clergy*, and *the Youth of the University*, to appear and acknowledge their *Obligations* to him: *Obligations* made *greater* by being *unasked*; I cannot say *unexpected*, because every Object in distress within his Knowledge had Reason to expect Relief. I would ask the learned Gentleman, whether Expences of *this kind* were part of *CATILINE's* Profuseness?

This, my Lords, will be an Answer to their oft-repeated Imputations, and must clear the Earl from all *suspicion* of ever having acted from such sordid motives, or from any *thirst* or *impotence of Gain*. Is it likely that he should *encourage the highest Villainy* to *raise* a Sum, and then *apply* it to *relieve the Poor* and *the Distrest?* Is it credible, at the same time, that *Virtue* and *Baseness* should thus *jointly* govern him? Hard indeed is the Condition of the Earl, when *his very Virtues*, when *his most commendable Actions*, are *turned to his Disgrace and Injury!* But, under all, it is a great Satisfaction to him, that your Lordships are his Judges; and he submits his whole Conduct to your Justice.

Mr. *Lingard*, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occasion, have so fully opened the Nature of the noble Earl's defence in general, that I shall not presume to take up any more of your Lordships Time, by following them in that Method; but shall confine myself to the 5th, 6th, 7th, 8th, and 9th Articles; and shall beg leave to inform your Lordships what we have to lay before you, in relation to the Matters contained in those Articles. But before I proceed, I shall beg your Lordships Permission to go out of those Articles, so far as shortly to observe, that in the Preamble to the Articles of Impeachment, where the several Favours and Advantages, which the noble Earl at the Bar received from the Crown, are enumerated, those which were the peculiar Marks of his Majesty's Royal Bounty to him, and those which were the ordinary Benefits and Allowances, which the Earl enjoyed in common with his Predecessors in that Office, are so blended together, and set in such a light, that at least it gives an occasion to mistake some of the latter Sort for those of the former; if it does not amount to an Insinuation to that Purpose, in order to enhance the particular Advantages which the noble Earl has received, above what they really were.

My Lords, I should be injurious to that noble Lord, who is possessed with Sentiments of the deepest Gratitude to his Majesty, should I endeavour to lessen the Instances of his Royal Munificence towards him: And I purposely omit mentioning any thing of the noble Earl's Merit upon this Occasion (though I humbly apprehend that I should be thought very excusable in so doing), because I am sensible, that he chooses to owe every thing purely to his Majesty's goodness: Yet as he has (very properly as we humbly apprehend) in his Answer, set one of those Matters in its true Light; by informing your Lordships that the Annual allowance of 4000 *l. per Annum*, mentioned in the Preamble to the Articles, and which he admits to have been granted to him, during the Time he should continue Lord Chancellor, is no way particular in his Case; but that the same has, for many Years past, been constantly granted to, and enjoyed by his Predecessors; give me leave, my Lords, for a Proof of what is so insisted on, to refer your Lordships to what appears upon your own Journal, in the Case of the Lord *Somers*, upon the Impeachment exhibited against him by the House of Commons, for high Crimes and Misdemeanors; where, in the Introduction of the Charge in the 8th Article, this Appointment of 4000 *l. per Annum* to him is alledged in aggravation of that Charge against him. His Lordship, by his Answer thereto, admits, that during his Custody of the Great Seal, he did receive the Profits and Perquisites thereto belonging, which before his Time were become very inconsiderable; and that he did also receive an Annual allowance from his then Majesty of 4000 *l. per Annum*, being the like Pension that had been allowed to several of his Predecessors. This, we humbly apprehend, plainly shews both that this allowance has been usual, and likewise the Reason of making such allowance; which is the inconsiderableness of the ordinary Profits and Perquisites belonging to that high Station.

I shall now proceed to the Articles I proposed to speak to; in which the Matter, which is charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extorsively, insist upon, take and receive, the several Sums of Money therein respectively mentioned, for the admitting the several Persons named in the 5th, 6th, 7th, and 8th Articles, to be Masters of the Court of *Chancery*; with a small variation in the 8th Article, by way of Aggravation, that there was a Deficiency in that Office, which is there taken notice of; and for permitting *Thomas Bennet*, as it is alledged in the 9th Article, to resign his Office of Clerk of the Custodies; which is agreed to be a Charge much of the same Nature with that in the four preceding Articles; and is alledged to be against the good and wholesome Laws and Statutes of this Realm.

It has been strongly insisted on, by the Gentlemen appointed to manage this Prosecution, that this is a Matter which is *Malum in se*, and consequently a Crime at Common Law, as well as expressly against the Statute of 12. *Richard* II. and 6th of *Edward* VI. and no Means, that could be thought of, have been wanting to represent it under all the most aggravating Circumstances, and in the most odious and frightful Appearance, that the blackest Colours could give it.

My Lords, The Earl, by his Answer, denies that he did at any time insist upon the Sum of 105*l.* or any other Sum of Money, to permit or accept of the Resignation of *Thomas Bennet*, mentioned in the 9th Article; or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum of Money on that Account: Which is a Denial of that, which is properly the Charge in that Article: He does indeed admit, that he did receive a Present from *Thomas Bennet*, under the Circumstances mentioned in the Answer to that Article; and likewise that he accepted the Presents, which were freely and voluntarily sent to him, by the several Persons mentioned in the four preceding Articles; in two of which Instances all, and in the other two, great part of what he so received, has been returned. But his Lordship very rightly (as we humbly apprehend), insists upon it in general, that the acceptance of Presents upon such Occasions has been long used and practised by his Predecessors; and that they have been reckoned as the ancient and known Perquisites of the said Office: That it is not Criminal in itself, or by the Common Law, or against any Statute of this Realm; or subject to any Judgment, which can be prayed in this Prosecution.

The Gentlemen of the House of Commons, my Lords, in order to support what they have insisted upon, and to make it appear that such an Acceptance of Presents is Criminal, have caused the Statute of 12 *Richard* II. to be read to your Lordships; and have produced Mr. *Ayres*, to give an Account of the Ceremony, which is annually practised upon the Occasion of nominating of Sheriffs.

I won't presume to act the Casuist, or trouble your Lordships with any Niceties, by questioning, whether what passes upon that Occasion ought to be esteemed an Oath or no; but, my Lords, I hope I may venture to say, that it is very plain, it is no Oath of Office in general, for this Reason, because, if it had been so, the once taking it had been sufficient; and there would have been no occasion of repeating it Annually, in the slight Cursory manner Mr. *Ayres* has given an Account of, upon one particular occasion; which likewise shews, that what is then done, is confined to that matter only which is then transacting, and not intended to be generally obligatory in other Things.

If the accepting of Presents, upon occasion of recommending, or admitting Officers to Places, had been understood to be criminal in the Eye of the Common Law, or against the Statute of 12 *Richard* II. no doubt, but in so great a length of Time, Precedents might have been produced, where Persons had been censured, or punished, for a Practice which has been represented to your Lordships as the most vile and pernicious

nicious Sort of Bribery and Corruption; and yet, notwithſtanding the many marks of the Severity of the Government againſt Bribery and Corruption, which have been taken Notice of, the Gentlemen of the Houſe of Commons have been pleaſed to acknowledge, that there is no Precedent, no Judgment to eſtabliſh and warrant what they aſſert to be Law in this Point.

My Lords, I beg leave to ſay, that a ſtronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reaſoning in our Law, and, I conceive, conſonant to the general reaſon of Mankind; That where a Thing never has been done, it is to be ſuppoſed there is no Ground or Foundation for the doing it. Nor can this Way of Reaſoning be avoided, but by ſuppoſing that there never have been any Inſtances of this Nature before, or thoſe ſo rare, and private, that the Government had no Opportunity of taking notice of them: A Suppoſition, my Lords, ſo extraordinary, that there is hardly room to admit of it: and therefore, when we ſhall, with your Lordſhips Permiſſion, lay before you Inſtances of this Thing having been frequently and openly done it will not be ſo much in order to prove the contrary of ſuch a Suppoſition, as to give an Opportunity to your Lordſhips, and to intreat you to reflect on the great Abilities, and unqueſtionable Integrity of thoſe excellent Perſons who have acted in the ſame manner; the Notoriety and Openneſs with which this has been tranſacted, and the perfect Silence of the grand Inquiſitors of the Nation, and the whole Legiſlature in regard thereto: And then to conſider, the Clearneſs and force of ſuch a Comment upon the Law, both from the Actions of thoſe, whoſe Characters will not allow of a Suſpicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of thoſe, who ſhould and would, no doubt of it, have taken ſevere Notice of it, if it had been thought to have been ſo.

But ſuppoſe, after all that has been ſaid, that this was ſtill a doubtful Point, would it not, my Lords, be extremely hard to rouſe up an old antiquated Law, which for ſo many Centuries has quietly ſlept, without exerting itſelf, without fixing any mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending ſuch a Practice; a Practice that has been owned and countenanced by ſuch great and unexceptionable Men, and objected to by none; and which from thence might well receive the Appearance of being fair and innocent: Would it not, I ſay, my Lords, be very hard, without ſome previous Notice of the Danger, to put this Law in Execution, to unſheath, this ruſty Sword to wound this Noble Earl with? We hope your Lordſhips would think ſo, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any Doubt remaining with your Lordſhips, as to the Legality of the Earl's Behaviour in this Point, that the Statute of *6th* of *Edw.* VI. will clear it up beyond queſtion; and that it will manifeſtly appear by that Statute, that accepting of Preſents is neither *Malum in ſe* againſt the Common Law, or the Statute of *Rich.* II. and that this Statute of *Edw.* VI. muſt be looked upon as a declarative Law in thoſe Points, or otherwiſe it muſt be allowed (which none ſure will ſuppoſe) that the Legiſlature of this Kingdom has made a Proviſion to ſanctify a moral Evil; (for that is the Import of *Malum in ſe*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the moſt pernicious Tendency and Conſequence, if the Repreſentation made of it by the Gentlemen of the Houſe of Commons is to be regarded.

My Lords, I ſhall paſs by the fourth Paragraph of that Statute, whereby it is provided, that the ſaid Act ſhould not extend to Offices of Inheritance; tho', I preſume, the Largeneſs of the Eſtate can hardly be thought to alter the moral Nature of the Action. By the *6th* Paragraph, there is a Saving for all Bargains, Sales, Promiſes and Agreements of or for any Office made before the firſt of *March*; and ſuch Bargains, Sales, and Contracts, are exempted out of the Force of that Act. Your Lorſhips will be pleaſed to obſerve, This Seſſion of Parliament began the *23d* of *January*; ſo that this ſaving Clauſe makes a Proviſion for Futurity. My Lords, this would be to eſtabliſh Iniquity by a Law, if the accepting a Preſent on Occaſion of admitting a Perſon into an Office, was immoral and criminal, as has been aſſerted. But if it were ſo, and likewiſe againſt the Statute of 12 *Rich.* II. and contrary to the ſuppoſed Oath, taken in purſuance of that Statute; what, my Lords, muſt be thought of the laſt Paragraph, which provides, that the Act ſhould not extend to the Chief Juſtices, or Juſtices of Aſſize, that then were, or thereafter ſhould be? Theſe all annually take the ſame Oath (if it is to paſs as ſuch) upon the ſame Occaſion of nominating of Sheriffs, as Mr. *Ayres* has informed your Lordſhips; and are conſequently, by virtue thereof, under the ſame Obligation, in this reſpect, as a Lord Chancellor: And can your Lordſhips ſuppoſe that ſo many reverend and learned Perſons, who, from their known Duty of Attendance, muſt be preſumed to be preſent in your Lordſhips Houſe, whilſt this Law was there under Conſideration, would have forborn informing their then Lordſhips, how contradictory thoſe Parts of this Statute were to the Common Law, and the Statutes of this Realm, eſpecially that of *Richard* II. Can it poſſibly be conceived, that the whole Legiſlature would paſs a Law, not only to allow, in ſeveral Inſtances, the Practice of what was ſo contrary to the Law of Reaſon, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath preſcribed by Statute, and annually repeated; and that nobody ſhould ever ſcruple the doing ſo, or diſcover the Illegality of this Practice, but upon this unfortunate Occaſion? And yet, my Lords, monſtrous as theſe Suppoſitions are, they muſt (as I humbly conceive) be allow'd of, or it muſt be granted that ſuch Acceptance of Preſents is not *Malum in ſe*, or contrary to the Statute of *Richard* II. And I hope it is plain, that this Statute of *Edward* VI. is in effect a declarative Law in thoſe Points.

My Lords, The Gentlemen of the Houſe of Commons ſeemed ſenſible of theſe Difficulties; and therefore they have, with great Induſtry, endeavoured to diſtinguiſh what the Earl has done, from the common and ordinary way of accepting of Preſents, upon ſuch Occaſions. They have told your Lordſhips, that his Method was haggling and extorſive; and have given it abundance of other hard Names: They have, to confirm it, informed your Lordſhips, that the Prices lately given, have been higher than thoſe formerly accepted upon the like Occaſions: Tho' they have not condeſcended to attempt the Proof of it.

My Lords, As the manner of the Earl's taking of Preſents will depend in a great meaſure upon the Evidence, which has been offered to your Lordſhips upon theſe Articles; I ſhall beg leave to take ſome ſhort Notice of it. As to the 9th Article, Mr. *Thomas Bennet* has been pleaſed to inform your Lordſhips, that he did deſire to have the Earl's Recommendation of Mr. *Hamerſly*, to ſucceed him as Clerk of the Cuſtodies: and that being told at the ſecond meeting with Mr. *Cottingham*, that a Preſent would be expected, he ſaid it was a very hard and unreaſonable Thing to expect a Preſent from him, who had ſo lately paid a large Sum upon his being admitted into his other Office: but upon its being inſiſted on, that 100 Guineas ſhould be paid, he was forced to comply therewith, and agree to pay it.

My Lords, I humbly inſiſt upon it, that if an entire Credit were to be given to what Mr. *Bennet* has ſaid upon this Occaſion, it would not amount to a Proof of the Charge contained in this Article: The Corruption and Extortion therein complained of, being reſtrained to the Conſideration of permitting and accepting the Surrender of the Office there mentioned; all the other Parts of that Article being only introductory to, or in Aggravation of that ſuppoſed Offence. But Mr. *Bennet* has not mentioned to your Lordſhips one Syllable of the Earl's having refuſed to permit or accept a Surrender of that Office, or of his having received any Sum of Money in Conſideration of his permitting or accepting Mr. *Bennet*'s Surrender thereof.

But, my Lords, we muſt beg leave to ſubmit it to your Lordſhips Conſideration, what Credit is to be given to Mr. *Bennet*'s Evidence, ſo far as it does go, for this Purpoſe. The Gentlemen of the Houſe of Commons have thought to call Mr. *Cottingham*, as a Witneſs to this Article; who owns that in his firſt Diſcourſe with Mr. *Bennet* upon this Occaſion, he told them he believed a Preſent would be expected to the Great Seal, and that Mr. *Bennet* freely offered 100 Guineas, before Mr. *Cottingham* ſpoke to the Earl about that Affair. He expreſly contradicts Mr. *Bennet* in what he ſaid of Mr. *Cotingham*'s inſiſting upon 100 Guineas, and Mr. *Bennet*'s Agreement to give that Sum at the ſecond meeting, Mr. *Cottingham* ſwearing, that the offer of 100 Guineas was voluntarily on Mr. *Bennet*'s Part; and that it was at their firſt meeting. There are ſeveral other Contradictions in their Evidence; but I ſhall only take Notice of that, where Mr. *Bennet* pretends, that Mr. *Cottingham* aſſerted he did not know Mr. *Hamerſly*, his next-door Neighbour. This Mr. *Cottingham* denies, and Mr. *Bennet* is forced in ſome meaſure to retract what he had ſo poſitively ſworn; and comes down to a Belief only, that Mr. *Cottingham* ſaid ſo, but will not be poſitive.

It is ſomething ſurprizing, that after they have done Mr. *Cottingham* the Honour to call him as a Witneſs, and given him a Credit by ſo doing, Hints ſhould be flung out, that Mr. *Cottingham* knows nobody, except where there is Gold in the Caſe; that Gold is a great clearer of the Eye-ſight, and the like Inſinuations, to the leſſening his Character. But why then did they call him as a Witneſs? Surely, my Lords, if he is a Perſon not to be believed, it was not altogether ſo proper to produce him as a Witneſs before this Auguſt Aſſembly. But, my Lords, we ſhall eaſe them in that matter, by thoroughly eſtabliſhing Mr. *Cottingham*'s Reputation; tho' it is ſomething unuſual to ſupport the Reputation of a Witneſs produced by the other ſide: And we hope your Lordſhips will then find no difficulty in determining whether Mr. *Bennet* or Mr. *Cottingham* deſerves moſt be credited.

In ſupport of the 5th Article, Mr. *Kynaſton* is called as a Witneſs. I ſhall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the Money paid upon his Admittance, and the Circumſtances of that Tranſaction. Mr. *Kynaſton* indeed has ſaid, that he would willingly have paid but 1000*l.* upon his Admittance; and accordingly offered that Sum, which Mr. *Cottingham* would not hearken to; and therefore he ſubmitted to pay 1500 Guineas; but he owns, at the ſame time time, that he has not a very exact Remembrance of what paſſed upon this Occaſion. Mr. *Bailey*, to whom Mr. *Kynaſton* refers, and who was his Agent in this Buſineſs, in his Evidence has given your Lordſhips an Account, that Mr. *Kynaſton*, when he underſtood that 1500 Guineas was apprehended to be the Preſent he intended to make, ſaid, that he thought it was only 1500*l.* but mentions nothing of the Offer of 1000*l.* It is very ſtrange if that had been the Caſe, that he ſhould not have taken Notice of that likewiſe. But Mr. *Cottingham*, who is again called as a Witneſs, ſhews the reaſon why no Notice could be taken of ſuch an Offer; and that is, becauſe there really was none ſuch. He denies that Mr. *Kynaſton*, offered 1000*l.* and ſwears that the Sum offered by Mr. *Kynaſton* was 1500 Guineas; and withal declared, that he would acquieſce under what the Earl ſhould think fit in that matter; and informs your Lordſhips, upon his being interrogated by the Gentlemen of the Houſe of Commons to that Purpoſe, that he never did acquaint the Earl with what paſſed upon that occaſion till the whole thing was agreed and ſettled; and that, when he was informed of it, he expreſſed himſelf to be well ſatisfied therewith. Surely, my Lords, here are no extraordinary Endeavours or Artifices uſed to enhance the Price; no haggling, by firſt naming one Sum, then another; but at once the matter is propoſed, and at once agreed and concluded.

To prove the *6th Article*, my Lords, Mr. *Thomas Bennet*, is called again; and here again the like misfortune happens as before; Mr. *Bennet* differs widely from Mr. *Cottingham*, who is called upon the ſame ſide to prove the ſame Article. Mr. *Bennet* ſays, that he acquainted Mr. *Cottingham*, that he thought 1000 *l.* was enough to give upon his Admittance, and with his

his Reasons for such Opinion; but that, however, he was willing to give 1000 Guineas. Mr. *Cottingoam* has sworn that no such Offer was made, that nothing of that Nature passed; but that Mr. *Bennet*, upon being informed what had been done before upon the like occasions, freely offered fifteen hundred Guineas.

My Lords, The very nature of the Thing, upon the Circumstances agreed on all Hands, speaks strongly in favour of Mr. *Cottingham*, and in contradiction to Mr. *Bennet*, as to what is asserted by each of them upon this occasion. Your Lordships observe what condition the Earl is agreed to be in at that time; had Mr. *Bennet* apprehended that he had so very hard terms put upon him, as he would not have your Lordships believe he did; Would he not have stayed some little time, to have seen the effect of so violent a distemper as a Pleuretic Fever, which his Lordship then laboured under in a very high degree? especially when Mr. *Bennet* appeared at the same time to be in no very good State of Health himself; of which he was reminded by Mr. *Cottingham*; who was so far from acting the rapacious part, in behalf of the Great Seal (which was not in a way to suffer, by the admission of a Person likely to make a new vacancy by Death), that perceiving Mr. *Bennet* to look yellow, and out of order, he desired him to consider what he was going to do, when he took a Place for Life in his Condition. Mr. *Bennet* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was so cautious, as he pretends, as to the Sum he was to give upon his Admittance, and which he then thought to be so unreasonable, hurries on this Affair, under these Circumstances of his own, as well as the Earl's State of Health; and tho' out of order, as he himself owned, presses an extorted Sum of 1500 Guineas, into the Hands of, probably, a dying Chancellor. Will not your Lordships think it more likely, that Mr. *Bennet* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon so easy Terms as were then offered him; rather than that he thought himself to be hardly used upon that Occasion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordships to look upon this Acceptance of Presents, by the Earl in particular, to be extorsive; which is, that the Sums of Money given upon these, and the like Occasions, are lately greatly increased. Your Lordships will be pleased to observe, upon what has hitherto appeared, that the Sums taken by the Earl upon the Admission of a Master into the Room of one deceased, have been constantly less than what the Masters, who have resigned, have had as a Consideration for so doing. And it is very easy to account for the late increase of the Sums given upon these Occasions, without any Extortion in the matter. As personal Estates have vastly increased within these few Years, and Settlements, and Provisions for Families, have been made out of the Public Stocks and Funds, the Business of the Court of *Chancery* hath increased proportionably; and consequently, People would be more desirous of, and give more Money for the Purchase of these Offices, which were improved by such increase of Business. And as the common Interest of Money is grown lower, it is natural to suppose, that People would be the more ready to invest their Fortunes in those Things, which were likely to produce a better Income, even in proportion to the risque that was run upon their Lives, than could be made of Money in an ordinary way. But whether that, which I have mentioned, or whatever else may be the Cause of it, it is so plain and notorious that all Places and Offices have of late Years increased in their Value, that it would be misspending your Lordships time to enter into the Proof of it.

My Lords, As to the Admission of Mr. *Elde* into his Office, and the Acceptance of a Sum of Money upon that occasion, which makes up the Charge contained in the 7th Article; and as to so much of the 8th Article as relates to the like Transaction with Mr. *Thurston*; there is not the least Colour or pretence from the Evidence, which has been given to support those Charges, to ground a Supposition of Haggling, or driving a Bargain: On the contrary, from that very Evidence it appears, that what was done by Mr. *Elde*, and Mr. *Thurston*, was perfectly free and voluntary; and attended with a good deal of Solicitude and Uneasiness in the latter, lest his Offers should not be accepted; the Circumstances of which I shall not trouble your Lordships with repeating. And tho' from the Troubles he has since met with in that Office, he has something altered his Opinion of it, your Lordships will be guided by what he then thought, and acted. Your Lordships will be pleased to observe from the same Evidence, that great part of the Money presented by those Gentlemen has been returned to them again; and tho' it is some time afterwards before it was done, it was plain there was a much earlier Intention of doing so. Mr. *Elde* has informed your Lordships, that in *May* following his Admission the Earl intimated to him, that he would return part of the Money; And Mr. *Thurston* received several messages, which plainly appeared to be in order to a Return of part of the Money which he had given; tho', on occasion of his being out of town, it was some time after before he knew the meaning thereof, or had the Money returned.

My Lords, There is one particular Circumstance in the 8th Article, which has taken up a great deal of your Time; that, I mean, of the Deficiency in Mr. *Borret*'s Office. Why that Matter was inserted there, and why it has been so much laboured, and your Lordships troubled with so much Proof about it, I must own myself at a loss to conceive; unless it be allowed and admitted, that the taking of Money, upon the Admission of a Person to the Office of one of the Masters of the Court of *Chancery*, is not purely and simply *Malum in se*, illegal, and contrary to the Statute of *Rich.* II. but that, if it be done to raise Money to make good the Deficiency in the Office, as was done in the Case of Mr. *Edwards*, which your Lordships have upon this occasion heard of, it is right and well. How otherwise can the Deficiency in the Office be an Aggravation of the supposed Crime of taking a Present upon the Admittance of a Person into it? Is it unreasonable to admit a new Master into an Office wherein there is a Deficiency? Is it not as necessary to fill up that Vacancy as any other? Certainly more so, in order to have one, whose Duty obliges him to a more particular Care of the Affairs thereof, which seem more to want it. The Aggravation then of the Fault, or rather the Fault itself, must consist in the not applying the Money received towards the Discharge of the Deficiency. But how can it be a Fault not to do so, unless there had been an obligation so to have applied it? And how can there be an obligation to make such Application of the Money, where there is so strong an obligation, as has been insisted on, not to raise any Money at all by such means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakned, at least, what is laid as the Foundation for its being a Crime; and this with little or no Success in the Proof attempted to be made of this matter; so far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that Office.

I won't repeat what Mr. *Godfrey* has said upon this occasion; your Lordships perceive that he and Mr. *John Bennet* were thought the fittest Persons to inspect the Affairs of Mr. *Borret*, after his decease; and were accordingly appointed to do so: And upon having examined Things, as well as they then could, were both of opinion, as Mr. *Godfrey* says, that there was no likelihood that there would be any Deficiency; and with this the Earl was acquainted. Mr. *Bennet*, indeed, differs something from Mr. *Godfrey*, as to the Account which he gave of this matter; but not so much, tho' his Account was to be taken, as would answer the purpose for which he was called; the aggravating the Charge in this Article against the noble Earl, who, there is no Room to doubt, would have acted as generously in this Case, as he did in the Case of Mr. *Edwards*, upon his coming into *Dormer*'s office, if the Circumstances, as represented to him, had been in any near degree alike.

My Lords, I have thus stated the matter of these several Articles, to the best of my Remembrance, in its true light, as it stands upon the Evidence already given. We shall beg leave to call some Witnesses to prove, that several noble and great Persons have taken Presents upon these occasions; men of excellent Characters; some of whom several of the Gentlemen of the House of Commons have taken such Notice of, that I may safely venture to say, they will concur in the Opinion, that they were Persons of so much Integrity, that they would not have taken such Presents, if they had thought it illegal so to have done; and of so great Abilities, that their Judgment must be of the greatest weight in this Point. We shall further trouble your Lordships to explain the nature of the Payment of 64*l.* which Mr. *Thomas Bennet* told your Lordships, he made over and above the 100 Guineas paid by him on Account of the Office of Clerk of the Custodies. He might, no doubt, if he had pleased, have informed your Lordships, that the most part of this 64*l.* was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33*s.* came to the Great Seal; and we apprehend that to have done so, would have been more agreeable to the Sincerity with which a Witness ought to speak, than to have left it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordships will excuse my observing upon this Occasion, the unhappy Circumstances of the noble Earl at the Bar: If he takes a small Sum, as this of the 100 Guineas for Instance, it is poor, pitiful, and a Prostitution of his Honour; if a larger Sum is taken, he is avaricious, greedy, rapacious, and I don't know what: Tho' your Lordships will observe, the Sums accepted are regulated according to the Nature of the Office on Account of which they are given. My Lords, his very Care in other Instances is made his Fault, his Actions must be all supposed to be done with corrupt Views; and yet his not acting is equally blamed; it is Carelessness, and Neglect. This is the Light in which his whole Behaviour has been set before your Lordships, and that with all the Aggravations and Vehemence imaginable. But it is your Lordships who, in a superior and calmer Station, are to weigh and judge of these Matters. It is from you the noble Earl is to expect Judgment; and it is his Happiness, that it is so. And in order thereto, when we have laid this Evidence before your Lordships, together with an Order, which shews the Payment of the Monies received from Mr. *Thomas Bennet* and Mr. *Kynaston*, into the Court of *Chancery*; we shall submit the Matter of these Articles to your Lordships. And notwithstanding all the severe Things which have been said upon this Occasion, we humbly hope your Lordships will be of Opinion, that the noble Earl at your Lordships Bar is not guilty of any of the Charges contained in these Articles.

Mr. Serj. *Probyn*. My Lords, we now proceed to call our Witnesses, and to prove the several Facts we have opened; and we beg leave to proceed in the same method as the Gentlemen, who are the Managers for the House of Commons, have done. As they began with the 9th Article, so we in our Evidence shall likewise begin there; and shew that Presents have constantly been made to the Great Seal upon all Admissions into the Office of the Clerk of the Custodies; and that in many other Offices under the Direction of the Great Seal, Presents have been usually made by the respective Officers on their Admissions; and this hath been the known uninterrupted Usage; and every Chancellor hath taken them as customary Presents. We desire, in the first place, that Mr. *Roger Lewis* may be called.

[Mr. *Roger Lewis* sworn.]

Mr. Serj. *Probyn*. We desire he may be asked, how long he hath been concerned as a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. I have assisted as Clerk of the Custodies of Lunatics and Idiots for the space of about 35 Years.

Mr. Serj. *Probyn*. I desire he may be asked, who was the first that came into the Office of Clerk of the Custodies in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wynne* was the first that came in after I was Clerk there.

Mr. Serj. *Probyn*. Who succeeded Mr. *Wynne*?

Mr. *Lewis*. Mr. *Roger Thompson*.

Mr. Serj. *Probyn*. I desire he may be asked, whether Mr. *Thompson* be now living or dead?—Mr. *Lewis*. Mr. *Thompson*, as I have been informed, hath been dead about these 9 or 10 Years past.

Mr. Serj. *Probyn*. I desire he may be asked, whether any Present or Compliment was made to the Great Seal on Mr. *Thompson*'s Admission?

Mr. *Plummer* My Lords, I object to the answering of that question; and desire to know, whether your Lordships will have Evidence against Gentlemen that are dead, who are no way capable of answering for themselves before your Lordships here? If my Lord can shew any Title or Right he had to sell this Place, we are ready to hear him; but to give Evidence against a Person that is dead, and cannot speak for himself; I submit that to your Lordships.

Mr. *Lutwyche.* My Lords, this matter is very proper to be objected to now, and it is very neceſſary for your Lordſhips Determination in the Beginning of this Affair. I ſee by this Queſtion, and their Opening, what large Compaſs the Gentlemen have taken, not only as to theſe Offices, but as to many other Offices for which Preſents were given. I take the proper Queſtion before your Lordſhips to be, Whether this be lawful by the Laws and Statutes of the Realm? And if that be the Queſtion, I ſubmit it, whether it is material to give an Account what other Perſons have done? Whether, when a Perſon is brought upon a Proſecution for an Offence againſt the Law, it be material for him to ſay, that other Perſons have been guilty of the ſame Crimes? This is a Queſtion at Law upon the Conſtruction of the Statute; and they ſay it is neceſſary for them to give theſe Inſtances, to ſhew the Judgment of thoſe great Perſons upon the Act of Parliament; but ſure I am, it was never yet attempted to give in Evidence the Actions of other Perſons in order to expound a Statute. The Expoſition of a Statute muſt be founded on the Words of the Law, and not on the Actions of other Perſons. In all the Experience I have had in Caſes of Proſecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the Law is, what Authorities have been in thoſe Caſes, and what the Conſtruction hath been in former Judgments. My Lords, this is a matter of great Conſideration to your Lordſhips, not only upon the Account of the Precedent, but alſo upon the Account of the Time that your Lordſhips are like to ſpend, if you are to go through all the Offices of the Law, to ſhew how many great men have accepted Preſents. It will take up a great deal of Time, without any Fruit at all. But, my Lords, there are other Conſiderations which will prove it unreaſonable to admit of this Evidence: At preſent your Lordſhips have under your Conſideration the Caſe of this noble Lord within your Bar; but would they in Defence of him impeach others, not here to defend themſelves? Many of them are dead; others are living: Will you try Perſons not accuſed, and without being preſent to anſwer for themſelves? But, my Lords, with reſpect to ourſelves, is it reaſonable for us to take upon us the Examination of ſeveral Facts, without knowing who the Perſons charged are, what the Circumſtances of the Caſe were? Are we to ſhew the Difference, or ſtate the Circumſtances? It is impoſſible for us to do it. My Lords, this being the Nature of the Caſe, it is a matter for your Lordſhips Judgment, now in the Beginning, that your Lordſhips may ſee the Extenſiveneſs of the Evidence they have hinted at, and intend to produce. That which we inſiſt upon is two Things, that it is not material, and that there is no manner of Notice for the Perſons ſo charged to make any Defence, or to ſhew how the Circumſtances of the Caſe were. So, my Lords, we muſt beg Leave to have your Lordſhips Judgment in this matter.

Mr. Sol. Gen. My Lords, if the noble Lord produceth any one to make out his Innocence, we do not oppoſe it. But if the noble Lord endeavours to ſhew what the Law is, from the Practice of other People, it is altogether improper. It is impoſſible that the Law can be judged of by the Practice of other People in committing the ſame Facts. That can't have the Weight of the Opinion of a great man. The Opinion of a learned Perſon, not concern'd in the Queſtion, is an Opinion of Weight; but the Opinion of a Perſon concerned in the Queſtion, is not to be look'd upon as of any Authority. If the noble Lord makes uſe of this Kind of Evidence, by way of mitigation, or of leſſening his Offence, in that View it can be of no Significancy: Becauſe the Aggravation or Mitigation of the noble Lord's Offence muſt ariſe from the particular Circumſtances, Manner, and Facts of his Offence. We muſt ſubmit it therefore to your Lordſhips Conſideration, whether this is a proper Inquiry or no.

Mr. Serj. *Probyn.* My Lords, we beg Leave to inſiſt upon it, that this is a proper Queſtion, and very material for the noble Earl's Defence. He hath inſiſted in his Anſwer, 'That what is objected to him in this Inſtance, hath been long uſed and practiſed in the Time of his Predeceſſors; and that ſuch Preſents have been reckoned among the ancient and known Perquiſites of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as ſuch; and that he humbly hopes, that the giving or receiving of a Preſent on ſuch an Occaſion, is neither criminal in itſelf, nor by the Common Law of this Realm; and that there is not any Act of Parliament by which the ſame is ſubjected to any Puniſhment or Judgment, which can be prayed in this Proſecution; and the ſaid Earl further hath ſaid, that he thinks himſelf obliged humbly to lay this before your Lordſhips, not only in his own Defence, but in Vindication of the Honour of ſo many great and excellent men, who have been his Predeceſſors in the ſame Office, and have all along done the ſame, for which he is now complained of; and alſo of others, who have been Lord Chief Juſtices of the King's Bench, and Common-Pleas, Maſters of the Rolls, and Judges, who have likewiſe received Preſents in money, upon the Admiſſion of the ſeveral Officers under them in the reſpective Courts of Juſtice wherein they preſided; and who, the ſaid Earl is aſſured, never apprehended themſelves to be guilty of any Crime againſt any the good and wholeſome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to ſupport this Part of the noble Earl's Anſwer.' But, my Lords, it is objected by the Gentlemen that are Managers for the Houſe of Commons, that they are not prepared to enter into this Proof, becauſe they had no Notice that ſuch Evidence would be given: In Anſwer to which we humbly ſubmit it, that the Anſwer the noble Lord hath given, that ſeveral preſiding Officers in the Courts of Law and Equity have always received ſuch Preſents, is ſufficient Notice to them to be prepared to anſwer ſuch Evidence as might be offer'd to ſupport this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Caſes, we ſubmit it that in this Caſe it is a material Circumſtance. Though the Precedents of great men, (whoſe Names they are unwilling to hear) who have taken Preſents in like Caſes, and not thought it criminal, may not controul your Lordſhips Judgment in this Particular; yet I humbly apprehend that ſuch Inſtances cannot but have great Weight in the Event of this Caſe. They are material Circumſtances, ſtrong Inducements to incline your Lordſhips to believe, that this noble Lord had no avaricious, no corrupt Deſign, in accepting the common, cuſtomary Preſents that were voluntarily tendered to him. And ſince it is made ſo material a Part of his Defence, and that he might well think himſelf innocent and ſecure in following the Examples of ſo many honourable and learned Perſons, of which we are prepared to give your Lordſhips many Inſtances in Evidence; and ſince they have Notice of it, and that the noble Lord hath inſiſted upon it in his Anſwer, we humbly beg your Lordſhips will admit us to give the ſeveral Inſtances in Evidence.

Mr. Com. Serj. My Lords, I beg your Lordſhips Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I think there can be no Evidence more proper. If the noble Lord ſhould have the Misfortune to be thought culpable, will he not appear under another View to your Lordſhips, when he hath had the Concurrence of ſeveral great Perſons, of whoſe Integrity, Honour, and Knowledge, no Queſtion hath ever been made? If he himſelf hath introduced this Practice, and ſet it up by himſelf, it will then moſt certainly be an Aggravation; if he hath done no more than others have done, it will be an Extenuation. My Lords, taking it in that Light, there is no Reaſon why this Evidence ſhould not be given. But I hope your Lordſhips will further conſider of the preſent Caſe: Here is a Law inſiſted upon, of ſeveral Hundred Years ſtanding, that makes this Criminal: It is owned that there hath been no Determination, or Judgment at Law that this is Criminal: Practice, eſpecially, in Reſpect of old Statutes, hath oftentimes been allowed and admitted to explain the Senſe and Meaning of thoſe Statutes. There are no Records preſerved of this, and therefore we are under a Neceſſity to confine ourſelves to ſuch Evidence as we can produce of living Witneſſes; and therein we apprehend we are proper, as it is Part of the matter in iſſue before your Lordſhips. Your Lordſhips are as well to try the Earl's Anſwer, as the Commons Articles. Another Circumſtance they are pleaſed to mention againſt receiving this Evidence, is, the taking up of your Lordſhips Time. Your Lordſhips have had the Goodneſs and Juſtice to hear, with great Patience, a very long Evidence, with repeated Obſervations and Openings of the Articles, in order to prove a noble Peer, one of your own Body, to be Guilty: Can it be ſuppoſed that your Lordſhips will not have that Patience, which is due to all People in Favour of Innocence, and when one of your own Body ſtands impeached? For theſe Reaſons we humbly hope that this Evidence ſhall be admitted; and that the noble Earl ſhall have the Benefit of this Explanation, what the Senſe of ſo many great and excellent men hath been of this old and doubtful Statute.

Mr. *Robins.* My Lords, we apprehend your Lordſhips will not be of Opinion, that this will be to defend the preſent Impeachment, by the impeaching of others. We lay it down as the Foundation of our acting, that our Predeceſſors have done the ſame, notwithſtanding this Statute of *Edw.* VI. and therefore it is a reaſonable Inference, that this was not taken to be within the ſaid Statute. We apprehend it cannot reflect upon any that are either dead or living; and that, as we are in Defence of this noble Lord, we are at Liberty to examine Witneſſes, to prove that other Perſons, his Predeceſſors, have done the ſame.

Mr. *Strange.* My Lords, I apprehend we have the ſame Right to juſtify ourſelves by Precedents, as they have to accuſe us by Precedents. What the noble Earl's Predeceſſors in other Inſtances have done, hath been mentioned by way of Aggravation. The Caſe of Dr. *Eddiſbury* hath been mentioned over and over by the Gentlemen of the Houſe of Commons; and they have aggravated the Offence of the noble Earl for not following that Precedent; and as they had a Right to aggravate the Earl's Offence, by not following the Precedents of his Predeceſſors, ſo we think we have the ſame Right to ſhew in other Inſtances, that we have followed the Examples which have been ſet us by our Predeceſſors. But they ſay, This is againſt Law: Whether that is ſo, or not, is the Queſtion; and it will be material for the Deciſion of that Queſtion, to take into your Conſideration, what hath been the Opinion of great men, in all Ages, upon this Act of Parliament. Continual Uſage, from Time to Time, even from making of the Act of Parliament, is the beſt Expoſition of that Law. Cotemporary Uſage, or the Opinion of thoſe, who were at the Time of the making of a Law, hath always been eſteemed the beſt Interpretation of that Law; and therefore, as we ſhew the Uſage to be conformable to what we now inſiſt upon, I humbly hope it will have a great influence upon your Lordſhips, as to the Expoſition to be now put upon this Act of Parliament: It hath been ſaid, This Way of Proceeding tends to accuſe great Perſons of Honour, *&c.* ſome that are dead, and ſome that are now living; we ſhall not enter into ſo nice a Debate: It is ſufficient for us that it is proper and neceſſary Evidence for the Defence of our Client. It is a material Evidence in this Caſe, whether other Perſons have diſpoſed of theſe Offices, and have incurred any Penalty; if they have done it, I humbly apprehend that no Objection remains againſt our entering into the Evidence of that Kind. Whatever is your Lordſhips Judgment in Point of Law, it is material for your Lordſhips Conſideration, whether this noble Lord hath ſet this on foot of his own Accord, or hath not trod in the Paths of his noble Predeceſſors? Your Lordſhips will take it into your Conſideration, and whatever the Point of Law may happen to be, it muſt be ſaid, That if this noble Lord did err, he erred with his Predeceſſors.

Earl of *Macclesfield.* My Lords, I would not trouble your Lordſhips, if I did not think it neceſſary to inſiſt upon your Lordſhips admitting this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble Lords, who have been my Predeceſſors, whether they be now dead or alive, I would undergo any Puniſhment rather than do it. But I hope it was innocent, both in them and me; and that its being done by Perſons of ſuch unblemiſhed Honour, will be one ſtrong Argument of its being ſo; and, my Lords, I proteſt their Example was the ſingle Reaſon with me for doing of it; and if it had not been done before, I would not have done it: This was the true Ground of what I have done. For what theſe Gentlemen ſay, my Lords, that this is not material, and that the Law muſt be proved by Law

Books

Books and Judgments, I thought the common Law was common Usage, and that which hath constantly and openly been done without being censured or blamed, cannot be contrary to common Law. If this be not allowed, I am highly obliged to these Gentlemen, that they have not accused me for taking money in many other Instances, relating to my Office; to instance in one only, upon the passing of every Patent there is a small Fee due, and constantly paid to the Great Seal; if they had accused me of this, and called it criminal, I know not what to have said to it, unless Usage and Custom had justified it; I claim it as a Right, and unless Usage will prove the Right, I know no other Way. I own this is something different: In that Case, I insist on a particular Sum by Usage: I do not insist in this Case that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of such a Sum as the Party should give: But, say the Gentlemen, this Evidence is to make other Persons criminal; That is very true, if this be a Crime. These Gentlemen take it for granted; but whether it be a Crime or no, will be for your Lordships final Determination: And I hope your Lordships will not be of Opinion that it is a Crime. If it should come out to be in your Lordships Judgment a Crime, it will be a great Censure upon my Predecessors, who all, as it is well known by every body, did the same Thing. But if this be understood to be a matter, that is admitted to have been practised, and to need no formal Proof, I had rather let this Examination alone: It is uneasy to me, to enter upon any thing that can draw a Reflection upon any Person: Therefore I submit it to your Lordships.

Mr. Serj. *Pengelly*. My Lords, The Managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unless they are satisfied and convinced that they ought to admit it, it is not to be expected for the Managers to do it. It is said, that the Things offered are in Extenuation: That it would be a greater Guilt, if there were not former Examples to justify it: I apprehend, for that Reason, it is an improper Time to insist upon this now: Because matters of Aggravation or Extenuation must come subsequent to your Lordships Determination on the Articles, and will be the Consideration of your Lordships, when you come to consider of the Judgment that is to be given. I have known, by frequent Experience, in Prosecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumstances before the Court in mitigation of the Punishment: And if, hereafter, this comes to be considered of in this Manner, the Managers will have an Opportunity to give a proper Answer thereto. If in this Answer he had insisted on it as an established Fee supported by Custom, and had claimed it as of Right, it had been proper to have examined Witnesses in support of that; but when he insists upon it as a matter of Discretion, and of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give in Evidence, that which doth not make good the Defence in answer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniencies. We do not know what may be grafted on such an Admission; therefore we beg Leave to submit it to your Lordships Determination.

Mr. *Lutwyche*. My Lords, It is said very roundly, That this is an old, doubtful Statute, and therefore you ought not to take Notice of it. As to the doubtfulness of it, I believe it is too plain; as to the Obsoleteness of it, it is a Statute that is read every Year in the Court of Exchequer. And therefore, whatever Doubts may be of this matter at the Common Law, yet this Statute makes it plain. And I desire the Counsel for the Noble Lord to tell us, where any Statute is more plain and positive; and wherein they have shewn the least Doubtfulness in the World, but rather object that it hath gone too far. Doth any Judge, in Point of Evidence, on an Indictment for Breach of a Statute-Law, permit Persons to give Evidence that others have been guilty of the same Facts, and that therefore it is no Breach of the Law? Suppose this is to be considered as doubtful, on Construction of the Statute, what then is the common ordinary method? It is well known, that the Jury find the Fact specially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this matter is; here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and positive; the Counsel make a Doubt on the Construction of this Statute; it is insisted upon, that other People have done it, and have not been punished; and would such a Thing be ever permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath been a great Master of Evidence in his Time, would not have permitted it to be done: They have shewn no Precedent for it: In its own Nature it is unreasonable. Are we to examine into the particular Manner and Circumstances of every particular Case of the several Persons that are now either Dead or Living? It is unreasonable, it is unprecedented, to offer such Evidence; and I hope your Lordships will not admit of it.

Mr. *Plummer*. My Lords, the Counsel for the noble Lord take that for granted which we deny. The admitting these Witnesses to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take care of the Reputation of the noble Lord's Predecessors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament says is so. And that this is a Crime, I beg Leave to remind your Lordships, that he himself declared so to the Masters in Chancery, that they had bought their Places against Law. I take that to be a fair Confession that his Opinion was, that it was a Crime.

Lord *Lechmere*. Before the Counsel withdraw, I would have this Question explained to me by the Counsel of the noble Lord, Whether this Practice be insisted on as a Proof of a Right in the Great Seal to take this as a Perquisite, or whether it be offered as an Extenuation?

Mr. Serj. *Probyn*. My Lords, we insist upon it in both Respects.

[Then the Managers and Counsel were order'd to withdraw; and after some Time, being called in again,]

Lord Chief Justice *King*. Mr. Serjeant *Probyn*, It is their Lordships Judgment that you are at Liberty to proceed in your Evidence, as you were going on.

Mr. Serj. *Prob*. My Lords, we desire Mr. *Roger Lewis* may be called again.

(Mr. *Lewis* called.)

Mr. Serj. *Prob*. My Lords, I desire this Witness may be asked, how long he hath been a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. About five-and-thirty Years.

Mr. Serj. *Prob*. Who was then in the Office?

Mr. *Lewis*. Mr. *Henry Wynne*.

Mr. Serj. *Prob*. How long did he continue in that Office?

Mr. *Lewis*. About Twelve Months.

Mr. Serj. *Prob*. Do you know who succeeded him?

Mr. *Lewis*. Mr. *Roger Thompson*.

Mr. Serj. *Prob*. My Lords, I desire he may be asked, whether any Present was made by Mr. *Thompson* on his Admission into the Office?

Mr. *Lewis*. I do not know of any Present made by Mr. *Thompson*.

Mr. Serj. *Prob*. By Mr. *Wynne*, or Mr. *Thompson*?

Mr. *Lewis*. No; but Mr. *Wynne* told me——

Mr. Serj. *Prob*. Is Mr. *Wynne* living or dead?

Mr. *Lewis*. He is dead.

Mr. Serj. *Peng*. My Lords, we beg leave to object to this: What a particular Person told him is not Evidence; we hope this shall not be admitted.

Mr. *Lutwyche*. They know this was never allowed.

Mr. Serj. *Prob*. If the Man be living, the Objection is good, but now he is dead, we hope it may be allowed.

Mr. Com. Serj. The Gentlemen object, that we are not at Liberty to ask what hath been declared concerning that Matter by a Person that is now dead; we humbly apprehend it is within the Rule of Evidence, and I must appeal to the Memory of your Lordships, whether it is not good Part of the Evidence that hath been given by the Managers.

Earl of *Macclesfield*. My Lords, what we are giving Evidence of, is of a Thing transacted thirty-five Years ago; the Parties are all dead: He is about to give you an Account of what he did, and was said to him at that Time by his Master, in his transacting that Affair. If the Person that said it were now alive, to be examined to it himself before your Lordships, it would not be Evidence without examining him; but if dead, what he said concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppose this Evidence, which in the Nature of the Thing is all that possibly can be now given.

Mr. Sol. Gen. My Lords, I hope this is what your Lordships will not suffer to be done. I never knew the Sayings of a dead Man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Usages and Customs; but as for a particular Fact, lying in the Knowledge of a particular Person, by his Death you have lost your Evidence.

Earl of *Macclesfield*. My Lords, if they will insist upon it, we must withdraw.

Mr. *Plummer*. This Man here is upon his Oath; but the Evidence that he must give of the Saying of another, must be of a Saying not upon Oath.

Lord *Trevor*. If there be a difference in Opinion between the noble Lord and the Managers, they must withdraw. But I don't see any Reason to withdraw. I will tell my Opinion, that such an hearsay Evidence is no Evidence.

Mr. Com. Serj. I desire he may inform your Lordships, whether he knows any Thing as to the Transaction, of his own Knowledge?

Mr. *Lewis*. I know that Mr. *Wynne*, whether he had surrendered, or was going to surrender, I don't remember, but he told me—

Mr. Serj. *Pengelly*. My Lords, they are going on again in the same Way.

Mr. Serj. *Probyn*. Do you know any Thing of your own Knowledge?

Mr. *Lewis*. I had money in my Hands of Mr. *Wynne*'s. He told me—

Mr. Serj. *Pengelly*. Evidence of this Sort is by your Lordships Judgment not to be permitted.

Mr. Serj. *Probyn*. He informs your Lordships, that he hath known this Office thirty-five Years. Now, I desire that he may declare what hath been the Usage on Surrenders and Admittances into this Office of Clerk of the Custodies, whether any Present, or Gratuity, hath been made to the Great Seal?

Mr. Serj. *Pengelly*. This is the same Thing again.

Mr. Sol. Gen. If Gentlemen put this general Question with no other View but to draw out what your Lordships have determined to be no Evidence, we must oppose it. It is a plain Question, Whether he knows of his own Knowledge that any Money was given? And we desire he may be confined to his own Knowledge.

Earl of *Macclesfield*. The Gentlemen say, that as to Matters of Usage, it is usual to enquire what old Men have said and declared. I apprehend this is a matter of Usage we are now enquiring after; but if your Lordships are of Opinion that this should not be asked, I believe he doth not know any Thing of his own Knowledge of the money being actually paid to the Great Seal.

Mr. Serj. *Probyn*. My Lords, we desire that Mr. *William Oaker* may be called.

(Mr. *Oaker* sworn.)

Mr. Serj. *Prob*. My Lords, we desire that Mr. *Oaker* may be asked, whether he knows of any Demand, or Claim, made upon the Admission or Surrender of the Clerk of the Custodies, and by whom?

Mr. Serj. *Pengelly*. My Lords, this Queſtion is contrived in an odd manner. The Queſtion muſt ariſe upon the Fact, not antecedent to the Fact. The Queſtion of any Claim before ſhould be, whether he knows of any money paid, and in what manner?

E. of *Macclesfield*. It is the ſtronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker*. I don't well underſtand the Queſtion as it is put; but I remember in my Lord *Cowper*'s firſt Time, in the Year 1710, that Office was transferred from Mr. *Thompſon* to Mr. *Edwards*; I was then Secretary of the Lunaticks, and I remember I enquired of one or both of thoſe Gentlemen, if any Preſent was made to my Lord on that Occaſion; and was anſwered, That nothing had been uſually given in the Caſe of that Office, and that they had ſatisfied my Lord thereof. Afterwards, when my Lord *Cowper* had the Great Seal again, and I was again Secretary of the Lunaticks, his Lordſhip was pleaſed to obſerve to me, that he had ſuffered himſelf to be impoſed upon in ſeveral matters, when he had the Seal before, and inſtanced particularly in the Affair of transferring the Office of Clerk of the Cuſtodies; and ſaid, he was very well ſatisfied thoſe Gentlemen had impoſed upon him, by aſſuring him that nothing had uſually been given on transferring that Office; for he was well aſſured there had been Preſents on that Occaſion, and did not ſee any Reaſon why there ſhould not: And his Lordſhip ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind ſhould happen again.

Mr. *Plummer*. My Lords, I believe this Gentleman was Servant to my Lord *Cowper*, when he was Chancellor laſt; I deſire to know if any Vacancy of this Office happened in the laſt Time that he was Chancellor?

Mr. *Oaker*. There was a Vacancy in the laſt Time. I don't know what Sum of money was given for it.

Mr. *Plum*. My Lords, I deſire this Witneſs may be aſked, if ever he knew that my Lord *Cowper* did take any Thing for the Surrender of this Place?

Mr. *Oaker*. I don't know, I believe he had nothing the firſt Time; but he thought himſelf impoſed upon in it, and bid me enquire about it. As to the ſecond Time, I never could inform myſelf what was done in it.

Lord *Lechmere*. I deſire he may be aſked, who it was that ſurrendered this Place of Clerk of the Cuſtodies, and to whom? Name them.

Mr. *Oaker*. The firſt was Mr. *Thompſon*, who ſurrendered to Mr. *Edwards*, he ſurrendered to Mr. *John Bennet*, and Mr. *John Bennet* ſurrendered to Mr. *Thomas Bennet*.

Mr. *Onſlow*. My Lords, I deſire, before Mr. *Oaker* goes, that he may explain himſelf, which of thoſe two Times it was that my Lord *Cowper* ſaid he was impoſed upon?

Mr. *Oaker*. It was the firſt Time.

Mr. *Onſlow*. I deſire to know if he took any Thing at either Time?

Mr. *Oaker*. I don't know otherwiſe than as I have before declared.

Mr. Serj. *Prob*. My Lords, we deſire that Mr. *Edward Dupper* may be called.

(Mr. *Dupper* ſworn.)

Mr. Serj. *Prob*. My Lords, I deſire that Mr. *Dupper* may be asked, whether he knows of any Sum of money that hath been paid, or received on the Surrender or Admiſſion of any Clerk of the Cuſtodies?

Mr. *Dupper*. I did not ſee any money paid. I did give my Lord *Macclesfield* an Account that there had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hamerſly* was admitted.

Mr. Serj. *Prob*. From whom had you that Information?

Mr. *Dupper*. My Lords, I don't know how far I may be permitted to name that Perſon's Name.

Many Lords. Name him.

E. of *Mac*. Was it from one that had the Cuſtody of the Great Seal?

Mr. *Dupper*. Yes, my Lords.

Lord ———. Who was it from?

Mr. *Dupper*. I had it from my Lord *Harcourt*. My Lords, I cannot ſay I ſaw the money actually paid; neither can I ſay, that his Lordſhip received this money. But I was a Servant to my Lord *Harcourt*, and his Lordſhip kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large Hand-writing for his Lordſhip's Uſe; and I generally made two Copies of each, for fear one ſhould be loſt or miſlaid when wanted. One of theſe Copies I kept by me, which I have here; in it is an Account of the yearly Profits of that Office, and there is this particular *Item* of 250 Guineas received for the Surrender of the Office of Clerk of the Cuſtodies, which I copied from a *Memorandum*, or Account of his Lordſhip's own Hand-writing.

Mr. Serj. *Pengelly*. My Lords, I don't know what he is going to do. I hope there is very little Notice to be taken of what he hath ſaid. A man tells a Story that is a Servant: I hope no Credit will be given to what he ſays.

Mr. Com. Serj. My Lords, I deſire he may inform your Lordſhip, when it was he gave an Account to the Earl of *Macclesfield*, that ſo much money had been paid, and upon what Occaſion it was?

Mr. Serj. *Peng*. Give an Account! he knows nothing.

Mr. Com. Serj. My Lords, I hope you will not think it an improper Queſtion. He ſays, that he gave an Account, I deſire to know what he gave an Account of, and if he knows upon what Occaſion it was?

Mr. *Dupper*. My Lords, the Reaſon of my giving this Account was, here was a Diſcourſe between Mr. *Cottingham*, who was my Lord *Macclesfield*'s Secretary, and myſelf, about the Office of Clerk of the Cuſtodies. Mr. *Cottingham* told me, that Mr. *Bennet* was going to ſurrender his Place of Clerk of the Cuſtodies: I asked him to whom? He told me, it was to his Neighbour Mr. *Hamerſly*. I anſwered, I am very glad to hear it; there will then be a Piece of money for my Lord Chancellor. Mr. *Cottingham* ſaid, that is more than I know; was there ever any money paid upon the Transfer of this Office? I ſaid, Yes, I remember there was, and I never knew any Offices or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him, I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Harcourt* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next Day I told Mr. *Cottingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Strange*. When Mr. *Hamerſly* was named, I deſire to know if Mr. *Cottingham* did not at that Time call him his Neighbour?

Mr. *Dupper*. I did not know Mr. *Hamerſly* at that Time; but Mr. *Cottingham* called him his Neighbour.

Mr. *Plummer*. My Lords, I deſire he may be asked, if he told my Lord *Macclesfield* of this before Mr. *Bennet* reſigned to Mr. *Hamerſly*?

Mr. *Dupper*. Yes, I did, my Lords.

Mr. *Lutwyche*. My Lords, I deſire to ask him one Queſtion. I think he is pleaſed to ſay there is no Place under the Great Seal but what an Acknowledgment is taken for: I deſire to know whether he himſelf hath not a Place given him by that noble Lord for his Life?

Mr. *Dupper*. No, my Lords.

Mr. *Lutw*. Had you no Place at all given you?

Mr. *Dupper*. I have the Reverſion of a Place, which is not fallen as yet.

Mr. *Lutw*. What Place is that?

Mr. *Dupper*. The Sealer's Place.

Mr. *Lutw*. Do you enjoy that Place?

Mr. *Dupper*. No.

Mr. *Lutw*. Was there any money given for that Place?

Mr. *Dupper*. No, Sir: It is what I had for fifteen Years Service. I was his Clerk, and I acted as his Steward in Town and Country a great many Years; and his Lordſhip was pleaſed to give me that Reverſion as a Reward for the Labour and Pains I took in his Service.

Mr. Serj. *Peng*. My Lords, I deſire he may be asked, how long after it was that he carried this Account to Mr. *Cottingham* that he ſpeaks of, how long after he had found it?

Mr. *Dupper*. I don't exactly remember: But as near as I can gueſs, it was the next Day, the firſt Time that I ſaw him afterwards.

Mr. Serj. *Peng*. I deſire he may be asked, whether at that Time he gave Satisfaction to Mr. *Cottingham*, that it ought to be inſiſted upon?

Mr. *Dupper*. I told him ſo much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without money.

Mr. *Lutw*. I deſire Mr. *Dupper* may acquaint your Lordſhips what the yearly Value of that Office is that was given to him?

Mr. *Dupper*. I never was in Poſſeſſion of it.

Mr. *Lutw*. Do you know what is the yearly Value of it?

Mr. *Dupper*. No.

Mr. *Lutw*. Can you give no Account of it?

Mr. *Dupper*. No: The man hath been in Poſſeſſion of it, I believe, theſe Three-ſcore Years, and I believe he will live theſe Three-ſcore Years longer.

Mr. Serj. *Prob*. My Lords, we deſire that Mr. *Laiton* may be called.

(Mr. *Laiton* ſworn.)

Mr. Serj. *Prob*. I deſire he may be asked, whether he was not formerly a Curſitor?

Mr. *Laiton*. I was a Curſitor almoſt three-and-forty Years.

Mr. Com. Serj. I deſire that he will inform your Lordſhips, whether any money was paid, either by him or any other?

Mr. Serj. *Peng*. My Lords, we beg leave to underſtand your Lordſhips Reſolution, whether it extends to allow an Examination as to the ſelling of any other Offices not contained in the Articles?

Mr. Serj. *Prob*. My Lords, we ſhall endeavour to prove that Acknowledgments have been anciently and uſually paid upon Admiſſions into all Offices under the GreatS eal, and this is Part of this noble Lord's Defence, that it is uſual for the Great Seal to take money for the transferring of thoſe Offices. This Witneſs was one of the Curſitors in the Court of Chancery; therefore I hope it is proper to give Evidence of money given for thoſe Offices, as being Offices under the Great Seal. Therefore, my Lords, I deſire he may be asked, whether he hath known of any money paid to the Great Seal upon the Surrender or Admiſſion of any Curſitor?

Mr. *Lutw*. My Lords, I ſubmit it whether it is proper for your Lordſhips to let them into this Evidence. I take it, that the immediate Queſtions before your Lordſhips are only upon two Sorts of Offices, one of the Clerks of the Cuſtodies, the other the Maſters in Chancery. Now, whether your Lordſhips will let them into an Evidence of all the Offices of the Kingdom, which is very extenſive, I ſubmit to your Lordſhips Conſideration.

Mr. *Plummer*. Your Lordſhips obſerve, that we have not gone upon the 10*th* Article, where we have laid that he ſold ſeveral other Offices: Conſidering the great Extenſiveneſs of it, and that it would draw this Trial into a great Length, we have waved it; and therefore ſubmit it to your Lordſhips Conſideration, whether he ſhall make his Defence to any Thing we have not yet given Evidence to?

Earl of *Macclesfield*. This would be to put a great Difficulty upon me. The Charge againſt me being founded upon a Suppoſition, that the taking money upon admitting Perſons into Offices in the Court of Chancery is criminal; Part of my Defence is, that the conſtant Practice of my Predeceſſors ſhews the general Opinion to be otherwiſe, and therefore I have by my Anſwer inſiſted upon it generally, that not only for the one particular Office of the Clerk of the Cuſtodies, or Maſters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore, whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another

another not charged, or charged and waved, it will be the same Thing. The Argument is the same with respect to the Foundation of the Accusation, if in all other Offices, of which Persons now living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reason it may be taken in these. I offer this Evidence, not to shew I am not criminal with respect to the Cursitors Offices; their waving that general Article which comprises them, admits it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Cursitors, and all the rest, besides the Masters in Chancery and Clerk of the Custodies, it is no more so to take it from them: If this Objection be allowed, the Proof, which in its full Latitude would be of great Extent, and go to all my Predecessors within 50 or 60 Years, will be confined to a very narrow Compass, when restrain'd to what Account can be given in only two Sorts of Offices, by Persons who saw the money paid, and happen to be still alive. Besides, for strengthening that Argument from other Instances, I have in another Part of my Answer insisted, that other Persons of great Wisdom and Honour have likewise, without Scruple, and without Censure, disposed of other Offices for money; that this hath been constantly practised in the Disposal of all Sorts of Offices in *Westminster-Hall*, money hath been taken for them all along; this Proof I must be cut off from too, if I am to give Evidence only of what was done in the Case of those Offices for which they proceed against me: I hope, therefore, the Gentlemen will not oppose the going on to make the Proof proposed by my Counsel.

Mr. Serj. *Pengelly*. My Lords, if it be put in this general manner of all other Courts, and in all other Instances, we apprehend it will be a very extraordinary Examination. A Person is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is beside the Issue, and not before your Lordships. Here is a Charge by the Commons of *Great Britain*, and an Answer and Defence to that, which can go only to those particular Offices charged. Now, to introduce an Evidence of this Nature, is exceeding any Rule or Instance that hath been ever heard of. If they apprehend, by proposing and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the Consequence of such an Allowance: And it is to no Purpose for the Managers to come prepared to examine to a particular Fact stated between us, when there may be ten thousand Things insisted on that are not in Issue.

Lord Viscount *Townshend*. I can't say this is within the Rule your Lordships laid down. If it is insisted upon the Counsel must withdraw.

E. of *Macclesfield*. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to shew that other Offices have been disposed of by the Master of the Rolls, the Chief Justices, and other Judges. This is in my Answer: The Commons had Notice of it; and they have joined Issue upon it. I wonder to hear it said they have not joined Issue, when in the Answer it is insisted upon, and they have replied thereto. This is a Thing that these Gentlemen are very well aware of; it is so general and universal a Thing, that every Body knows of it. I don't know whether it is intended to make any Distinction between this Case, and what is done in other Cases; if they do, I would be glad to hear it; if they do not, then I would beg your Lordships Determination upon it.

Mr. Serj. *Peng*. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Question is in Point of Evidence.

Mr. Soll. Gen. My Lords, I don't apprehend that we have joined Issue on every Thing that the Noble Earl hath thought fit to put in his Answer. The Commons have charged him with several Crimes: He hath answered to those Crimes: The Commons reply, that they are ready to make good their Charge. By this, Issue is joined upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Answer. We insist that he is not to give Evidence of the Sale of any other Offices, but of those that he is particularly charged with. As to the Cursitors Office, and other Offices that he is not charged with, we say he is to give no Evidence.

Mr. *Lutwyche*. My Lords, because it is insisted upon that whatever this Noble Lord hath said in his Answer we have replied to; I would observe that the very Replication takes Notice of this very Thing, and was one of the Things considered of by the Commons, and therefore the Reply is, "That he hath endeavoured to evade the Enquiries into his "own Crimes, by insinuating Facts not material to the matters charged." And therefore, my Lords, we insist that he may not enquire into those matters which we have not charged.

Mr. Com. Serj. I don't know whether I may be at Liberty to add, that I humbly apprehend, that what the Gentlemen of the House of Commons now insist upon, is contradicting your Lorships Resolution already taken.

[*Then the Managers and Counsel were order'd to withdraw, and being afterwards called in again, and returned*;]

Lord Chief Just. *King*. Mr. Serj. *Probyn*, The Lords have resolved, That the Counsel for the Earl of *Macclesfield* be not permitted to give Evidence touching Sale of the Office of the Cursitors, for that no Evidence hath been given in Relation thereto by the Managers for the House of Commons.

Mr. Serj. *Prob*. Then if it be your Lordships Pleasure, we beg Leave to call one Witness more in Opposition to the Evidence given by Mr. *Thomas Bennet*, in relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Custodies; he gave your Lordships an Account that he had paid the Sum of Sixty-four Pounds, (besides the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we shall shew your Lordships, that no Part of that Sum of Sixty-four Pounds was really paid to the Great Seal, as Mr. *Bennet* seems to insinuate, but was all laid out in the Fees and Expences of passing his Patent through the several Offices that are proper upon that Occasion. And to this End we desire that Mr. *Tench* may be called.

(Mr. *Tench* sworn.)

Mr. Serj. *Prob*. My Lords, we desire Mr. *Tench* may inform your Lordships, if he was employed in taking out the Patent for Mr. *Thomas Bennet*, upon his Surrender of the Clerk of the Custodies?

Mr. *Tench*. My Lords, I was employed by Mr. *Thomas Bennet* to sue out the Patent, and I paid the Fees of every Office of passing the Patent, which comes to between 60 and 70 *l*.

Mr. Serj. *Prob*. We desire he may tell us what Officer he is?

Mr. *Tench*. I am Clerk of the Patents to the Attorney-General, and Deputy Clerk of the Patents in Chancery.

Mr. Com. Serj. I desire he may be asked, What Part of those Fees are paid to the Great Seal?

Mr. *Tench*. There is a Dividend of the money arising from the Patents, of this 1 *l*. 8 *s*. 4 *d*. and 3 *s*. went to the Great Seal.

Mr. Com. Serj. I desire he may be asked, Whether any more came to the Great Seal out of the 64 *l*. than 1 *l*. 11 *s*. 4 *d*.?

Mr. *Tench*. I don't know that there is any more of the Dividend of the Patent. The rest went amongst others for their several Fees at the several Offices.

Mr. Com. Serj. I won't trouble your Lordships to ask to whom the rest of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. *Tench*. I don't know that any Thing is paid to the Great Seal, upon passing the Patent Office, but the Dividend of 1 *l*. 11 *s*. 4 *d*.

Mr. Com. Serj. I desire he may inform your Lordships, Whether the Remainder is paid to other Offices?

Mr. *Tench*. Yes, to other Offices, to the Hanaper Office, the Secretary's Office, the Signet and Privy Seal.

Mr. Serj. *Prob*. My Lords, we shall trouble your Lordships with no further Evidence on this Article: But beg your Lordships Favour to begin our Evidence on the 5*th*, and other Articles.

Mr. *Sandys*. My Lords, I desire he may be asked, Where he found the Warrant for passing the Patent at that Time?

Mr. *Tench*. I had the Warrant from the Secretary's Office.

Mr. *Sandys*. I desire he may be asked, If he knows how it came there, and by whose Direction; if he knows who procured it?

Mr. *Tench*. My Lords, I drew a Petition by Mr. *Bennet*'s Direction, to the Secretary of State; upon that the Petition was referred to the Attorney-General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. *Sandys*. My Lords, I desire he may be asked, At whose Instance he drew up that Petition?

Mr. *Tench*. I drew it up at Mr. *Thomas Bennet*'s Request.

Mr. *Sandys*. To what Purpose was that Petition?

Mr. *Tench*. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's surrendering, it might be granted to him.

Mr. *Sandys*. It is the last Petition we desire to be informed of, what the Purport of that was; not the Petition of Mr. *John Bennet*, when he surrendered to Mr. *Thomas Bennet*, but the Petition of Mr. *Thomas Bennet*, when he surrendered to Mr. *Hamersly*?

Mr. *Tench*. It was a Petition reciting the Grant to Mr. *Thomas Bennet*, and that he might resign to Mr. *Hamersly*'s Use, who was a Person well affected to his Majesty and the Government.

Mr. Serj. *Prob*. My Lords, we now proceed to the other Articles, which relate to the Presents made by the Masters in Chancery to the Earl of *Macclesfield*.

[*Upon this the House adjourned to the next Morning Ten o'Clock.*]

Thursday *the* 13*th of* May, 1725. *The Sixth Day.*

The Lords being seated in their House, and the two Proclamations being made as on the former Days.

LORD Chief. Just. *King*. Mr. Serj. *Probyn*, you may go on with your Evidence.

Mr. Serj. *Probyn*. My Lords, we beg Leave to lay before your Lordships some Instances where, upon former Admissions of Masters in Chancery, Sums of money have from Time to Time been taken by the Great Seal. We desire Mr. *Meller* may be called again.

(Accordingly Mr. *Meller* appeared.)

Mr. Serj. *Prob*. We desire Mr. *Meller* may be asked, Whether he knows of any Sum of money paid to the Great Seal upon the Admission of a Master in Chancery, and what Sum?

Mr. *Meller*. My Lords, I humbly apprehend, that the Subjects of *Great Britain* are not compellable in any Case to give an Answer to any matter that may be to their Prejudice. I speak it with the greatest Submission to your Lordships. For my Part, I am very unwilling to do any Thing that may any ways lessen the Security of the Subject, therefore I humbly hope your Lordships will not compel me to give an Answer to any Question of this Nature. I humbly submit it to your Lordships Judgment.

Earl of *Macclesfield*. My Lords, the Question he is asked is a general Question, whether he knows of any money paid to the Great Seal by any Master in Chancery upon his admission? Whether he knows or doth not know it?

Mr. Serj. *Pengelly*. My Lords, we beg Leave to acquaint the House of the Circumstances of Mr. *Meller*, from whence the Objection rises. He was formerly a Master, but before the late Act of Parliament he quitted that Office, and hath no Indemnification, as the present Masters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Answer to this Question, without subjecting himself to a Penalty, and accusing himself of an Offence against the Law.

Mr. *Lutw.* This general Queſtion tends to make him accuſe himſelf, and ſubject himſelf to a Penalty.

Earl of *Mac.* My Lords, I would gladly know whether theſe Gentlemen object to this Queſtion or not? If they object themſelves to it, they have a right ſo to do, and to offer their Reaſons, and they muſt be left to your Lordſhips Judgment. But they have no right to inſtruct a Witneſs.

Mr. *Lutw.* I never endeavoured to inſtruct any Witneſs. It is very well known I never attempted any ſuch thing; and that noble Lord knows it. I am now here not as Counſel, but as one of the Managers for the Houſe of Commons, and by their Command, and ſo have more Reaſon to take Notice of this Reflection. We do not inſtruct Witneſſes, this is no ſuch thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lordſhips Determination upon it. It is not ſo very long ago, but the noble Lord may remember this very Queſtion was directly aſked of Mr. *Bennet*, and then refuſed; the next Day asked again by a ſide-wind, whether he knew any, and what money had been given for the Place? and rejected by your Lordſhips; and then a Queſtion was aſked, How much he knew the Place ſold for? And your Lordſhips likewiſe refuſed that: Here now is a Queſtion aſked of a Man that hath been a Maſter in Chancery, and not indemnified by the laſt Act, whether in effect he paid any money for his Office? Your Lordſhips thought this induced a Penalty, becauſe you thought it neceſſary to paſs an Act of Parliament to indemnify the preſent Maſters; but it is well known it doth not extend to thoſe who were Maſters before; and therefore, as there is a Penalty annexed to it, he ought not to anſwer this Queſtion. Beſides, for the ſake of our Proceedings, it ought not to be anſwered, and we have a Right thus to interpoſe, that when your Lordſhips have refuſed the ſame thing in another Man, the ſame is not to be inſiſted upon again.

Mr. Serj. *Peng* My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends that he hath a right to controul the Managers in this Houſe, and whether that ariſes from the Seat he enjoys, your Lordſhips will conſider the Conſequences of this Behaviour. When the firſt Day we were told, that we were working up the Witneſſes, and now that we are inſtructing them, whence could this Lord have this Imagination but from his own former Practice?

Earl of *Mac.* My Lords, as to that Gentleman that thought himſelf reflected upon, he greatly miſtakes me. I did not intend to reflect upon him as going to inſtruct the Witneſs in his Evidence; I believe him as far from it as any Man in *England*. I know him to be a Perſon of too much Honour; and I had not the leaſt Thought when I ſpoke it, of his inſtructing a Witneſs in that Senſe. But here a Witneſs is making ſome Difficulty in anſwering a Queſtion, and I thought that that Gentleman who ſpoke firſt, was ſtating that which made the Witneſs's Objection; which I apprehended did not belong to the Managers to do. That is what I meant by inſtructing. The Queſtion that is aſked is, Whether he hath known of any money given to the Great Seal, upon an Admiſſion of a Maſter in Chancery? Say they, he was a Maſter in Chancery himſelf, therefore it may include his giving money upon his being admitted: But be that ſo, he may know of other Perſons beſides himſelf that gave money. My Queſtion therefore is general, whether he knows of any money given to the Great Seal on Admiſſion of a Maſter in Chancery? The Queſtion your Lordſhips reſolved was as to Mr. *Bennet* himſelf, and confined to his ſingle Office; and had I aſked Mr. *Meller* what he had given on his Admiſſion to his own Office, it had been another Matter, and within your Lordſhips Reſolution. But the Queſtion that is now aſk'd, includes what he knows hath been given by other Maſters; therefore he may give an Anſwer without charging himſelf. If he anſwers that he doth not know of any money given by any other Maſter except himſelf; then it will come to the Queſtion the Managers would bring it to. In the mean time give me leave to ſay, that thoſe Gentlemen, by being Managers for the Houſe of Commons, have not a Right of treating Perſons in a different manner than what they ſhould do if they were not Managers. That that Gentleman ſhould ſay, that what I ſpoke about inſtructing of Witneſſes, ariſeth from a Practice of my own, is a Language unbecoming the Dignity of your Lordſhips Bar. Is this a Way of treating Mankind? Is this a fit method of carrying on a Proſecution? Is this decent ſpeaking before ſo auguſt a Judicature as this? What I ſaid of inſtructing a Witneſs imported no faulty way of Inſtruction.—*(After a ſhort Pauſe)* I have uſed a great deal of Preparation not to be diſturbed at any Expreſſions that fall upon this Occaſion. It is a faulty Way of inſtructing a Witneſs, to tell him what he ſhall ſay; but to tell him he hath a legal Objection to a Queſtion that is aſked, I know no Crime in that. My Lords, I beg Pardon for taking ſo much Notice of this Matter; but I inſiſt upon an Anſwer to this Queſtion, whether he knows of any Money given to the Great Seal, on an Admiſſion of a Maſter in Chancery? He may anſwer affirmatively, without at all affecting himſelf; and I ſubmit, whether he ought not to do it.

Mr. *Plummer.* My Lords, if the Counſel for the noble Lord have done, I beg leave to reply. The noble Lord ſays, that this Gentleman may poſſibly anſwer, and not accuſe himſelf. But if by the Anſwer he may accuſe himſelf, it is a Reaſon why he ſhould not anſwer. The method propoſed, that he may ſay he doth not know of any but himſelf, is accuſing himſelf. As for the other Point about inſtructing Witneſſes, it is not our Witneſs, but his own Witneſs, who refuſes to anſwer.

Mr. *Onſlow.* The Managers cannot but obſerve the indecent Behaviour of this Lord, and his unworthy manner of treating us. What we ſay here, we are ready to ſay any where. We do not think the Lord at the Bar ſhould be directing the Managers, as if he ſat in his Place as Judge: If we do any thing unbecoming, we are ſubject to your Lordſhips Judgment. We appear not here as common Proſecutors, and are not to be treated as common Counſel by him, as he would have treated Counſel in another Place. We are here Advocates for all the Commons of *Great Britain*, to demand Juſtice againſt this Earl; and ſubmit it to your Lordſhips, whether he is to treat us in this unbecoming manner? As for the Queſtion, the very Reaſon he now gives for aſking it, is the ſame that was given by him for examining Mr. *Bennet*, and your Lordſhips then over-ruled it. It is only by a ſide Wind aſking a Queſtion of a Witneſs, the Anſwer whereto will unavoidably charge him with a Crime: He cannot anſwer without charging himſelf. This Lord hath laid a Trap for the Witneſs to accuſe himſelf. He ſays he may anſwer that he knows nothing of any money given by any Maſter but himſelf; which is directly ſaying that he himſelf hath given money. We hope therefore this Queſtion ſhall not be aſked; and we inſiſt upon the Objection.

Mr. *Palmer.* In Duty to the Houſe of Commons, I think myſelf obliged to take Notice of the ſtrange Behaviour of this Lord in this Inſtance. According to your Lordſhips own Rule, tho' he ſits within the Bar, yet he is not a Judge; and therefore I muſt beg for myſelf, in the Names of the Managers, and in the Names of all the Commons of *Great Britain*, that no ſuch Language or Behaviour be again uſed; if it ſhould, we cannot bear it, but muſt retire.

Earl of *Mac.* My Lords, I deſire the general Queſtion that I have propoſed may be aſked; I do not know what is your Lordſhips Pleaſure; I think I have a Right to have it anſwered.

Mr. *Plum.* I object to the Lord's going on. The Lord hath anſwered; we have replied; and I inſiſt upon it he hath not a Right to ſpeak any more.

Duke of *Argyle.* I hope they will withdraw.

(Ordered to withdraw.)

[*Then the Managers and Counſel withdrew, and being called in again, and returned*;]

Lord Chief Juſt. *King.* Mr. Serj. *Probyn*, the Queſtion propoſed by the noble Earl to Mr. *Meller* was, Whether he knew of any money paid to the Great Seal by any Maſter on his Admiſſion; and Mr. *Meller* inſiſting that he had been a late Maſter in Chancery, and was not obliged to anſwer the Queſtion, becauſe it might tend to accuſe himſelf; the Lords upon Debate are of Opinion, that he is not bound to anſwer that Queſtion.

Mr. Serj. *Probyn.* My Lords, then we deſire he may be aſked, whether he knows of any Sum of money paid by any other Perſon, except himſelf, upon the Admiſſion of any Maſter?

Mr. Com. Serj. I would not preſume to aſk any Queſtion that is improper, I underſtand your Lordſhips Reſolution to be, that we are not to aſk the general Queſtion of Mr. *Meller*, becauſe it might affect himſelf; this Queſtion, we think, will not; Whether he knows of any Sum of money given upon the Admiſſion of any other Maſter?

Mr. Serj. *Peng.* My Lords, we ſubmit it, whether this Queſtion differs at all in Conſequence; tho' it be not in the ſame Words, yet it is to the ſame Effect: It is, in other Words, to aſk the ſame Queſtion over again. We hope they will not give your Lordſhips this Trouble.

Mr. *Lutw.* My Lords, the Queſtion implies that he gave money himſelf.

Lord *Lechmere.* If the Counſel would explain themſelves more particularly, name the Maſter, the Perſon who received it, or any other particular Fact; then it will appear whether that be a proper Queſtion.

Mr. Serj. *Probyn.* My Lords, we humbly apprehend, that we are at Liberty to aſk this Queſtion in the Form propoſed, otherwiſe we ſhall in a great meaſure be precluded from the juſt Defence of the noble Earl. We could not preſume to aſk theſe Witneſſes beforehand, who were the Perſons that gave, or the particular Perſons that received; but as theſe Perſons have been in the Office, and muſt know the Nature of admitting the Maſters in Chancery; we hope they will explain it in their Evidence, and name the particular Perſons, who either gave, or received Money upon that Occaſion. We are not proper to aſk more particularly.

Mr. Com. Serj. My Lords, I ſhall be very loth to give any Diſtaſte to this Honourable Houſe; therefore I beg Leave to know, whether or no we have Liberty to ask this Queſtion, and whether your Lordſhips Reſolution extends to it? I humbly take it, we are at Liberty to ask the Queſtion, and the Witneſs is not obliged to anſwer, if he apprehends that as the Queſtion is formed, he cannot anſwer without an Inconvenience to himſelf. I would not willingly ask any Queſtion that I thought the Houſe would think improper.

Lord *Trevor.* If the noble Lord inſiſts upon this Queſtion, it is proper that he ſhould name ſome Perſon, concerning whom he would ask; otherwiſe, it is indirectly to overthrow your Lordſhips Reſolution.

Earl of *Mac.* My Lords, I am very unfortunate in this Matter. I would ask him the Queſtion in ſuch a Manner, as ſhould not carry any the leaſt Imputation on him: but if I ſhould firſt name one Maſter, and afterwards another, in ſo great a number of Maſters it would be tedious; I only ask in ſhort, what he knows of any money taken by the Great Seal for, or on the Admiſſion of other Maſters? I don't ask him concerning himſelf, but only concerning other Maſters; Whether he knows any thing of the Tranſactions of other Maſters Admiſſion beſides his own? I hope your Lordſhips will think this may be asked, with this Explanation and Declaration, that it don't extend to any thing relating to himſelf; but only whether he knows any thing concerning any money paid by any other Perſons; and to name them particularly.

Lord Chief Juſt. *King.* You hear the Queſtion.

Mr. *Meller.* Is it your Lordſhips Pleaſure that I ſhould anſwer to the Queſtion as it is now form'd? My Lords, I don't know, or remember, that ever I had a Diſcourſe with any Maſter about what he gave, or what he was to give, for any Place; except I have heard Dr. *Eddiſbury* ſay—

Mr. *Lutw.* My Lords, we object to this as not being Evidence, but only Hearſay.

Mr. *Meller.* Except Dr. *Eddiſbury*, I don't know one indeed.

Mr. Serj. *Probyn.* My Lords, we deſire that Mr. *Lovibond* may be called.

(Mr. Lovibond called.)

Mr. Serj. *Probyn.* My Lords, we hope that Mr. *Lovibond*, being one of the preſent Maſters, and conſequently within the Indemnity of the late Act of Parliament, may be examined, as to what happened in his Caſe: And we deſire that he may be asked, what Sum of Money was paid to the Great Seal, on his being admitted a Maſter in Chancery?

Mr. *Lov.* My Lords, as to that Tranſaction, it is many Years ago, above twelve Years ago, I will recollect what I know of it to the beſt of my Remembrance. My Lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal; nor did I employ any Body in it. But there was an Acquaintance of mine, a Maſter in Chancery, ſince deceaſed, who apprehending it to be for my Service, without my Knowledge tranſacted it.

Mr. Serj. *Probyn.* Who was it?

Mr. *Lovibond.* Mr. *Browning*, He came to me, and told me, I have ſettled the whole matter, you muſt be ſworn in this Night, and you muſt ſend to Mr. *Cottingham* or Mr. *Appleby*, then Officers under the Great Seal, 700 *l.* in Money or Bank Bills. I did ſend it that Night, and was then ſworn in.

Mr. Serj. *Peng.* My Lords, I deſire he may be particular as to the Time: It is neceſſary he ſhould be certain.

Mr. *Lovibond.* Mr. *Browning* ſaid, He had ſettled it with the Great Seal, that I ſhould be ſworn in that Night; my Lord *Harcourt* was then *Chancellor*.

Mr. *Strange.* My Lords, I deſire he may be aſked, Whether he was admitted upon a Death or a Surrender?

Mr. *Lovibond.* I was admitted upon a Surrender.

Mr. *Strange.* By whom?—Mr. *Lovibond.* Mr. *Pitt.*

E. of *Strafford.* Before the Witneſs goes, I deſire to aſk him how much he gave to Mr. *Pitt* upon his ſurrendering?

Mr. *Lovibond.* It was 2000 *l.*

L. *Harcourt.* My Lords, If the Gentleman is not gone, I deſire to ask him a Queſtion or two.

(*Mr.* Lovibond *called again.*)

L. *Harcourt.* My Lords, I deſire he may be asked, Whether he was worth ſo much money as to pay 2700 *l.* of his own money at that Time?

Mr. *Lovibond.* Yes, my Lords, and much more.

L. *Harcourt.* I deſire he may be asked, Whether he paid it out of his own money, or out of the Suitors money?

Mr. *Lovibond.* I paid it out of my own money.

L. *Harcourt.* I deſire he may be asked, Whether Mr. *Pitt*, at the time of his Admiſſion, transferred, and actually delivered over to him all the money of the Suitors that then was in his Hands?

Mr. *Lovibond.* Mr. *Pitt*, to the beſt of my Belief, delivered over every Thing that was in his Hands to me.

Mr. Serj. *Probyn.* My Lords, We deſire that Mr. *Cottingham* may be called again.

(*Mr.* Cottingham *called.*)

Mr. Serj. *Probyn.* My Lords, We deſire that Mr. *Cottingham* may be asked, Whether he knows any thing of any Tranſaction relating to the Payment of any Sum of money on the Admiſſion of Mr. *Holford?*

Mr. *Cot.* My Lords, if I remember right there was 800 *l.* paid.

Mr. Serj. *Prob.* How long ago?

Mr. *Cot.* It is ſeveral Years ago: There was 800 *l.* or 800 Guineas given or paid on his Admiſſion, ſeveral Years ago.

Mr. Serj. *Prob.* To whom?

Mr. *Cot.* My Lords, Sir *Richard Holford* deſired me to recommend his Son to the noble Lord that then had the Great Seal.

Mr. Serj. *Prob.* Who was it?

Mr. *Cot.* The Lord *Harcourt.* Sir *Richard Holford* was my old Friend and Acquaintance: I accordingly did recommend him; Mr. *Holford* came under a good character to my Lord *Harcourt*; my Lord agreed to admit him; but he firſt deſired to know, whether he had any Eſtate in Poſſeſſion ſufficient to anſwer the Suitors money? Upon my ſaying this to Sir *Richard Holford*, Sir *Richard* ſaid he had none in Poſſeſſion, but agreed to ſettle an Eſtate upon his Son; and, to the beſt of my Remembrance, it was either 800 *l.* or 800 Guineas that were given on his Admiſſion, for the Uſe of my Lord *Harcourt*.

L. *Lechmere.* To whom was it paid?

Mr. *Cot.* I can't ſay whether it was paid to me, or to Mr. *Appleby*.

Dr. *Sayer.* Who carried the Propoſal?

Mr. *Cot.* I carried the Propoſal. Sir *Richard Holford*, as I told you, being my Friend and Acquaintance, deſired me to do it: Accordingly I tranſacted the whole matter; being an Upper Secretary it was left to me.

Mr. *Lutwyche.* My Lords, I deſire to ask this Witneſs one Queſtion as to this matter: He ſays, That Mr. *Holford* was recommended as a man of good character; I deſire to know, whether he hath not ever ſince maintained that good Character?

Mr. *Cot.* Yes; he hath made an admirable good Maſter as ever I knew; and hath executed his Office with as much Honour and Integrity as any Maſter. I never heard any Complaint againſt him in my Life.

Mr. *Lutwyche.* Can you recollect who paid the money, Mr. *Holford*, or Sir *Richard Holford?*

Mr. *Cot.* Sir *Richard*, I believe; I can't recollect. He was a young man; I preſume Sir *Richard Holford*, his Father, paid the money.

Mr. Com. Serj. I deſire he may inform your Lordſhips, whether it was on a Death or Surrender?

Mr. *Cot.* As I told you before it was on a Surrender; upon the Surrender of Sir *Robert Legard*, if I remember right.

L. *Harcourt.* My Lords, if that Witneſs is not gone, and the Counſel for the Earl, and the Managers for the Houſe of Commons have done with him, I deſire to ask him, If he can tell whether any Account was taken of the Suitors money by his Predeceſſor? and whether all the Suitors money was delivered up by Sir *Robert Legard* to Mr. *Holford* at the Time of his Admiſſion?

Mr. *Cot.* My Lords, I believe it was. But I was not privy to that, I did not tranſact that matter; I have heard that an Account was made up.

E. of *Strafford.* I would not ask the ſame Queſtion twice; I think nobody hath asked it already; I deſire to know, If he knows, of his own Knowledge, what was given to Sir *Robert Legard* for his Surrender?

Mr. *Cot.* I know nothing of it.

L. *Harcourt.* My Lords, If I might have your Lordſhips Indulgence, in order to have this matter a little further explained, I deſire Mr. *Holford* himſelf, or Mr. *Appleby*, or both of them, may be called.

(*Mr.* Holford *called.*)

L. *Harcourt.* I deſire to know of Mr. *Holford*, Whether, at the Time of his Admiſſion, when he was ſworn Maſter, Sir *Robert Legard* transferred and delivered over to him all the Effects of the Suitors?

Mr. *Holford.* He did, my Lords.

L. *Harcourt.* I deſire to ask him, Whether the money, that it was ſaid he preſented to the Great Seal on his Admiſſion, was his Father's money, or his money, or whether it was out of the Suitors money?

Mr. *Holford.* My Father paid it before any thing was delivered to me.

E. of *Strafford.* I deſire to ask the Gentleman this Queſtion, What money he paid to Sir *Robert Legard* on his Admiſſion to his Place?

Mr. *Holford.* My Lords, I did not give it myſelf; I can tell your Lordſhips what I believe was given, and I have ſome reaſon to think I know the Truth; I believe it was 2000 *l.*

Mr. Serj. *Probyn.* My Lords, I deſire he may be asked, How long it was after his Admiſſion before theſe Accompts and Effects were delivered over to him?

Mr. *Holford.* My Lords, when I came to my Lord *Harcourt* to be ſworn in, my Lord *Harcourt* had an Account delivered there of what was in Sir *Robert Legard*'s Hands. My Lord *Harcourt* took the Paper in his Hand, and asked me, If I was ſatisfied to be charged with that? I told him, Yes. I was then ſworn in; and a Day or two after the things were delivered over to me by Sir *Robert Legard.*

(*Mr.* John Bennet *called.*)

Mr. Serj. *Probyn.* I deſire he may asked, What money was paid by him to the Great Seal on his Admiſſion?

Mr. *J. Bennet.* I gave Mr. *Woodford*, the Secretary of the Great Seal at that Time, 500 *l.* I don't know that it was given to the Great Seal; I gave it with that Deſign.

Mr. Serj. *Prob.* When was it?—Mr. *J. Bennet.* About two or three Days before I was admitted.

Mr. Serj. *Prob.* When?—Mr. *J. Bennet.* It was in *March*, 1716.

Mr. Serj. *Prob.* Who was Chancellor then?

Mr. *J. Bennet.* My Lord *Cowper* was Chancellor.

Mr. Serj. *Prob.* Whether was it paid before his Admiſſion?

Mr. *J. Bennet.* It was paid before my Admiſſion.

Mr. Com. Serj. I deſire he would inform your Lordſhips, whether he came in upon a Surrender or a Death?—Mr. *J. Bennet.* It was upon a Surrender.

L. C. Juſt. *King.* Upon the Surrender of whom?

Mr. *J. Bennet.* Of Mr. *Medlicot.*

L. *Bathurſt.* I deſire he may be ask'd, whether he paid it out of his own money?

Mr. *J. Bennet.* It was my own money.

L. *Bathurſt.* I deſire he may be asked, whether he had any Account of what was in the former Maſter's Hands, and when delivered over to him?

Mr. *J. Bennet.* The Effects were all delivered over to me in a Week's Time, except ſome very ſmall matters.

L. *Bathurſt.* What was the money that was given to your Predeceſſor?

Mr. *J. Bennet.* 3000 *l.*

L. *Bath.* Was that paid out of the Suitors money, or out of your own?

Mr. *J. Bennet.* It was paid out of my own money.

(*Sir* Thomas Gery *called.*)

Mr. Com. Serj. My Lords, the Queſtion that I ſhall propoſe to Sir *Thomas Gery*, is under the Apprehenſion that I mentioned before, that we are at Liberty within the meaning of your Lordſhips Reſolution to propoſe it, he being at Liberty to anſwer, or not to anſwer, if the Queſtion carry any Imputation upon him. I would not ask a Queſtion that is improper; I deſire that Sir *Thomas Gery* will inform your Lordſhips what he knows has been paid to the Great Seal upon the Admiſſion of a Maſter in Chancery?

Sir *Tho. Gery.* My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatſoever.

Mr. Serj. *Probyn.* I deſire he may anſwer the Queſtion, Whether he hath known any Sum of money paid to the Uſe of the Great Seal, or of my Lord Keeper or Lord Chancellor, upon the Admiſſion of any Maſter?

Sir *Tho. Gery.* I can't tell how that may affect me; I refer that to your Lordſhips. I think I am not bound to anſwer.

E. of *Macclesfield.* I think he ſaid, He doth not know of any money paid to a Lord Chancellor. Doth he intend to include Lord Keeper?

Sir *Tho. Gery.* Neither Lord Keeper nor Lord Chancellor.

E. of *Macclesfield.* It may be, not into the Hands of a Lord Chancellor or Lord Keeper. I deſire he may be aſked, If he hath not known it paid to the Uſe of the Lord Chancellor or Lord Keeper?

Sir *Tho. Gery.* That, I hope, I ſhall not be obliged to anſwer. I ſubmit that to your Lordſhips.

Mr. Serj. *Probyn.* If the Gentleman is not pleaſed to give a more particular Anſwer we muſt ſubmit.

L. *Harcourt.* I deſire to aſk this Witneſs one Queſtion, which will not draw him into any Inconvenience, Whether ever he was required in any Lord-Chancellor's or Lord-Keeper's Time, to make up an Account of the Suitors Money; and whether ever he did ſo?

Sir *Tho. Gery.* Yes, I did it three ſeveral Times; once in my Lord *Cowper*'s Time; and when the noble Lord that aſks me the Queſtion was in that place, I did the like; and I did it again when my Lord *Cowper* was Chancellor. At all thoſe Times I gave a particular Account of the Sums of Money in my Hands, the Time it came in, and how it was diſpoſed of, and the diſtinct Securities, in diſtinct Columns.

E. of *Strafford.* He ſays twice in my Lord *Cowper*'s Time: I take it, he means both the Times that my Lord *Cowper* was Chancellor?

Sir *Tho. Gery.* Yes, my Lords; and the ſame in my Lord *Harcourt*'s Time.

L. *Harcourt.* I deſire he may be aſked, whether all the reſt of the Maſters did ſo as well as himſelf?

Sir *Tho. Gery.* I believe they did; I have heard them all declare ſo.

Mr. Serj. *Probyn.* My Lords, we have now called all the living Witneſſes that are willing or compellable to ſpeak to this Article, we have a great

a great many other Witneſſes that would ſpeak to this, as a conſtant Uſage time out of mind: But we apprehend it to be againſt your Lordſhips Reſolution to call and examine any Witneſſes but to what they can ſpeak of their own Knowledge, and them we have produced. We ſhall now beg leave to proceed to prove, That the Offices in the Court of Chancery are increaſed in their Value beyond what they were formerly, that not only theſe, but all other Offices, as they have increaſed in Value, have increaſed in the Price; all Offices have riſen in Value, and the Price given in this Inſtance, is no more than in proportion to the Prices given for others.

Mr. Com. Serj. We apprehend, my Lords, it is ſo notorious that all Sorts of Offices have riſen in their Value, that a very ſmall Evidence will be ſufficient. We have a great many Witneſſes to this Purpoſe, we will only call ſome few. We deſire Mr. *Steele* may be called.

[*Mr.* Steele *ſworn.*]

Mr. Serj *Peng.* My Lords, We deſire to know, before they proceed, Whether they deſign to aſk as to thoſe Offices your Lordſhips gave them Direction laſt Night not to aſk to. Your Lordſhips gave them Directions not to aſk any Queſtions but to the particular Offices mentioned in the Articles; this is a Piece of Dexterity to elude that Reſolution.

Mr. *Lutw.* My Lords, I ſubmit it to your Lordſhips, Whether this Attempt is not directly the ſame as that which was over-ruled Yeſterday. If the Witneſs is to give an Account whether the Price of the Curſitor's Office, or other Offices have riſen, they muſt then ſhew that they were ſold; which is the very Queſtion your Lordſhips determined they ſhould not aſk to.

Mr. Serj. *Probyn.* My Lords, We were then directed by your Lordſhips not to prove any Money was paid to the Great Seal for any other Offices, but thoſe particularly mentioned in the Articles. We don't pretend now to aſk as to the Payment of Money to the Great Seal, but only whether Offices in general have not much advanced in their Prices?

Mr. Serj *Peng.* My Lords, it is extraordinary Uſage to tell us of Offices in General: there are private Offices, there are Offices in other Courts in *Weſtminſter-Hall.* We apprehend your Lordſhips Determination is ſo ſtrong againſt what is now attempted, that they would not urge it, unleſs they thought that the Managers had forgot every thing that happened.

Mr. Com. Serj. My Lords, The Queſtion we aſk is, as to Employments in general, Offices in the Law, or any other Offices; we deſire to inform your Lordſhips in general, that the Value of all Employments, not of the Law only, hath riſen.

E. of *Mac.* I will inform your Lordſhips how the matter is. I believe this Gentleman is not intended to be aſked what Offices belonging to the Great Seal are worth? but what Difference there is in the Value of other Offices, to what they were heretofore? particularly, how the Prices of the Seats in the Six Clerks Office are increaſed; that they were once at ſuch a Rate, and what they are now? That is the matter as I take it.

Mr. *Lutw.* My Lords, I apprehend the Direction was given to the noble Lord, not to aſk concerning the Sale of any Office but what was in the Articles, and the Managers had given Evidence to. Now to aſk the Difference or Increaſe of the Prices of a Clerk in Chancery's Place, lis, we apprehend, to aſk to the very Thing that your Lordſhips have over-ruled already.

E. of *Mac.* My Lords, this is not like the Curſitor's Office, which is in the Diſpoſition of the Great Seal; your Lordſhips Reſolution was, That the Witneſſes were not to anſwer as to their giving Money to the Great Seal. The Evidence we are now upon, is an Inquiry that relates not to any Money given to the Great Seal, but what thoſe Perſons paid to one another for an Office that doth not belong to the Great Seal.

Mr. *Onſlow.* At the End of your Lordſhips Reſolution Yeſterday, the Reaſon given why they ought not to be let into the Examination as to the Offices then in Queſtion was, becauſe no Evidence had been given thereto by the Managers, and it was not charged nor mentioned in the Articles, altho' the noble Lord did inſiſt that he ſhould be let into that Examination, becauſe in the Preamble of his Anſwer, he had taken Notice of thoſe Offices. This Caſe is ſtronger, becauſe the Offices now deſired to be examined into, are neither in the Articles nor Anſwer, nor hath any Evidence been given to them; and therefore we hope he ſhall not be let into this Examination.

Mr. Com. Serj. We humbly hope your Lordſhips will permit us to enquire, whether the Buſineſs of thoſe Offices in the Court of Chancery is not greatly increaſed, and whether the Value of the Offices be not increaſed with it?

Mr. Serj. *Probyn.* Notwithſtanding your Lordſhips Direction in the former Queſtion, we ſubmit whether we may not be permitted to aſk this Queſtion, Whether the Offices in the Court of Chancery are not increaſed in Value much beyond what they were Seven Years ago?

Mr. Serj. *Peng.* My Lords, That is the very Queſtion that we object to.

E. of *Mac.* What I before offered was, that there had been a Uſage to make Preſents to the Great Seal; I apprehend your Lordſhips overruled it as to the Curſitor's Office, becauſe there was no need of an Excuſe as to that Office, as there is no mention made of it in the Articles, nor any Proof offered againſt me. This is not of any Payment to the Great Seal, but goes by way of Excuſe as to the Sums, to ſhew the Increaſe or Difference of the Prices of Offices in general. It is notorious that Money now carries a leſs Intereſt, and that the Price of all Offices is increaſed. I don't know whether the Gentlemen will deny it: If they do not, I will not trouble your Lordſhips any farther about it.

Mr. Serj. *Peng.* We have no Occaſion either to confeſs or deny any thing that is not before your Lordſhips in Judgment. Therefore, if they expect any Anſwer, we give this, That it is not before your Lordſhips in Judgment.

Mr. *Lutw.* I apprehend the Reaſon of your Lordſhips Reſolution Yeſterday was, That there was no Charge in the Articles concerning thoſe Offices; the ſame Reaſon equally holds to what they are aſking now in relation to Clerks in Chancery.

Mr. *Plum.* My Lords, I ſhould be extreme ſorry to make any Objection to any Evidence that is material: But, if he is pleaſed to examine this Gentleman how far by the Increaſe of Buſineſs the Value of any Office is riſen, that muſt be of the annual legal Value, and not according to the Liberties he left to his Maſters.

Mr. Serj. *Probyn.* I deſire he may be aſked, Whether he doth not know that the Prices of Offices are greater now than they were formerly?

Mr. Serj. *Peng.* My Lords, we don't underſtand they have any ſuch Permiſſion to aſk that Queſtion. To repeat the ſame Thing over and over again, we apprehend they think we are aſleep.

E. of *Mac.* Your Lordſhips ſeem not to be of Opinion that this Queſtion ſhould be aſked; therefore to ſave your Lordſhip's Time, I will wave the Queſtion.

[*Mr.* Goldeſbrough *ſworn.*]

Mr. Serj. *Probyn.* We will proceed, in the next Place, in confirmation of that Part of the Anſwer to this Article, That two Sums of Money, mentioned to be paid to my Lord *Macclesfield* by Mr. *Kynaſton* and Mr. *Bennet*, were both paid back into the Court of Chancery. We deſire Mr. *Goldeſbrough* may be aſked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my Lord *Macclesfield* into the Court of Chancery.

Lord *Lechmere.* My Lords, I beg Pardon. I think the Queſtion that the noble Earl hath waved, if I miſtook not, was about the Riſe and Increaſe of Value of the Offices in Chancery. Now, notwithſtanding the noble Lord hath waved it, yet it may be proper for your Lordſhips Conſideration, whether he ſhould not have Liberty to aſk it, if he thinks fit?

E. of *Strafford.* I think what the noble Lord hath ſaid is conſiderable, and it may be proper for our Judgment.

Ld. Viſc. *Townſend.* I move that they may withdraw.

Ld. *Lech.* It may be proper to have the Queſtion repeated again. I therefore deſire, that the Counſel for the Earl would repeat the Queſtion again that they would have aſked of Mr. *Steele.*

Mr. Serj. *Probyn.* My Lords, The Queſtion is, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office particularly, are increaſed now more than anciently they were.

[Thereupon the Managers and Counſel withdrew, and being returned,]

L. C. J. *King.* Mr. Serjeant *Probyn*, the Lords have conſidered the Queſtion on which you withdrew. Their Lordſhips are of Opinion That you are at Liberty to aſk the Queſtion, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office particularly, be increaſed now more than heretofore they were?

Mr. *Steele.* My Lords, I came to be a Clerk in the Chancery Office in the Year 1687. I ſerved my Clerkſhip in the Office; and in that Year, and for ſeveral Years afterwards, I know that waiting Clerks Places were bought at 50 Guineas, or leſs; and after I was out of my Clerkſhip, I was offered a waiting Clerk's Place in the Office for 50 Guineas. They are not ſworn, nor have Power to take a Clerk; and ſince that Time I have known them ſold for 3, 4, and 500*l.* My Maſter was a ſworn Clerk, and he ſold his own Clerk's Place for 230*l.* It was a Clerk at the Seat; and by the Cuſtom of the Office, he that hath one Clerk cannot take another till the firſt Clerk be provided for; but I having a Propoſal to go into a Seat of greater Buſineſs, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwiſe he would not have given ſo much. Since that Time I have known a ſworn Clerk's Place ſold for 800*l.* Particularly I tranſacted a Sale upon a Brother-in-Law's Account; I contracted for 500*l.* and then there was a Clerk upon the Seat that had not ſerved half his Clerkſhip out.

Mr. Serj. *Probyn.* What Sum of Money had they upon taking a Clerk at that Time, and what now?

Mr. *Steele.* I did treat in order to put my Brother-in-Law Clerk to one Mr. *Atkinſon*, in the Office.

Mr. Serj. *Probyn.* What Time was that?

Mr. *Steele.* To the beſt of my Remembrance it was in 1703, or 1704, and he had 100 Guineas. Since that Time my Brother-in-Law, while he was there, had 300*l.* or 300 Guineas with a Clerk.

Mr. Com. Serj. I deſire he may explain to your Lordſhips what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele.* By the Cuſtom of the Office, he that is put a Clerk, muſt be provided for before his Maſter can take another. The Maſter ſo taking him, cannot take another Clerk, till he is provided for by a ſworn Clerk's Place, or a waiting Clerk's Place.

Mr. *Lutw.* If the Counſel have done, I deſire to aſk one Queſtion; that is, The Gentleman ſays, he came into the Office in the Year 1687. I deſire to know how many Clerks there were at that Time?

Mr. *Steele.* There were at that Time but 60 ſworn Clerks; there was an Addition made, to the beſt of my remembrance, in my Lord *Jefferys*'s Time; Sir *John Trevor* was then Maſter of the Rolls, I think there was an Addition of thirty.

Mr. *Lutw.* I deſire to know whether they are not reduced from 90 to 60 again?

Mr. *Steele.* They are not at preſent yet reduced.

Mr. *Lutw.* Whether they are not intended to be reduced?

Mr. *Steele.* If any one dies without ſurrendering his Office, they don't fill up the Place of that Perſon with another; but any one may ſurrender.

Mr. *Lutw.* How many are there now?

Mr. *Steele.* I have been told there are about 12 or 13 leſs than 90: They are to be reduced from 90 till they come to the ancient Number of 60; and they are reduced as they die without ſurrendering.

Mr. *Lutwyche.* We don't expect you to give an exact Account, How many may there be?

Mr. *Steele.* I can't take upon me to say how many; but, as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be mistaken, I am not certain; but there are several Gentlemen here who can give an exact Account.

Mr. *Lutwyche.* I desire to know whether the Offices are not a great deal better, by there being fewer of them?

Mr. *Steele.* Certainly, I believe that is pretty natural; the fewer the Offices are the better; but the Offices are not so good as they were when I came Clerk. They have reduced several Profits belonging to them since I came out of the Office, by the Act of Parliament made *For the Amendment of the Law.*

Mr. *Lutwyche.* You say they are sold for more than formerly they sold for; I desire to know whether some of those Clerks, whose Predecessors have had good Business belonging to the Office, have not made that Seat sell better?

Mr. *Steele.* Certainly it doth; if the Person surrendering had good Business, that Seat will sell for more than a Seat of less Business.

Mr. Com. Serj. I desire that he will inform your Lordships, when it was in point of Time that these Offices sold at so low a Rate?

Mr. *Steele.* It was in the Year 1694 that the Gentleman to whom I was Clerk surrendered his Seat.

Mr. Com. Serj. And when was it you knew 50 Guineas paid for the Place of a Waiting Clerk?

Mr. *Steele.* The 50 Guineas I speak of for a Waiting Clerk's Place, was in the Year 87, or thereabouts.

Mr. Com. Serj. Whether was that before the Increase of the additional Number of Clerks?

Mr. *Steele.* Much about the Time that the Additional Number of Clerks was added.

Mr. Com. Serj. I desire he would inform your Lordships, whether the Prices began to rise before any Reduction was made?

Mr. *Steele.* Yes; before the reducing of them.

Mr. Serj. *Prob.* When was the Reduction of them made?

Mr. *Steele.* I can't tell the exact Time. There was an Order made, that they should not be filled up as they died, without Surrender.

Mr. Serj. *Prob.* I desire he may be asked, Whether there was not a Difference of Price between those Seats which were full or empty of Business, or whether they were all at a *Par?*

Mr. *Steele.* The Price always varied, as there was much or little Business.

Mr. Serj. *Prob.* But every Seat, whether great or less, had a Rise in proportion?

Mr. *Steele.* Yes.

Mr. *Cary.* I desire he may asked, Whether there hath not been an Act of Parliament since the Time he mentions, which hath been beneficial to the 60 Clerks?

Mr. *Steele.* There was an Act of Parliament, called, *An Act for the Amendment of the Law*; by which the 60 Clerks had the Term Fees instead of the Tenour Bill, which was a considerable Profit; and to make up that to them, the Fees of the small Writs were given to them, and the Term Fees; but in my Apprehension, the Tenour Bill was a greater Advantage than those Fees that have been given in lieu of it.

Mr. Com. Serj. That worthy Gentleman's Question hath occasioned me to desire, that he would inform your Lordships, Whether, upon the whole of the Act, the Six Clerks Offices are better or worse?

Mr. *Steele.* In my Opinion, they were better before the Act, than they are now.

Mr. Serj. *Prob.* My Lords, we have more Witnesses to this purpose; but we apprehend that Mr. *Steele* hath spoken so fully to it, that we shall not trouble your Lordships with any others, as to this Matter. The next Witness which we shall beg leave to call, is in relation to the two Sums of 1575*l.* that were paid into the Court of Chancery by the Noble Earl, for which we did call Mr. *Goldesbrough.*

Dr. *Sayer.* Before your Lordships enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Repayment: The learned Managers were right in their Observations, That it was after the Vote for the Impeachment; but it was before the Articles were exhibited. This is mistaken in the Answer; but I am sure the Honourable House of Commons will be so candid as to think it was a Mistake only, and that 'tis impossible it could be with any View of deceiving the World, since both Facts were upon Record; the Earl was so very impatient to have his Answer in, that no Delay might be charged upon him, that I assure your Lordships the Answer was not settled till 3 or 4 a-Clock in the Morning of that Day that it was delivered in. In such a Hurry, a Mistake of this Nature, I hope will not be taken amiss, nor be looked upon by the House as designed. My Lords, I thought it my Duty to observe this, before your Lordships entered into this Examination.

(Mr. *Goldesbrough* called.)

Mr. Com. Serj. There are two Sums of Money taken Notice of to be given by Mr. *Kynaston* and Mr. *Bennet* to my Lord *Macclesfield*, I desire you would inform my Lords, whether those two Sums were paid back again, and when, and in what Manner?

Mr. *Goldes.* My Lords, the 23d of *February* last my Lord *Macclesfield* came into Court, and deposited in Bank Notes and Money to the Value of 3000 Guineas. The Lords Commissioners were pleased to direct the investing it in *South-Sea* Annuities, in the Names of Mr. *Holford* and Mr. *Lovibond*, the two Senior Masters of the Court, for the benefit of the Suitors of the Court.

Mr. Com. Serj. I think, my Lords, we need not ask whether Mr. *Goldesbrough* be the proper Officer?------*Lords.* No, no.

Mr. Com. Serj. I would with Submission ask another Question of Mr. *Goldesbrough*; I would beg leave to inform your Lordships what the Question is. There hath been an Examination on the Part of the Gentlemen of the House of Commons into the Nature of these Offices, and I hope it will not be improper, Mr. *Goldesbrough* being now at your Lordships Bar, to ask him as to the manner of the money coming into the Masters Hands, whether it be by Compulsion, or at the Instance of the Parties?

Mr. Serj. *Pen.* This must appear by the Order. No money is paid in but by Order.

Mr. Com. Serj. The Orders are infinite; but Mr. *Goldesbrough* being the Register, may be properly asked, what the Practice and Usage of the Court is in this Instance? It is usual to ask the Officers of the Court, what the Practice and Usage of the Court is. If we should produce 20 Orders, they might object that others are not so; and therefore I beg Mr. *Goldesbrough*, the proper Officer, may inform Your Lordships what the Practice of the Court is?

Mr. *Goldes.* Upon Decrees, when Causes are heard, the Counsel pray what Decree is proper: Where Estates are to be sold, they order the money to be brought before the Master.

Mr. *Lutwyche.* My Lords, I desire to ask one Question; Mr. *Goldesbrough* is a very experienced Officer of the Court, hath been a good while in the Place, and probably may give your Lordships some Light into this matter. The Question I would ask is, When he first knew the Office, whether it was usual to direct the money to the Masters in the manner it hath of late been directed?——Mr. *Goldes.* I can't say it was.

Mr. *Lut.* The next Question is, When the present Usher of the *Rolls* had given Security, whether there were not some Orders made by the late Lord *Chancellor*, as well as by the Masters of the *Rolls*, for Payment of money to the Usher of the *Rolls*; that is, into Court?

Mr. *Goldes.* Yes, there was.

Mr. *Lut.* I desire him to explain the Difference between paying the money into Court, and paying the money to a Master. What is understood by paying it into Court?

Mr. *Goldes.* Paying it into Court, is paying it to the Usher.

Mr. *Lut.* I desire to know, whether there were not some Orders made, after Mr. *Trevor*, the present Usher, had given Security, for Payment of money to him?—Mr. *Goldes.* Yes, there were.

Mr. *Lut.* I desire to know, how soon after those Orders were varied?

Mr. *Goldes.* I can't remember when the Orders were varied; as to those made before Hearing, and for continuance of an Injunction, I don't know they are altered yet.

Mr. *Lut.* What I ask is, Whether he had any Directions touching the varying of Orders for the Payment of money; any Direction, I mean from my Lord *Macclesfield*, to vary the Order?

Mr. *Goldes.* Money paid before Hearing, was paid into Court; money paid upon the Decree, was brought before the Master. I had no Direction from my Lord *Macclesfield* to vary the Order.

Mr. *Lut.* Was there any Variation or Difference in drawing up the Order, for some time after the Usher gave Security, from what it was some time before?

Mr. *Goldes.* Upon interlocutory motions, the money was brought before the Usher, and so it hath been ever since.

Mr. *Lut.* Was it always so?-----Mr. *Goldes.* It hath been so ever since.

Mr. *Lut.* Ever since what time?

Mr. *Goldes.* Ever since the time that Mr. *Trevor* gave Security.

Mr. *Lut.* What I would know is, Whether the Orders and Directions at first were not in general, to pay the whole money into Court?

Mr. *Goldes.* No, my Lords.

Mr. *Lut.* How was it?

Mr. *Goldes.* On all Orders interlocutory before Hearing, it was paid in to the Usher: On all Orders for money, subsequent to the Hearing, it was brought before the Master.

E. of *Macclesfield.* This Question hath been asked Mr. *Goldesbrough*, with relation to the paying of money into Court, and being brought before a Master, I desire he would inform your Lordships what the difference between them is?

Mr. *Goldes.* Money brought into Court, is money brought in before Hearing, and is subject to the Order of the Court, to be paid out either before the Hearing or after, as the Nature of the Case requires. Money brought in after Hearing, is money to be put out on Security, and is brought before the Master.

E. of *Mac.* Whether, when money is ordered to be brought in to be disposed of, as upon a Purchase, or upon a Decree, to pay Debts, *&c.* The Course of the Court in all his Time hath been to bring it into Court, or before a Master?

Mr. *Goldes.* I can't say it hath been so in all my Time: Since the Revolution it hath been generally brought in before the Master, before it was brought into Court.

E. of *Mac.* Have the Orders made by me, since the Usher gave Security, been made in the same manner as those by my Predecessors?

Mr. *Goldes.* Yes, They have been the very same.

E. of *Mac.* I desire to know, when first the money paid into the Hands of the Usher went into another Course, that is, upon the Usher's Death, or not giving Security; and what method was taken then?

Mr. *Goldes.* I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Usher, and it was upon that Consideration that the Money was ordered before the Master.

E. of *Mac.* And afterwards, was there not an Alteration made of all the money that used to be paid to the Usher? Was it not ordered to be brought before the junior Masters?

Mr. *Goldes.* In my Lord *Cowper*'s Time, when there was a Difference between the Usher and his Deputy, my Lord *Cowper*, upon that, did order the money to be brought, and lodged in the two junior Masters Hands. They were each to keep a Key, and the Usher another: When any money was paid, it was paid out of the Chest, kept under those Keys; and the money that was paid in was paid in there.

E. of *Mac.* Was not the money that used to be paid into the Usher's Hands, directed in to the junior Masters Hands?

Mr. *Goldes.* It was so.

E. of *Mac.* As to the money appointed to be disposed of, for payment of Debts, or otherwise, How was that paid? Was that put into the Chest, or into the Hands of the respective Masters to whom it was referred?

Mr. *Goldeſbrough*. I think it was put into the Cheſt; there was then no Difference at all.

E. of *Macclesfield*. Had no other Maſters then any money brought before them? Was all brought before the junior Maſters?

Mr. *Goldeſ*. The general Order was, for the money to be brought before the junior Maſters, to be kept in a Cheſt there.

E. of *Mac*. Mr. *Goldeſbrough* miſtakes the Queſtion. I don't aſk how the money was uſually brought; but had no other Maſter money brought before him in my Lord *Cowper*'s Time?

Mr. *Goldeſ*. Yes, My Lords.

E. of *Mac*. What money was that? Upon what Occaſion?

Mr. *Goldeſ*. The bringing the money to the two junior Maſters was found to be inconvenient; whereupon, after that it was altered, and the money was brought before the Maſters to whom the Reference was in Court.

E. of *Mac*. Whether the money that was paid in to the two junior Maſters, was not ſuch money as was before ordered to be paid into Court?

Mr. *Goldeſ*. Yes.

E. of *Mac*. I deſire you would recollect, whether you were not preſent at a meeting of the Maſter of the *Rolls*, and Uſher, and others; whether this was not under Conſideration, what money ſhould be paid into Court, and what ſhould be brought before the Maſter?

Mr. *Goldeſ*. Yes.

E. of *Mac*. Whether you was not then aſked. Whether money directed after a Cauſe is heard, to be diſpoſed of, was not brought before a Maſter?

Mr. *Goldeſ*. Yes, I was aſked that Queſtion.

E. of *Mac*. What Account did you give of the Courſe of the Court in that Particular?

Mr. *Goldeſ*. I gave the ſame as now, That the latter Practice had been to bring it before the Maſter, to whom the Cauſe was referred.

E. of *Mac*. Do you remember, whether the Uſher was not aſked, Whether he had any Precedents of money paid into his Hands, to be diſtributed amongſt Legatees, or Creditors, and what the Anſwer was?

Mr. *Goldeſ*. He ſaid he had none.

E. of *Mac*. Do you apprehend the Courſe of the Court to be, that money brought in before Hearing is to be paid in to the Uſher, and money after Hearing to be brought in before the Maſter?

Mr. *Goldeſ*. Yes, I do.

E. of *Strafford*. I deſire he would inform your Lordſhips, what the Security is, and how much, that is given by the Uſher; and whether it is the ſame now, as it was before my Lord *Cowper* made that Alteration?

Mr. *Goldeſ*. I can't ſay any Thing as to that, I know nothing of it, it doth not lie in my Province.

Mr Serj. *Probyn*. Your Lordſhips will pleaſe to remember, in the Caſe of Mr. *Elde*, though he paid 5250 *l*. all the money was returned except 1850 *l*. So the ſame as to Mr. *Thurſton*, 5250 *l*. that all was returned in a reaſonable Time except 2000 *l*. ſo that to theſe Facts, we ſhall not trouble your Lordſhips with any Witneſſes. But now we ſhall beg Leave to lay before your Lordſhips another Evidence, that when Mr. *Thurſton* was admitted into this Office upon the Payment of 5000 Guineas, another Gentleman offered 6000 *l*. Mr. *Cottingham* proved the ſame as to Mr. *Elde*. This we do to ſhew, that his Lordſhip was not that avaricious Perſon as he hath been repreſented; he refuſed 6000 *l*. and took leſs from another. We deſire Mr. *Ellis* may be called.

(Mr. *Ellis* ſworn.)

Mr. Serj. *Prob*. We deſire Mr. *Ellis* may be aſked, What he knows of any Sum of money that was offered for the Maſterſhip in *Chancery* to which Mr. *Thurſton* was admitted, and what that Sum was?

Mr. *Ellis*. Upon the Death of Mr. *Borret*, Mr. *Richard Lucas* came to me at my Lord *Macclesfield*'s and told me, That his Brother deſired to have the Place of a Maſter in *Chancery*, then vacant: And he ſaid, that as I was in my Lord *Macclesfield*'s Family, I might be of Service to him, in conveying Mr. *Lucas*'s Propoſal to my Lord. He then told me, what I was to offer my Lord *Macclesfield* for that Place; he ſaid he was ſo ſenſible of my Lord *Mcclesfield*'s Honour and Generoſity, that he would leave it entirely to his Lordſhip, what he would have in Conſideration of his coming in. But if my Lord *Macclesfield* did not approve of a Propoſal ſo undetermined as that was, I was to offer 6000 *l*. or 6000 Guineas; I don't remember which of thoſe two Sums, but one of them I am certain it was. I did offer it to my Lord, who told me Mr. *Lucas* had been well recommended to him, and he was ſatisfied with his perſonal Character, and with this Offer. My Lord *Macclesfield* ſaid no more; and I could not preſs his Lordſhip to explain himſelf any further. I returned that Anſwer to Mr. *Lucas*, and heard nothing further of that matter, till my Lord *Macclesfield* had declared that Mr. *Thurſton* ſhould have it.

Mr. Com. Serj. I deſire he may be aſked, Whether the Gentleman that applied to him, was not his Friend and Acquaintance?

Mr. *Ellis*. Mr. *Richard Lucas* was my Acquaintance; when he deſired me to do this, I told him it was not proper for me to apply about matters of ſuch Nature; but in Friendſhip to him, I would ſpeak to my Lord about it.

Mr. *Plummer*. I don't know whether the Counſel have done; if they have, I deſire to aſk this Witneſs what Mr. *Richard Lucas* is himſelf?

Mr. *Ellis*. He is a Clergyman.

Mr. *Plum*. I deſire to aſk him, If Mr. *Richard Lucas* did not, at the ſame Time that he propoſed the 6000 *l*. lay ſome Reſtriction or Condition upon which he was to pay it. Had not you ſuch Inſtructions?

Mr. *Ellis*. No, I don't remember he did any.

Mr. *Plum*. Then I deſire to aſk you, If he did not ſay, Provided Mr. *Borret*'s Deficiency was made good?

Mr. *Ellis*. He mentioned no ſuch Condition to me; he did ſpeak of Mr. *Borret*'s Deficiency; I told him I had heard there would be no Deficiency there. Upon which he ſaid, He had been aſſured there would be none, by a Gentleman known to us both; but however that be, ſays he, my Brother is willing to enter into a Treaty with my Lord *Macclesfield* upon thoſe Terms.

Mr. Serj. *Prob*. My Lords, we ſhall trouble your Lordſhips no further upon theſe Articles we have been upon, the other Gentlemen will anſwer what is to follow.

Mr. *Robins*. May it pleaſe your Lordſhips, I am likewiſe by your Lordſhips Permiſſion aſſigned of Counſel with the noble Earl, who has the misfortune to lie under the Weight of ſo heavy a Charge, as an Impeachment of the whole Body of the Commons of *Great Britain*; and ſhall beg Leave to open to your Lordſhips the Nature of his Defence, and the Strength of his Evidence, with regard to the *Eleventh* and *Twelfth* Articles of this Impeachment.

I am ſenſible, my Lords, that the Solemnity of this Proſecution, from the Weight and Number of thoſe who are become the Accuſers of this noble Earl, and the awful Appearance and Wiſdom of thoſe who are to be his Judges, and the Name of an Impeachment in Parliament, may ſeem to carry an Argument of greater Crimes and greater Guilt, than are to be met with in the ordinary Courts of Juſtice below.

But, my Lords, with the greateſt Submiſſion, if the Solemnity of the Proceedings on this Occaſion has not altered the Nature of Things, and imprinted a Guilt where there is no Guile, we humbly hope we ſhall be able to lay before your Lordſhips ſome few Obſervations and Circumſtances of Evidence, that will, at leaſt, extenuate, if not wholly abate and take out, the Sting and Malignity of the ſeveral Crimes whereof this noble Earl ſtands accuſed.

Your Lordſhips, without Queſtion, will have long ſince obſerved, That the Loſſes and Sufferings of Widows, of Orphans, and others, who, from the Diſtreſs and Impotence of their Condition to help or defend themſelves, have fled to the Court of Chancery, when this noble Earl preſided there, for Sanctuary and Protection; that theſe have been juſtly made Uſe of as the greateſt Aggravations of the Crimes wherewith he is charged, and they have been diſplayed with the utmoſt Force of Eloquence, and in the moſt moving Strains of Commiſeration and Pity.

And I believe, my Lords, every one that heard them have ſhared and gone along with the Honourable Managers for the Houſe of Commons, in the Concern and Indignation they have ſo juſtly ſhewn towards thoſe who have been the Authors and Contrivers of them.

Theſe, my Lords, are Subjects wherein the richeſt Fancy may almoſt loſe itſelf, and the pooreſt can never be at a Loſs for ſomething to offer to move and affect the Paſſions of mankind.

And the learned Managers for the Honourable Houſe of Commons, have adorned and ſet off their Charge againſt the noble Earl on this Head, with ſo many Beauties of Expreſſion, and ſo great a Propriety and Choice of Language, to engage and win over all the Paſſions of Human Nature to their Side, that it will be difficult, if not impoſſible for us, who may ſeem to have undertaken an Argument leading to diſprove and reaſon againſt the Force and Truth of all theſe, to hope for Succeſs, but by ſhewing to your Lordſhips, that the noble Earl entirely joins with the learned Managers in their juſt Reſentment and Concern on this Occaſion, that he is deeply affected with the Loſſes, the Depredations and the Havock, which has been made of the Fortunes of the unhappy Suitors of the Court of Chancery.

That he has long been endeavouring to put a Stop to them; that at one Time he has contributed his Reaſon, his Judgment, and his Underſtanding, to find out effectual methods for the Cure of them; at other Times has made Uſe of his Power, his Authority, and that Majeſty wherewith, as Lord Chancellor, he ſeems to be inveſted, to enforce and haſten the compleating of them.

That he has convened the Maſters, the Regiſters, and the ſeveral Officers belonging to his Court, to conſult, adviſe and aſſiſt, in finding out means to ſtop the growing Evil; that he has aſſiſted with his Purſe, has advanced conſiderable Sums of money of his own, and when nothing would do, when the miſchief appeared too big for his ſingle Endeavours to oppoſe, that he then at laſt preſumed humbly to lay the whole before his Majeſty in Council, as well for his Majeſty's Aſſiſtance and Direction, as to teſtify how much he had at Heart the finding out a Remedy for the Cure of thoſe overgrown Diſeaſes, this Epidemical Contagion, which was ſpreading through every Part of the Court where he preſided, and ſeemed to threaten Deſtruction and Ruin to the whole.

Theſe, my Lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned Spectator at the Tragedy that was acting around him; that he ſaw and felt the Commotions it had raiſed, and was fully determined to put an End to them as ſpeedily and effectually as he could.

But when, my Lords, a Stop was put immediately to his Endeavours; when he was diſarmed almoſt in the very Beginning of his Onſet, and when the great Seal, and therewith his Power to proceed further, was taken from him, your Lordſhips will not impute it to him, that he was forced to ſit ſtill, and leave it to others to effect what he had, ſo proſperouſly and happily, begun.

Your Lordſhips, without Queſtion, will have already obſerved, That theſe fatal miſchiefs did not ſpring up all at once, That they had long been growing, That the Seeds of them had lain buried and concealed for a conſiderable Time, and, That they hardly appeared at all, till they were grown too ſtubborn and obdurate, to yield to an eaſy Cure.

Your Lordſhips will likewiſe, no doubt, have obſerved, that however, in the ſtricteſt Way of conſidering Things, the Chancellor may poſſibly be thought to be anſwerable for them; yet, that they did not originally proceed from him, that he had not the immediate Cuſtody or Ordering of the Suitors money or effects.

That the Maſters in Chancery, who are no leſs than Eleven in Number, by the Conſtitution of the Court, and the Nature of their Office, were neceſſarily to be entruſted with that Part of the Buſineſs thereof.

And when your Lordſhips ſhall likewiſe be pleaſed to obſerve further, That enough, and more than enough for the ſtrongeſt Conſtitution of Body, and the greateſt Abilities both of Mind and Underſtanding, remained ſtill for the Chancellor's own Share, in the Diſpatch of the daily and neceſſary Buſineſs of the Court where he preſided, the innumerable Avocations by his Attendances on your Lordſhips, on His Majeſty, and the Council, and other Services, which the Duty of his High Station required from him; your Lordſhips, no doubt, will

will easily reflect, that he had but little Leisure, suddenly, and immediately to go through so arduous, so difficult, and so tedious an Undertaking, as the stating and settling of the Masters Accounts, for no less than almost a Million of Money, which has now appeared to be in their Hands. And your Lordships, we are persuaded, are no Strangers to the many and almost insuperable Difficulties which even at last have attended the Prosecution of that Affair, the great Length of Time it has taken up, the number and variety of Meetings and Consultations with Persons of the greatest Abilities and Experience to go to the Bottom of it, and whether even yet they have been able fully to effect it, or have fixed on such methods of Enquiries as have laid open the whole Scene, or will certainly prevent the like Mischiefs for the Time to come; these, my Lords, we humbly apprehend, are Considerations that will not be thought altogether unworthy of your Lordships Notice in determining the Guilt or Innocence of this noble Earl of the Crimes laid to his Charge.

It must indeed be admitted that they have, for the present, taken away the Money, Effects, and Securities of the Suitors out of the Masters Hands, and so have prevented any Loss for the Time to come on their Part.

But whether, my Lords, they are even yet disposed of in such manner as fully to answer to the Ends proposed, whether the Ease and Convenience of the Suitors of the Court will appear to be more effectually provided for, than they were before, by the Methods that have now been taken to dispose of their Money and Securities; these, my Lords, I am afraid are Questions more easily asked than answered.

But, my Lords, all I would be understood to mean by this, is, and I mean nothing more by it, than that the settling and adjusting of the Masters Accounts for such great Sums of Money, placed and disposed of in such variety of Hands, so difficult to be thoroughly considered or understood; and so little to be depended on if they were understood; that this, my Lords, was rather the Work of Persons at full Leisure, of Persons conversant in the nature and manner of Accounts, that it was the Work of Variety of Persons of different Capacities and Abilities, and so the taking of these Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the single Endeavours of a Chancellor to the same end, by being unsuccessful, will not be made criminal, and that he will not be obliged, under the Pain of an Impeachment in Parliament, to do what, with the greatest Submissions, has never yet been attempted, or if attempted, has met with the same ill Success with the Endeavours of the present Earl, and could never hitherto be completely or perfectly effected.

But, my Lords, with great Submission, if the stating and settling of these Accounts, on a just and lasting Foundation, should be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to care take of them, yet as this is a Work of the greatest Moment, Judgment, and Consideration, and must unavoidably take up a every great Portion of Time, and put a total Stop and Obstruction for the present to all the other Branches of his high Office, we humbly hope, my Lords, that his being cut off in the midst of his Endeavours of that kind, and thereby prevented from further Pursuit of them, that this will be a Consideration of the greatest Weight with your Lordships in determining the Fate of this noble Earl, and that he will not be made criminal for leaving it unfinished, when his Power of proceeding further therein was suddenly and unexpectedly taken from him.

My Lords, your Lordships very well know that the Business not only of the Court of Chancery, but of all the other Courts of *Westminster-Hall*, and even of your Lordships Supreme Court of Judicature, is and must necessarily be distributed and disposed of into variety of Hands, that some are assigned to one Province, some to another, and all of them concurrning to the same End, the carrying on the Business of the respective Courts to which they belong.

And, my Lords, the Officers and Ministers of each of these Courts of Justice, on their being admitted thereto, give each of them the Security of an Oath, or some personal Security for the due and faithful Discharge and Execution of their Duty, whilst they continue in their Offices.

Now, my Lords, what can be the End of requiring and resting on these Securities, but to relieve and ease the minds of their Superiors from the necessity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more immediate Duty?

The Officer is at the Peril of his Oath, or the Security he has given, nay, even at the Peril of the Office itself, to discharge his Duty as he ought, and justly forfeits his Office by a Neglect or Breach of any Part of his Duty therein; and if one or two of them should have no regard to all or any of these Ties, must the ten Righteous that are left, nay, must the Chancellor himself be punished for their Sakes?

But, my Lords, Masters in Chancery are generally, if not always, chosen from the Profession of the Law, and the manner of their Educaion, and the nature of their Studies, are justly supposed to set them above the Temptation of mean, of base, or little and unjust Actions.

Many of that Profession your Lordships, will permit me to observe, do now, and have, in all Ages, worthily adorned even the august Body of the House of Peers, and have been advanced to the highest Dignities in the State.

And then, my Lords, I humbly hope 'twill not be thought an Observation altogether improper, that when one of this liberal Education, when one brought up in the Study and Practice of a Profession, whose very Principles consist in the Knowledge of Virtue and Honour, of the Rules of Justice and Equity, and all the Accomplishments which can adorn Life, or make him useful to his King and Country; I say, my Lords, I humbly hope 'twill not be improper to observe, that when such a one applies for an Office in the Civil Government, which he is in any Degree qualified for, 'tis no wonder that he should meet with a more favourable Reception than other Persons, who perhaps may have nothing but their Estates or Fortunes to recommend them.

The very Profession of such a one is, my Lords, almost a sufficient Security and Recommendation of itself, and immediately induces a Persuasion and Belief, that they will do nothing to forfeit their Honour, their Reputation, or that Credit and Esteem which they so justly do, and ought to regard and value.

But when, my Lords, 'tis remembered that the additional Security and Sanction of an Oath is likewise required from them, when they invoke the Majesty of Heaven to bless them as they perform their Duty, what higher, what greater or better Security can be taken from them for the due and faithful Discharge of their Duty in the Office they are entering upon?

The Oaths they take upon that Occasion your Lordships have already heard, and no doubt will have observed, that they differ little from the Oath, which even the Lord Chancellor himself takes on his being admitted to his own high Office.

And as they sit with him in Judgment on the Bench, share with him in carrying on the most important Business of that Court, which is next in Dignity to the Supreme Court of Judicature we are now before, when they are in most Cases necessary for the distributing and dealing out Justice and Equity, and fixing the Rules and Bounds of Property to the Suitors there. Can it, or will it, my Lords, be easily or readily imagined, that they should have no Regard to all these sacred Ties of Duty, that they should prostitute their Honour, their Conscience, and every Thing that is dear and valuable to them, for the sake of any worldly or temporal Consideration whatsoever?

These, my Lords, we humbly apprehend, are some of the Reasons which may be offered, why no personal Security has ever been required from a Master in Chancery, on his Admission into that Office, any more than from the Chancellor himself.

And if this be so, tho' there could be no need or Occasion for the Chancellor's making any Declarations concerning their Ability or Substance, yet we humbly hope we shall be able to shew to your Lordships, that this Declaration, which is made one of the Articles of an Impeachment against this noble Earl, that even this too, was not without its just Foundation of Reason and Truth.

And this, my Lords, leads me to observe a little on the Eleventh Article of this Impeachment.

[*Article* XI.] My Lords, the Eleventh Article contains a two-fold Charge against the Earl; First, That whilst he continued in the Office of Lord Chancellor, in order to advance and increase the illegal and corrupt Gain arising to himself from the Sale and Disposal of the Offices of Masters in Chancey, he did admit several Persons to those Offices, who at the time of their Admissions were of small Substance and Ability, unfit to be trusted with the great Sums of Money and Effects of the Suitors lodged in their Hands.

The Second Charge against the Earl in this Article is, That he did publickly, in open Court, falsly represent the Persons by him admitted to the Offices of Masters of the Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them.

These, my Lords, are the two Branches of this Article against the Earl; and I would beg leave to observe upon it in general that 'tis not so much as charged or insinuated in any part of it, that the Earl knew, or had the least Notice of any Insufficiency or Inability in the Masters at the Time he admitted them to take upon them that great Trust.

If that had been the Case, or could have been clearly made out, the Commons without doubt would not have omitted so material an Aggravation of this part of their Charge against the Earl.

They have indeed proved, that the Earl did not think fit to take the Masters own Words for their Abilities and Fortunes, and therefore never asked them the Question.

But, my Lords, we hope we shall be able to shew to your Lordships, that the Earl took a much more proper and effectual method, to be satisfied of the Truth of their Circumstances and Abilities, than by any Appeal he could have made to themselves; that he did not content himself with barely asking the Question for the sake of an Answer, which he ought to have had no regard to, whether true or false, but that he weighed, considered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of so great Trust.

That in Consequence thereof, he absolutely rejected some, though their Friends offered him a greater Present, or if it must be called so, a greater Price for their Offices than others, for want of an Estate or Fortune in Possession of their own, that might be some ways adequate to the great Charge they were going to be entrusted with.

That from the same Views of Security to the Suitors of the Court, he refused to admit others, from an Apprehension that the Sums they offered, though considerably greater than were offered by others, would too much exhaust and lessen their own Fortunes, to be able, with any Degree of Ease or Credit, to support themselves, or be consistent with the Safety and Security of the Suitors Money and Effects, to be entrusted with them.

These Instances, my Lords, we shall be able to produce to your Lordships; and when we have so done, we hope we shall need to be in very little Pain for the second Part of this Charge, which the Earl by his Answer has partly admitted to be true; that is, that he believes he may, upon some Occasions, have declared, That he thought the then Body of Masters as good, with respect both to their Estates and Ability for the Discharge of their Office, as had been at any Time before.

This, my Lords, the Earl owns by his Answer, That he may on some Occasions have said; and if it were true, where was the Crime of it? 'Twas indeed more than he needed to have said, as no one had Authority to require him to make any Declaration at all about the Masters.

But, my Lords, if he had said more than he needed to have said, and yet his Saying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the honourable Managers for the House of Commons, both in their Opening, and the Course of their Evidence, have tacked to this Declaration a Circumstance arising from the Death of Mr. *Fellowes*, one of the Masters, which happened just before this Declaration was made, from whence they would infer, and one of them was pleased to say, 'Twas a necessary Declaration to be made at this Time, to give Notice that the Office was worth buying, or to that Effect.

But, my Lords, we humbly hope, how ingenious ſoever the Obſervation may be, that it will have no Weight with your Lordſhips, if the Truth and Nature of the Caſe itſelf will ſupport the Declaration that was made upon that Occaſion.

But, my Lords, before I leave this Article, I would beg leave to add one Obſervation more to what I have already ſaid upon the firſt Part of it, concerning the Obligation on the Maſters in Chancery to be faithful in the Diſcharge of their Duty, from the Honour of their Profeſſion, and the Nature and Sanctity of the Oath they take on their being admitted Maſters.

And, my Lords, I the rather chuſe to take Notice of it, becauſe 'tis an Argument which the Honourable Managers of the Houſe of Commons have themſelves furniſhed us with.

Your Lordſhips were pleaſed to obſerve, That, in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Maſters in Chancery as high as poſſible, and therefore they read to your Lordſhips ſeveral Commiſſions, and put in others to the Table, from the Time of *Edward* the VIth, down to this Time, to prove, That the Maſters in Chancery were joined in Commiſſion with the Maſter of the Rolls, and the Judges themſelves, for the hearing and determining of Cauſes in Equity, in the Abſence of the Chancellor.

And 'twas ſaid by one of the learned Managers in the firſt Day's Opening upon that Occaſion, That the Maſters in Chancery were next in Power to the Chancellor himſelf, after the Maſter of the Rolls.

From which I would humbly preſume to infer, That if this be ſo, if they are Perſons of ſuch Eminence and Worth, and ſo nearly related to Juſtice itſelf, on their commencing Maſters, 'tis ſtill a higher Obligation on them to be careful in the Diſcharge and Execution of their Office; and then, whether theſe Conſiderations, whether the Ties of Honour, of Conſcience, and of the Venerable Company they are from henceforth joined with, and made equal to; whether theſe may not in a great meaſure be ſuppoſed to ſuperſede that ſtrict Enquiry, which a Lord Chancellor would otherwiſe think himſelf obliged to make; this, my Lords, we humbly hope will not be thought an Argument altogether foreign to the preſent Queſtion before your Lordſhips, but will, we hope, at leaſt extenuate, if not wholly wipe off any Guilt, that for want of ſuch Enquiry might poſſibly be imputed to the Earl on his Admiſſion of Maſters.

But, my Lords, there is one Obſervation further, which I cannot let paſs on this Occaſion, though 'tis not ſtrictly to the Article I am now upon.

And that is, my Lords, what the ſame learned Manager obſerved in his Reaſoning upon that Point, That the Offices of Maſters in Chancery being Offices of ſuch great Truſt and Dignity, that no Offices were more improper to be bought and ſold than they, except thoſe of the Judges themſelves.

This, my Lords, might, and, no doubt, was a very juſt and proper Obſervation to be made, in ſupport of the Point they were endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to diſparage and weaken another Part of their Articles, which, without doubt, they have equally at Heart to maintain, and that is, the obliging theſe great Men, theſe Judges, theſe Maſters in Chancery, to give Security for the Suitors money and effects in their Hands, as if they were not fit otherwiſe to be truſted with them.

They are juſt before made a ſort of petty Chancellors, equal in Dignity and Power to the Judges themſelves, and fit to be entruſted with the Diſpoſal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places muſt not be bought or ſold; but here they are reduced and abaſed to the low and ſervile Condition of a common Receiver or Rent-Gatherer, and muſt give Security for all the Suitors money or effects that ſhall happen to come to their Hands for fear they ſhould run away with it.

All, my Lords, I ſhall preſume to add further under this Head, is, That though one of the Maſters has indeed frankly owned, That he was worſe than nothing when he came into his Place of a Maſter in Chancery, yet, from another part of his Evidence, he owns, and it fully appears, that he groſly abuſed and impoſed upon the Earl in concealing it from him, of which the Earl, when he came to have Notice, very juſtly complained, and expreſſed his Surprize and Reſentment, that he ſhould pretend to come into an Office which he was not able to pay for.

And how far the ſame Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Diſtreſs afterwards for want of it: This, my Lords, muſt be left to your own Conſcience, and the Gratitude of his own Heart; as muſt alſo the like return of Fifteen Hundred Guineas made to another of the Maſters under the like Diſtreſs and Inability to bear the Want of it; Theſe, my Lords, are Inſtances of the greateſt Generoſity, Honour and Tenderneſs, I had almoſt ſaid Charity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occaſions; however, they have been diſfigured and diſguiſed by the Learning and Ingenuity of the Honourable Managers for the Houſe of Commons.

In the mean time, my Lords, I would beg leave to obſerve, that the ready Paying and Producing of theſe Sums to the Earl, for their Places at firſt, their not giving him the leaſt Notice or Intimation that it was not their own money, and the Figure and Appearance they made in the World; theſe all concurring might eaſily miſlead the noble Earl into a Perſuaſion and Belief, that they really were what they appeared to be, that they were well able and ſufficient to bear the Expence of it. And neither of theſe Two, or of the other Maſters have given any Sort of Evidence, that the Earl knew, or had reaſon to entertain the leaſt Suſpicion to the contrary: And if now, at laſt of all, the Deficiencies of theſe, and of all the others Maſters placed in by the Earl ſhall appear to have been already made good, or to be ſo far ſecured, as to prevent any Danger of a Loſs to the Suitors of the Court, from their ſeveral Offices (which we humbly hope, on the ſtricteſt Examination, will appear to be the Caſe) we may then humbly preſume to hope, that the Earl will not be thought to be criminal under any Part of this Article; but that Your Lordſhips great Juſtice will acquit him wholly of it.

[*Article* XII.] But, my Lords, I would now humbly beg leave to offer a few Words and Obſervations on the Twelfth *Article*, which comes next to be conſidered of.

This, my Lords, charges that whilſt the Earl was Chancellor, an unjuſt and fraudulent method was practis'd in the Court of *Chancery*, on the Sale of Maſters Places, and on the Admiſſions of *new* Maſters; that the Sums agreed to be paid for the Purchaſe thereof, were paid out of the Suitors money, either by way of Retainer, or by replacing the ſame again in the Hands of the Selling Maſter, immediately after the Admiſſion of the new one: And that by this Practice the Price and Value of theſe Places was greatly advanced, and Perſons of ſmall Ability and Subſtance were encouraged to contract for the ſame, which has occaſioned great Deficiencies.

This Part, my Lords, ſhews only the Contrivances amongſt the Maſters themſelves, how to get into thoſe Offices; and ſo far the Earl ſeems to be but little concerned in it.

But then comes the Charge againſt the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted therewith, yet, for his own unjuſt and corrupt Profit, in the Selling of thoſe Places, he took no meaſures to prevent or reform that Abuſe, either by cauſing Schedules to be taken of the money and effects of the Suitors, delivered over to the new Maſter, or by appointing any Perſon to ſuperviſe or inſpect the Transfer, and Delivery thereof: But, on the contrary, ſuffered that fraudulent Practice to continue without controul, whereby great Embezzlements have been made of the Suitors Money and Effects.

My Lords, the noble Earl, by his Anſwer, ſays, That he was totally ignorant of this practice amongſt the Maſters; but admits, that he never gave any particular Directions for Delivery of the Suitors money and effects, by a Schedule to the ſucceeding Maſter; and ſays, he never heard that his Predeceſſors ordered ſuch Schedules to be made; but ſays, he believes ſuch Schedules were made, between the new Maſter and the old, on the general Order of Transfer, made of Courſe on the Admittance of the new Maſter.

This, my Lords, is the Earl's Anſwer to this Article. And as he has in general denied his Knowledge of theſe Practices amongſt the Maſters, it was certainly expected by Your Lordſhips, that the Honourable Managers for the *Houſe of Commons*, would have fully proved it upon him, and thereby have falſified his Anſwer to this Part of the Charge.

But, my Lords, if I did not greatly miſtake the Evidence to this Point; it has proved nothing more, than that the Earl knew of this Practice, at the ſame time that all the reſt of the World did, that is, a little before *Chriſtmas* laſt; when the Curtain drew up, and diſplay'd the Maſters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Aſſiſtance and Help of Mr. *Thomas Bennet*, and the Affidavits that were made by him and others on that Occaſion.

But, my Lords, with great Submiſſion, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redreſſing it for the time to come; for the Great Seal was taken from him ſometime before, and then all his Knowledge after could be of no uſe to him, but only to ſhew how treacherouſly he had been dealt with, in not being let into this uſeful Part of Learning, whilſt it might have done him any good.

And, my Lords, if this be ſo, as it can be no ways criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of, and which the Maſters kept private amongſt themſelves. We humbly hope, how ill ſoever the Maſters may be thought to have deſerved of this noble Earl, that the Earl himſelf will not be thought to have deſerved ill of your Lordſhips, in not endeavouring to prevent it; and that, in Conſequence thereof, Your Lordſhips great Juſtice will acquit him of this Part of the Impeachment.

And, my Lords, As to the laſt Part of this Charge, the not cauſing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the ſucceeding Maſter, as a method which might, in all probability, have prevented the Practices amongſt the Maſters, complained of in the firſt Part of this Articles; this, my Lords, we humbly apprehend, neither can, nor is intended, even by the Articles themſelves, to affect the Earl further or otherwiſe, than as a means he ought to have made uſe of, to put a Stop to theſe dangerous Contrivances, formed and ſet on foot amongſt the Maſters, to diſpoſe of their Places to the beſt Advantage.

But, my Lords, If the Earl himſelf knew nothing of theſe Contrivances, if he was wholly a Stranger to, and unacquainted with the miſchief, 'twill ſurely, we hope, be no Crime in him that he did not look out for a Cure.

But, my Lords, It may, perhaps, be worth while, juſt to conſider of the wonderful Diſcovery that ſeems to have been made of theſe Schedules, and how far they would have anſwered the ends propoſed, admitting the Earl had known of theſe Practices amongſt the Maſters, and had been better diſpoſed than the *Commons* are pleaſed to think he was, for the remedying of them.

And, my Lords, I am afraid this would have proved very far from being an infallible method of remedying theſe Evils for the time to come; for, my Lords, if the Maſters would but truſt one another, or any Body would truſt them for a very few Days, might they not have done juſt the ſame thing they did before? Might they not have immediately replaced the Money again in the Hands of the Selling Maſter; or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as ſoon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had ſo done, and this had been diſcovered and complained of, would it not, with great Juſtice, have been called inſtituting a trifling and fallacious method of Security for the Suitors, which could do them no manner of Service, but tended only to amuſe and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may, we humbly hope, be thought deſerving of your Lordſhips Notice; eſpecially, my Lords, when it might have been ſo eaſily explained and urged, as no doubt it would have been by the learned Managers, that the very taking of theſe Schedules was for the ſake of ſeeing into the Nature and Value of the Office to be ſold, that he might the better know how to ſet his Price upon it.

But, my Lords, I ſhall only beg leave to add one or two very ſhort Obſervations more upon this Head, and then call ſuch Witneſſes, as we have, to ſpeak to theſe two Articles.

And, my Lords, the firſt Obſervation I would beg leave to mention, is, that the Earl by his Anſwer owns that he did not, neither did he ever hear,

hear, that any of his Predeceſſors ordered ſuch Schedules to be made; neither is there the leaſt Proof on the Part of the Honourable Managers for the Houſe of Commons, that any ſuch Schedules ever were made, or thought of, 'till Mr. *Lighthean* very happily hit upon them.

Indeed, the Earl owns by his Anſwer, that he believes ſuch Schedules were uſually made between the Old Maſter and the New, on the General Order of Transfer made of Courſe in the Admittance of the new Maſter.

But, my Lords, theſe are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at leaſt was to have one Part of them; or elſe they could be of no Uſe to him in guarding againſt any fraudulent Practices of the Maſters. And if he had had one, what Security that could have been to the Suitors of the Court, if the Maſters ſhould have been diſpoſed to make Uſe of their Money afterwards, this, my Lords, I have already endeavoured to conſider of.

The next Obſervation, my Lords, I would beg leave to make under this head, is, That if ſuch Schedules had been made, what Security would this have been to the Earl, that they were in all Reſpects true, or with any certainty to have been depended on?

Some, my Lords, even of the Maſters themſelves, in the hurry they were lately obliged to give in their Accounts, diſcovered afterwards ſeveral Miſtakes and Omiſſions therein; and though they were given in upon Oath, yet on a Review, and a more narrow and careful Inſpection and Examination of them, 'twas found they were not altogether to be relied on; and therefore the Maſters were forced to ſet them right in their Poſt-Accounts, given in at ſome diſtance of Time after; and whether any, or what other, or better Security for the Truth of thoſe Accounts has been yet found out, I am wholly ignorant of.

My Lords, the Third, and laſt Obſervation, I would beg leave juſt to mention, and ſubmit to your Lordſhips under this head, is, Whether there be any, and what real miſchief in the Practice itſelf, ſo grievouſly complain'd of in this Article?

It is, my Lords, notorious, That in every one of the Offices of theſe Maſters in Chancery, there is always neceſſarily a much greater Sum of Money lying dead in the Office, than goes to pay for their Places, either for want of Securities whereon to place the money, or from the different Claims of Perſons entitled thereto; or to ſatisfy the Demands of Creditors, and other Perſons, as they ſhall from Time to Time come in and prove their Debts, and from ſeveral other Cauſes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Suitors Money, lying dead in their Hands, or raiſing ſo much money out of their own Eſtates and Fortunes, in order to let the Suitors money lie dead; whether a Practice of this Nature, which does no Sort of Hurt to the Suitors, is of no Advantage to the Maſters, and which the Earl himſelf was wholly a Stranger to, and which, if he had known, could not have been prevented; whether this can be heightened or improved into ſo heinous a Crime in the Earl, as to need or deſerve the moſt ſolemn Proſecution, which we are acquainted with, a Proſecution by the Repreſentatives of the whole Body of the Nation; this, my Lords, we humbly hope will deſerve to be thought of. In the mean time, as the Commons have choſen your Lordſhips to be the Judges, the Earl himſelf with the greateſt Pleaſure joins with them, and humbly appeals to your Lordſhips Juſt and Impartial Judgment.

Mr. Serj. *Probyn*. My Lords, the Evidence, which we have next to lay before your Lordſhips, relates to the 11th Article, by which it ſtands charged, that ſeveral Maſters admitted by the noble Earl were Perſons of ſmall Subſtance and Ability; and in that reſpect very unfit to be truſted with the Great Sums of money, and other Effects belonging to the Suitors, which were lodged in their Hands by Order of the ſaid Court; notwithſtanding which the Noble Earl did publickly in open Court declare them to be Perſons of great Fortunes, and in every reſpect qualified for the Truſt ſo repoſed in them, to the manifeſt Deceit and Prejudice of the Suitors of the ſaid Court: But, my Lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now only to account for the Abilities and Circumſtances of ſuch of the Maſters, as they have deſcended into any particular Evidence againſt, upon that Head: Now the Maſters, who have been admitted in by his Lordſhip, and againſt whom any Inſinuations of this kind have been levelled, are Mr. *Kynaſton*, Mr. *Bennet*, Mr. *Elde*, and Mr. *Thurſton*: But I ſhould in the firſt Place obſerve, as to Mr. *Elde* and Mr. *Thurſton*, That there is not the leaſt Pretence of any Deficiency in either of their Offices, from any Evidence that has been yet offered by the learned Managers; they ſtand both of them without Objection in point of Subſtance; as to Mr. *Kynaſton*, indeed, I do own, That at the Time when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but ſince that Time he hath given ſuch Security, as the Court thought fit to accept of, for anſwering it to the Suitors concern'd. At the time of his Admiſſion he appears to have been a man of Fortune; he had a good Eſtate in Land, and a conſiderable ſum of money in Bank; and had a great deal of Wood upon his Eſtate: If he really was a man of a conſiderable Fortune at that time, and if he appeared ſo, and came well recommended in other reſpects to the noble Lord, what Foundation is there left to ſupport that part of the Charge againſt the noble Earl? As to Mr. *Tho. Bennet*, indeed, tho' he did make an Appearance in the World equal to a man of Fortune, yet he now pretends it was far from being ſo, tho' he had an Eſtate in Land; yet he has told your Lordſhips it was incumbered; but, with Submiſſion to your Lordſhips, it doth not appear that any of theſe Incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the ſame light as in the Year 1720, when he ſaith he was worth 20,000 *l.* and theſe Incumbrances being private, it is impoſſible the noble Earl ſhould then know them; we ſhall ſhew that at this time he was not only a man of viſible Subſtance, but of real Subſtance, equal to thoſe, who are uſually admitted into theſe Offices; and if he was equal, both in reputation and fortune, with thoſe admitted by the noble Earl's Predeceſſors, we hope it ſhall not be imputed a Crime in him, to have trod in their ſteps in that particular: In order to make this out againſt Mr. *Bennet*, we ſhall prove, that about the time when he applied to *Hiccocks*, to get back part of the 7000 *l.* he then declared his Subſtance was ſo good, that if he could but have 2000 *l.* he would pay the reſt himſelf; he denied before your Lordſhips that he ſaid ſo, but we have Perſons of undoubted Character to prove that he did ſay ſo. And when that appears, we hope you will give the leſs Credit to Mr. *Bennet*'s Teſtimony in any other particular, which concerns his Fortune; we ſhall likewiſe prove, as to Mr. *Hiccocks* and Mr. *Rogers*, that the Sums of money, which they retained, are now ſubmitted to be returned by them reſpectively to the Court, to anſwer any Deficiency, ſo far as the Eſtates of their Succeſſors ſhall fall ſhort in ſatisfying the ſame; ſo that upon the whole, the Suitors are in no poſſibility of ſuffering by any Tranſaction of *Bennet* or *Kynaſton*. We ſhall beg leave to call our Witneſſes, and prove the ſeveral Facts I have opened to your Lordſhips upon this Article.

Mr. Com. Serj. My Lords, we humbly apprehend, that in this Caſe the noble Earl is not reſponſible for the bad Circumſtances of the Party; if he, upon inquiry, have received ſuch an Account as is proper to rely upon, and to ſatisfy a reaſonable man, it is ſufficient: The greatneſs of the Truſts repoſed in theſe Maſters hath been magnified, and great it is; but your Lordſhips will pleaſe to conſider, that it is not to be expected from the Nature of the Thing, that Perſons of great or overgrown Fortunes ſhould take upon them thoſe Offices. They have informed your Lordſhips, that 120,000 *l.* hath been in one of theſe Gentlemen's hands. I believe no Perſons of ſuch vaſt Eſtates as 100,000 or 150,000 *l.* would give themſelves the trouble of executing theſe Offices, attended with ſuch riſque, and requiring ſo great attendance. I believe the Office of a Maſter in Chancery will never find either ſuch Buyers or Sellers; all that can be expected is, that they muſt be men of reaſonable Fortunes, Perſons of 4 or 500 *l.* a-Year, brought up with a liberal Education; Perſons who are of good Characters as to their Integrity and Abilities; this is all that can be reaſonably expected, and we apprehend it hath appear'd to your Lordſhips, that theſe Maſters, which the Evidence hath been given of, were ſuch, and ſuch a Repreſentation was made of them to the noble Earl. My Lords, I muſt ſubmit it upon the Evidence given in that behalf by the Gentlemen of the Houſe of Commons in this Proſecution, that Mr. *Kynaſton* did appear no way unfit, but a Perſon proper to be admitted into ſuch an Office; no Objections are made either to Mr. *Elde* or Mr. *Thurſton*. As to Mr. *Thomas Bennet*, it will appear that his Deficiency will be made good, and that is the beſt proof of his Ability; and, we hope, Mr. *Kynaſton*'s will be ſo too: As to Mr. *Thomas Bennet*, he hath denied that ever he told Mr. *Hiccocks*, that if he would return 2000 *l.* he would pay the reſt: Being aſk'd, whether he had declared to any Body, that he had made that offer to Mr. *Hiccocks*, he anſwered directly in the Negative, that he had not, no, he was ſure he had not; he was aſked the Queſtion over and over. But, if my Inſtructions don't fail me, we ſhall produce three Witneſſes to ſhew your Lordſhips, that Mr. *Bennet* declared the ſame thing over and over again, and conſequently it could not be a ſlip of his memory.

[Mr. *Steele* called.]

Mr. Serj. *Probyn*. I deſire he may inform your Lordſhips, as to what Reputation and Character Mr. *Bennet* was of, in point of Fortune, when he was admitted Maſter?

Mr. *Steele*. Which of the *Bennets*?—Mr. Serj. *Prob*. Mr. *Tho. Bennet*.

Mr. *Steele*. It is near two Years ago ſince Mr. *Tho. Bennet* came to be admitted a Maſter in Chancery, he was looked upon then to be a man of good Subſtance and of good Reputation; and ſince that he had married a Lady of a good Fortune, he made a good Appearance in the World, and was generally eſteemed to be a man of Subſtance.

Mr. Serj. *Probyn*. Did he keep his Coach?

Mr. *Steele*. I have heard ſo; I don't know that of my own Knowledge.

Mr. *Plummer*. My Lords, if the Counſel have done, I deſire to know what Character Mr. *Bennet* had as to his Integrity, whether he was accounted an honeſt man or no?

Mr. *Steele*. My Lords, I never heard to the contrary in my life; nor ever knew any thing to the contrary.

(Mr. *Walker* ſworn.)

Mr. Serj. *Probyn*. We deſire that Mr. *Walker* will inform your Lordſhips, what he knows of any Propoſal or Agreement for the Repayment of any money by Mr. *Hiccocks*.

Mr. *Walker*. My Lords, Mr. *Hiccocks*, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the monies and ſecurities of the Suitors of the Court of Chancery to his Succeſſor Mr. *Bennet*? It having been alledged by Mr. *Bennet*, that he retained out of them 7500 *l.* Mr. *Hiccocks* did think fit to ſubmit to the Payment of that money, to make ſo much good to the Suitors of the Court, as the Eſtate of Mr. *Bennet* ſhould prove defective in ſatisfying, as appears by the Petition delivered by him, and the Anſwer to the Petition.

Mr. *Lutwyche*. We ſhall ſee that by the Petition, We deſire that the Copy of the Petition may be read; they are giving an Account of written Evidence: I deſire to aſk you, whether you are not concerned as Clerk for Mr. *Hiccocks*?

Mr. *Walker*. I am concerned for Mr. *Hiccocks* as his Solicitor.

Mr. *Lutwyche*. Whether you had any Authority from Mr. *Hiccocks* to preſent that Petition?

Mr. *Walker*. I had Authority to preſent that Petition.

Mr. *Lutwyche*. When did you preſent the Petition?

Mr. *Walker*. About three or four Days ago.

Mr. Serj. *Pengelly*. We deſire to ſee what the Petition is? It hath been preſented ſince the Great Seal was in Commiſſion: Read it.

[Mr. *Walker* reads it.]

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*,

The humble Petition of *John Hiccocks*, Eſq. late one of the Maſters of this Court,

Sheweth,

"THAT by an Order of the 23*d* of *Feb.* laſt upon the Affidavit of *Thomas Bennet*, Eſq. your Petitioner's Succeſſor, (who ſwore that the Sum of 7500 *l.* part of the Monies belonging to the Suitors of this Court, did remain in your Petitioner's Hands, and was never paid over

"to

" taken it was ordered that your Petitioner ſhould be examined upon In-
" terrogatories, whether all the Monies, Securities, and other Effects,
" belonging to the Suitors of the Court, were delivered over by your Pe-
" titioner to the ſaid *Thomas Bennet*, and whether your Petitioner kept
" away any, and what Part, by him.

" That Interrogatories have been accordingly prepared, and your Pe-
" titioner is ordered to put in his Examination, or ſtand committed.

" That your Petitioner, by reaſon of his Indiſpoſition, is not in a
" Capacity to put in his Examination.

" That though your Petitioner did pay over, ſatisfy, and aſſign to the
" ſaid *Thomas Bennet*, all the Monies, Effects, and Securities of the Suit-
" ors of the Court in your Petitioner's Hands; and the ſaid *Thomas Ben-*
" *net* hath given your Petitioner a Receipt in full for the ſame, yet ſo far
" as the Eſtate of the ſaid *Thomas Bennet* ſhall fall ſhort to ſatisfy the juſt
" Demands of the Suitors of the Court, your Petitioner is willing to
" pay the Sum of 7500 *l.* into Court, ſubject to the Order of the Court,
" ſo ſoon as your Petitioner can raiſe the ſame; and your Petitioner is
" willing to pay the Sum of 2000 *l.* part thereof, within ten Days, and
" the Reſidue thereof within three months, ſo as the ſame (as between
" your Petitioner and the ſaid *Thomas Bennet*) may not be conſtrued to ex-
" tend to eaſe the ſaid *Thomas Bennet*'s Eſtate from being liable, in the
" firſt Place, to anſwer the Demands of the Suitors of the Court; but ſo
" as the ſame may abide as a Security to anſwer any Deficiency of the
" ſaid *Thomas Bennet*'s Eſtate; and to the End it may appear whether
" there will be any Deficiency or not, that the real and perſonal Eſtate
" of the ſaid *Thomas Bennet* may be forthwith ſold and diſpoſed of; and in
" the firſt Place applyed to anſwer the Demands of the Suitors of the
" Court; and the rather, for that your Petitioner is informed the ſaid
" *Thomas Bennet* hath, purſuant to ſome Order of this Court, by Recog-
" nizances, and other Aſſurances, ſubjected his whole Eſtate towards
" making good thoſe Demands.

" Your Petitioner therefore moſt humbly prays your Lordſhips, that,
" upon Payment into Court of the ſaid 7500 *l.* on the Terms aforeſaid,
" ſubject to the further order of the Court, all further Proceedings upon
" the ſaid Order, for compelling your Petitioner to be examined upon
" Interrogatories, may be ſtayed.

" *And your Petitioner*, &c."

He reads the Order, May 8*th*, 1725.

" UPON Payment of 3000 *l.* into Court, and giving Security
" ſuch as Mr. *Holford* ſhall approve of, for Payment of the further
" Sum of 4500 *l.* alſo into Court, in a month, both ſums to be ſubject
" to the farther Order of the Court; let all proceedings for the compelling
" the Petitioner to be examined upon the Interrogatories before the
" Maſter, be ſtayed. Hereof give Notice forthwith.

" *J. Jekyll*, C. S.
" *R. Raymond*, C. S."

Mr. Serj. *Pengelly*. I would be glad to know, whether we can rely upon this as an authentick Order. Did he examine it?

Mr. *Walker*. The original Petition and Anſwer are in the Regiſter's Office, to draw up an Order.

Mr. *Lutwyche*. Is it a right, a true Copy?

Mr. *Walker*. It is.

Mr. *Lutwyche*. Did you examine it?

Mr. *Walker*. Yes, I did.

Mr. Com. Serj. If it is not wholly immaterial to examine into the Circumſtances of this Gentleman, I would aſk, whether Mr. *Hiccocks* is a Perſon of Ability, ſufficient to make good this Sum?

Mr. *Walker*. My Lords, I don't know the Circumſtances of Mr. *Hiccocks*, nor his Riches. I believe he is able to do what he hath propoſed. I believe he hath paid the 3000 *l.* in money this morning; he told me he would; and he hath propoſed Security for the Remainder, 4500 *l.* and I believe the Security will be approved of.

Mr. *Lutwyche*. If they have done, I deſire he may be aſked, How long ago it was ſince Mr. *Hiccocks* was ordered to be examined upon Interrogatories?

Mr. *Walker*. I think the Order is dated the 29th of *February*.

Mr. *Lutwyche*. And how long ago is it ſince this Propoſal was made?

Mr. *Walker*. The Petition was preſented the 8th of this inſtant *May*.

Mr. *Lutwyche*. Was the Petition preſented before his Examination? When was it anſwered?

Mr. *Walker*. It was anſwered the 8th of *May*. It was preferred a little while before. I believe two or three Days. There was an Order, that Mr. *Hiccocks* ſhould put in his Examination in four Days, or ſtand committed; thereupon this Petition was preſented.

Mr. *Lutwyche*. I think it was on Payment of ſo much money, and giving Security for the reſt, that all Proceedings were to ſtay. I don't find Mr. *Walker* can ſay the money is paid, or Security given.

Mr. *Walker*. Mr. *Hiccocks* told me the 3000 *l.* was paid, and I know he hath offered Security for the 4500 *l.*

Mr. *Lutwyche*. One or two Securities?

Mr. *Walker*. I believe only Sir *John Buckworth*.

(Mr. *Richard Rogers* ſworn.)

Mr. Serj. *Prob*. I deſire he may be aſked, what he knows of the Payment of any money, or the directing the Payment of any money into Court by Mr. *Rogers*, the late Maſter, in Satisfaction of the Deficiency of Mr. *Kynaſton*?

Mr. *Rogers*. I did, my Lords, by the Direction of Mr. *Rogers*, the late Maſter, prefer a Petition about the latter End of *April* laſt, upon the 28th or 29th of *April*, to the Right Honourable the Lords Commiſſioners, and thereby did offer to give a Recognizance to make good to the Suitors of the Court any Sum not exceeding 6000 *l.* as the Eſtate of Mr. *Kynaſton* ſhould prove defective in anſwering the Effects of the Suitors of the Court. The Petition is anſwered, and I believe they deſign to pay the money.

Mr. Serj. *Probyn*. Have you the Petition?

Mr. *Lutwyche*. Is the Order drawn up?

Mr. *Rogers*. The Petition itſelf I have in my Hand.

(*The Clerk reads.*)

To the Right Honourable the Lords Commiſſioners for the Cuſtody of the Great Seal of *Great Britain*,

The humble Petition of *William Rogers*, Eſq. late one of the Maſters of the High Court of Chancery,

Sheweth,

" THAT by an Order, made by your Lordſhips the 20th of *Janu-*
" *ary* laſt, it was ordered, that Mr. *Kynaſton*, one of the Maſters
" of the ſaid Court, who ſucceeded your Petitioner, ſhould in a Week
" depoſit the Sum of 26,908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$ in the Bank of *England* (be-
" ing the Balance of the Account of Money and Securities of and belong-
" ing to divers Suitors of the ſaid Court, paid into the Hands of the ſaid
" Maſter *Kynaſton*, and your Petitioner), or in Default thereof, that the
" ſaid Maſter *Kynaſton* ſhould enter into a Recognizance, in the Penalty
" of 53,817 *l.* with two or more Sureties, to anſwer and pay the ſame as
" your Lordſhips ſhould direct.

" That the ſaid *Kynaſton* not having paid the ſaid 26 908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$
" into the Bank, or given Security for the ſame, as the ſaid Order di-
" rected; and having before propoſed, towards Satisfaction of the ſaid
" 26,908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$, to aſſign over a Debt of 20,850 *l.* owing to him
" from one *De la Hay*, for the Benefit of the ſaid Suitors; it was by an
" Order made by your Lordſhips the 29th of *January* laſt, ordered, That
" the ſaid Maſter *Kynaſton* ſhould aſſign over *De la Hay*'s Debt to Mr.
" *Holford*, one other of the Maſters of the ſaid Court, for the Benefit of
" the ſaid Suitors, and ſhould give his own Recognizance for the ſaid
" 26,908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$ in the Penalty of 53,817 *l.* And upon his ſo do-
" ing, the Time for his performing the ſaid former Order ſhould be en-
" larged to the *Wedneſday* following.

" That by another Order made the 3d of *February* laſt, your Lordſhips
" ordered, That upon Mr. *Kynaſton*'s aſſigning of the ſaid Debt, and up-
" on his ſignifying his Conſent to be examined upon Interrogatories for
" Diſcovery of all other his real and perſonal Eſtate, and that the ſame
" might be aſſigned and conveyed to the ſaid Maſter *Holford* in Truſt for
" the ſaid Suitors, the Time for performing the former Order ſhould be
" enlarged to the *Wedneſday* following.

" That purſuant to the ſaid Order, the ſaid *John Kynaſton* aſſigned over
" the ſaid *De la Hay*'s Debt; but the ſame not being ſufficient to anſwer
" the ſaid Sum of 26,908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$, *Nicholas Paxton*, Sollicitor for,
" and on Behalf of the Suitors of the ſaid Court, on the 15th of *Fe-*
" *bruary* laſt, preferred his Petition to your Lordſhips, ſetting forth the
" ſeveral Proceedings aforeſaid; and that it appeared by Mr. *Kynaſton*'s
" Affidavit, that 6000 *l.* Part of the ſaid 26,908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$ was re-
" tained by your Petitioner, at the Time your Petitioner ſurrendered his
" ſaid Office to the ſaid Mr. *Kynaſton*; and that the ſame ſtill remained
" in your Petitioner's Hands: It was therefore prayed, that your Petiti-
" oner might forthwith pay the ſame for the Benefit of the ſaid Suitors,
" or to ſuch Perſon, and in ſuch manner as your Lordſhips ſhould direct.

" That upon hearing the ſaid Petitioner, upon the 23d of *February*
" laſt, your Lordſhips were pleaſed to order your Petitioner ſhould be
" forthwith ſtrictly examined before Mr. *Holford*, one of the Maſters of
" this Court, whether all the Monies, Securities, and Effects, belong-
" ing to the ſaid Suitors, were delivered over by your Petitioner to the
" ſaid Mr. *Kynaſton*, and whether he kept any, and what Part thereof
" by him.

" That in purſuance of the laſt Order Interrogatories have been exhi-
" bited for the Examination of your Petitioner; and in caſe your Peti-
" tioner ſhould put in his Examination thereto, he doubts not but it
" would appear that your Petitioner hath acted with great Juſtice to-
" wards the ſaid Maſter *Kynaſton*, and that Mr. *Kynaſton* ought to anſwer
" and make good the ſaid 6000 *l.* to the Suitors of the ſaid Court; how-
" ever your Petitioner being unwilling that any Part of the Deficiency in
" the ſaid Maſter *Kynaſton*'s Office ſhould be imputed to your Petitioner,
" or that the Suitors of the Court ſhould be put to any Expence or
" Trouble, in making any further Enquiry touching the ſaid 6000 *l.*
" your Petitioner is willing (if your Lordſhips ſhall think fit) to give
" his own Recognizance, or a good and ſufficient mortgage, to be ap-
" proved of by one of the Maſters of this Court, to ſuch Perſon or Per-
" ſons as your Lordſhips ſhall direct, to anſwer and make good to the
" Suitors of this Court any Sum not exceeding 6000 *l.* as the Eſtate and
" Effects of the ſaid Mr. *Kynaſton* ſhall fall ſhort of ſatisfying the ſaid
" 26,908 *l.* 11 *s.* 3 *d.* $\frac{1}{4}$, which he was ordered to depoſit in the Bank of
" *England* as aforeſaid; or if your Lordſhips ſhall think it more for the
" Benefit and Security of the ſaid Suitors, that your Petitioner ſhould
" bring 6000 *l.* into Court, your Petitioner is willing to bring in ſuch
" Sum for the Purpoſe aforeſaid, having a reaſonable Time allowed him
" to raiſe the ſame.

" Foraſmuch therefore as it is not pretended, but that your Petitioner
" has paid and delivered over to Mr. *Kynaſton* all the money and Securi-
" ties belonging to the Suitors of this Court, which were in your Peti-
" tioner's Hands at the Time when he ſurrendered his ſaid Office to the
" ſaid Mr. *Kynaſton*, except the Sum of 6000 *l.*

" Your Petitioner humbly prays your Lordſhips will be pleaſed to
" make ſuch Order in the Premiſes, as to your Lordſhips ſhall ſeem meet;
" and that in the mean time all Proceedings upon the ſaid Order of the
" 23d of *February* laſt, for examining your Petitioner upon Interrogato-
" ries, may be ſtayed.

" *And your Petitioner*, &c."

The Clerk reads the Order, 29*th of* April, 1725.

Upon the Petitioner's paying the ſaid 6000 *l.* into Court, ſubject to the further Order of this Court, let all Proceedings upon the ſaid Order of the 23d of *February* laſt, for examining the Petitioner upon Interrogatories, be ſtayed. Hereof give Notice forthwith.

Jeff. Gilbert, C. S.
R. Raymond, C. S.

There was another Petition preferred, but never anſwered.

Clerk

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The Humble Petition of William Rogers, *Esq. late one of the Masters of this Court,*

SHEWETH,

THAT Mr. *Paxton*, in behalf of the Suitors upon Mr. *Kynaston*, being 26,908*l.* 11*s.* 3*d.*$\frac{1}{4}$ deficient in his Accounts to answer the Suitors monies in his Hands, having, by his Petition to your Lordships, represented (*inter alia*) That your Petitioner, upon surrendering your Petitioner's Office to him, detained, and still hath, in his Hands, the Sum of 6000*l.* of the said Suitors money; your Lordships, upon hearing the said Petition, on the 23d of *February* last, were pleased to order your Petitioner should be examined before Mr. *Holford*, one of the Masters of this Court, Whether all the Monies, Securities, and Effects belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. *Kynaston?*

That your Petitioner, on the 29th Day of *April* last, preferr'd the annexed Petition to your Lordships; and your Lordships were, thereupon, pleased to make the Order thereunto subscribed.

That your Petitioner is informed, the said Mr. *Kynaston* hath, pursuant to a former Order of your Lordships, by Recognizance and Assurances, subjected his whole Estate towards making good his said Deficiency.

That your Petitioner, upon surrendering his Office, received from the said Mr. *Kynaston*, proper Discharges for all Monies, Securities and Effects of the said Suitors, then in your Petitioner's Hands, which your Petitioner is ready to produce and prove: And the said Mr. *Kynaston*, from that Time, never pretended but that the Account delivered in to him, contained a full Account of all the Money, Effects and Securities of the Suitors of the Court in your Petitioner's Hands, except the Sum of 70*l.* or thereabouts, which your Petitioner was always ready to pay him, provided he would have given your Petitioner an Account wherein the said Omission or Mistake consisted; and your Petitioner, upon Examination of his Vouchers, found the same to be true; but the said Mr. *Kynaston* hath hitherto neglected so to do, though your Petitioner hath sent to him several Times for that Purpose.

That your Petitioner, upon the Terms mentioned in the annexed Petition, is willing to pay a ready Obedience to your Lordships Order thereupon; and, for that Purpose, now humbly offers, in Six Days time, to pay 2000*l.* part of the said 6000*l.* into Court, subject to the further Order of the Court, so far as may be necessary to make good any Deficiency to the Suitors of the Court, which Mr. *Kynaston*'s Estate shall not be sufficient to answer.

And your Petitioner humbly prays, he may have a Month's Time to pay in the remaining 4000*l.* *(your Petitioner being obliged to borrow the same on his Estate) and that all Proceedings on the said Order of the* 23*d of* February *last, against your Petitioner, may in the mean Time be stayed: And your Petitioner further humbly prays your Lordships, That the said Order, made by your Lordships on the* 29*th of* April *last, may be so far explained, that as between the said Mr.* Kynaston *and your Petitioner, the same may not be construed to extend to ease the said Mr.* Kynaston's *Estate from being liable, in the first Place, to answer the Demands of the Suitors of the Court; or, if all, or any part of the said* 6000*l. shall be applied for that Purpose; that your Petitioner may then stand in the Place of the Suitors of the Court, to have Satisfaction out of the Estate of the said Mr.* Kynaston, *for all, or so much of the said* 6000*l. as shall be so applied; and that the said* 6000*l. so to be deposited by your Petitioner, or any Part thereof, may not be applied towards making good the said Mr.* Kynaston's *Deficiency, till after Sale and Disposal of all the said Mr.* Kynaston's *real and personal Estate for that Purpose.*

And your Petitioner shall ever pray, &c.

Mr. Serj. *Pengelly.* Is there any Order upon this?

Mr. *Rogers.* This was never answered.

Mr. *Lutwyche.* If they have done, I desire he may be asked, if he hath given any Notice to the Sollicitor of the other Side, of the Order on the first Petition?

Mr. *Rogers.* I did acquaint Mr. *Paxton*, that I had such an Order; but I did not serve it upon him.

Mr. Com. Serj. I desire to ask you, Whether, when you told Mr. *Paxton* of it, he insisted upon a formal Service?

Mr. *Rogers.* Mr. *Paxton* said, Let it be done as soon as possible.

Mr. Com. Serj. What Answer did you give to Mr. *Paxton*, when he desired it might be done as soon as possible?

Mr. *Rogers.* I told him, I was raising the money by Direction of Mr. *Rogers.*

Mr. Com. Serj. I ask you, If you had any Directions from Mr. *Rogers*, for the Payment of, or for raising the money?

Mr. *Rogers.* Yes, I had. I believe it will be paid in a Day or two. I can't directly say what Day. Such a Sum is not immediately raised.

Mr. Com. Serj. I desire he may be asked, Whether there is any Reason to doubt of his Ability to raise the money?

Mr. *Rogers.* I believe he is able to give a Security; but, as he lives in the Country, he may not be able at present to pay so much money; but he is now in Town, and endeavouring to raise the money.

Mr. Com. Serj. My Lords, we beg leave to call two or three Gentlemen, with respect to Mr. *Thomas Bennet*, what he hath said; and that he said he was able to pay all the rest of the money, if Mr. *Hiccocks* would pay 2000*l.*

(*Mr.* Holford *called.*)

Mr. Serj. *Probyn.* My Lords, we beg leave to begin with Mr. *Holford*, and to ask him, Whether he was not employed, or concerned as a Friend to Mr. *Thomas Bennet*, to go to Mr. *Hiccocks*, and what Proposals he was to make to Mr. *Hiccocks?*

Mr. *Holford.* Presently after the Article was delivered in by Mr. *Thomas Bennet*, relating to the money he said was in the Hands of Persons of Ability and Substance, to the Judges and Gentlemen of the Bank, Mr. *Bennet* did send to me, to desire I would speak to Mr. *Hiccocks*, that if he would pay him but 2000*l.* he would pay the Remainder of the money. I did not much care to undertake it; but, upon some Importunity, I did go upon the said message; and it was this, That he desired me to tell Mr. *Hiccocks*, that if he would pay him back 2000*l.* he could or would take care that the rest should be paid, and Mr. *Hiccocks* should not be troubled about the Remainder.

Mr. Serj. *Probyn.* I desire he may be asked, Whether he had any Discourse with Mr. *Thomas Bennet*, concerning what passed between him and Mr. *Hiccocks?*

Mr. *Holford.* Mr. *Hiccocks* told me——

Mr. *Lutwyche.* That is no Evidence.

Mr. *Holford.* I am only relating the Answer he returned to my Message; which was, That Mr. *Bennet* had given in that Article, and brought his Name in Question, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that Answer, and never troubled myself any more about it.

Mr. *Lut.* I desire Mr. *Holford* would recollect the Time.

Mr. *Hol.* I believe it was the next Day after he had given in that Article.

Mr. *Lut.* I think they call this Witness to prove a Contradiction in Mr. *Bennet*'s. Mr. *Holford* says, He said he was willing, he would take care the rest should be paid. I desire to know, Whether he declared he had the money to pay, the money in his own Hands?

Mr. *Hol.* No, my Lords, I can't say he told me so.

E. of *Macclesfield.* I desire to ask him, If Mr. *Bennet* did not expressly tell him, That he was able to pay the money; or if Mr. *Holford* would have gone upon the Errand, without being satisfied that he was able to pay the money?

Mr. *Holford.* Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* said to be true, and that he could make good what he at that Time sent me to desire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

(*Mr.* Thurston *called.*)

Mr. Serj. *Prob.* My Lords, we desire Mr. *Thurston* may inform your Lordships, what he hath heard Mr. *Thomas Bennet* say, in relation to Mr. *Hiccocks*, about his paying back 2000*l.?*

Mr. *Thurston.* I do remember Mr. *Thomas Bennet* told me, and I think I was then sitting in the publick Office, that if *Hiccocks* (as I think his Expression was) would pay him back 2000*l.* he would make up the rest himself.

Mr. Serj. *Prob.* I desire Mr. *Thurston* to explain himself, whether he expressed himself in that manner that Mr. *Thurston* apprehended he was able to do it?

Mr. *Thurs.* I can't swear critically to the last Words, that he would make up the rest himself; but he spoke in such Words, that I understood he meant so; that was the Sense of those Words, as I have delivered it now to your Lordships.

Mr. Serj. *Prob.* Had you any Discourse at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurs.* I believe I had some Discourse with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000*l.?* The Reply he gave me was, All he had in the World would not do it.

Mr. Serj. *Prob.* I desire he may be asked, if he had any Discourse with Mr. *Thomas Bennet* at any Time, about his Ability to pay this money, or whether he was able to pay it?

Mr. *Thurs.* I had no Discourse with Mr. *Thomas Bennet* directly, of his Ability to pay in this money, when these Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks*'s detaining his money by way of Retainer; explaining the Reason, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors money, that it was the most compendious method of doing in that Case, and prevented the Trouble of mortgaging his Estate.

Mr. Serj. *Prob.* Did he say any thing in case of his Death, whether he should leave sufficient to satisfy it?

Mr. *Thurs.* He said at that Time, if he died, there would be Estate sufficient to answer it; therefore he had the less Occasion to trouble himself to raise the money, but to pay it in the particular manner I have mentioned.

Mr. *Plummer.* I desire to ask him, If Mr. *Bennet* explained to him in what manner the money was to be raised to make good the Deficiency?

Mr. *Thurs.* He did not at all explain to me how he was to raise it.

Mr. *Plum.* I desire to ask you more particularly, Whether he mentioned to have insured any money upon his Life.

Mr. *Thurs.* Not at that Time, as I remember; I have heard him at other Times talk of insuring of money on his Life.

Mr. Serj. *Peng.* When was the first Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thousand Pounds, he would make up the rest himself?

Mr. *Thurs.* My Lords, I can't remember distinctly the Time, never having imagined I should be called upon to repeat it on this Occasion; but it must necessarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

(*Mr.* Elde *called again.*)

Mr. Serj. *Prob.* My Lords, we desire that Mr. *Elde* may inform your Lordships., what Discourse he had with Mr. *Bennet*, in relation to the money in Mr. *Hiccocks*'s Hands?

Mr. *Elde.* Some small Time after I had given in my Accompt, I saw Mr. *Bennet*; and he came up to me and said, That it was hard that he could not have any money from Mr. *Hiccocks.* He said, If he would pay him 2000*l.* he would, or could pay the rest. I do not remember which.

Mr. Serj. *Prob.* Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde.* I know nothing of Mr. *Bennet*'s Circumstances; I am as little acquainted with him, as with any I must necessarily have Correspondence with.

Mr. Serj. *Prob.* My Lords, We shall not trouble your Lordships with any further Evidence on the 11th Article, in which we think we have sufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the Purchase-money was paid out of the Suitors money; that is a Fact that lies upon the Gentlemen of the House of Commons to prove: It is impossible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witness, but by Mr. *Thomas Bennet:* Now this being a Fact that rests intirely upon Mr. *Bennet*'s Evidence, we submit, Whether your Lordships can believe any thing upon the Credit of his Testimony?

Mr. Com. Serj. My Lords, We humbly apprehend the Gentlemen of the Houſe of Commons, by joining theſe Two Articles together, did it as if they were there the ſame, and did depend upon one another: For unleſs the matter in the 11th Article be eſtabliſhed, what was done on the 12th will be of no great Significancy; For if Perſons of good Ability, who are reſponſible, and fit to anſwer the money that comes to their Hands, be admitted to be Maſters, it is not very material whether the Forms of transferring in like Tranſactions of that Nature are ſtrictly purſued or no; becauſe the Perſon, being ſufficient and reſponſible, will anſwer that money that is ſo detained. I chooſe to call them Forms; for, with Submiſſion, if we examine them, they are Forms, and nothing elſe: Whether they take all the money from the preceding Maſter, or replace with the Succeſſor's own money what is detained by the Predeceſſor, it comes to the ſelf-ſame Thing, and are only different Forms or Methods of Payment. Upon the whole, we apprehend, We have eſtabliſhed our Anſwer to the 11th Article; we think the other follows of courſe; and that there is no Neceſſity to give your Lordſhips any further Trouble on this Head; but that the Noble Earl will ſtand clear as to any Accuſation on theſe Two Articles.

Then all Perſons concerned in the Impeachment, were directed to withdraw, and then the Houſe adjourned to Ten o'Clock the next Morning.

Friday, 14 May, 1725. *The Seventh Day.*

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence; as alſo another Proclamation, That all Perſons concerned were to take Notice, That *Thomas* Earl of *Macclesfield* now ſtood upon his Trial; and they might come forth in order to make good the Charge.

L. C. J. *King.* Mr. Serjeant *Probyn*, you may go on.

Mr. *Strange.* My Lords, We who are Counſel for the noble Earl within the Bar, beg Leave to proceed to his Defence againſt the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in theſe Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a Maſter of the Court; upon whoſe Failure it is charged, that there was a total Neglect, either to ſecure his Perſon or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a Declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Proſecution of this Endeavour to conceal the Deficiency in *Dormer*'s Offices, a precarious and trifling Compoſition was made with a Creditor of Mr. *Dormer*'s; and this without any Notice to the Suitors of the Court.

My Lords, I ſhall, for my Part, confine myſelf at preſent to theſe Two Articles only, reſerving any Thing I may have to offer in general to the Cloſe of the Defence; but before I proceed to obſerve upon the Evidence brought to ſupport the Charge contained in theſe Two Articles, it will be proper to take Notice to your Lordſhips, That the Honourable Managers for the Houſe of Commons, have not offered one Tittle of Proof, as to the Declaration pretended to be made, relating to Mr. *Dormer*'s being gone to take the Air, though they were pleaſed to enlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordſhips, who are incapable of receiving any Impreſſions from Facts that are barely opened, and not proved; and therefore we reſt aſſured, that no Weight will be laid upon this Circumſtance, ſince no Evidence has been produced in Support of this Part of the Charge.

My Lords, as to the other matters contained in theſe Articles, we humbly hope to give your Lordſhips abundant Satisfaction in the noble Earl's Behaviour on that Occaſion; that all the proper Steps were taken to ſecure the Intereſt of the Suitors; and that, if there ſtill remains any Deficiency, it is not to be imputed to any Neglect of the noble Earl within the Bar.

Your Lordſhips were pleaſed to obſerve, in the Courſe of the Evidence produced by the Honourable Managers for the Houſe of Commons, That Mr. *Dormer*'s Failure happened about *Chriſtmas*, 1720. My Lords, it was about that Time that Mr. *Wilſon*, who had large Effects of Mr. *Dormer*'s in his Hands, ſtopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suſpicion of any one, to retire himſelf to *Holland*; and ſoon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was loſt; for the Two Senior Maſters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer*'s Affairs: His Chambers were ſearched; the Transfer of any Stock in the publick Funds was ſtopped; and all Endeavours uſed to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though theſe methods were very proper to prevent the embezzling of Mr. *Dormer*'s Effects, yet your Lordſhips will readily perceive, that no Steps, that could be taken whilſt Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Propoſal of Mr. *Dormer*'s, to come over and diſcover his Effects for the Benefit of the Suitors, in caſe he might be aſſured of his Liberty, and not to be left to die in a Gaol in his old Age (as himſelf expreſſes it), the noble Earl within the Bar was prevailed upon to give him thoſe Aſſurances; but upon Condition, That he made a full Diſcovery, and aſſigned over all he had.

Suppoſe, my Lords, the Propoſal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Perſon of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Preſence or Conſent, nor were there any means to procure it under theſe Circumſtances, without ſome Compliance on the Side of the noble Earl. To ſay, my Lords (and it was only ſaid), That Dr. *Ediſbury*'s Perſon was ſecured, is, in my humbly Apprehenſion, an Argument of no Weight in this Caſe, ſince it does not appear, that he was out of the Reach of the Court before his Failure; and, I am perſuaded, the Gentlemen who mentioned this Inſtance, don't deſire to have it thought, That the noble Lord, who then preſided, was capable of ſo great a Breach of Faith, as to deprive him of his Liberty after a Promiſe to the contrary: It muſt be ſubmitted, therefore, to your Lordſhips, whether the committing a man in the Power of the Court, was a Precedent that could be followed in the Caſe of Mr. *Dormer*.

My Lords, to finiſh this Part of the Defence in not ſecuring the Perſon of Mr. *Dormer*, I ſhall beg Leave only to obſerve, That though it is alledged in the Articles, and was inſiſted on in the Opening and Summing up, That Application was made to the Earl of *Macclesfield* for that Purpoſe, yet the Honourable Managers forgot to call any Witneſſes to the Proof of that Particular; which muſt therefore reſt upon the Denial in the Anſwer of the noble Earl.

My Lords, It was inſiſted upon, That Mr. *Dormer* had not complied with his own Propoſal in diſcovering and delivering up his own Effects; and for that Purpoſe a Witneſs was called to inform your Lordſhips of a very great Diſcovery that has been ſince made of a Quantity of Hops, that belonged to Mr. *Dormer*: Your Lordſhips remember how very lamely they were proved to belong to Mr. *Dormer*, and how reaſonable an Account was given of their being kept ſo long in Hopes of a better market. My Lords, we ſhall not preſume to entertain your Lordſhips with any Counter-Proof of ſuch a trifling Evidence (as a learned Manager was pleaſed to call it), but beg Leave to infer from thence, That it is evident a more than ordinary Care was taken in looking after Mr. *Dormer*'s Effects, ſince, after Four Years, which have paſt from the Time of aſſigning his Eſtate, a few muſty Hops are all that are diſcovered.

My Lords, we humbly hope to make it fully appear to your Lordſhips, That the complying with Mr. *Dormer*'s Propoſal was the only means to procure any Satisfaction: Had not Mr. *Dormer* been induced to come over, his Books and Accounts would never have appeared; and had he died Abroad, as he did ſoon after his coming Home, I am perſuaded the Deficiency would have been much greater: And if a full Diſcovery of his Effects was not made (which, however, I apprehend there is no Foundation to believe, after the Hops are laid out of the Caſe), the ſame will appear to be owing to his death, which happened in a ſhort Time after his Return.

My Lords, The ſeveral Steps that were taken towards ſecuring the Effects of Mr. *Dormer*, muſt neceſſarily promulge his Failure in ſome meaſure; the Chambers could not be ſearched; there could not be Caveats entered in the Books of all the publick Funds; nor could *Lockman* be cautioned againſt expecting any more out of the Effects of Mr. *Dormer*, without making ſome Noiſe, and giving People Notice: And, therefore, when we have made out theſe Facts, I humbly hope, the noble Earl will ſtand acquitted of any Deſign to conceal the State of *Dormer*'s Office, in Prejudice of the Suitors; but that, conſidering all the Circumſtances of the Caſe, he took the wiſeſt and propereſt Courſe to ſecure as ample a Satisfaction for the Suitors, as it was in his Power to do.

My Lords, The 14th Article, relating to the Compoſition with *Wilſon*, will give me no Occaſion to take up much of your Lordſhips Time. It is called a precarious and trifling Compoſition, and was aggravated in the Opening, and ſo, of courſe, in the ſumming up, by a matter which they failed in the Proof of, That *Wilſon* was ſuffered to compound this Debt, though he paid others their whole Demand with Intereſt.

My Lords, The Witneſs, who was called to prove this, did by no means come up to what was opened: He did, indeed, ſay, That he was informed, That *Wilſon* had paid ſome Perſons their whole Debt; but he, at the ſame Time, acquainted your Lordſhips, That theſe were ſmall Debts; and that he did not pay them out of his own Effects, but from a Supply adminiſtred by a Friend, only to give him a Credit at his ſetting up again; and the unfortunate End of this man (of which I am juſt now informed) is an unanſwerable Proof of his Inability to pay the Whole.

My Lords, As a further Argument to prove the Reaſonableneſs of this Compoſition, I beg Leave to appeal to another Part of the Evidence produced on this Article by the Managers of the Houſe of Commons; whereby it appeared, That Mr. *Wilſon*'s Books were peruſed by two Maſters, and himſelf was put upon his Oath; and that he ſwore, the Compoſition he then offered, was all he was then able to make; which I humbly ſubmit to your Lordſhips, as an Anſwer to what an Honourable Manager was pleaſed to object, when he inſiſted, that there ought to have been a Commiſſion of Bankruptcy againſt *Wilſon*, that thereby his Effects might have been diſcovered upon Oath.

My Lords, There were many other Creditors of Mr. *Wilſon*'s, beſides Mr. *Dormer*, who might have applied for a Commiſſion of Bankruptcy, if it would have been for their Advantage; but, as every Body is acquainted with the great Expence and Delay of ſuch a Procedure, I believe they will be thought to have taken the wiſeſt Courſe: Here was all the Benefit of a Commiſſion, by the putting *Wilſon* upon his Oath, and none of the Expence and Delay that attended ſuch an Inquiry.

My Lords, Another Thing opened, and not proved, is, That, at the Time of this Compoſition, *Poulter*, who was *Wilſon*'s Debtor, was worth nothing: It is true, my Lords, he was afterwards in Execution, and eſcaped; but if we make it appear to your Lordſhips, That at the Time of the Compoſition he was a viſible Perſon, and not ſuſpected, I humbly hope, whatever has happened ſubſequent to the Compoſition, will be no Ingredient in ſhewing it to have been a trifling and precarious one at the Time of making it.

My Lords, I beg Leave humbly to obſerve, That the Honourable Managers have not been pleaſed to inſtance how the Suitors would have been in a better Condition, in caſe this Compoſition had not been made: Could they have ſhewn your Lordſhips, that if Part of the Debt had not been taken, the Whole might have been obtained, I muſt confeſs, there would have been ſome Reaſon to have called this a trifling Compoſition; but, ſince nothing of that Nature has been attempted, I muſt ſubmit the whole Tranſaction upon what I have already offered, to have been a Tranſaction moſt for the Advantage of the Suitors, conſidering the Circumſtances that attended this Compoſition.

My Lords, An Honourable Manager, who ſpoke Second upon this Article, was pleaſed to ſay, That by this Compoſition the Suitors were

tied down to a certain Loss of Half their Demand. My Lords, I humbly apprehend the Consequence to be directly otherwise; and that the Suitors are not tied down at all: As they were no Parties to the Composition, they were not bound by it; nor is Mr. *Wilson*, by this Composition, in any degree discharged as to the Suitors of the Court; so that if *Wilson* be able to pay the Whole, he is still as liable to the Demands of the Suitors, as if this Composition had not been made; and if this be so, it will be to the Advantage of the Suitors, that they had no Notice, which, however, I apprehend was in the Nature of the Thing impracticable.

My Lords, It was insisted upon, That the Petitions, and Orders, and Reports on this Occasion were in an unusual and clandestine manner; and a Certificate has been read to your Lordships to prove, That they were never filed and registered, as is usual in other Cases: But do they, my Lords, pretend to say, that this was by the Order, or with the Privity of the Earl of *Macclesfield?* The Business of a Chancellor is to make Orders; but I never yet heard it was his Duty to see them drawn up and registered; and therefore, if there was any thing unusual in this, it is not to be imputed to the Neglect of the noble Earl, unless that it was proved to have been by his express Direction.

My Lords, It has already appeared, that this Composition, and the Proceedings upon it, did not proceed *from* the Noble Earl; but were proposed *to* him; Mr. *Edwards* did acquaint your Lordships, That it was himself, who first proposed it to the Earl, after having advised with Mr. *Hitchcocks*, who put him into that Method.

This, my Lords, is the Nature of our Defence against the 13th and 14th Articles of the Commons Charge: We humbly hope the several Steps that were taken, will appear to have been for the Benefit and Advantage of the Suitors, and with no other View, than the securing them their whole Demand; that the Composition so much complained of, was given into only as means towards the attaining that End, and could in no Event be prejudicial to the Suitors of the Court, as the Gentlemen of the House of Commons would represent it to your Lordships.

[*Mr.* Dormer Parkhurst *sworn.*]

Mr. Serj. *Probyn.* My Lords, we desire Mr. *Parkhurst* may be asked, What Conversation passed between him and Mr. *Dormer* previous to his going abroad, and upon what Occasion he was obliged to go abroad?

Mr. *Parkhurst.* Mr. *Dormer* came to me about the latter End of *November*, 1720, at my Chambers. I had then somebody else with me; upon that Account he said nothing to me, but desired I would come next morning early to him. I went, and when I came to him (he lived then in Chambers in *Lincoln's-Inn*), he shut the Door, and told me, he had a thing of great Importance to communicate to me in relation to himself; and then told me, he designed to go abroad: He said Mr. *Wilson*, his Goldsmith, the Day before had been with him (this was on a *Sunday* Morning, and he had been with him the *Saturday* before) and had acquainted him, That the *Monday* following he should be obliged to shut up Shop, and stop Payment: He had a great deal of Money in his Hands, and he was afraid, that as soon as it was known, that Mr. *Wilson* was unable to pay, the Sollicitors, and Practisers belonging to the Court, who knew he kept Mr. *Dormer's* Cash, would immediately be alarmed; and that Application would be made thereon to my Lord Chancellor; and he believed, that the first thing to be done, in relation to himself, would be to confine him; and that there would be an Order for his being committed; and therefore, to prevent that (for he could not live a Week without Air and Liberty), he was resolved to withdraw himself, and retire to some Place or other. Upon this, I expressed a great deal of Concern, and endeavoured to persuade him against it: I desired him to make his Circumstances known to my Lord Chancellor and the Masters: He said No; he was sure the Consequence would be his Confinement, and was come to a Determination with himself to secure his Person; his Uneasiness was from the Fear that he should be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any Order from my Lord Chancellor; but the first Thing he would do, he was resolved to withdraw, to secure himself from being confined.

Mr. Serj. *Probyn.* What happened after he was gone abroad; and what Notice was taken of it?

Mr. *Parkhurst.* In a little time after this, I understood he had put his Resolution in Execution, and had withdrawn himself. He had desired me, that I should not mention it to any Body; and gave out by his Clerk, that he was gone into the Country. I did, after this, in about three Weeks, receive a Letter from him, that he was then at *Rotterdam*; and there was a Letter inclosed, which he desired me to shew to some of the Masters. I think I shewed it to Mr. *Rogers*; afterwards, according to his Directions in the Letter to me, I carried it to Mr. *Cottingham*. It was directed to Mr. *Cottingham*, who was then Secretary to my Lord Chancellor; I carrried the Letter to him, and left it with him.

Mr. Serj. *Probyn.* If you can, recollect what were the Particulars of that Letter, the Contents of it, relating to any Terms of his coming over again.

Mr. *Parkhurst.* It is a great while ago; I have but a faint Remembrance of it; but I think it was much to the same Purpose with what he communicated to me at first, after he had acquainted me with the unhappy Affair, as hath been mentioned. He said he had a great Sum of Money in Mr. *Wilson's* Hands; and when he found *Wilson* unable to pay, he was apprehensive of an immediate Confinement, which he could not possibly bear; therefore he had withdrawn himself; but that he had left his own Estate entire behind him, and every thing relating to the Suitors; and he was willing to come over to give an Account of the State of the Office, and of his own Estate; and he was willing to make over all his own Estate, to answer the Deficiency of the Office, as far as it would go; and to do every thing the Court should think fit to order him, provided he might have his Liberty both before and after: He desired he might not be confined, and he would do every Thing that the Court would order him to do, or should be desired of him, as much as if he was confined.

Mr. Serj. *Probyn.* We desire he may be asked, If he knew how it was that Mr. *Wilson* came to have so much of Mr. *Dormer's* Effects in his Hands, and upon what Account?

Mr. *Parkhurst.* I did not know, till this Affair happened of *Wilson's* failing, what Money he had in his Hands belonging to Mr. *Dormer*. I used to see Mr. *Wilson* with him; I knew Mr. *Wilson* had Cash of his in his Hands; but afterwards, by way of Justification of himself, for losing so much Money, I heard him say, it was an unlucky Accident, he had a considerable Sum of Money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what to lay it out in; the Stocks were so high and precarious, he would not buy any; and he thought *Wilson's* Hands as safe a Place as any at that Time; he could not keep it by him in his Chambers, and he was going into the Country for three or four Weeks; and when he saw things were settled, then he would lay it out: But when he came back to Town, he found Mr. *Wilson* in those declining Circumstances. This was after he returned from *Holland*. I knew nothing before of this, nor that he had any great Sum of Money in his Hands.

Mr. Serj. *Probyn.* He saith that he did propose that he would come over and make a Discovery of, and deliver up his Effects, in case his Person was secured; now I desire he may recollect, before he did come over, if he knew of any Steps taken to secure his Effects; and whether any Thing in his Chambers was taken care of, and by whom?

Mr. *Parkhurst.* I can give but one Instance of it; that is Mr. *Rogers*, a Master in *Chancery*, came to me one Morning, and desired me, upon the Account of being a Relation, for I was no otherwise concerned, that I would go along with him to look into Mr. *Dormer's* Chambers, to see what there was, what Securities, or any thing of that Nature belonging to the Office. I remember we did find several Things, several Land-Tax Tallies which Mr. *Rogers* gave an Account of. I don't know what the Number was.

Mr. Serj. *Probyn.* Who took Possession of them?

Mr. *Parkhurst.* Mr. *Rogers*, the Master in Chancery.

Mr. Serj. *Probyn.* By whose Directions did you understand that Mr. *Rogers* took this Care?

Mr. *Parkhurst.* I understood it was by the Direction of the Court. He came to me, and desired me to go along with him to see that no Person meddled with any Thing but what belonged to the Suitors; and he took them and locked them up in his Closet or Scrutore.

Mr. Serj. *Probyn.* My Lords, we have done with this Evidence.

Mr. *Plummer.* I think he says, the Reason of Mr. *Dormer's* having so much Money in the Hands of Mr. *Wilson*, was, that there was a great Sum of Money come in upon the Land-Tax: I desire to know, if Mr. *Dormer* left this Money dead in the Hands of Mr. *Wilson*, or if he had any Interest for it?

Mr. *Parkhurst.* I know nothing of that. By way of Justification, he said, It was unlucky he had so much Money paid into his Hands at that Time; Times were so precarious, he did not know how to lay it out.

Mr. Serj. *Peng.* I desire he may be asked, Whether Mr. *Wilson* did not usually keep Mr. *Dormer's* Cash, and the Cash of the Office?

Mr. *Parkhurst.* I believe he did, I knew but few Instances of it.

Mr. Serj. *Peng.* Whether he never heard him declare that Mr. *Wilson* paid him Interest?

Mr. *Parkhurst.* I never heard him declare he did: He never spoke to me about it particularly.

Mr. *Lutwyche.* I desire he may be asked, Whether he can inform your Lordships, how long Mr. *Wilson* had been Banker to Mr. *Dormer?*

Mr. *Parkhurst.* I can't say exactly how long: I believe some Years.

Mr. Com. Serj. If the Gentlemen have done with this Witness, we beg leave to call another, to prove what Care was taken to stop those Effect that were in the publick Funds.

[*Mr.* John Elphinstone *sworn.*]

Mr. Com. Serj. My Lords, we desire that Mr. *Elphinstone* may inform your Lordships, what he knows of any Orders or Directions given, in relation to the Effects of Mr. *Dormer* that were in the Publick Funds, and by whom those Directions were given?

Mr. *Elphinstone.* My Lords, I have been to search the Books of the Bank, the *South-Sea*, and *East-India* Companies, to see what Stock *Fleetwood Dormer*, Esq. one of the Masters of the Courts of Chancery had in the Books of those Companies, and what Orders there were for stopping Mr. *Dormer's* transferring such Stock. My Lords, I went first to the Bank, and searched a Book of that Company, called a *Ledger*, where Mr. *Dormer's* Accompt was stated by way of Debtor and Creditor. I found in that Book, a *Memorandum* written over Mr. *Dormer's* Accompt in red Letters, as follows: *Q. No Transfer.* I likewise enquired, if there were any Orders with the Court of *Chancery*, for stopping the Transfer of such Stock? I was told by the Clerk, That he knew of none. I enquired of the Clerk at the Transfer-Office, if there was any Order of the Court of *Chancery*, for transferring Mr. *Dormer's* Stock to Mr. *Edwards*, the succeeding Master? After some search, he brought me an original Order, Signed *Parker*, C. dated 11 *July*, 1721. I have a Copy of that Order in my Hand, whereby it appears, that all the Stock and Annuities, in the Name of Mr. *Dormer*, were ordered to be transferred to Mr. *Edwards*, on the 12th of *July* 1721, *viz.* the Day after the Date of the said Order. I found in the Transfer Book of that Company the Sum of 3393*l.* 16*s.* transferred by Mr. *Dormer* to Mr. *Edwards*, and Mr. *Edwards's* Acceptance of the same. This is a Copy of the original Order. I afterwards went to the *South-Sea* House; I searched the Book of that Company, and in the Book marked Letter *D.* N°. 6. Fol. 430. where Mr. *Dormer's* Accompt is stated by way of Debtor and Creditor, I found a *Memorandum* over Mr. *Dormer's* Accompt, which is as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed), or from the Court of* Chancery. I also searched the Transfer-Book of the said Company; and I found in Book N°. 5. Page 86. that on the 12th Day of *July* 1721. 2251*l.* 14*s.* *South-Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*, and under the Transfer I saw Mr. *Edwards's* Acceptance; Mr. *Dormer* signed the Transfer, and Mr. *Edwards* signed the Acceptance. I enquired if there were any Orders for stopping Mr. *Dormer's* Stock from being transferred.

Mr.

ferred. I found no such Order, nor any Order for transferring the Stock that was transferred; and the Reason which the Clerk of that Office gave, was, That upon the unhappy Turn of the Affairs of that Company, several of the Clerks being discharged, and many Books and Papers being destroyed, lost, or mislaid, and the rest in the utmost Confusion, rendered it impossible to find any such Paper at this Distance of Time. I went likewise to the *East-India* Company; but I could not find upon those Books any Stock belonging to Mr. *Dormer*, or that he had any Interest in that Company.

Mr. *Strange*. I beg leave to take Notice of one Thing he says, relating to the Words expresly entered in one Ledger-Book; it stands that Mr. *Dormer* should not transfer any Stock, he being failed.

Mr. *Elphinstone*. Yes, the *Memorandum* entered in the *South-Sea* Ledger-Book is as follows: *Stock not to be transferred without Order from the Court of Directors (he being failed), or Court of Chancery*; the Words, *he being failed*, are in a Parenthesis, and then follow the Words, *or Court of Chancery*.

E. of *Macclesfield*. Who was then Governor of the *Bank*?

Mr. *Elph*. I think Mr. *Hanger* was.

Mr. Serj. *Probyn*. Were the Entries dated?

Mr. *Elph*. There was no Date to any of the *Memorandums*; they are wrote just over Mr. *Dormer*'s Account, and under a Line drawn to separate Mr. *Dormer*'s Account from another Person's.

Mr. Serj. *Prob*. Was that before the Transfer made to *Edwards*?

Mr. *Elph*. There is no Date to the *Memorandum* for stopping the Transfer of Mr. *Dormer*'s Stock; but it must be before the Transfer.

Mr. Serj. *Prob*. But the Entry in the Books, was it precedent or subsequent to the Transfer?

Mr. *Elph*. When I searched for the Account, I found the Account and the *Memorandum* for stopping the Transfer of the Stock, placed over it, in a Book called the Ledger, and when I searched for the Transfer of the Stock, I found that in the Transfer-Books which is a different Book.

Mr. Serj. *Prob*. What Transfer-Book was it?

Mr. *Elph*. It was the Transfer-Book No. 5. in Page 86, where I found Mr. *Dormer*'s Transfer, and Mr. *Edwards*'s Acceptance; but the Ledger is quite a different Book. It was in the Ledger marked D, that I found the *Memorandum* for stopping the Transfer of Mr. *Dormer*'s Stock over his Account; but I could not tell what Day of the month it was entered; there were promiscuous Dates in the Year 1720, 21, 22, 23, and 24, to several Articles of that and other Accounts, but no Date to the *Memorandum* at the Head of his Account. I took this Copy of it, which I have in my Hand.

Mr. *Lutwyche*. I desire to ask one Question, which, indeed, is to explain what he mentioned concerning an Order, that I think he takes to be signed by my Lord Chancellor. I desire to know the Date of it?

Mr. *Elph*. It was a loose Order brought to me, dated 11th *July*, 1721.

Mr. *Lutw*. Who brought it?

Mr. *Elph*. It was brought to me by a Clerk that belongs to the Transfer-Office at the *Bank*.

Mr. *Lutw*. Was that original Order left in the Book?

Mr. *Elph*. No, my Lords, I saw no Book of Orders; it was a single Order brought to me.

Mr. *Lutw*. You say there was an Order signed *Parker* C. was there any such Order drawn up by the Register of the Court?

Mr. *Elph*. I know nothing of its being drawn up by the Register. I saw *Parker* C. signed to an Order; and I believe it was the noble Earl's Hand.

Mr. Serj. *Peng*. He hath a Copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutw*. Mr. *Elphinstone* may read it to your Lordships.

Mr. *Elph*. reads. *Martis* 11 *July*, 1721, "I do order, That all the "*Bank* Stock and Annuities therein subscribed, belonging to *Fleetwood* "*Dormer*, Esq. late one of the Masters of this Court, be by him forth-"with transferred to *Henry Edwards* the succeeding Master."

Parker C.

To the Governor, Deputy-Governor, and Directors of the Bank of England.

Mr. Serj. *Peng*. We desire he may be asked, whether he heard any Thing of Mr. *Dormer*'s being gone to take the Air?

Mr. *Elph*. No, my Lords, I never did, upon my Oath.

Mr. Serj. *Peng*. Whether he did not hear the Earl of *Macclesfield* make a Declaration to that Purport?

Mr. *Elph*. I do not remember that the noble Lord ever made any such Declaration.

Mr. Serj. *Peng*. He mentioned several Orders he found in the Books of the *Bank*, as I apprehended him; whether was there any other Order under my Lord *Macclesfield*'s Hand?

Mr. *Elph*. No, I saw but one original Order signed by the noble Earl, of which this is a Copy in my Hand.

Mr. *Lutw*. This was an Order under my Lord's Hand a considerable Time after: I desire he may be asked, whether he hath heard of any Order directed to the Governor, Deputy-Governor, *&c.* of the *Bank*, and signed by the Chancellor, and that original Order left there?

Mr. *Elph*. My Lords, I would be very cautious of saying any Thing that I do not remember; but I do remember something of a Discourse of an Order given for stopping of *Dormer*'s Stock and Effects about the Time of Mr. *Dormer*'s absconding; but when it was I can't tell.

Mr. *Lutw*. He did not understand me: my Question is, whether or no he hath ever heard of any Order directed to the Governor, *&c.* of the *Bank*, and signed by the Chancellor, and that original Order left there?

Mr. *Elph*. No, my Lords, I don't say I heard of any other Order signed by my Lord Chancellor, and directed to the Governor, *&c.* of the *Bank*; but I heard an Order was given by my Lord to stop *Dormer*'s Stock.

Mr. *Lutw*. I only ask, whether in this, or any other Instance, my Lord Chancellor made Orders to the *Bank*, to be left there?

Mr. *Elphinstone*. I don't know what Orders are made; it was out of my Province; I had nothing to do with that; my Business was quite another Thing.

Mr. Serj. *Probyn*. I would beg leave to take Notice of one Observation that has been made on the Evidence given in relation to the Order of the late Lord Chancellor, as though it was unusual to direct any in that manner to the *Bank*; but to that I beg leave to answer, that this was not an Order of the Court; but only a particular Direction, which he in his private Capacity sent to that Company, out of his great Care to secure the Effects of the Suitors; and this, I apprehend, fully clears him of the Objection made to him of Neglect to do it in his judicial Capacity.

Mr. Com. Serj. Your Lordships cannot choose but observe, that this very Thing implies some Caution taken, that these *Effects* of Mr. *Dormer*'s should not be transferred without the Privity of the Great Seal: This Order, we apprehend, was for that Purpose; and to make this plain, we shall shew, that Mr. *Cottingham* went from my Lord Chancellor about this matter.

(Mr. *Cottingham* called.)

Mr. Serj. *Prob*. We desire Mr. *Cottingham* may be asked, how he came to have Notice, and from whom, of Mr. *Drmer*'s withdrawing himself; and what Care was taken to secure his Effects?

Mr. *Cottingham*. Soon after *Christmas*, 1720, to the best of my Remembrance as to the Time, Mr. *Parkhurst*, Mr. *Dormer*'s Nephew, came to me, and told me, his Uncle, Mr. *Dormer*, had withdrawn himself into *Holland*; and the Reason was, upon Account of his having left money and Effects belonging to the Suitors, in Mr. *Wilson*'s Hands, and Mr. *Wilson* had been very unfortunate in the *South-Sea* Year, and was likewise gone off. I acquainted the Earl of what passed. The Earl directed me to attend the two senior Masters, Mr. *Hitchcocks* and Mr. *Rogers*, and consider what was proper to be done on that Occasion. On Consideration, we agreed, that it was necessary to get Mr. *Dormer* over.

We then considered, that it was not possible to have him over, unless he was secure of his Liberty. A Proposal was made to the Earl, that, in Case he came over, he should have his Liberty: The Earl agreed to it. In the mean Time, to the best of my Remembrance, Orders were given for searching of his Office, and securing what Effects and Papers were there. The Masters told me that, pursuant to these Directions, they had searched his Office, and locked up what they found there; but his Effects there were of very little Value.

The next Step the Earl took was, he directed Persons to go to the *Bank* and the *South-Sea* House, to stop the transferring of any Stock or Effects in his Name.

In *April* following, when Mr. *Dormer* returned, he came late to me one Evening, and asked me, if the Letter writ by the Master was writ by the Earl's Direction? I told him, Yes. He then asked me, if the Earl had promised his Liberty? Otherwise he would be gone again.

I told him, the Earl had promised him his Liberty, if he would make a full Discovery of all his Effects upon Oath; and make over all he had to the two senior Masters for the Benefit of the Suitors of the Court; and assist them in getting in every Thing that belonged to him.

He said, these Conditions he readily submitted to, and would attend the Masters accordingly. I spoke to Mr. *Rogers*, to know whether he would have an Order in Form to examine Mr. *Dormer* upon Interrogatories; and that, if he would, I would prepare one, and get it signed. He told me, it was not necessary; and that they thought it was best to get the Estate and Effects in the first Place, before that should be done; fearing if Mr. *Dormer* was severely dealt with, he should run away, and an Order might be had afterwards, if necessary. I forgot to tell your Lordships one Circumstance: Sometime in the Summer following, either in *July* or *August*, I happened to dine one Day at the *Blue-Posts*, behind *Lincoln's-Inn*, Mr. *Dormer* came to me with Tears in his Eyes; he cried bitterly, and said, That the Masters had stripped him of all he had in the World, and begged I would intercede with the Earl to allow him something. I desired him not to insist upon it; for his Effects, as I was informed, were not sufficient to pay his Debts, and he knew well, that the Earl could not give away the Effects of the Suitors; it was out of his Power.

Mr. *Plummer*. I think you say, Sir, That Mr. *Dormer* failed, by leaving his Money and Effects in Mr. *Wilson*'s Hands; I desire to ask him, what he means by his Effects?

Mr. *Cottingham*. The Money and Effects belonging to the Suitors of the Court.

Mr. *Plummer*. And you told my Lord of that?

Mr. *Cottingham*. Yes, I told my Lord what Mr. *Parkhurst* had mentioned of the Money and Effects of the Suitors of the Court being left in *Wilson*'s Hands.

Mr. Com. Serj. I desire he would inform your Lordships, whether or no, upon this Occasion and Transaction, he applied to the Masters to make up this Deficiency of Mr. *Dormer*'s?

Mr. *Cottingham*. As to the Deficiency of Mr. *Dormer*, I always apprehended and understood, that the Masters would make good that Deficiency, Mr. *Lightboun* excepted, who always declared, he would do nothing towards it, unless it were put on another Foot.

Mr. Com.

Mr. Com. Serj. I desire he may be asked, whether he gave any such Information to the Earl of *Macclesfield?*

Mr. *Cottingham.* I did so; I told the Earl of it; and to the best of my Remembrance Mr. *Hiccocks* and Mr. *Rogers*; my Lords, I won't be positive, but I think Mr. *Hiccocks* and Mr. *Rogers* did order me to wait upon the Earl, and let his Lordship know that the Body of the Masters had undertaken to make up the Deficiency; I do think so, I will not be positive of that, I think it was so.

Mr. Com. Serj. I desire he may inform your Lordships, if he knows how it came to pass that Mr. *Dormer* had money in Mr. *Wilson*'s Hands?

Mr. *Cot.* Mr. *Packhurst* told me, and I think Mr. *Dormer* likewise, but of that I am not certain; that Mr. *Dormer* had left the money in his Hands when he went into the Country in the long Vacation.

Mr. *Onslow.* I desire he may be asked, what were the Words that Mr. *Rogers* and Mr. *Hiccocks* said to him when he apprehended the Masters would make good the Deficiency?

Mr. *Cot.* I think it was what I told your Lordships, that the Body of the Masters would make good the Deficiency; I do not, I cannot swear that positively.

Mr. *Onslow.* Did any other of the Masters tell you so?

Mr. *Cot.* Mr. *Godfrey* told me, I am positive of this, that Mr. *Godfrey* told me that the Body of the Masters would make good the Deficiency; I must except Mr. *Lightboun.*

I have heard Mr. *Edwards* say, that he would never have paid his 500 *l.* if he had not apprehended that it would have been made good.

Mr. Com. Serj. This makes it necessary for us to ask another Question, and I desire he may be asked, tho' he doth not remember the particular Words, yet whether that induced him to believe that they intended so to do?

Mr. *Cot.* It did.

Mr. Com. Serj. Whether upon this Belief he did inform the noble Earl that they would make good Mr. *Dormer*'s Deficiency?

Mr. *Cot.* I did, I told the noble Earl so, and that his Lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. *Lutwyche.* I desire he may be asked, whether the Deficiency of Mr. *Dormer* was ever stated so as to know how much it was?

Mr. *Cot.* No.

Mr. *Lutw.* Did they agree to make up the Deficiency when they did not know how much it was?

Mr. *Cot.* I heard some of the Masters say at first, that it was 17,000 *l.* or 18,000 *l.* afterwards they said 20,000 *l.* and then 22,000 *l.* and of late it comes out to be 26,000 *l.*

Mr. *Lutw.* If I understand Mr. *Cottingham* right, he speaks of several Masters, I desire to know, whether he means all, except Mr. *Lightboun?* I desire to know whether they all singly promised?

Mr. *Cot.* Singly, as I remember; Mr. *Edwards* can tell I was at a meeting with them at the Tavern, I think they said singly.

Mr. Serj. *Pengelly.* I desire he may be asked, whether this Discourse with the Masters about paying this Deficiency was absolute, or upon some particular Terms or Conditions of paying the money?

Mr. *Cot.* Mr. *Edwards* told me that they would make good the Deficiency, provided they continued on the old Foot as usual.

Mr. Serj. *Peng.* That is, to have the Disposal of the money, the money to be in their Hands?

Mr. *Cot.* Yes.

Mr. *Lutw.* I desire to know, whether you acquainted the Earl of *Macclesfield* with this?

Mr. *Cot.* No, this was but lately that Mr. *Edwards* told me that. It was, I believe, in *November* or *December* last.

Mr. *Lutw.* Did none of the other Masters acquaint you so?

Mr. *Cot.* No, I don't remember any other Master did.

Mr. *Lutw.* I desire to ask you, whether you ever heard what Interest Mr. *Wilson* allowed to Mr. *Dormer?*

Mr. *Cot.* In *December* last, when the Accompts were before the Judges, the Earl told me that Mr. *Wilson*'s Composition was complained of; it was said, that Mr. *Wilson* had paid 20 *s.* in the Pound; and ordered me to talk with Mr. *Wilson*; and accordingly I did see him, and blamed him for imposing upon the Masters in the Composition he made with them, when he had paid other Creditors whole Demand; he denied it.

Mr. *Lutw.* That is not the Question; what Interest did Mr. *Wilson* allow Mr. *Dormer* for the Suitors Cash?

Mr. *Cot.* I am going on to that Part. Mr. *Wilson* said to me; why is all the Blame laid upon me? I allowed Mr. *Dormer* very large Interest for his money: I could have set aside his Debt upon the Score of an usurious Contract; I was resolved I would not do it; I would shew myself to all the World to be an honest man; I gave my Creditors all that I had, what would they have more?

Mr. *Lutw.* Whether he mention'd Ten *per Cent.* or no?

Mr. *Cot.* No, he did not, but he said he had given large, high Interest, and the Court had had as much as his other Creditors.

Mr. Com. Serj. When was this Discourse?

Mr. *Cot.* It must have been in *December* last, when the Judges were inquiring into this matter, because he told me Mr. *Edwards* had been with them about the Composition.

Mr. Serj. *Probyn.* Recollect what was said upon this Discourse, whether he said that the Court or the Masters had as much as any of his other Creditors?

Mr. *Cot.* He told me, I am an honest man, the Masters had as much as my other Criditors, what would they have more?

Mr. Serj. *Probyn.* It is our Misfortune we can't produce Mr. *Wilson* here, we are deprived of his Evidence, which would have been very material, by his Death; we are told he has very lately shot himself.

Mr. *Cot.* He was very poor, I always looked upon him to be an honest man; he told me at the same time, I forgot to tell your Lordships, if Mr. *Poulter* could be but delivered up, he should be very easy; he was sure he was in Circumstances to pay him.

Mr. Com. Serj. My Lords, if the Gentlemen have done with this Witness, we desire to call a Witness or two in relation to the Fourteenth Article, to shew the Credit of *Poulter* when his Debt was assigned. We apprehend that a little Evidence will serve to clear up the Innocence of this noble Earl on this Occasion: The great Concern the noble Earl had to make up this Deficiency of Mr. *Dormer*, made him with the best of his Knowledge and Power apply thereto; a little Evidence will make it appear, that however unfortunate it was in the Consequence, he did it to make the most he could for the Suitors of the Court.

(*Mr.* Hunt *sworn.*)

Mr. Com. Serj. My Lords, we call this Witness to prove the two Judgments, the one against *Poulter*, to shew that there was a real Debt due from *Poulter* to *Wilson*; the other is a Copy of a Judgment by *Wilson* against the Marshal of the King's Bench, for the Escape of *Poulter.*

Mr. *Hunt.* My Lords, I examined these two Copies of Judgments with the Records in the Court of King's Bench. They are true Copies of the Judgments.

Mr. Com. Serj. I desire he may be asked, whether he was the Attorney for Mr. *Wilson?*

Mr. *Hunt.* I was the Attorney for Mr. *Wilson* in that against *Machen*, and entered up the Judgment in the other.

Mr. Com. Serj. Is it your Lordships Pleasure that the Judgment should be read at large?

Mr. Serj. *Probyn.* Read only a Word or two of the Judgments, the Names of the Plaintiff and Defendant, the money demanded, and the Sums recovered.

(*Clerk reads the Beginning and Ending.*)

Memorandum quod alias, scilicet Termino Sancti Hilarii ult' præterit' coram Domino Rege ven' Willielm' Wilson versus Edvardum Poulter—Ideo consideratt' est quod prædict' Willielm' recuperet versus præfat' Edvardum Poulter damna sua, quæ quidam damna in toto se attingunt ad octodecim mille septingent' & sexagint' libras duodecim solid' & quinque denar'.

Mr. Serj. *Probyn.* The first is against *Poulter.*

Mr. *Lutw.* Look when the Judgment was signed.

Mr. *Hunt.* It was signed 22 *Dec.* 1721.

(*The Judgment read against* Machen.)

Placita coram Domino Rege apud Westm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilson—protulit—billam—vers' Richardum Machen—de placito debiti—quod reddat ei octodecim mille septingent' octogint' & un' lib.——Ideo consideratt' est quod præd' Willielm' Wilson recuperet, &c.

Judgment signed 27 *Nov.* 1724.

Mr. Com. Serj. If your Lordships please he may be asked, if he knows of any offer made by *Poulter* for a Composition, and what Sum of Money was offered, and how Mr. *Wilson* behaved himself on that Occasion.

Mr. *Hunt.* I don't know of any Composition offered, of my own Knowledge; I have heard the present Marshal of the King's Bench say, there was 1000 *l.* offered; but I had Orders from my Client, if any Offer was made to me, not to accept it, but to refer the Person who made it to him.

Mr. Com. Serj. As Mr. *Wilson* is dead, I desire Mr. *Hunt* may be asked, Whether Mr. *Wilson* gave any Reason for that Order not to compound with him?

Mr. *Hunt.* Mr. *Wilson* hath often said that it was his Opinion Mr. *Poulter* was able to pay him.

Mr. Com. Serj. We have done, my Lords, with this Witness.

Mr. Serj. *Probyn.* My Lords, we beg leave to call a Witness to shew that at this Time Mr. *Poulter* had the Reputation of being a man of Substance, and an honest man.

(*Mr.* Peter Gandy *sworn.*)

Mr. Serj. *Probyn.* My Lords, I desire Mr. *Gandy* may give your Lordships an Account, whether Mr. *Poulter* had not the Reputation of being a substantial man about the year 1722 or 1723?

Mr. *Gandy.* Mr. *Poulter* always lived in good Reputation, and was reputed to be an honest man; he lived at *Hackney*, he told me he purchased 6000 *l.* South-Sea Stock, which cost him 36,000 *l.* and transferred it to Mr. *Knight*, and Mr. *Knight* gave him nothing for it.

Mr. Serj. *Probyn.* I desire to ask you, whether he was a substantial, honest man?

Mr. *Gandy.* I believe he was; he always bore an extraordinary Character, I believe I might summon all *Exchange-Alley*, and they would say the same; he was reputed to be worth a great deal of money, and a very honest man.

Mr. *Lutw.* At what time was this that he was thought a man of Substance?

Mr. *Gandy.* When he lived at *Hackney.*

Mr. *Lutw.* After he was arrested?----Mr. *Gandy.* Yes.

Mr. *Lutw.* Will you say after he was arrested he was a substantial man?

Mr. *Gandy.* No, my Lords, I do not say he was; but he was generally reputed to be so.

Mr. *Lutw.* Whether at the same time you mention that he told you the Circumstance of transferring Stock to Mr. *Knight*, that was not given as a Reason for his Deficiency?

Mr. *Gandy.* He said he had been able to pay Mr. *Wilson* every Farthing, if Mr. *Knight* had not gone away.

Mr. *Lutw.* That is what Mr. *Poulter* told Mr. *Gandy.*

Mr. Serj. *Peng.* I desire he may be asked when *Poulter* was first known to be in a failing Condition?-------Mr. *Gandy.* I don't know.

Mr. Serj. *Peng.* When was he arrested?

Mr. *Gandy.* I don't know; he told me he should have been able to have paid Mr. *Wilson*, if Mr. *Knight* had not gone away.

Mr. Serj. *Peng.* Did he give you that as a Reason why he could not pay Mr. *Wilson?*

Mr. *Gandy.* Mr. *Knight* not paying him, he said he could not pay Mr. *Wilson.*

Mr. Serj. *Peng.* Was that the Reason?

Mr. *Gandy.* Here is another Gentleman will tell you he was employed to make a Composition with Mr. *Wilson*, and he can tell you more.

Mr. *Onslow.* What was *Poulter*'s Profession?

Mr. *Gandy.* He was a Servant to Mr. *Stroud.*

Mr. *Onslow.* What is Mr. *Stroud?*

Mr. *Gandy.* Mr. *Stroud* is a Sworn Broker.

Mr. *Onſlow.* I deſire to know what Profeſſion this Perſon is of?

Mr. *Gandy.* I tranſact in *Exchange-Alley* as a Broker.

Mr. *Lutwyche.* Did not Mr. *Poulter* tranſact as a Broker too?

Mr. *Gandy.* Yes.

Dr. *Sayer.* We are not now upon the Point what he was really worth at that time, but what his Reputation and Character was, and therefore we deſire to know what that was, whether he was not looked upon as a ſubſtantial man?—Mr. *Gandy.* He bore a good Character.

Mr. *Strange.* What was his Character as to his Circumſtances at that time?—Mr. *Gandy.* His Character was then very good, and ſo continued till he was put in Priſon.

Mr. *Strange.* Where is he now?—Mr. *Gandy.* He is at *Rotterdam.*

[Mr. *Scott* ſworn.]

Mr. Com. Serj. I deſire that Mr. *Scott* may inform your Lordſhips, whether he knew Mr. *Poulter*, and what his Character and Reputation was, as to Subſtance?

Mr. *Scott.* Mr. *Poulter* I had been acquainted with a great many Years; I looked upon him to be a very honeſt man; and in the Year 1720 he tranſacted abundance of Buſineſs, and I did a great deal of Buſineſs for him, and ſome other Gentlemen at that time, as a Scrivener. In the Year 1720, upon the Fall of the Stocks, he came and told me he was ruined by it, and begged of me to aſſiſt him. He told me at firſt he had ſome Accounts depending with Mr. *Wilſon.*

Mr. Serj. *Peng.* I deſire he may repeat it, where he told him, and when?

Mr. *Scott.* About *December* 1720, before Mr. *Knight* went away, he ſaid he had large Accounts with Mr. *Wilſon*, and that he was utterly ruined, becauſe he ſaid he had transferred 6000 *l.* South-Sea Stock to Mr. *Knight*, which coſt him 40,000 *l.* or better, and if he could not get it of Mr. *Knight*, he muſt be ruined. He told me I was acquainted with ſeveral Gentlemen of Mr. *Wilſon*'s Acquaintance, and deſired me to ſpeak to him or them about this matter.

Sometime after Mr. *Wilſon's* Agents, Mr. *Aſhton*, I think, and one Mr. *Newton*, ſent to Mr. *Poulter*, and deſired a meeting on the Behalf of Mr. *Wilſon.* I went on the Behalf of Mr. *Poulter*, and carried a Friend with me; we met at the *Crown Tavern* over againſt St. *Clement's Church*, and we told them how Mr. *Poulter* was ſerved; that Mr. *Knight* had ſo much Stock of his without any manner of Conſideration, as Mr. *Poulter* had told us; that Mr. *Poulter* was willing to do any thing they could expect. Some conſiderable time afterwards, I heard Mr. *Poulter* had been arreſted, and he deſired me, as being acquainted with Mr. *Wilſon*, to go to Mr. *Wilſon*, and ſee if I could make up the Affair; he apprehended that his Bail would ſurrender him: Whereupon I went to Mr. *Wilſon*, and told him, that Mr. *Poulter* proteſted to me he was worth but 3500 *l.* or thereabouts, and that he would endeavour to get Friends to make it up 4000 *l.* if Mr. *Wilſon* would accept it. I was with Mr. *Wilſon* ſeveral times about this matter, but he would not accept it.

Mr. Serj. *Peng.* Did he give any Reaſon why he would not accept it?

Mr. *Scott.* He ſaid he looked upon Mr. *Poulter* not to be an honeſt man, and that he could pay more; I ſaid he had better take that than keep him in Priſon.

Mr. Com. Serj. Notwithſtanding theſe private Intimations of his Diſability, I deſire to know what was his general Character as to his Circumſtances?

Mr. *Scott.* He was looked upon to be a very honeſt man, and in good Circumſtances; he hath been truſted with Thouſands and Thouſands of Pounds.

Mr. Serj. *Peng.* I deſire he may be aſked, Whether the money, the 24,000 *l.* *Wilſon* lent to him, was not for Stock-jobbing, for him to traffic with in the Alley.

Mr. *Scott.* I know nothing at all of that.

Mr. Serj. *Peng.* Whether he hath not declared ſo?

Mr. *Scott.* No, I know nothing of that; whenever I was in Company with Mr. *Wilſon* he was always very ſhy, and would not ſpeak freely.

Mr. *Plummer.* I deſire he may be aſked, Whether in *June* or *May* 1720, he looked upon Mr. *Poulter* to be a good man?

Mr. *Scott.* Mr. *Poulter*, in *April* or *May* 1721, told me his Circumſtances, and deſired me to go to Mr. *Wilſon* to meet thoſe Gentlemen, and to treat with them; but every body then, except four or five Perſons to whom he had made known his Circumſtances, reputed him an honeſt and a ſubſtantial man.

Mr. Com. Serj. I deſire he may inform your Lordſhips, In *May* 1721, what his general Character was, or what was generally thought by other People of him, without relation to his own particular Knowledge?

Mr. *Scott.* He was looked upon as a man of Subſtance, and a very honeſt man.

Mr. *Sandys.* I deſire he would explain himſelf; Whether he was looked upon at that time by himſelf to be a ſufficient man, and able to anſwer the Demand of Mr. *Wilſon?*

Mr. *Scott.* He had told me a Reaſon to induce me to have but an ill Opinion of his Ability, that he had transferred 6000 *l.* Stock to Mr. *Knight*, which coſt him 40,000 *l.* and upwards.

Mr. Serj. *Peng.* Whether Mr. *Poulter* at that time went on dealing in the way of Buſineſs as he did before?

Mr. *Scott.* No, I believe he did not at that time: I believe, in 1720, his Buſineſs was done, and he thought himſelf worth a great deal of money.

Dr. *Sayer.* Whether in the Year 1720, he was not looked upon to have got a great deal of money, and for that Reaſon to have quitted his Buſineſs?

Mr. *Scott.* It was then taken ſo; he was then looked upon as a man of great Subſtance: There were not above five who knew his Circumſtances to be otherwiſe; he was generally looked upon then to be a man of Subſtance.

Mr. *Lutwyche.* It is a very ſurpriſing way to eſtabliſh a man's Reputation, to ſay he was a man of Subſtance when he offered a Compoſition; and at the ſame time he could not pay his Debts, he is underſtood to be a man of Subſtance; I deſire to know, Whether it was after or before you had that meeting, and offered the Compoſition?

Mr. *Scott.* I believe it was after.

Mr. *Lutwyche.* Did you take him to be a man of Subſtance afterwards, after you had offered a Compoſition for him?

E. of *Macclesfield.* This Gentleman hath anſwered two Things very conſiſtent, that he and three or four more, who knew Mr. *Poulter*'s Circumſtances, knew that he was not a man of Subſtance then, but that all other People looked upon him to be a man of Subſtance, and he tells you how he came to be ſo eſteemed.

Mr. *Scott.* Yes, ſo it was.

Mr. *Lutwyche.* I deſire to know again, whether after the Year 1720, he tranſacted Buſineſs as he uſed to do?—Mr. *Scott.* No.

Mr. *Lutwyche.* I deſire to know again, where he lived after the Year 1720, and what means he had to live upon, beſides his Buſineſs?

Mr. *Scott.* He lived as a Gentleman at *Hackney*, had his Houſe well furniſhed and full of Plate; I have been at his Houſe ſeveral times.

Mr. *Lutwyche.* How long ago?

Mr. *Scott.* I believe a Year and a half, or two Years ago.

Dr. *Sayer.* I don't apprehend it is material what this Gentleman thought from the private Converſation he had with Mr. *Poulter.* The general Reputation is ſufficient for us to juſtify what was done; I deſire he may be aſked, whether till that Converſation he himſelf did not look upon him to be a man of Subſtance?

Mr. *Scott.* I looked upon him to be a man of Subſtance, till he told me he was ſo unhappy that he could not get his forty thouſand Pounds and upwards of Mr. *Knight.*

Mr. *Lutwyche.* When was it he told you ſo?

Mr. *Scott.* I believe ſome time in *December* 1720, that he told me ſo firſt.

Mr. *Lutwyche.* The Compoſition was in 1722.

Mr. Serj. *Peng.* I deſire he may be aſked one general Queſtion, Whether after the Year 1721, Mr. *Poulter* retained any Character of Sufficiency or Ability?

Mr. *Scott.* He was looked upon by every one that did not know this Affair of Mr. *Knight*'s, to be a man of Sufficiency in 1721.

Mr. *Lutwyche.* After 1721, Whether it was not generally known that Mr. *Poulter* was an inſufficient man?—Mr. *Scott.* No, I believe not.

E. of *Abingdon.* If they have done, I deſire to aſk this Witneſs a Queſtion, Whether it was generally known that Mr. *Poulter* had tranſacted for Mr. *Knight?*—Mr. *Scott.* Not as I know of; I believe not.

Mr. Serj. *Probyn.* My Lords, we ſhall trouble your Lordſhips with no further Evidence on this Article. So if your Lordſhips pleaſe, we ſhall now proceed to the other Articles.

Mr. *Strange.* With your Lordſhips Permiſſion, we will now go on to the next Sett of Articles that were opened by the Managers for the Honourable Houſe of Commons, which are the fifteenth, ſixteenth and ſeventeenth Articles. And I ſhall now, as I did before, confine myſelf to theſe particular Articles.

The Charge, my Lords, in theſe three Articles conſiſts of ſeveral Acts ſuppoſed to be done by, or by the Order of, the noble Earl within the Bar, and are laid to be all tending to the ſame Deſign of concealing the Deficiency of *Dormer*'s Office.

For which Purpoſe, my Lords, it is ſaid the Accounts of the Maſters were called for, not with any Deſign of examining the Accounts, but with an Intent to terrify the Maſters, and oblige them to contribute towards anſwering the Demands that ſhould be made upon that Office: And as an Inſtance of this Deſign, the Commons charge, That after a Contribution by nine of the Maſters, the Earl did not oblige them to bring in their Accounts.

That upon occaſion of another Sum of Money wanted to pay off a Suitor who had an Order for money in *Dormer*'s Office, the noble Earl preſſed the Maſters to raiſe it amongſt themſelves; and, upon their Refuſal, cauſed his Secretary to pay it: And that notwithſtanding this Notice of *Dormer*'s Deficiency, an Order was afterwards made for Mr. *Edwards* to enquire, whether there was likely to be a Loſs of any Money depoſited with Mr. *Dormer.*

And as a farther Inſtance of this Endeavour to conceal the Deficiency, it is inſiſted on, that ſeveral Orders were made for the paying ſome Suitors the whole of their Demand, without regard to that juſt Proportion to which the other Suitors were entitled.

This, my Lords, is the State of the Complaint contained in theſe three Articles.

And as to the firſt part of the Complaint in calling for the Account, and terrifying the Maſters into a Contribution, I ſhall beg leave to inſiſt upon two Facts; either of which, in my humble Apprehenſion, will be a ſufficient Defence againſt the Charge.

The firſt, my Lords, is, That the Contribution was voluntary: And the next is, That long after this Contribution the Accounts were continued to be called for, notwithſtanding it is charged to have been dropp'd immediately upon the Contribution.

To prove the Contribution voluntary, I beg leave, my Lords, in the firſt place to look back upon Mr. *Lightboun*'s Evidence, where he acquainted your Lordſhips, that upon his aſking the noble Earl, who the Propoſal came from, the Earl's Anſwer was, That it came from ſome of the Maſters: And he concluded his Account of that Converſation with informing your Lordſhips, that, upon his declining to contribute, the Earl left him to his Liberty.

But, my Lords, not to reſt it upon Mr. *Lightboun*'s Evidence only, we ſhall call Mr. *Cottingham*, who was acquainted with the whole Tranſaction, and will inform your Lordſhips, that the Contribution was altogether voluntary, and of their own Propoſal.

My Lords, the other Branch of the Article, and which indeed is the Jet of the whole, relates to the dropping the Deſign of looking into the Accounts upon the making of this Contribution, which we ſhall be able to falſify; and the Account, my Lords, we ſhall give of the whole Tranſaction is this:

In *February* 1720, Mr. *Cottingham*, by the Earl's Directions, wrote a Letter to the Maſters, requiring them to make up their Accounts, and preſent them to the Earl, according to a Plan which he imparted to them in that Letter.

Your

Your Lordships are pleased to observe, that Mr. *Dormer*'s Failure was at *Christmas*, and this Letter in *February* following, before Mr. *Dormer* had any Leave to come over, or any Discovery had been made of the Condition of his Office.

My Lords, The use which the Honourable Managers say was to be made of this Letter, was so little understood, that some of the Masters did, pursuant thereto, make up and deliver in an Accompt, tho' not according to the Directions they had received: and the Affair of Mr. *Dormer* coming on, caused a Stop in making up these Accompts, till after the appointing a Successor, and making the Contribution, which, I think, is already fixed to have been in or about *August* 1721.

My Lords, The Summer being then far advanced, and every Body going out of Town, the Accompts were not exacted at that Time; but upon their Return to *London* a new Order was sent by Mr. *Cottingham* in *November*, with fresh Directions for bringing in their Accompts.

My Lords, I must here beg Leave to observe, that if the Contribution was all that was aimed at by calling for these Accompts, how comes it to pass that Mr. *Lightboun*, who never contributed, was not called upon, in a particular manner, to bring in his Accompt, which, I did not observe, was proved, or so much as opened by the learned Managers?

My Lords, the true Reason why these Accompts were not brought in, was the insuperable Difficulties of such an Undertaking; of which, I am persuaded, no other Evidence need be given, than to reflect on the Proceedings that have been of late in taking these Accompts.

But, my Lords, a learned Manager was pleased to say, Why did this noble Earl keep the Office, if he was not able to do the Business of it? I hope your Lordships won't think the noble Earl was idle all the while: Every Body knows the great Variety of Business, and the continual Hurry a Chancellor is in: The ordinary Business of the Court of Chancery is sufficient to engage a man of uncommon Application: What a Fatigue then, my Lords, must it be, when the necessary Attendance upon your Lordships, and at the Council Table, are both taken into the Account? Sure I am, my Lords, it can never be said, that there was no want of Time or Leisure for taking these Accounts.

My Lords, The next Branch of the Charge is the Order for 1000 *l.* to Mrs. *Chitty*, which, it is said, was paid by the noble Earl's Direction, in order to conceal the Deficiency: But pray, my Lords, does not the Article and Evidence both destroy the Supposition? Could the Earl of *Macclesfield* intend to conceal the Deficiency, when he cautioned *Lockman* against marrying Mrs. *Chitty*, in prospect of any more Money to be coming out of *Dormer*'s Office? "*That this would be the last Payment* (I give your "Lordships the very Words) *she was like to receive out of the Money paid* "*into the Hands of Mr.* Dormer, *for the Residue thereof was in danger of* "*being lost, by Reason of the Deficiency in the Effects of Mr.* Dormer." Is this, my Lords, a concealment of the Deficiency? A Payment of 1000 *l.* of the noble Earl's own Money, in order that the Suitor should have no Suspicion of a Deficiency!

But to go further, my Lords, we shall shew, that the Payment of this money did not proceed from any such low motive, as, I may say, is uncharitably represented in this Article, but from a noble Mixture of Generosity and Compassion.

Mr. *Lockman*, my Lords, represented himself as an undone man if he had not the money: He first insinuated himself among the noble Earl's Servants, as a Person under the utmost Distress: and the frequent Solicitations, which himself owns, are a strong Evidence of that Distress: When he had gained Access to the Earl, he told his Story in so moving a manner, not without Intimations of some desperate Resolution he might be forced to take if he had not the money against the Time, that, in pure Compassion to his Distress, the noble Earl (whose Purse was always open to the Unfortunate) was prevailed with to order him the Money. And we shall prove to your Lordships, that how little sensible soever he now is of so great a Favour, yet at that Time he expressed himself in Terms of one the most highly obliged; and I believe when our Witnesses to this Transaction come to be examined, they will leave Mr. *Lockman* very little Credit with your Lordships, and will wipe away the most remote Suspicion of affecting any Concealment by this Transaction.

My Lords, The last Branch of this Article relates to a Declaration said to be made by the Earl in the Cause of *Harper* and *Case*, and an Order made therein for Mr. *Edwards* to enquire if there was likely to be a Loss of any Money deposited with Mr. *Dormer*.

My Lords, The particular Occasion and Manner of that Declaration and Order have been fully stated by the Evidence we have already given of the several Judgments and Proceedings that have been against Mr. *Poulter* and the Marshal, which I shall not trouble your Lordships with a Repetition of, it being sufficient for my Purpose in answering it as an Instance of Concealment, to observe, that the whole transaction was after the Accompts of the Masters had been laid before the Committee of Council, when it was too late, and to no Purpose to affect any Concealment.

My Lords, The last Branch of the Charge I am now upon, relates to the making Orders for paying to several Suitors their whole Demand, out of the Effects of Mr. *Dormer*, without regard to that just Proportion to which the other Suitors were intitled: And the Case of *Eddisbury* was mentioned for this Purpose; tho' I did not observe the Gentlemen entered into any Proof of what was done in that Case.

My Lords, In Proof of this Article several Orders were read: But I appeal to the Evidence of Mr. *Edwards*, whether it did not appear, upon his cross Examination, that it was but in one Cause only where the whole money was paid out; and whether that single Instance is a sufficient Proof of this Article, I must submit to your Lordships.

But, my Lords, the true Answer is this: Both the noble Earl and Mr. *Edwards* doubted not but that the Deficiency would be made good, and proceeded upon that Expectation; nor can a stronger Evidence be given (and I desire it may be applied to some of the other Articles) that they were under this Persuasion, than Mr. *Edwards*'s making Payments without any Objection.

Especially, my Lords, when it is considered too, that Mr. *Lightboun*, who was so averse at first to any Contribution, has, in that Letter which has been read to your Lordships, mentioned several of his own Schemes for making good the Deficiency.

And if there was a Prospect of making good the Deficiency (as I humbly apprehend it is plain there was); it was very proper and natural to make the Orders in the manner they are now complain'd of. The Nature of ordering money out of Court makes it impossible the Suitors should call for it all at once, but the same is ordered out by Degrees: And Mr. *Cottingham*'s taking an Assignment of *Chitty*'s Order, shews plainly, that it was expected Effects would in Time come in to discharge that, and all other Demands.

I would not, my Lords, be understood by any Thing I have offered, as if I intended to dispute the Rule of Equity that has been laid down by the Managers, That where several Persons have Demands out of one Common Fund that cannot answer the whole, there ought to be an Average in such Case: But what I shall beg Leave to insist upon is, That that Rule only holds Place where the Quantum of what is left to answer is fix'd and certain. In this Case the Effects were daily coming in, and therefore a Declaration of an Average where there was likely to be no Deficiency, would not, in my humble Apprehension, have been advisable or proper.

I beg Leave, my Lords, to close my Observations upon all the Articles relating to the Concealment of *Dormer*'s Deficiency, with submitting it to your Lordships Judgment, if the whole Transaction does not speak itself to have been one continued Endeavour to secure to the Suitors their whole Demand, and to have been no more.

Mr. Serj. *Probyn*. My Lords, the Managers, when they entered upon these Articles, produced an Order made by the late Lord Chancellor, in the Year 1720, by which the Masters were obliged to bring in their Accounts, which as they charge to have been concerted with other Views, and for very different Ends than at first appear, we think it will be extreamly proper for us to begin our Defence to that Part of the Charge with a Witness who is ready to shew your Lordships the real Designs the impeached Earl had in calling for these Accompts; and his Evidence, we humbly conceive, will satisfy your Lordships that it could be for no other Purpose than that the Earl might the better know the true State and Condition of their respective Offices, in order to find out a proper method of redressing such Grievances as were most apprehended at that Time. My Lords, it will appear by the Course of the same Witness's Evidence, that the other Order that was made upon them afterwards in *December* following, in as strong Terms as the former, could be for no other Reason or Purpose than that his Lordship hath assigned in his Answer, that he might understand the State of the several Offices, so as to be able to apply proper Remedies to the Danger which was then dreaded. All this will appear yet more fully from the Evidence of another Witness, who is to inform your Lordships of the particular Directions the Noble Earl gave about the manner of bringing in these Accompts, with the Names of the Causes of the respective Solicitors concerned in them, and also what the several Sums first paid in were, the Time when so paid in, and also when the same or any Part were paid out again, together with many other Particulars which his Lordship thought necessary for his more exact Information. It will be likewise made appear to your Lordships, how the Masters were severally consulted with about this Matter, and that the Assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. *Helsford* (who had been in the Office for twelve Years) that it was next to impossible to bring in their Accompts, as first directed, in any reasonable Time; then it was, and not before, that the noble Earl condescended that they might bring them in in a different Manner. Now, my Lords, as to the Suggestion that all this was only a Scheme made use of to terrify the Masters into a Contribution towards *Dormer*'s Deficiency, give me leave to say it is impossible to collect the least View of that Kind from the Evidence laid before your Lordships on that Head; for the Masters who did contribute on this Occasion, have all sworn that they paid in their money voluntarily, and without being any ways influenced by his Lordship's Threats or Persuasions; so far from that, that Mr. *Lightboun* (the only Master who refused concurring in this Contribution) made no other Objection at first to it, than that the Proposal did not come from his Lordship, but from the other Masters; for in that Case he declared, That, if it had come from the noble Earl himself, he might have had more Regard to it, and would have taken it into his Consideration. So that we doubt not, upon the whole, but it will plainly be made appear to your Lordships, that the constant Application which the noble Earl made from Time to Time to the Masters for this Purpose, proceeded from no other View, than that as soon as he might be truly informed of the State of their Offices, he should apply proper Remedies to whatever Abuses he should discover; and that as this was always his real Intention, so he would have put it effectually in Execution, had he not resigned the Great Seal so soon.

Mr. Com. Serj. My Lords, we shall call a Witness to shew, that after the 500 *l.* a-piece was paid, the Accompts were called for; it cannot then be pretended, that this calling for the Accompts was to terrify the Masters to pay this 500 *l.* a-piece.

The Time of the Payment of these five hundred Pounds was in *August*; these Accompts were called for in the Beginning of *November*.

(Mr. *Cottingham* called.)

Mr. Serj. *Prob.* I desire Mr. *Cottingham* would inform your Lordships, whether any Directions were given to call in those Accompts about *November*, 1721?

Mr. *Cottingham*. I did in *November*, by the Direction of the Earl, write a Letter dated the 7th *Nov.* 1721.

L. Ch. Just. *King*. Have you any Draught of that Letter?

Mr. *Cot.* I have a Draught, the Committee required me to leave the Letter with them.

Mr. *Lutwyche*. My Lords, we will do the noble Earl all the Justice we can; here are the Letters.

Mr. *Cot.* The first Letter is dated *Feb.* 14. 1720.

Mr. *Lut.* Who is it directed to?

Mr.

Mr. *Cottingham*. The Letter is directed to each Master, and this is the Letter.

SIR,

I Am commanded by my Lord Chancellor to signify to you, that you do, with all convenient Speed, lay before his Lordship an Account in several Columns,

1. Of the Name of the Cause.
2. The Solicitor or Agent.
3. The Date of the Order.
4. For what Purpose the money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

A distinct ACCOUNT *of the Securities.*

1. Cause.
2. From whom the Security is taken.
3. What the Security is.
4. In whose Name taken.
5. For how much each Security.
6. The total of the several Securities in the same Cause.
7. In whose Hands lodged.

A distinct ACCOUNT *of Money paid out.*

1. Cause.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant,

14 *Feb.* 1720. *P. Cottingham.*

SIR,

BY my Letter of the fourteenth of *February* last, I signified to you my Lord Chancellor's Pleasure, which was, that you should with all convenient Speed lay your Account before his Lordship; (the method whereof was to be in several Columns subscribed at the Foot of that Letter.) I am now further to acquaint you, that his Lordship is very much surprised to find, that in all this Time no such Accompt hath been laid before him: And therefore hath commanded me to tell you, that it is expected to be delivered in on or before the last Day of this Term. And, if this is not complied with, you will oblige his Lordship (though very unwillingly) to think of other measures; which I doubt not but you will avoid, by a ready Compliance of what is a second Time required of you. And to the End there may be no mistake as to the method of your accompting, I here subscribe it again at the Foot of this Letter; and am,

Sir, your very humble Servant,

7 *Nov.* 1721. *P. Cottingham.*

To the best of my Remembrance, this Letter was delivered to ten of the Masters.

Mr. *Lutwyche*. Did you read it to them?

Mr. *Cottingham*. No: I am going to give you an Account. My Lords, according to a *Memorandum* I kept at that Time of this Letter, it was delivered to ten of the Masters: To Mr. *Rogers*, Mr. *Hiccocks*, Mr. *Fellowes*, Mr. *Lightboun*, Mr. *Bennet*, Mr. *Holford*, Mr. *Borrett*, Mr. *Godfrey*, Mr. *Conway*, and Mr. *Lovibond*.

Mr. Serj. *Probyn*. We desire that the second Letter in *November*, 1721, may be read.

Mr. *Cot*. The second Letter is dated 7 *Nov.* 1721. "Sir, By my Letter of the fourteenth of *February* last, I signified, &c. No. 47."

Mr. Serj. *Prob*. By this it appears to be after the several 500 Pounds were paid in, the last 500 Pounds was paid in in *August* before, which shews, that these Accompts were to be delivered in for no other Reason, than that the Suitors should have Satisfaction as soon as a proper Remedy could be found.

Mr. Com. Serj. I beg leave to make one Observation; here is——

Mr. *Lutw*. If they have any more Questions to ask the Witnesses, they may; the Observing is proper afterwards.

Dr. *Sayer*. I only beg leave to ask this one Question, to be better informed: The Letter recites, it is written by the Command of my Lord Chancellor: I would ask, whether my Lord Chancellor did give such Directions?

Mr. *Cot*. Yes, my Lords, he did.

Mr. *Plummer*. If they have done with the Question, I would ask Mr. *Cottingham*, in the Words of his own Letter, whether the Earl of *Macclesfield* did oblige the Masters to deliver in their Accompts in pursuance of such his said Order?

Mr. *Cot*. Of the Letter of *November*, 1721, I have kept no *Memorandum*; of the first Letter I have.

Mr. *Plummer*. Whether that Letter of 1721, was delivered to the Masters?

Mr. *Cot*. I believe it was.

Mr. *Plum*. Then I desire to know, if the Masters did deliver in their Accompts?

Mr. *Cot*. I don't remember they did.

Mr. *Plum*. I desire he may be asked, if after this Time that the 500 *l*. was paid in obedience to the first Letter, there was afterward any other Demand made upon the Masters for more money?

Mr. *Cot*. I know of no Demand made upon them, except the 500 *l*. a-piece.

Mr. *Plum*. I desire he may be asked, if he doth not remember Mrs. *Chitty*'s Affair, and if that was not after 1721?

Mr. *Cot*. The Business of Mrs. *Chitty* was but in *July* last.

Mr. Serj. *Pengelly*. I desire he may be asked, whether, since no Accompt was called for after this last Letter, whether he did not understand the Reason to be, because he apprehended the Masters would make good Mr. *Dormer*'s Deficiency?

Dr. *Sayer*. My Lords, I submit it, whether that Question is material as to what his Apprehension was; your Lordships are Judges only upon Evidence of Fact, and not upon his Thoughts or Apprehensions?

Mr. Serj. *Pengelly*. Why were not the Accompts called for afterwards?

Mr. *Cottingham*. I really can't tell the Reason.

Mr. Serj. *Peng*. Whether he acquainted my Lord *Macclesfield*, that the Masters would make good the Deficiency?

Mr. *Cot*. I told your Lordships I did.

Mr. Serj. *Peng*. Therefore I desire he may be asked, whether after that Time he received any Orders to send to the Masters to give in their Accompts?

Mr. *Cot*. I can't speak particularly as to the Times.

Mr. Serj. *Peng*. Whether those other measures, intimated in his Letter to be taken, were not signified to him by my Lord *Macclesfield* to be, that the Cash should be taken out of their Hands?

Mr. *Cot*. My Lord called me into his Study, and directed me to write this Letter; all he said was, he was sorry that the Masters had not brought in their Accompts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other measures: my Lord did not say to me what those other measures were, whether it was to make an Order in form, and then he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the Masters that he would take other measures; what those other measures were, I do not know; but I apprehended it to be an Order his Lordship would make for obliging him to it.

Mr. *Snell*. I desire he may be asked, whether he did not himself apprehend by those other measures, the taking the money out of the Masters Hands?

E. of *Mac*. My Lords, I submit it, whether a Question of this Kind is proper; he hath been asked what those measures were; he hath told your Lordships that he knows not; but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your Lordships with it.

Mr. *Cot*. Your Lordship said you would take other measures; what I apprehended was, your Lordship would make an Order in form, if they did not comply with that Letter.

Dr. *Sayer*. My Lords, I beg leave to ask one Question: Whether the Masters, after this Letter was brought to them by Mr. *Cottingham*, did not represent to him the Difficulty of making up their Accompts?

Mr. *Cot*. There were several Particulars mentioned in the former Letter, there was the Causes to be named, &c. Some of the Masters told me, they had not kept their Accompts so as to answer all the Particulars in the Letter; others said, it would take up a great deal of Time; others that the manner required was very difficult and tedious, and that it was almost impracticable, so many *Items* were contained in the Letter, that they seemed to say it could not be done.

Dr. *Sayer*. I desire he may be asked, whether he hath any Paper of the method of accompting required by the Committee, that his Majesty was pleased to direct to look into this matter?

Mr. *Cot*. I have not a Copy of it here. There is an original Order, if the Masters please to produce it, I left it with Mr. *Lightboun*.

Mr. Com. Serj. If the Gentlemen have it, I hope they will produce it.

Mr. *Cot*. The original Order is of the third of *November* last, which I left signed by the Earl.

E. of *Mac*. This will come more properly under another Article: The Gentlemen, the Masters, will take care to look it out that it may be ready by that Time.

Mr. *Cot*. My Lords, I have now found it; I can't say it is a true Copy, dated the third of *November*, 1724. signed *Macclesfield*, C. *Let the several Masters*——Am I to read it, my Lords?

Mr. *Lutw*. What, the Order of the third of *November* last?

Mr. Com. Serj. This Order cannot relate to this matter. We are now upon the second Letter in 1721. The Letter is framed in so strong Terms, that it can't be supposed but the Earl was very much in Earnest, and it can't be insinuated as if intended to make the Masters comply in the Affair of Mrs. *Chitty* and *Lockman*, because that Transaction was but in *July* last.

E. of *Mac*. I desire, my Lords, to go a little back again, upon recollecting, that the Question the honourable Manager was pleased to ask, about his giving me an Account that the Masters would make good the Deficiency, carries an Insinuation, as if this method were dropped upon it: I desire he would inform your Lordships, whether he can be sure of the exact Time, whether this was before or after *November*, 1721?

Mr. *Cot*. I really can't be sure of the exact Time.

E. of *Mac*. How near was it to Mr. *Dormer*'s going out, and Mr. *Edwards*'s coming into his Office?

Mr. *Cot*. Mr. *Edwards* came in in *May*, 1721. It was near his coming in.

E. of *Mac*. I desire to know, whether you can recollect the Time you did tell me of it? Whether it was after *November*, 1721, or before?

Mr. *Cot*. I several Times mentioned it to your Lordship before *Nov.* 1721, and I believe several Times after; but that I cannot certainly tell, nor can I be particular to a Day.

E. of *Mac*. Did you ever hear of it before the 500 *l*. a-piece was paid?

Mr. *Cot*. No, my Lords, it was after they had paid the 500 *l*. a-piece; but, my Lords, I don't know that they agreed to make good the Deficiency; I only told my Lord I thought they intended it.

Lord *Trevor*. He hath proved two Letters sent by the Direction of the noble Earl. As to the first Letter he kept a *Memorandum* as to the Time, but no *Memorandum* of the second. I would ask him as to the Time, when the Masters made that Representation of the Difficulty of giving in the Accompts, whether it was before or after the second Letter, or between the first and the second Letter?

Mr. *Cot*. To both the Letters they still made a Representation of the Difficulty.

Lord *Trevor*. Then I desire to ask one Question more, that is, whether, after the Representation made after the second Letter, they owned that they had received the second Letter?

Mr. *Cottingham.* I verily believe that the second Letter was delivered to the Masters, as the other was, but I kept no *Memorandums* of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a *Memorandum*; I enquired after him; he hath been gone from me, and I can't find him out: I verily believe it. I have no Reason to doubt but I gave it; the Masters know that.

Mr. Serj. *Probyn.* If Mr. *Holford* is called, he will explain it; on his Cross-Examination he admitted a second Letter was sent for him, and left in the public Office: That appear'd in his Cross-Examination.

Mr. *Strange.* It might not be improper (this Letter is before the Honourable Manager) to enquire if they had it not from some of the Masters?

Mr. *Cottingham.* No, they had it from me.

(*Mr.* Holford *called.*)

Mr. Serj. *Probyn.* I desire he may be ask'd, Whether he had not any notice of the Letter in *November* 1721, whereby the Masters were obliged to bring in their Accompts?

Mr. *Holford.* Indeed, my Lords, I do not remember that Letter.

Mr. Serj. *Probyn.* I desire he may be asked, Whether he remembers a second Letter about Accompts?

Mr. *Holf.* Whether it was a Letter or a message I cannot tell; but between the first Accompt in *February* 1720, and the last in *November* last, I was called upon to Accompt, and had prepared it; but this second Letter dated in *November* 1721, I do not remember any thing of it.

Mr. Serj. *Probyn.* How long was it after the Payment of the 500 *l.*?

Mr. *Holf.* It was a good while after.

Mr. Serj *Probyn.* That is all we contend for.

Mr. *Holf.* I believe not above a Year before the last.

Mr. Serj. *Peng.* I desire he may be asked, whether after this Letter, supposed to be in *November* 1721, his Accompt was ever demanded of him?

Mr. *Holf.* I did deliver to my Lord an Accompt of *November* 1721; and I think a Year before *November* last, in pursuance of either a Letter or a message, I don't know which, my Lord required an Account; then I deliver'd an Account of money, not of Securities in my Hands.

Mr. Serj. *Peng.* Whether that was an Account in pursuance to that Letter, demanding and requiring it of him?

Mr. *Holf.* Not as I know of, indeed.

Mr. *Lutw.* My Lords, as some mention hath been made of it, I think it may be proper to know what he can say to it, whether he ever promised to make good the Deficiency of Mr. *Dormer?*

Mr. *Holf.* I never did, my Lords.

(*Mr.* Cottingham *called again.*)

Mr. Serj. *Probyn.* I desire he may inform your Lordships what he knows in relation to the Payment of the 1000 *l.* to *Lockman*, and what Conversation he had with Mr. *Lockman?*

Mr. *Cot.* About the beginning of *July* last, to the best of my Remembrance, Mr. *Lockman* told me, that Mrs. *Chitty* had any Order upon Mr. *Edwards* the Master to pay her 1000 *l.* That she had been with the Master but could not get the money, and that he had spoke to my Lord *Macclesfield* about it, and the Earl had promised to speak to the Master.---And he desired me to speak to the Earl concerning it: I promised I would, and accordingly I did; he sent me to the Master. When I came to him, I spoke to him of it; he said he had no money; I informed the Earl of it; the Earl said he could not tell what to do. I informed Mr. *Lockman* of it; he seemed to be under the greatest Concern, and said, if he had not the 1000 *l.* he was undone; he was going to marry Mrs. *Chitty*, and Mrs. *Chitty* would not marry him, unless his Debts were paid, and she had given him this 1000 *l.* to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 *l.* was not paid, he was undone.

I have not seen a Gentleman in a greater Distress than he appeared to be; on which I told him, if he would please to have a little Patience I would consider the thing, and see what could be done. I did consider it; and it came into my mind that Mr. *Lightboun* had not paid his 500 *l.* I acquainted the Earl with it, and said Mr. *Lightboun* had not paid his 500 *l.* and if he could prevail upon him to do it, I thought it would be easy to get 50 *l.* a-piece of the other Masters, and that would do.

By the Earl's order, I attended Mr. *Lightboun*, and told him that the Earl expected him to pay his 500 *l.* but I could not get a Penny from him; so he refusing to pay the 500 *l.* that proposal of the 50 *l.* a-peace dropt: I acquainted the Earl of this; he said he could not tell what to do. I acquainted Mr. *Lockman*, and told him I had done all that was in my Power to do; and that it was not to be done, unless he expected I should pay it out of my own Pocket, which I was sure he could not expect: When I told him that, he said, I am undone, Mrs. *Chitty* will not marry me, his Royal Highness the Prince of *Wales* will not protect me, my Creditors will throw me into a Gaol, there I must rot and starve. He made use of so many extravagant Expressions, and was under that Pain and Agony of mind, that I apprehended he would do himself a mischief. I could say nothing to it, I had done all for an unfortunate Gentleman that possibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to speak with me immediately; he begged of me of all things in the World to go: On that I went to the Earl. The Earl was pleased to send for me into an inner Room, and said, that he was teized out of his Life by Mr. *Lockman*; I told him I was so too, I had no Rest Night nor Day for him; I then represented to the Earl his own Story in Substance as he had told me. The Earl said he was sorry to find Mr. *Lockman* brought to that State and Pass. I told the Earl I was afraid of the Consequence, I did not know what a despairing Man might do, he seemed to be in the utmost Despair. Upon that the Earl ordered me to pay him the 1000 *l.* and said, he would pay it me again. When I saw Mr. *Lockman*, I told him I had now received Orders to pay him; I had not the money by me, but he should have it in a little time, three or four Days would break no Squares; he said, I am satisfy'd, provided it is paid. I said I had it not by me, I must borrow it; I did so; and on the thirtieth of *July* I paid him the 1000 *l.* I think it was three or four Days after, he asked me what Reward he should give me; I told him that his Distress was so great that he should not give me any Reward; I would not take a Penny of him; and I never had the Value of a Dish of Coffee of him; I paid him the money, I borrow'd it for that Purpose. Says I, Mr. *Lockman*, it appears to me that you are in great Distress, I will borrow the money. I did borrow the money, and paid Interest for it, merely to supply the Gentleman.

Mr. Serj. *Probyn.* I desire he may be asked, if he knows of any other Sum of money demanded by Mr. *Lockman* after this 1000 *l.* was thus agreed to be paid him?

Mr. *Cot.* After this money was agreed to be paid, and, I think, the same Evening, I received this Letter from him, which any Gentleman that will may read. (*The Letter read.*) Sign'd *Lockman*. *Monday* Evening.

SIR, *Monday* Evening.

'I AM very sensible of the Favour you have already done me, in promoting what my Lord in so affable a Manner was pleased to promise me, which Kindness I shall gratefully acknowledge all my Life; But as there is so great a Necessity, I hope you will pardon me the sooner in being once more troublesome, to beg of you to remind his Lordship of *letting Mrs.* Chitty *have the other* 574 *l. which my Lord was pleased to say we should have*, and without which Mrs. *Chitty*, who hath neither out of Chancery, nor her Estate, received any money this two Years, cannot spare me *the whole* 1000 *l.* As my whole Ease and Quiet depends on your kind Assistance, I must beg, Sir, once more to use your Interest to let us have it on *Thursday* Afternoon, between Four and Five, when Mrs. *Chitty* intends to wait on you for the other. I shall be very proud on all Occasions to shew with how much Gratitude and Esteem I am,

'SIR,

'Your most oblig'd

'humble Servant,

'*A. Lockman.*'

Dated *Monday* Evening, no other Date. My Lords, Upon the Receipt of this Letter, the very same Evening I laid it before the Earl, I told him that it appeared by this he wanted 570 *l.* more. The Earl said he was very much surprized at this Gentleman's sending such a Letter, he did not know what he meant by 570 *l.* more than he promised, and, in short, told me he could advance no more.

Mr. *Strange.* I desire he may be asked, whether he had any Discourse with Mr. *Lockman*, relating to this 570 *l.* after this Letter?

Mr. *Cot.* I had a Discourse with him some time afterwards about the Letter.

Mr. Serj. *Probyn.* I desire to ask him, whether, after this Letter, Mr. *Lockman* came to know what Answer he would give him?

Mr. *Cot.* Mr. *Lockman* came on the *Thursday* following, being the thirtieth of *July*; Mrs. *Chitty* did not come: And then I told him that I had received his Letter, and had laid it before the Earl, and that the Earl understood not what he meant by it, that this was a growing upon him, and he would not pay a Penny more; I thought he had been very generous to him, and I told him, I wondered what he meant.

Mr. Serj. *Probyn.* I beg leave to take notice, and your Lordships will please to recollect, that *Lockman* swore he never made any Demand of any money besides the 1000 *l.*

Mr. *Lutw.* That is to be observed when the Witness is examined throughout.

Mr. Serj. *Probyn.* I ask whether Mr. *Lockman* did petition my Lord Chancellor for this Sum of money?

Mr. *Cot.* I don't remember Mr. *Lockman* petitioned, I believe not.

Mr. Serj. *Probyn.* Or Mrs. *Chitty?*

Mr. *Cot.* Yes, Mrs. *Chitty* did, before the Payment of this 1000 *l.* as I remember.

Mr. *Lutw.* Was there any Petition preferred before the Payment of the 1000 *l.* because the money was not paid according to the Order, which I think was dated *March* 17, 1723?

Mr. *Cot.* Yes: I told you so before.

Mr. *Lutw.* I desire to know, whether there was not a general meeting of the Masters before my Lord *Macclesfield* order'd him to pay the said 1000 *l.* to Mr. *Lockman?*--------Mr. *Cot.* Yes, there was.

Mr. *Lutw.* Whether it was not after the meeting of the Masters, when it was propos'd to Mr. *Lightboun* to pay his 500 *l.* and the others 50 *l.* a-piece?

Mr. *Cot.* Yes, I believe it was.

Mr. *Plummer.* Mr. *Cottingham* hath given a long Evidence, he hath told you on the Application for this 1000 *l.* he recollected that Mr. *Lightboun* had not paid his 500 *l.* and if he could get him to pay his 500 *l.* and the other Masters 50 *l.* a-piece, that would make up the 1000 *l.* The Question I would ask is, if Mr. *Cottingham* had then any Orders from the Earl of *Macclesfield* to convene the Masters?

Mr. *Cot.* No, I had then no Orders.

The first Order I had to convene the Masters together, was on a *Monday*, before Payment of the 1000 *l.* as I remember: Mr. *Edwards* was then at my Lord's House, and my Lord ordered me to speak to him to convene the Masters; and they were convened, and came to my Lord's House that Evening, as I was told, but that was after the money was ordered to be paid.

Mr. *Lutw.* I desire Mr. *Cottingham* may look upon that, and tell us, whether it is his Hand.

Mr. *Cot.* This is my Hand (*reads.*) His Lordship can do nothing in it at present.

Mr. *Lutw.* Do you remember any thing of this Petition being offered?

Mr. *Cot.* Yes, I do remember it; it is a Petition of Mrs. *Chitty* preferred to the Earl, to be paid 1000 *l.* This Petition came to my Hands; the Earl said, he could do nothing in it at present, and this Order writ upon it is my Hand.

Mr. *Lutw.* Whose Petition is it?

Mr. *Cot.* The humble Petition of the Defendant *Elizabeth Chitty*, Mrs. *Chitty*'s Petition.

Mr. *Lutw.* What is the Answer writ upon the Back?

Mr. *Cot.* His Lordship can do nothing in it at present.

Dr. *Sayer.* We apprehend it is of consequence to have this meeting cleared. I desire he may be asked, whether he knows of any meeting of the Masters, and when, and what was done there?

Mr. *Cot.* Yes, there was a meeting that Evening, but I was not present.

E. of *Macclesfield*. By the Queſtions they have aſked, they have taken it for granted as if he knew what was done at that meeting of the Maſters; I deſire to know, whether he was preſent or not at that meeting of the Maſters?

Mr. *Cottingham*. I was not; I ſaid ſo before.

E. of *Mac*. Then I think he ſays the Day of Payment of this Money was on the thirtieth of *July?* —— Mr. *Cot*. Yes.

E. of *Mac*. What Day were the Maſters called upon to meet?

Mr. *Cot*. I can't be poſitive, but I think it was the *Monday* before Payment of the 1000*l*. This meeting of the Maſters was between the Order and Payment of the Money.

Mr. *Plummer*. I believe there is a Miſtake in this matter; I deſire to know of Mr. *Cottingham*, whether Mr. *Edwards* was not by when he acquainted the Earl with this Demand, and propoſed to him the method of paying it by Mr. *Lightboun*'s 500*l*. and the other Maſters 50*l*. a-piece?

Mr. *Cot*. No, no.

Mr. *Plum*. I deſire it may be cleared then, and to aſk him, if Mr. *Edwards* was not by when he acquainted my Lord *Macclesfield* of the Demand of the 1000*l*.?

Mr. *Cot*. No, Mr. *Edwards* was not by: When this 1000*l*. was directed to be paid, Mr. *Edwards* was in the Houſe, but the Earl did not ſee him; when I ſpoke to Mr. *Lightboun* for the 500*l*. it was only between Mr. *Lightboun* and me; Mr. *Edwards* was in the Houſe when my Lord ſpoke to me, and ordered me to ſpeak to Mr. *Edwards* to convene the Maſters together.

Mr. Serj. *Peng*. I deſire he may be aſked, whether the 1000*l*. was paid before he made the Propoſal to my Lord *Macclesfield*, that Mr. *Lightboun*'s 500*l*. and the other Maſters 50*l*. would pay it?

Mr. *Cot*. The Money was paid afterwards, I have told you ſo before.

Mr. Serj. *Peng*. Before the 1000*l*. was paid, whether did not you hear that the Maſters had refuſed to advance the further Sum of 50*l*. a-piece?

Mr. *Cot*. Yes, I told you ſo before, that Mr. *Lightboun* would not pay his 500*l*. ſo the other Maſters did not pay their 50*l*. a-piece; this was ſome Time before the Payment of the 1000*l*.

[*Mr*. Elphinſtone *called*.]

Mr. *Strange*. My Lords, we deſire Mr. *Elphinſtone* to give your Lordſhips an Account of what he knows of the Application of Mr. *Lockman* for this 1000*l*.

Mr. *Elphinſtone*. My Lords, Mr. *Lockman* and I often had Converſation together before he received the 1000*l*. upon the Account of Mrs. *Chitty*. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the 1000*l*. againſt a certain Day, on which he had engaged to pay it, he ſhould be ruin'd and undone; and ſome Time after he told me, that his Creditors had been with much Difficulty brought to give him ſome few Days longer for Payment of the Compoſition, and that if he had it not then, he ſhould be ruin'd and undone for ever; ſwearing by the bleſſed Name of God, that that Diſappointment would be a Means of breaking off the Match with the Lady.

Mr. Serj. *Probyn*. Go on.

Mr. *Elphin*. I can't be poſitive as to the Day, whether it was the ſame Day that he received the 1000*l*. or a Day or two before; but I then heard the noble Earl declare to him, that in Pity and Compaſſion to his Circumſtances, and the great Difficulty he then laboured under, he the ſaid Earl had given Directions to Mr. *Cottingham* to pay him the 1000*l*. and about two Hours after, or ſomething more, Mr. *Lockman* came to me, and with abundance of Joy told me how much obliged he was to the noble Earl, for that he had reliev'd him in his Circumſtances, by giving Mr. *Cottingham* Orders to pay him the 1000*l*. He ſeemed to expreſs this with an uncommon Pleaſure, and did not at all doubt it would be agreeable to Perſons of the higheſt Diſtinction and Character to know it, and that he would make them acquainted with it. My Lords, I think it was on *Friday* laſt, in a Converſation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred Guineas or Pounds, than have been examined on this Occaſion; and ſaid, Damn it, it hath happen'd, thro' a ſilly Word or two I dropt to the Solicitor on the other ſide. I aſked him what it was? he ſaid, it was his telling him he had received the 1000*l*. for Mrs. *Chitty*, by the noble Earl's Direction.

Mr. Serj. *Probyn*. After this Money was paid, whether he hath had any Diſcourſe with him, and whether it was owned by him that it was out of the Earl's own Pocket?

Mr. *Elphin*. Yes, many any many a Time, and with great Reſpect.

Mr. *Plum*. I deſire the Counſel for the noble Lord may explain one thing: I think the Witneſs ſaid, Mr. *Lockman* ſaid, He had rather give two or three hundred Pounds than have been examined. Whether the Witneſs doth apprehend by what Mr. *Lockman* ſaid, that he comes an unwilling Witneſs?

Mr. *Elphin*. No, my Lords, I did not ſay that Mr. *Lockman* was an unwilling Witneſs, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occaſion.

Mr. Serj. *Probyn*. We ſhall give your Lordſhips no further Evidence on this Article; we ſhall now proceed to the ſeventeenth Article; which charges the Earl of *Macclesfield*, that, in order to conceal the Deficiency in *Dormer*'s Office, and to prevent any publick Enquiry, he did, from time to time, in Violation of the Truſt repoſed in him, make Orders on Mr. *Edwards* for Payment of the Money belonging to ſeveral particular Suitors, which had been lodged in the Hands of Mr. *Dormer*; in obedience to which Orders ſeveral Sums were paid, without Regard to, or Conſideration of the Proportion which the reſt of the Suitors were entitled to, out of the Effects of the ſaid Mr. *Dormer*, whereby many of the ſaid Suitors loſt the Benefit of their proportionable Share, to which in Juſtice they were entitled.

The Crime ſuppoſed in this Charge is denied by the Earl in his Anſwer; he had no certain Knowledge what Mr. *Dormer*'s Eſtate would come out to be; but he was under a full Perſuaſion that Effects would come in in due Time, to make full Payment; and that the only Reaſon why they were not paid in an Average, was becauſe no Application was made by any of the Suitors for that Purpoſe.

Mr. Com. Serj. As to the ſeventeenth Article, your Lordſhips obſerve there was a full Perſuaſion both in the noble Earl and Mr. *Edwards*, that there would be ſufficient to pay every one; beſides, I think he himſelf made not above one Order, not more than this one in the Caſe of *Chitty*; your Lordſhips will pleaſe to obſerve, from the Evidence of Mr. *Edwards*, that the noble Lord who made theſe Orders was firmly of an Opinion, from the Accounts he had received, that the Deficiency would be made up, ſo likewiſe Mr. *Edwards* was then under the ſame Perſuaſion: We ſhall reſt it here that it was no manner of Fault under theſe Apprehenſions, to make ſuch an Order as that was.

Mr. *Robins*. If your Lordſhips pleaſe, there is in the Cloſe of the ſixteenth Article a Declaration, ſuppoſed to be made by the Earl of *Macclesfield*, then ſitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court at that Time, I apprehend that what he ſaid was——

Mr. *Plum*. If the Gentleman ſpeaks as Counſel, he ſtands in a proper Place, but if he comes as an Evidence, I beg he may come to the Bar and be ſworn; I humbly appeal to your Lordſhips if it is not proper.

Lords. Ay, ay.

Dr. *Sayer*. If the Gentlemen think it proper to inſiſt upon it, the Gentleman is ready to be ſworn.

Mr. Com. Serj. The Gentleman's Character is ſo unexceptionable, that we hope the learned Gentlemen will not put this Difficulty upon him of taking an Oath in a Cauſe, wherein he is Counſel.

Mr. *Plum*. My Lords, I inſiſt upon it; becauſe then I ſhall have the Liberty of aſking ſome Queſtions, which I apprehend I have not now.

Mr. Serj. *Probyn*. My Lords, we ſubmit it upon the Evidence that hath been already given, he himſelf did declare then, when it came before him regularly, he would examine into it; and the firſt Opportunity this came before him in Judgment, he then put it into a method, and accordingly referred it to a Maſter, and all proper meaſures were taken.

Mr. Com. Serj. My Lords, we ſhall, with your Lordſhips Permiſſion, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 18th Article. The Charge therein contained is in Effect, that tho' the Earl knew, that the Maſters of the Court might and did diſpoſe of, and traffick with the Effects of the Suitors; and tho' Propoſals were made for remedying of it, yet the Earl neglected to enquire into the Accompts of the Maſters, permitted, and encouraged them to employ, and traffick with the Effects of the Suitors, and took no Care that thoſe Effects ſhould be placed out, ſo as to prevent ſuch Practices of the Maſters, or that they ſhould give ſuch Security as was propoſed; and this is charged to be done with a corrupt View and Intention of making an unlawful Gain by the Sale of thoſe Places, and to keep up the Price of them.

The Proof of theſe matters depends entirely upon the Teſtimony of Mr. *Lightboun*, Mr. *Holford*, and Mr. *Kynaſton*, with the particular Repetition of whoſe Evidence, I ſhall not preſume to trouble your Lordſhips after ſo much Time has been already ſpent; but ſhall beg leave to obſerve upon the whole, that there is not the leaſt Evidence to ſupport that Part of the Article, whereby the Earl is charged with permitting and encouraging the Traffiicking with the Suitors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence which Mr. *Lightboun* has given upon this Article. He has inform'd your Lordſhips, that when a Propoſal was made, in order to the making good the Deficiency in *Dormer*'s Office (which the Earl had confeſſedly ſo much at Heart) that each Maſter ſhould out of the Suitors Effects in his Hands, place out a Sum of Money, the Intereſt whereof ſhould be applied for that Purpoſe; the Earl would not give the leaſt Countenance to that Practice, by coming into the Propoſal; but in plain Terms declared, he neither could nor would give any Encouragement or Direction for the Diſpoſal of the Suitors Effects, for any other Purpoſe than their own Benefit.

My Lords, The Gentlemen of the Houſe of Commons are ſo ſenſible of the Defect of their Evidence as to this Point, that they ſeem not to rely upon it, but are forced to fly to Implication for Aſſiſtance; and your Lordſhips are told that this Part of the Charge is a Conſequence of the Earl's not having taken Care that the Suitors Effects were ſo placed out, as to put it out of the Power of the Maſters to make ſuch an uſe of them; and that this Neglect amounts to a Permiſſion and Encouragement to the Maſters, to diſpoſe of and traffick with them as they have done.

My Lords, if this Part of the Article is to be conſidered as a diſtinct, ſeparate Charge, it is ſo obvious, of how dangerous a Conſequence it would be to admit ſuch argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordſhips with ſaying any Thing more to it; if it is to be looked upon as a Conſequence only of ſome other Part of the Charge, as a miſchief ariſing from the neglect of putting thoſe Effects of the Suitors out of the Power of the Maſters to make ſuch uſe of them, I am ſomething at a Loſs to know, why it is made a diſtinct, ſelf-ſubſiſting Charge; it may perhaps by that means ſwell the Bulk of the Article, but we humbly ſubmit it to your Lordſhips Conſideration, whether it at all increaſes the Weight of it?

My Lords, the Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omiſſion only of doing what it is conceived he ought to have done, for the Prevention of this miſbehaviour of the Maſters; that perhaps was thought too ſlight a Ground for an Article of an Impeachment, eſpecially when the Neglect here complained of does not conſiſt in the not redreſſing any particular Grievance, pointed out by the Complaint of any of the Suitors of the Court, but in the not making general Orders for the Reformation of the Maſters. Perhaps, my Lords, it might be thought, that ſuch a Charge would have been ſufficiently anſwered, by alledging, as the Truth is, that the Maſters have only been continued by the Earl in the ſame Degree of Truſt and Power in which he found them, and with which they were inveſted long before he preſided in that Court: It may be too, my Lords, it might be conſider'd, how wide and dangerous a Field for Impeachments and other Proſecutions would have been opened, by making it criminal

minal in every one who had the Superintendency of an Office, barely to neglect, or omit, the introducing such new general Orders and Regulations, as seemed to carry a Probability of preventing the Abuses of the under Ministers of such Office; and therefore it is, my Lords, as it may be presumed that the Earl's Behaviour in this Respect is alledged to be fraudulent, and unjust, and with an Intention of making unlawful Gain to himself, by the Disposal of those Offices, and with a corrupt View and Intention to keep up the Price of them: So that it is not Remissness, or Negligence that the Earl stands here accused of, but Fraud and Corruption, and if this is not made out, we must humbly submit it to your Lordships Judgment, whether or no this Article does not fall to the Ground?

But what Proof, what Evidence has been offered for that Purpose? None, my Lords, that I remember; but your Lordships are left to recollect it, by way of Argument, from the Earl's not having made use of proper Expedients to prevent this ill Practice; the Masters, by that means, were more at Liberty to make a Profit out of their Offices, which for that Reason sold at higher Prices, and therefore the Earl must be guilty of this Neglect with that View; a severe (though not a strict) Consequence indeed! Is the Prospect of Gain from hence so certain as to tempt so strongly? And are there no other Reasons apparent why the Earl should defer his Regulations in this matter? I need not put your Lordships in mind of the great uncertainty of a Continuance in that high (but slippery) Station: And as the Profit supposed to be in View, depends upon the Death or Alienation of the Masters, which sometimes do not happen in a long Interval of Time; when this Uncertainty is added to the other, I appeal to your Lordships, whether it can be easily imagined, that any, even the most greedy Person, allowing him only to be in his Senses, could be prevailed upon to hazard his Reputation and Quiet, upon such distant, such uncertain Hopes; especially my Lords, if the Necessity of so harsh a Conclusion be excluded, by its appearing that there were other matters which might probably enough be the Reason, or Occasion of the Earl's not immediately entering upon these Regulations?

It appears by what Mr. *Lightboun* has said, that the Earl was very willing and desirous of having these matters regulated; and that when he first informed the Earl that he had something to offer to his Consideration in relation thereto, the Earl seemed very glad, and mightily pleased with the Proposals, and gave him all due Encouragement.

It appears, my Lords, that after some time taken by Mr. *Lightboun*, to discourse the Masters upon this Head, he wrote a Letter to the Earl, containing several Proposals for the regulating the Affairs of the Masters; and your Lordships will observe the times and manner of the Earl's sending for, and pressing the Masters to bring in their Accompts, which, notwithstanding the different Turn that has been endeavoured to be given to it, we humbly insist upon it, appears to have been done, in order the better to enable the Earl to Judge and regulate these matters.

As there were Proposals for regulating the Conduct of the Masters, in respect of the Suitors, so several Grievances, which the Masters were supposed to labour under, and in which the Suitors too were supposed to be concerned, were represented to the Earl; and, amongst others, that of money being ordered to be paid into the Hands of the Usher of the Court, instead of the Masters; which was represented as a Thing of ill Consequence, and dangerous to the Suitors of the Court, as well as injurious to the Masters. It appears likewise, that it was thought proper, if not necessary, to take all these matters into Consideration together, that the intended Regulation might be entire, and not by piece-meal; and Mr. *Lightboun* himself was of that opinion, as well as Mr. *Holford*. And tho' it is alledged, that the Earl was credibly informed that the Sufficiency of some of the Masters was much suspected, and consequently that a more immedate Regard should have been had to what concerned the Effects in their Hands; yet when your Lordships consider how that stands upon Mr. *Lightboun*'s Evidence; that it was only a general Intimation, without naming any particular Person, and that Mr. *Lightboun* declared he had no certain Ground for such Suspicion; it will not, we hope, be thought a Fault not to single out that Part of the intended Regulation; especially when the same Witness informs your Lordships, that it was as impracticable for the Masters to have given an adequate, that is, a proper Security, as for the great Officers of the *Exchequer*, or the Treasurers of the *South-Sea*, or other great Companies to do so. And your Lordships will be pleased to think it well deserves Consideration, whether it was in the Earl's Power to compel the Masters to give even such Security as they could? And if it should be said, that if they would not have complied, he might have ordered the money out of their Hands; it will require Time to consider where, in such Case, he must have placed those Effects? It would have been as extraordinary to have required Security from the Masters which came in afterwards, and so to have put them upon a Foot different from the others, when it was under Consideration how to settle the whole. But, my Lords, the Event has shewn, that there was not so much Occasion for so speedy a Precaution in this matter, for the Purpose for which it was then principally intended, which was the preventing the Masters from embezzling the Securities of the Suitors in their Hands, since there is no Occasion of Complaint in that respect, they having been all delivered up, and the Deficiencies which have happened have been in the Cash in their Hands, of which there was then so little Apprehension or Likelihood, that the preventing it was one of the Things the least under Consideration. So short-sighted and uncertain is human Prudence! So different the Judgments made of Things in Prospect only from what they are in Experience! I make no Question but your Lordships will have a due Regard thereto, and make all equitable Allowances on that Account.

Your Lordships have been further informed, that in order to settle these matters, several meetings were had, and among the rest, one very solemn one, at which were present both the Earl and the Master of the Rolls. I need not trouble your Lordships with a Repetition of what passed there; it is sufficient to observe, that nothing being settled, the Earl, whose mind was intent upon this Affair, proposed some Expedients to facilitate matters; particularly, that if the Masters would quit their Pretensions to a co-ordinate Power of Judicature with the Master of the Rolls, that matters might be made easy, in respect of the ordering the Payments of the money: But this would not be complied with. And when it was found by Experience impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole matter into his Consideration; and since he could not have the Concurrence of others, he himself would regulate these matters as soon as he could. Upon the whole of the Evidence offered upon this Article, more especially from what Mr. *Lightboun* and Mr. *Holford* have said, it plainly appears, that for a considerable time past, even from the latter End of the Year 1721, here has been an Intention of regulating the Offices of the Masters of the Court of Chancery; that such Intention has been pursued, and several Steps taken, and Endeavours used to bring it to effect; and your Lordships, I hope, perceive the many Difficulties that have interposed, and will not be at a Loss to find Reasons for the Earl's not having actually made these Regulations, very different from the distant View of an unjust Gain.

My Lords, the Business of Reformation, however desirable it may be, is in all Instances attended with Difficulties, and in the present Case those Difficulties have been increased by the different and jarring Interest of the Parties concerned; which, at least, prevented their Concurrence in such Reformation, and in a great measure deprived the Earl of the Benefit of the Advice of those who were the most able to inform him what was fit to be done.

Your Lordships are sensible how great a Portion of the Earl's Time must necessarily be taken up in the Dispatch of the ordinary Business of that Court, and in his Attendance upon the public Functions of his Office; and if, under these Circumstances, he has not been able to bring his good Intentions to Effect, and compleat them, before it was put out of his Power so to do, your Lordships, we hope, will think it more his Misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omission in that respect, which can be adjudged to be criminal. We shall not trouble your Lordships with any Evidence upon this Article, but submit it upon what has been already offered.

Mr. *Robins*. May it please your Lordships, The last Article which the Managers for the Honourable House of Commons have been pleased to close this solemn Prosecution withal, is the Nineteenth; wherein they have endeavoured to represent the Earl as designing to abuse and impose upon his most sacred Majesty, for the Sake of screening and protecting the Masters from a parliamentary Enquiry, and to keep up the Price and Credit of their Offices.

But, my Lords, we humbly hope no Evidence appears to have been given that does, in the least, support or prove any such Designs in the Earl.

'Tis true, indeed, that when his Majesty was graciously pleased to order the Masters Accompts to be laid before the Committee of Lords of the Council, in order to inspect the same, that the Earl, in obedience to his Majesty's Commands, thought he could not be too zealous in giving Orders for their preparing and getting the same ready, and therefore ordered them immediately to set about it.

And when some of them objected, that 'twas impossible to have them ready by the Time expected, the 10th of *November* last, especially Mr. *Holford*'s, which was to be an Accompt of twelve Years, that the Earl however ordered them to be got ready in the best manner they could, and told them, if it should appear they wanted more Time to make them perfect, that on Application it would, without doubt, be granted.

After which your Lordships have heard, that at a meeting of most of the Masters at Mr. *Edwards*'s, when Mr. *Cottingham* came in, he proposed to them, some say, three Things, others two; but all of them agree in Substance, that 'twas to have their Accompts and Securities inspected, and to produce the Balance of Cash in their Hands, if it should be requir'd.

And as to the inspecting of their Accompts and Securities, your Lordships have been pleased to observe, that not one of them appeared to make any Difficulty or Objection to it, but, on the contrary, readily consented and agreed to it.

But as to the producing their Balance of Cash, they were something startled at that, as not knowing what was intended by it; and therefore asked Mr. *Cottingham* if they were only to produce or shew it, or if 'twas going to be taken away from them.

And though Mr. *Cottingham*'s Answer was, that they were only to produce it, as he understood, yet several of them appeared to be very jealous that 'twas going to be taken out of their Hands; and Mr. *Edwards*, one of the Masters, expressly said so, and therefore advised them to get it ready as soon as they could.

But your Lordships have been pleased to observe, that whatever they understood by it, yet not one of them said, or so much as insinuated to Mr. *Cottingham*, that they were not able to answer or make good their Balance of Cash, only that some of them had it not all ready immediately; and Mr. *John Bennett* said, it could not be expected they should keep it all by them, for fear of having their Throats cut, and that therefore they must have some reasonable Time given them to raise it in; and Mr. *Conway* expressly swears, that he apprehended they all said they were able and sufficient to produce their Cash and Effects.

And, my Lords, it seems very natural and reasonable to believe that they did say so, or at least that Mr. *Cottingham* understood it so, because when some of them asked, whether they were to produce it in *Specie*, or whether Bank Notes, or Goldsmith's Notes would not do as well, he made Answer, it certainly would do as well, and therefore advised those that had not such Notes ready by them to provide them, and to stand by and assist one another.

Now, my Lords, with great Submission, all this seems to be a very natural, plain and artless Representation of this meeting: And when Mr. *Cottingham* had thus acquainted the Masters what was expected from them, and had Assurances from them all, that they were ready and willing to comply with what had been proposed.

Can there be any room to doubt but that the noble Earl was very well pleased with this Account from Mr. *Cottingham*? And therefore when they met after, at the Earl's House on the 10th of *November*, no wonder he did not particularly ask them the Question, whether they were able and sufficient to pay or make good the Balance of their Cash, for this Mr. *Cottingham* had before assured him they were, and therefore no Need for the Earl to ask the Question over again?

And

And Mr. *Lovibond*, one of the Maſters, ſwears expreſly, not only that he himſelf was ready and willing to pay and produce his own Balance, but that, from what paſſed at the Earl's Houſe, he believed or thought all the reſt of Maſters were ſo too.

Now, my Lords, if this be ſo, if the noble Earl was fully ſatisfied that all the Maſters were able to make good their Accompts, and he was juſt then going to lay a State of them before the Lords of the Council; is it at all to be wondered at, that his Lordſhip ſhould give them his Advice or Opinion what Form of Words or Subſcription he thought would be moſt proper to expreſs their meaning by?

And as he approved of the Form made uſe of by Mr. *Holford* on that Occaſion, Was it, or could it poſſibly be any Crime in the Earl to adviſe the reſt to ſubſcribe, or under-write the ſame Form to their Accompts likewiſe?

And your Lordſhips have been pleaſed to obſerve, from the Evidence of all the Maſters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very ſame Subſcription to their Accompts.

'Tis true indeed, my Lords, ſome of them, when they were got by themſelves, were conſcious they could not come up fully to it, and therefore varied the Form as beſt ſuited their own Circumſtances.

But your Lordſhips have been pleaſed likewiſe to obſerve, that the noble Earl was ſo far from being in any Plot with the Maſters to deceive his Majeſty or the Lords of the Council, that he took their Accompts, with the Subſcriptions they had under-wrote, without ſo much as ever looking to ſee if they were conformable to Mr. *Holford*'s Subſcription, and apprehended they really had been all the ſame, till upon reading them before the Lords of the Council the Variance between them appear'd.

But your Lordſhips have not heard of one Word of Reproof given them by the Earl afterwards, for not obſerving his Directions in making the Subſcription he deſired.

If the Earl had had any Deſigns of impoſing on his Majeſty or the Council, by getting the Maſters to under-write ſuch a particular Form of Subſcription to their Accompts, would he not have been more careful, before he carried in thoſe Accompts to the Council-Board, to have ſeen that they had exactly purſued his Orders for fear of a Diſcovery?

Nay, my Lords, can it poſſibly be imagined but that when he came afterwards to find they had deceived him, and had not under-written the Subſcription, they pretended, and went out of the Room ſeemingly on purpoſe to comply with;

I ſay, my Lords, can it poſſibly be imagined, but that if the Earl had had any Views or Deſigns of his own on it, he would have ſeverely rebuked and reprimanded them afterwards for not obſerving his Directions:

But your Lordſhips have not heard one Word of Proof that the Earl complained of, or ever ſaid any thing afterwards to the Maſters about it.

Now, my Lords, if this be ſo, can there poſſibly be a greater or ſtronger Concurrence of Circumſtances to ſhow, that the Advice or Encouragement which the Earl afterwards gave the Maſters to aſſiſt and ſupply each other with money and effects, and repreſented to them that it would be for their Honour and Service to appear able and ſufficient; I ſay, my Lords, can any thing in the world be more unnatural than to imagine, that by this the Earl meant to adviſe them to make a falſe Shew and Appearance?

They had before aſſured him, or given him the ſtrongeſt Reaſons poſſible to believe, that they could make a true Shew and Appearance. Why then ſhould he adviſe them to make a falſe Shew and Appearance? What End or Purpoſe in the World could this ſerve, either for themſelves or his Lordſhip?

This ſurely, my Lords, could never be the Earl's meaning; or if it was, whilſt he was under a Perſuaſion that they were all able and ſufficient to anſwer and make good the Balance of their Accompts, if he meant to adviſe them to make a falſe ſhew and appearance, it muſt have been by adviſing them to conceal Part of their Caſh and Effects, for fear the World ſhould really take their Words, and be of Opinion that they were as able and ſufficient to make good their Accompts, as they had under their Hands acknowledged themſelves to be.

But, my Lords, as the Conſtruction the other way is not only moſt natural, but alſo conſiſtent and agreeable with all that had before paſs'd on that Occaſion, ſurely, my Lords, it muſt be a ſtrange wreſting and perverting of Words to underſtand them otherwiſe.

The Sum of this whole Article, my Lords, is this: The Maſters were on a ſudden call'd upon to bring in their Accompts of Caſh and Effects, and they did ſo, and declared, at the ſame time, that they were able and willing to make good the ſame on a reaſonable time given them for raiſing the Money; but being afterwards called upon for their Money ſooner than they expected, and applying to the Earl for his Advice and Directions what to do in it, he adviſes them to aſſiſt and ſupply one another with Money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and ſufficient, and that he would not have them let the World ſee, at a time when there had been ſo much Clamour and Noiſe about them, that they were not always ready, even at a Minute's Warning, to make good their Accompts.

This, my Lords, is the whole of this grievous Complaint againſt the Earl; and as it ſeems to be nothing but a Piece of good Advice in the Earl given to the Maſters for their own ſakes, in great Sincerity and Friendſhip, as the Earl expreſſes himſelf in his Anſwer, without any poſſibility of Advantage to the Earl himſelf, we humbly hope your Lordſhips will not think it worthy of a Place in this Impeachment.

Mr. Com. Serj. My Lords, we ſhall not give your Lordſhips much trouble on this Article, we ſhall only call Mr. *Holford*.

(*Mr.* Holford *not then appearing*, *Mr.* Cottingham *was called in again.*)

Mr. Serj. *Probyn.* My Lords, we deſire that Mr. *Cottingham* may inform your Lordſhips of the Time the Maſters had the Letter which he refers to, and which he deliver'd whereby the Accompts are directed to be brought in? We did deſire Mr. *Holford* to bring it up with him: If Mr. *Holford* hath not the Letter, and it is not among the Maſters, we muſt examine Mr. *Cottingham* about it.

Lord Ch. Juſt. *King.* Mr. *Holford* is come.

Mr. Serj. *Probyn.* This is the Copy of a Letter, the Original of which Mr. *Holford* hath; if he hath it not here, I hope your Lordſhips will give leave to read the Copy.

My Lords, I deſire that Mr. *Holford* may give your Lordſhips an Account of this Letter.

Mr. *Holford.* My Lords, I have it not; Mr. *Kynaſton* did inform me juſt now that he believed it might be in his Cuſtody, but he hath it not here.

Mr. Serj. *Probyn.* Your Lordſhips will give us leave to examine Mr. *Cottingham*.

Mr. *Cot.* My Lords, there was an Order made, dated the 3d of *November* laſt, of which my Clerk made a Copy. I can't ſay I examin'd it myſelf: The Order is,

Let the ſeveral Maſters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein diſtinguiſhing, in ſeveral Columns,

The Names of the Parties to the Cauſe.
The Dates of the Orders for bringing in Money or Securities.
The Time of bringing in each Sum.
Particularly expreſſing the Sums transferred and paid to them at their coming into their Office in the firſt Place.
How the ſame hath been diſpoſed.
What Sums paid out, and to whom, } When, and by what Order.
What inveſted in Securities, - - }
Specifying the Securities, by Dates, Numbers, *&c.*
Where the Securities are at preſent.
What Money remains in their Hands.
Where the ſame now is.

Nov. 3, 1724. MACCLESFIELD, C.

Mr. Com. Serj. My Lords, we beg leave to obſerve, that this Order is very much the ſame with the Directions given by the noble Lord before to bring in their Accompts; but, upon the Nature of the Thing, there ſeems to be a very good Reaſon why they did not comply punctually with it.

Mr. *Plummer.* Upon this Obſervation, my Lords, I beg leave to aſk this Witneſs, Whether the Maſters have not given in ſome Account, notwithſtanding the Difficulty of the method?

Mr. *Cot.* Yes, my Lords, they have.

Earl of *Mac.* Mr. *Holford* will inform your Lordſhips of this.

Mr. *Holf.* I believe this is a Copy of the Order given by my Lord *Macclesfield* for bringing in our Accompts in *November* laſt.

Mr. Serj. *Probyn.* I deſire he may be aſked, whether the Maſters were able to make up the Accompts purſuant to the Directions given in that Order?

Mr. *Holf.* I believe it was the next Day after this was ſent, that Mr. *Cottingham* did inform me of it; I had not ſeen it, I was then at *Weſtminſter*, ſitting in Court with my Lord *Macclesfield*; after the Court was up I went into the little Room behind the Court with my Lord, and I did ſay, I thought it would be very tedious to do exactly as this Order directed, becauſe it would require a tranſcribing of every Particular that each Maſter in the Court had ever paid and received for ſeveral Years, even where Cauſes were ended many Years ago, and that I thought it an impracticable Thing. My Lord told me that muſt be no Objection to the bringing in of the Accompts; if we could not do as well as he wiſh'd, we ſhould do it as well as we could; and deſir'd them to be ready, that they might be brought in by the Time prefixed.

Mr. Com. Serj. I deſire he may be aſked, whether there were any Arguments uſed by my Lord to recommend Diſpatch in this matter?

Mr. *Holf.* My Lord recommended it to me to be ſure to have the Accompt ready by the Time; I think he ſaid it was to be delivered in to the Council by ſuch a Day.

Mr. Com. Serj. I deſire he may inform your Lordſhips, if nothing was ſaid about making an Excuſe a Pretence for delaying the Accompts?

Mr. *Holf.* My Lord did deſire that they might be prepared according to thoſe Directions, but ſaid, This muſt be no Excuſe, for not bringing in the Accompts as well as you can by the Time.

Mr. *Plum.* When this Accompt was aſked for, how long was it before it came in?——Mr. *Holf.* Three or four Days, or a Week.

Mr. *Plum.* And you gave them in compleat and right, fully and amply.

Mr. *Holf.* Yes, there were ſome little miſtakes which were rectified afterwards, very ſmall ones.

Mr. Com. Serj. By Reaſon of this Queſtion that hath been aſked, give me leave to trouble your Lordſhips with aſking another, Whether in the Accompt deliver'd in there was any thing more than the Balance of the Accompt?

Mr. *Holf.* Yes, the Accompt I deliver'd in was an Accompt of every particular Cauſe, and of the Money and Securities in every Cauſe, and I did add the Sollicitor Names in every Cauſe, as far as I knew; I believe all the others were not ſo.

Mr. Com. Serj. How were the others?

Mr. *Holf.* I believe the others were the ſame, only not the Solicitors Names.

Mr. Com. Serj. I don't mean that, but whether there was not the Balance of each particular Accompt deliver'd in?

Mr. *Holford.* There was the Balance of the particular Cauſes, and the whole ſummed up together.

Mr. Serj. *Probyn.* I deſire he may be aſked, whether it was practicable to give in their Accompts in the method directed within the Time preſcribed them?

Mr. *Holf.* It was not.

Mr. Serj. *Probyn.* I deſire he would inform your Lordſhips, whether they have not been call'd upon frequently to haſten their Accompts?

Mr. Com, Serj. I deſire he may be aſked, whether they have been ſince call'd upon by the honourable Committee of the Council, to bring in their Accompts according to the ſaid Method?

Earl of *Mac.* I deſire he may be aſked, whether after this Accompt brought in, and the Balance made upon every Cauſe they have been ſince called upon to make up the Accompt according to the firſt Inſtructions, or not?

Mr. *Holford.* We have not been required to purſue the former Inſtructions.

Mr. Com. Serj. If the Gentlemen of the Houſe of Commons have done as to this Article, we have done. My Lords, We ſhall now beg Leave to call ſome Witneſſes to the eſtabliſhing the Reputation of Mr. *Cottingham*; when one Side have endeavoured to leſſen his Credit, it will be neceſſary for the other Side to call Witneſſes to confirm his Credit. As to the Teſtimony he hath given, it is very material, as it ſtands in Oppoſition to the Evidence of others; tho' it be not directly contradicted, yet it is very different from ſome Accounts, which your Lordſhips have received from ſome of the Maſters, particularly from Mr. *Thomas Bennet*: And as for the Managers of the Houſe of Commons notwithſtanding he was called a Witneſs by themſelves, tho' they have not ſaid in direct Terms that he is a Perſon not to be credited, yet calling him *a black Miniſter of Iniquity*, and uſing a great Number of ſuch like other Expreſſions ſeem to carry ſome Inſinuation, as if Mr. *Cottingham* was not a man of that Integrity as I believe all that know him will bear Teſtimony to. We beg Leave, therefore, to call a few of that Number as Witneſſes to his Character and Reputation, who have known him for ſeveral Years, and have had a full Opportunity of knowing his Character and Behaviour in the ſeveral Stations he has been in.

(Mr. *Goldeſbrough* called.)

Mr. Serj. *Prebyn.* My Lords, I deſire he may be aſked, how long he hath been acquainted with Mr. *Cottingham?*

Mr. *Goldeſbrough.* I have been acquainted with Mr. *Cottingham* upwards of twenty Years.

Mr. Serj. *Preb.* I deſire he would inform your Lordſhips, during his Acquaintance with him, what hath been his Character?

Mr. *Goldeſ.* All the Time he was a Solicitor, I obſerved him to have a good Character; he behaved himſelf with all Integrity and Fidelity as ever I knew any body of his Profeſſion.

Mr. Serj. *Preb.* You ſpeak as to his general Character.

Mr. *Goldeſ.* I never heard he had any Blemiſh on his Reputation, he always maintain'd a very fair Character.

Mr. Serj. *Preb.* During the Time he was Secretary to the Lord Chancellor, how did he behave himſelf?

Mr. *Goldeſ.* He bore a very fair Character in the Place, as fair as ever any body did that went before him.

(Mr. *Price* ſworn.)

Mr. Com. Serj. We deſire he may give your Lordſhips an Account, what he knows of the Character of Mr. *Cottingham*, and how long he hath known him?

Mr. *Price.* My Lords, I have known him upwards of twenty Years, I never knew any Body ſay any Thing amiſs of him, I always took him to be a very fair and honeſt man: I know no man in his Place behav'd himſelf better than he hath done.

Mr. Com. Serj. We deſire to aſk not only to what Mr. *Price*'s Opinion is, but to what is the Opinion of others, as to his general Character?

Mr. *Price.* I believe, if you aſk his Character of an hundred People, ninety of them will give him rather a greater Character.

Mr. Com. Serj. And as to the remaining ten, what Character doth he believe the remaining ten will give him?

Mr. *Price.* I believe that the remaining ten cannot juſtly charge him with any Thing that is ill.

(Mr. *Hickman* call'd and ſworn.)

Mr. Serj. *Preb.* I deſire Mr. *Hickman* may likewiſe give your Lordſhips an Account, how long he hath known Mr. *Cottingham?*

Mr. *John Hickman.* I have known Mr. *Cottingham* thirty Years, I believe; he had always a very good Character, he was Clerk to me for two Years, he was a diligent, faithful Clerk, and hath had a very good Character ever ſince, and I never heard any Thing to the contrary.

(Mr. *Blithman* ſworn.)

Mr. Serj. *Preb.* My Lords, We have a great Number to this Purpoſe; I deſire you would inform my Lords, how long you have known Mr. *Cottingham*, and what his Character is?

Mr. *Blithman.* My Lords, I have known, and been intimately acquainted with Mr. *Cottingham*, for above twenty Years; while he was a Practiſer in the Court of *Chancery*, we were now and then concern'd one againſt another in Buſineſs, and I obſerved him to act with great Diligence for his Clients, and in a fair way of Practice in reſpect to his Adverſaries; he had the Character of the Practiſers of the Court of *Chancery* in general, for being a very honeſt and fair man; after he was promoted to be Secretary to my Lord *Macclesfield*, every Practiſer of the Court that had any Buſineſs muſt have frequent Recourſe to him, and he was obſerved to diſcharge that Office with great Juſtice and Diſpatch to the Suitors, with great Civility to the Practiſers, and with a ſtrict Regard to the Honour of his Maſter and the Court; he was content with his juſt Fees, without ever demanding or expecting more on Pretence of Expedition, or upon any other Account. In general, I took him for a very honeſt man, and he was always ſo reputed during the Time that I knew him.

Mr. Serj. *Preb.* My Lords, we might apply to ſome of the learned Managers themſelves, were it proper upon this Occaſion, but we hope his Character is ſo clearly eſtabliſhed, by what Evidence has been already offer'd, that there is no Neceſſity for troubling your Lordſhips with any more on this Head: But we ſhall trouble your Lordſhips with one Piece of Evidence more, of a different Kind, which the noble Lord is with a great deal of Difficulty oblig'd to ſubmit to, and that relates to the private Conduct of himſelf, of which many enjoy the Benefits, and all were enjoin'd and oblig'd to keep ſecret; but now it is become neceſſary to make known, ſince he hath been repreſented in Publick as a Perſon full of Corruption, that hath ſtudied nothing in the whole Conduct of his Life, but the amaſſing great Riches to himſelf, in Oppreſſion of his Majeſty's Subjects; it is now become neceſſary, for the Vindication of his Lordſhip's Innocence, to ſhew that his Actions (which beſt ſpeak the Intention) have been of a different Nature; that as his Lordſhip hath received great Bounties from his Majeſty, ſo he hath been as liberal in ſharing them with thoſe who have wanted his Relief. Multitudes of Inſtances might be given of this Kind, but we ſhall only lay ſome few before your Lordſhips, and then beg Leave to ſubmit to your Conſideration, whether it be poſſible to ſuppoſe, that a noble Lord, whoſe Heart was ſo charitably inclin'd to relieve the afflicted who apply'd to him, and to ſeek Opportunities of doing good to Strangers who were no ways known to him, could be guilty of Actions ſuch as his have been repreſented by the Managers of the Houſe of Commons. How can theſe Things be reconciled, that a man, truly religious, truly virtuous and charitable, ſhould be guilty of Oppreſſion, Injuſtice, Avarice, and Corruption? We beg Leave to lay ſome few Inſtances of this Nature before your Lordſhips, and then ſubmit their Weight to your Lordſhips great Judgment.

Mr. Com. Serj. I beg Leave to obſerve, that in a great many Articles, the Intention being what the Managers have much relied upon, we humbly apprehend we have clear'd the noble Lord from thoſe Intentions he is charg'd with, by what we have already offer'd to your Lordſhips; but if any Doubt ſhould ſtill remain, when it ſhall appear that he was a conſtant Benefactor to the Oppreſſed and Afflicted, that a conſtant Spirit of Benevolence hath reigned in the Breaſt of this noble Lord towards mankind, you will think it impoſſible for a man to be ſo contradictory to himſelf, that at the ſame Time as he was doing all the Good he could in private, he ſhould be guilty of Avarice, Corruption and Oppreſſion in the moſt public manner. Theſe Qualities are ſo inconſiſtent, that they could not reign in the ſame Breaſt at one and ſame Time, for that Reaſon we ſhall beg Leave to mention a few of the great many Inſtances we might produce on this Head; and firſt we deſire that Mr. *Oaker* may be called.

(Mr. *Oaker* ſworn.)

Mr. Serj. *Prob.* My Lords, I deſire that Mr. *Oaker* may give your Lordſhips an Account, how long he hath been employed under the Noble Earl within the Bar?

Mr. *Oaker.* I ſerv'd his Lordſhip all the Time that his Lordſhip had the Great Seal.

Mr. Serj. *Prob.* I deſire he may give a general Account, during all the Time that he ſerv'd his Lordſhip, how far he hath been privy to any charitable Actions he hath done?

Mr. *Oaker.* My Lords, I have the Names of ſome few in my Hand, I can only tell the Names and Sums of ſuch as accidentally came in my way; for his Lordſhip always did thoſe Actions privately, and with his own Hands, if it could conveniently be. When I firſt came to ſerve his Lordſhip, having heard his Lordſhip's Character of being very bountiful to almoſt every Body that came in his way, I therefore endeavoured to inform myſelf more particularly from ſuch Perſons as I aprehended apply'd to him for any Aſſiſtance of that Nature. The firſt that I remember was one Mr. *Brown*, who had been Author of ſeveral Practical Books in the Law; his Lordſhip was pleaſed for ſome Years before I acted under him, to pay for him 24 *s.* a month for his Board and Subſiſtance, beſides Cloaths and Pocket-money; the Perſon that uſed to pay it being abſent in my Time, I paid it for near ſeven Years, till *Chriſtmas* laſt, when he died.

Mr. Serj. *Prob.* At the Time he died, how old was he?

Mr. *Oaker.* He ſaid he was on *Bartholomew* Day laſt aged 102. As I have been inform'd, my Lord ſent a Surgeon and an Apothecary to attend him, and paid them, and the Expence of his Funeral; and the whole that came within my Knowledge was about 120 *l.* Afterwards there were two Clergymen recommended to his Lordſhip for a Living that was in his Diſpoſal; my Lord could not ſoon determine which to give it to; one of them was a poor Curate in *Surrey* at *Thames Ditton*: This poor man complained, that he could not attend longer in Town, nor had money to carry him home; my Lord gave him a Guinea, and told him he might go home, he need not ſtay, but ſhould be ſent to when he had determined what to do for him. A little while after he came to Town again, and ſaid that it being reported that his Lordſhip would give him a Living, he was turned out of his Curacy, and being an Inmate, was order'd by the Officers of the Pariſh to quit the Pariſh, but that he had not money to remove his Family; and my Lord being told of that, ſent for him, and gave him a Sum of money in a Paper; I aſked the Clergyman what it was he gave him, and he ſaid *twenty Guineas*. He had ſoon after a Living given him by my Lord, in *Kent*, and then as he was removing his Family to his Living, they were, here in Town by the way, taken ill of the Meaſles; upon which the poor Gentleman wanting money to proceed on his Journey, came again to my Lord, and his Lordſhip gave him twenty Guineas more, as he told me; and I believe his Lordſhip hath given him ſeveral Times ſince, but I don't know the Particulars, neither had I known any of thoſe I have mention'd, had not the poor Clergyman himſelf told me of them.

Mr. Com. Serj. What is his Name, and where is his Living?

Mr. *Oaker.* His Name was *Vigurs*, and his Living is near *Sittingbourne* in *Kent*. There was one man, a converted *Jew*, I believe he is here himſelf; he hath had of my Lord ſeventy or eighty Pounds. There is one *Thwaites*, a Quaker, who hath attended the Houſes of Parliament long, and is very well known, hath had a pretty large Sum of money, beſides other Aſſiſtance; Sixty Pounds I paid him at once by my Lord's Order. There is one Mr. *Wickham*, a Gentleman in the Navy, a half-pay Officer; he had out-run that, and was in the *Marſhalſea* Priſon, and could not make up his matters; a Friend of his was perſonally acquainted with me, and ſaid my Lord had ſome Knowledge of this Officer, and deſir'd me to acquaint him with his Caſe, which I did, and his Lordſhip ſaid he had no Acquaintance with him, but had known his Father, and for his ſake would clear him; and it being ſaid he was in for about thirty Pounds, his Lordſhip ſaid if it came to forty Guineas he would pay it, ſo that it ſet him out of Diſtreſs, and cleared him of all Debts; the Gentleman did make up his Affairs, and my Lord paid the money, and beſides gave him a whole Suit of Cloaths, double Shoes and Stockings, and Wigs, and new Sword and Belt, fit to appear in the World again, which came to ſomething above forty Pounds in the whole. Another poor Clergyman my Lord gave a Living to, and he was very lame, and came to Town to go into the cold Bath; he happened to be arreſt-

ed for an old Demand of 36*l.* His Wife came to my Lord, who gave her Money for preſent Subſiſtance, and order'd me to take care that the whole Affair ſhould be made up, and the whole Debt was clear'd and diſcharg'd, and all the Coſts and Charges paid out of his Lordſhip's Pocket. There are abundance of other ſmall Sums I might mention of the ſame kind, but it would be endleſs to trouble your Lordſhips with them. Then there is another matter which I mention to your Lordſhips, not ſo much for the Value, as for the Manner of doing it; a poor Gentleman reſiding at the *Bath*, had a Place given him, as he ſaid, in *Ireland*, but had not Money to carry him over, and therefore only begg'd 40*s.* to carry him over to *Ireland*; my Lord order'd me to remit him five Guineas, which he received, but afterwards he wrote word that he and his Family were ill at the Time, and therefore had expended the Money, and wanted the ſame Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordſhips Bar one Mr. *Saunders*, a Clergyman who hath ſundry times receiv'd of his Lordſhip's Favours whilſt a Youth, and upon the Foundation in the *Charter-Houſe*; and when he went from thence to the Univerſity his Lordſhip gave him forty Guineas; and afterwards, when he was near going into Orders, remitted him ſixty Pounds to clear all matters in the Univerſity, which I ſent to Dr. *Bentley* by his Lordſhip's Order. I don't mention ſeveral other Particulars, but they are very numerous, both what paſſed through my Hands, as well as others of his Lordſhip's Servants; hardly a Week paſſed without ſome Inſtance of this kind.

Mr. Com. Serj. As you was under the Great Seal, you can inform my Lords, when Clergymen were admitted to their Livings, whether his Lordſhip has not frequently order'd their Fees to be remitted them?

Mr. *Oaker.* My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordſhip paid the Fees of the Patent Officers and Stamps out of his own Pocket; and hath given the Clergymen Money beſides to pay their Journeys to their Livings, and otherwiſe to ſuſtain them, and to buy Books.

Mr. Com. Serj. Do you remember Mr. *Higgs?*

Mr. *Oaker.* Mr. *Higgs* was greatly indebted and in Priſon; his Lordſhip diſcharg'd him, and paid ſuch Debts as were inſiſted upon, to the Value of about ninety Pounds: He is there to give your Lordſhips a particular Account.

Dr. *Sayer.* As a great deal depends upon the manner of doing theſe things, I would aſk him as to the manner in which they were done, whether in an oſtentatious manner, or how?

Mr. *Oaker.* My Lord did theſe generous Actions merely as they fell in his way, and without mentioning them, or letting them be ſeen or known, as far as I could ever perceive; ſo that where I did not apply to his Lordſhip myſelf for ſuch People as came to me, I never knew it but by Accident; and in Caſes where I was privy, my Lord generally gave me more than was aſked, his method being, as far as might be, to ſet Perſons entirely free, and to do them a full Service.

[*Mr.* Hunt, *a Clergyman, ſworn.*]

Mr. Serj. *Probyn.* My Lords, we deſire that Mr. *Hunt* would recollect and give your Lordſhips an Account of what charitable Acts he hath known done by the Earl of *Macclesfield?*

Mr. *Hunt.* I have known my Lord to be a very generous and noble Patron: I can ſpeak from ſeveral Inſtances, relating not only to myſelf, but to ſeveral other Gentlemen of the Univerſity of *Oxford*. The firſt Time I had the Honour of being known to his Lordſhip, was about *Whitſuntide* 1722, upon the Recommendation of one Mr. *Thornbury*, Vicar of *Thame* in *Oxfordſhire*. The Noble Lord aſk'd Mr. *Thornbury* what Perſons he knew in the Univerſity that were inclinable to be ſtudious: Mr. *Thornbury* was ſo kind as to mention me as one: Upon which his Lordſhip ſent for me to dine with him the Day after; I carried him ſome of the private Exerciſes that I had done in the Univerſity, which his Lordſhip read over, and was ſo kind as to approve. His Lordſhip kept me with him ſeveral Days, and deſired to have more Converſation with me; and he diſmiſs'd me with a generous Preſent of twenty Guineas, telling me he ſhould be glad to ſee me when he came to *Shirburn*, and that he deſign'd to make me a Preſent now and then till he could do ſomething elſe for me. About *Chriſtmas* after was the next Time I waited on my Lord: I carried him again ſome of my Univerſity Exerciſes, which his Lordſhip peruſed, and was ſo favourable as not to miſlike them: His Lordſhip diſmiſs'd me at that Time with another generous Preſent of twenty Guineas, and Further Aſſurances of future Favours. About this Time I had received a Letter from Mr. *Gagnier*, Deputy Profeſſor of *Arabick* in the Univerſity of *Oxford*, wherein he complained to me, that he had been ill uſed by ſome Perſons in the Univerſity, for having writ a Poem in Praiſe of her Royal Highneſs. This I related to his Lordſhip, his Lordſhip expreſs'd a great deal of Concern for his Misfortune, pity'd his Caſe, and ſent him by me a Preſent of twenty Guineas. The third Time I had the Honour to wait upon his Lordſhip was about *Michaelmas* 1723, when I receiv'd likewiſe a Preſent of twenty Guineas: I ſhould have alſo mention'd, that I received other ſmaller Preſents from his Lordſhip, five Guineas at one Time, and one Guinea at another. The laſt Time I had the Honour of waiting on his Lordſhip and receiving his Bounty, was about *Eaſter* 1724, when his Lordſhip made me the uſual generous Preſent of twenty Guineas, and was ſo kind as to ſend by me thirty Guineas more, *viz.* fifteen to Mr. *Hutchinſon*, and fifteen to Mr. *Greenway*; ſo that within the ſpace of two Years I received of his Lordſhip's Bounty, for the uſe of myſelf and the Gentlemen of my Acquaintance, one hundred and thirty-ſix Guineas, upon no other Account, and for no Conſideration whatever, but to encourage us in our Studies, and ſupport us in the Univerſity.

Dr. *Sayer.* I would know whether the thirty Guineas were look'd upon as a ſingle Bounty, or was it to be an annual Charity?

Mr. *Hunt.* I believe ſo; they told me they had received it as ſuch before; we all looked upon our ſeveral Benefactions as to be continued.

[*Mr.* Smythys, *a Clergyman, ſworn*]

Mr. Serj. *Probyn.* I deſire he may give an Account of what he knows of my Lord *Macclesfield*'s Charities.

Mr. *Smythys.* My Lords, In the Year 1721 there became vacant the Place of a Maſter of an Hoſpital in the Town of *Colcheſter*, in the Diſpoſal of my Lord Chancellor, to which Maſterſhip King *James* the Firſt had annex'd the Cure of Souls of a Pariſh adjoining, and which Pariſh had no other Proviſion for a Miniſter.

The former Maſter had taken no notice of the Pariſh, nor had any Care been taken time out of mind (as I have been informed by the Inhabitants of the Pariſh) of either burying their Dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, ſent to me to know if I would accept of the Maſter's Place. I would not miſtake, my Lord's Chaplain ſent me word, if I would accept of the Place, and let him know my Chriſtian Name, his Lordſhip would ſend me the Grant of it. I did ſo, and then my Lord was pleaſed to enquire into the Nature of the Thing. I informed his Lordſhip that no Care was taken of the Pariſh at all, tho' I apprehend the Maſter of the Hoſpital ought to take Care of it. My Lord then was pleaſed to give me the Grant of the Hoſpital, and obliged me to a particular Care of the Pariſh; and at the ſame time deſired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for Divine Service; none had been performed in it (as I had been informed) Time out of mind; and the Pariſhioners were in ſuch a Condition of Poverty, that they were not capable of making it fit for Divine Worſhip.

My Lord then was pleaſed to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I informed his Lordſhip thirty Pounds would do it. My Lord ordered me to ſet the Workmen at work, and he would pay their Bills. Before the Church was finiſhed, through my Unſkilfulneſs, and the Cunning of Workmen (as I then thought) this thirty Pounds would not do. I acquainted his Lordſhip with it; and he deſired to know how much more would do. The Workmen told me ten Pounds. My Lord ordered the Workmen to proceed, and they ſhould be paid the other ten Pounds; but by the falling of a Wall, and other Accidents, this Money was not ſtill enough. I was aſhamed to betray my own Ignorance, in ſuffering myſelf to be ſo impoſed upon by the Workmen (as I imagined his Lordſhip would think), I determined to pay the reſt of the Money myſelf; but being encouraged by Dr. *Sayer*, I did inform his Lordſhip of the Condition we were in. I then received an unlimited Commiſſion to let the Workmen finiſh the Work, and ſend up their Bills when they had done, which they did, and my Lord immediately paid the Money, which amounted to 52*l.* 6*s.* 11½*d.*

Dr. *Sayer.* I deſire he may be aſked what ſort of Pariſh this is, and what kind of People the Inhabitants of it are?

Mr. *Smythys.* It is a poor Pariſh, but not numerous; there is not one in the Pariſh that is called Maſter; nor one, I believe, able to contribute a Shilling towards a Work of this kind, without hurting himſelf or his Family.

Dr. *Sayer.* I deſire he may be aſked whether the Earl has any relation to it, or any Eſtate thereabouts?

Mr. *Smythys.* He hath no relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any Man belonging to it.

Mr. *Plummer.* If my Lord *Macclesfield* thinks it decent to give this Evidence, we do not think fit to oppoſe it.

Dr. *Sayer.* The Charities laid out by my Lord *Macclesfield* have been to fit out Clergymen for Pariſhes, and to provide Churches for Pariſhes.

[*Mr.* John Meyer *ſworn.*]

Mr. Serj. *Prob.* I deſire this Witneſs to inform your Lordſhips, whether he was not formerly a *Jew?*

Mr. *Meyer.* I was a *Jew* formerly.

Mr. Serj. *Prob.* I deſire he would give your Lordſhips an Account of his Converſion, and what Circumſtances of Life he was then in, and how he was relieved?

Mr. *Meyer.* I was, by ſeveral Misfortunes, and by the hardſhip of my Relations, reduced to great Extremities, after I was converted from *Judaiſm*.

Mr. Serj. *Probyn.* After you were converted, what Charities have you received? Have you received any Collection made for you by any Perſon?

Mr. *Meyer.* I did apply myſelf to my Lord *Macclesfield* for Charity, by the Recommendation of ſeveral worthy Clergymen: Upon which Recommendation his Lordſhip was pleaſed to beſtow upon me a Charity of fifty Guineas. I was ſet up in a way of living in the Pariſh of St. *Katherine*'s near the *Tower*; then the Fire happen'd there, and I was burnt out, after which I had a dangerous Fit of Sickneſs.

His Lordſhip got an Account of the ſame, and ſent me a ſecond Relief of twenty Guineas. The ſame Time that his Lordſhip gave me fifty Guineas, he ſent twenty Guineas to the Reverend Mr. *Shute*, who was Treaſurer to the Society for propagating the Goſpel in Foreign Parts.

[*Mr.* Edward Saunders *ſworn.*]

Mr. Serj. *Probyn.* I deſire he may give an Account of what he hath received of my Lord *Macclesfield*'s Bounty?

Mr. *Saunders.* My Lords, in the Year 1713 the Duke of *Somerſet*, through the Interceſſion of the Earl of *Macclesfield*, put me into the Charter-Houſe, where I was educated eight Years and an half; all which Time his Lordſhip furniſhed me with Books; and at my leaving of the School, he gave me forty Guineas for the better proſecuting my Studies at *Cambridge*: In a Year and an half after this, he gave me ſixty Pounds. My Lords, this was not all; for when I acquainted his Lordſhip at my going into Orders, that I owed ſome Money at *Cambridge*, his Lordſhip was pleaſed to give me forty Guineas more towards the diſcharging of my Debts.

[*Mr.* Thornbury, *a Clergyman, ſworn.*]

Mr. Serj. *Prob.* My Lords, I deſire he may inform your Lordſhips what he knows of his Lordſhip's Charity?

Mr. *Thornbury.* My Lords, what I have to inform your Lordſhips of, is this; that in the Year 1721, about the latter End of *July*, ſome Application having been before made to my Lord Chancellor by my Father, I had the Honour to be ſent for by his Lordſhip to *London*. When I came to Town, as it was my only Buſineſs, ſo I made it my earlieſt Care to wait upon his Lordſhip, who was pleaſed to receive me with the greateſt Kindneſs and

and Condescension, telling me he had some Livings at that time in his Disposal, one of which he intended for me; his Lordship likewise offered, if I had a Mind to see the Livings, he would be at the Expence of my Journey, and that I should have my Choice when I was come back; but I answered, I would refer that to his Lordship's Pleasure. In a few Days after, he ordered his Secretary of the Presentations to prepare a Presentation of me to a Vicarage in *Somersetshire*, called *Ninehead*. When the Presentation was sealed, and I had received Instructions to go and wait upon his Lordship for it, he was graciously pleased not only to give me the Presentation, but also discharged the whole Fees, and likewise made me a Present of 100 Guineas to buy me Books withal.

[Mr. *T. Withers*, and Mr. *Henshaw* called, who not immediately appearing.]

Mr. Serj. *Probyn*. My Lords, I am told here is a Reverend Prelate, who will willingly stand up in his Place, and give your Lordships an Account of what he knows of some of my Lord *Macclesfield*'s Charity.

[The Lord Bishop of *Oxford* stands up.]

Mr. Serj. *Probyn*. I desire your Lordship would give an Account of what you know of this Matter?

Bishop of *Oxford*. My Lords, the Question put to me is concerning my Lord *Macclesfield*'s Benefactions and Encouragement to Learning in the University of *Oxford*. I am a good Witness of it; for my Lord some time since desired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make a considerable Progress in Law, Physick, Divinity, or any other Branch of Learning. He said he was willing to bestow a considerable annual Stipend on them, for no other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Regard to Party, but merely for the promoting of Learning in the University. I recommended several Persons to him, and enquired into the Characters of some who were recommended by others, and have no Reason to doubt but that every one that was thought deserving had a considerable Allowance. I can't charge my Memory with particular Sums, but believe his Lordship said he was willing in the whole, to expend this way four or five hundred Pounds every Year. This is the Sum of what I know; if your Lordships desire to be informed of any Thing more particularly, I am ready to give an Answer to the best of my Knowledge.

Mr. Com. Serj. My Lords, we have now gone through our Evidence, and I shall beg your Lordships Indulgence for the making some short Observations upon what has been offered in Defence of the noble Earl, now at your Lordships Bar; and as this Proceeding has already been drawn out to a very great Length, I am sensible it will become me, to use as much Brevity as may be. I shall, however, before I proceed, beg leave to trespass upon your Lordships Patience so far as to say, that if in the Course of this Proceeding, any thing should have slipped from us who are of Counsel for the Earl, which might not be so exactly suitable to the very great Respect and Deference, which is due from every one to this august Assembly, I hope your Lordships will, in your great Goodness, impute it only to the Inadvertency, which the Variety of Incidents, and Hurry attending Proceedings of this Nature, may reasonably be supposed to occasion, and as such excuse it.

We hope, my Lords, that what has been humbly offered to your Consideration, in behalf of this noble Earl, has made him appear a Person very different from what he has been represented to be by the Gentlemen of the House of Commons; and I am apt to persuade myself, that if they had been as well informed beforehand of what he had to say in his Vindication, as they were of what they had to object to his Conduct, your Lordships would have been spared the great Trouble occasioned by this long Prosecution.

It is, my Lords, the peculiar Happiness of our Constitution, to have in the different Parts of it, all the Requisites necessary and proper for the Preservation of the Peace and Welfare of those who have the good Fortune to live under it. In those, whose Part it is, like Centinels, to watch for and guard the Liberties and Safety of the People; who are the grand Inquisitors, to search into, and expose every Thing that has even the Appearance of being hurtful or dangerous to the Liberties or Properties of those they represent, Vigour, Warmth, Zeal, I had almost said some Degree of Passion, seem proper Qualifications; whilst Calmness Moderation, and Patience, not altogether without Tenderness and Mercy, are the proper Characteristicks of those, who by the Constitution are to determine and judge. And, my Lords, I may venture to say, that, to the Glory of our Nation, all these Qualities have been exercised, and every Part of our Constitution hath exerted itself upon Occasion of this Proceeding: His Majesty's great Condescension, in readily laying this Matter before his Parliament; the Zeal and Vigour of the House of Commons in examining into it; the great Abilities and Industry which the learned Gentlemen, who have had the Honour of managing this Prosecution, have shewn, (they'll pardon me, I hope, for saying, I could have wished it had been attended with something less Harshness and Severity,) and your Lordships great Goodness and Patience, hitherto so conspicuous, and of the Continuance of which there is not the least Reason to doubt, are so many illustrious Proofs of it,

Give me leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair. His Readiness, when after his Endeavours for that Purpose, he found the thorough Reformation of the Court of Chancery a Work too difficult for him singly to effect, in laying the Affair before his Majesty in Council; the seasonable and proper Orders he afterwards issued out upon that Occasion; and his Zeal in pressing to have them immediately comply'd with; leave him still, we hope, some Share of the Reputation and Merit of what has been, or is likely to be done towards the Reformation of that Court. Nor will your Lordships be at a Loss, to what Cause to ascribe this Behaviour of the Earl, notwithstanding the Representations which have been made of him; when you shall consider the steady Affection and Zeal for our Constitution, which on all Occasions have so remarkably appeared in him. Your Lordships, no doubt, remember those Times and Conjunctures, which it was thought required not only good Wishes and Affection, but Vigour likewise and Courage, to support and preserve to us the Continuance of our Constitution. Then it was, and for that end, that this noble Lord so eminently exerted all those great Abilities he was Master of; and that with such Success, as gained him the approbation of his Majesty, who thought his Services so signal, as to justify his Munificence towards him, and his Goodness in raising him to so great Honour. And can it easily be thought, my Lords, that one so qualified, so affectioned, so distinguished, should enter into a wild Design of deceiving both King and Parliament? Or that he should enter into it, and carry it on in so poor and indiscreet a manner, as is suggested in the Charge against him? In a manner so void of Thought and Contrivance, that it relishes more of Madness than any thing else. Suppose he could be thought capable of attempting to conceal Matters that were so notorious to every body, and that by a Means, which from the very Nature of it, must in some short Time have betrayed the Contrivance; yet surely, my Lords, his Fears and Apprehensions would have restrained him from communicating himself in a Matter of so high Concern, without Distinction, to so many Persons as were then supposed to be present; that he should publickly give such Orders as would certainly expose him to the Resentment of his Majesty, and both Houses of Parliament, in Hopes that such a Secret would be kept by so many People as are supposed to be concerned in it; surely, my Lords, is a Charge of so extraordinary a Nature, as will require better Proof than what arises from uncertain Expressions, in Discourse with a Number of People at the same time, and they in so great a Hurry and Confusion, that there was very great room for Misapprehensions, and where it was easy for one to mistake what was said to another, as if spoke to himself: And from hence it proceeded, as I presume, that the Account given of that Transaction, by the Gentlemen concerned in it, is so various and uncertain, that we humbly hope your Lordships will not think it reasonable to be relied on, as a Proof of such a Charge.

My Lords, the Foundation of this whole Complaint against the Earl is his Acceptance of Presents or Gratuities, upon the Disposal of Places; or, as the Gentlemen of the House of Commons are pleased to style it, the selling of Places, principally those of the Masters of the Court of Chancery. We have admitted the Facts, but without admitting those Circumstances which accompany it, as it stands charged in the several Articles for that Purpose; and we hope we have satisfied your Lordships, that it was no ways illegal to act as the Earl hath done upon those Occasions. To support our Reasoning upon that Head, we proposed to shew to your Lordships, what the Sense and Opinion of divers great and learned Men had been, in respect to the Law in that Point, from their own Practice and Behaviour; And we hope that the Evidence which hath been offered for that Purpose, hath plainly made it out, that the Earl hath the constant Usage of his Predecessors in that Office, as well as of other great Persons in other Stations, to countenance what he hath done upon such Occasions, and that without any Marks of Parliamentary Resentment. If this noble Lord stood in need of an Excuse for having taken Presents, how effectual would this be for that Purpose? For sure, my Lords, if it were allowed that he had erred in this Matter, yet after such great Examples, your Lordships would think it an Error only, and not an Offence, which deserved a heavy Censure.

The rest of the Articles have so near a Relation to the charge of taking Money, being only Aggravations of that Matter, under the several Circumstances therein contained, that I humbly apprehend, they do in a great measure depend upon, and will stand or fall together with it. And as the Evidence which has been given in relation to them, and the Observations made thereon, have been so full, and are yet so fresh in your Lordships memories, I will avoid troubling your Lordships with a needless Repetition of any thing upon those Heads.

My Lords, the Source of all the Evils here complained of in the Earl is supposed to be Avarice: Every thing is ascribed to an immoderate Thirst after Gain, an irregular Desire of amassing Wealth. And great Endeavours have been used to persuade your Lordships, that the Earl was so wholly tainted, so thoroughly possessed with this Vice, that he had nothing in View but to gratify it; and every single Action of his had a Tendency that Way. But sure, my Lords, the Evidence just now laid before your Lordships, shews a Spirit and Temper of Mind far different from that, and totally inconsistent with it. And none, I hope, will object against our having entered into a Proof of that Nature; there are some Occasions, and surely this is one, that will justify the most modest man in publishing his own good Deeds; and upon which even charitable Acts, as first intended, as they ought to be, bury'd in Silence, and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and disclosed to public View.

My Lords, the Instances which we have produced are not of pompous Charities; we should then, no doubt, have been told that Vanity and Ostentation had the greatest Share in them: Had they been a few Instances only which were laid before your Lordships, though far exceeding in Value, those which have now appeared, it would perhaps have been said, that those were Starts and Fits of Charity: But your Lordships will observe that these have flowed in a continual Stream, and can be owing to nothing but a constant habitual Benevolence towards Mankind, a regular and continual Inclination to do good. And can such a Temper and Disposition of Mind be consistent with insatiable Avarice, base Corruption, and merciless Cruelty, in spoiling and oppressing Widows, Orphans, and Lunaticks, and such too, who were under his Guardianship and Protection?

My Lords, we hope it will be thought impossible for such opposite Sentiments to reign in the same Breast, at the same time; and that at least, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of presuming always in Favour of Innocence, but this Benignity of Temper in the Earl will determine

your

your Lordſhips to conſider it in the moſt favourable Light, and never to intend any thing harſh, which will admit of a milder Conſtruction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to raiſe your Lordſhips Compaſſion and Indignation upon this Occaſion. It is no Wonder, my Lords, that Women and Children ſhould be frightened at the firſt Appearance of the Deficiency in the Suitors Effects, which was repreſented in ſo terrible a View; but we hope, my Lords, the Terror is ſunk with the Deficiencies, and that in a great Meaſure theſe Cries are huſhed, and Tears dry'd up, now it already appears (as we hope it evidently does) that no very conſiderable Loſs is likely to happen to the Suitors, and that the Proſpect of its being leſſened ſtill improves.

Under theſe Circumſtances ſhould your Lordſhips think (which we humbly hope there is no Ground to ſuppoſe) that the Earl has fallen into any miſtakes; yet when his Majeſty, your Lordſhips, and the Commons, have extended their Clemency to thoſe Maſters, who have been the acknowledged, the immediate Inſtruments and Actors of the Evils complained of, and of whatever may be prejudicial to the Suitors; and the Legiſlature hath interpoſed, to preſerve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object on which your Lordſhips Goodneſs did not ſhine. We rather hope your Lordſhips will conſider his misfortunes; and when you look upon the high Eminency from whence he is fallen, and view him at your Lordſhip's Bar, ſcourged with the ſevereſt Stripes the Tongue can inflict, and what can be more cutting, a puniſhment, from which he had ſome Reaſon to expect that his Relation to your illuſtrious Body might have protected him: That theſe Circumſtances will raiſe thoſe generous Sentiments of Tenderneſs, which always dwell in noble Breaſts: A Tenderneſs, no ways inconſiſtent with your Lordſhips Juſtice, to which the Earl chearfully ſubmits himſelf; and that in Imitation of the unerring Judge of all, whoſe Vicegerents you are on this Occaſion, your Lordſhips will in Judgment remember Mercy.

Mr. *Onſlow.* I would not interrupt the Gentleman that ſpoke laſt before he had ended; but I muſt now, before this Gentleman goes on, inform your Lordſhips that an Incident hath happened, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the leaſt ſuſpected as to his Veracity, and the Truth of what he ſays; but in judicial proceedings, eſpecially in a criminal Caſe, as this is, the Managers think Witneſſes of all Sorts are to be examined upon Oath; not, as I have ſaid, that they have any Doubt of the Reverend Prelate's Veracity; but for the ſake of the Precedent, and to prevent ill Conſequences, the Managers think his Lordſhip muſt, as all other Perſons do, give his Teſtimony upon Oath: Your Lordſhips have Precedents in the Caſe of my Lord *Strafford* and others. The Witneſſes, if Members of your Lordſhips Houſe, are to be ſworn at the Table, and give their Evidence in their Place.

Mr. Serj. *Pengelly.* My Lords, if it is inſiſted upon, that what the Reverend Prelate ſays ſhould be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give his Evidence upon Oath. And this being ſo material an Incident, and the Proſecution having proceeded ſo far, we humbly beg leave to put your Lordſhips in mind, that it is inſiſted upon in Point of Teſtimony, that the Reverend Prelate would be pleaſed to be ſworn.

Lord *Lechmere.* No doubt but the Reverend Prelate ought to be ſworn. It was not taken Notice of. If the Prelate be called upon as a Witneſs, his Evidence muſt be upon Oath.

Biſhop of *Oxford.* My Lords, I ſhould be very ſorry to give any Offence to your Lordſhips; if the honourable Managers inſiſt upon it that I take my Oath, and your Lordſhips direct me ſo to do, I am as willing to give my Evidence upon Oath, as without it. I ſubmit it to your Lordſhips, whether you will look upon the Journals, to ſee how the Precedents ſtand.

Lord *Lechmere.* If it be inſiſted upon to look into the Journals, the Parties muſt withdraw.

(Thereupon it was waved, and the Biſhop ſworn.)

Biſhop of *Oxford.* My Lords, for the Advancement and Encouragement of Learning in the Univerſity of *Oxford*, I remember my Lord *Macclesfield* ſome time ſince, told me he was willing to allow conſiderable Salaries to Perſons that were ſtudious and ſober; and that this ſhould be done for the Advancement of any Sort of Learning in general, without reſtraining it to any particular Science or Faculty, and without any Relation to Party, provided the Perſons were worthy: And I deſire leave to own to your Lordſhips, that otherwiſe I would not have had any concern in it. I did, my Lords, recommend ſeveral Perſons, whom I thought proper Objects of his Lordſhip's Bounty; and, at his Lordſhip's requeſt, enquired the Characters of others, who had been before recommended to him. I have Reaſon to believe that ſeveral of theſe ſucceeded in his Lordſhip's Favour, and received bountifully from him. I dare not, at this Diſtance of Time, charge my memory with particular Sums, but believe that the noble Lord aſſured me, he was willing, in the whole, to lay out this way four or five hundred Pounds a-Year. This, as near as I can remember, is the ſubſtance of what I ſaid before.

Mr. *Robins.* My Lords, I ſhall preſume to take up very little of your Lordſhips Time, in obſerving on what has paſſed at this ſolemn Aſſembly of the two Houſes of Parliament.

The Occaſion of it has been to examine into the Conduct and Behaviour of a Member of your own auguſt Body, during the Time he had the Honour to ſerve his moſt ſacred Majeſty in the High Office of Lord Chancellor.

And the Commons have faithfully diſcharged their Part, by omitting no one Circumſtance or Ingredient, that could poſſibly ſerve to heighten and aggravate the Crimes they have thought fit to lay to his Charge.

But whether, after all, the Miſtakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itſelf, are not the whole, the Sum total of all this ſolemn and pompous Trial, will I believe with many remain for ever the Queſtion.

It would not perhaps be for the ſervice of this noble Earl to ſay, that every Step he took, every Advance he made, for the Benefit and Relief of the Suitors of the Court where he preſided, was the beſt that could poſſibly have been invented; 'twill, we hope, be ſufficient to ſay, that he ſincerely thought them the beſt: And if better have been ſince found out, which have proved more effectual to the ſame end, it only proves him not to have been infallible, which ſurely is no Crime.

And if the Actions of his private Life, his Juſtice, his Piety, his Charity, and his Compaſſion for others, may be allowed to caſt any Light or Reflection on his public conduct and Behaviour, I believe, my Lords, I may preſume to affirm, that thoſe who are acquainted with his Innocence in the one, will never be brought to think him criminal in the other.

My Lords, I am afraid many are the Abuſes, the Corruptions and the Evils which have ſpung up in our Courts of Juſtice, even to the Diſparagement and Diſcredit of Juſtice itſelf. And Complaints of this kind have been made in almoſt all Ages, though at the ſame Time they have been juſtly placed to the Account of ſome of the loweſt, and moſt inferior Officers and Miniſters, which are neceſſarily and unavoidably made uſe of in the Diſpenſation and Diſtribution of Juſtice.

And if an effectual Method of Cure could be found out for theſe: if thoſe who are to give the laſt Hand to the Completion of Juſtice were pure, the Streams would then run clear and undiſturbed to the end.

But, till that is done, till Means are applied for the purging and clearing theſe Channels, thro' which Juſtice muſt be conveyed, 'tis no wonder that the Fountains themſelves look, as it were, muddy, and polluted by Reflection.

But, my Lords, how deſirable ſoever theſe Ends may be, they are only the Work of the Legiſlature; a Chancellor, or a Judge, may ſit by and lament, but they cannot help them.

They are only to be affected by that Power which has a ſort of Omnipotence; and when they are effected, I believe none will rejoice and congratulate themſelves more, than the many learned, great, and upright Men, which preſide in our ſeveral Courts of Juſtice.

In the mean time, my Lords, as the Sentence which is prayed againſt this noble Earl will be of little Avail to ſtop the Miſchief; as 'twill in ſome ſort be a puniſhment of the Innocent, and letting the Guilty eſcape: we are too well acquainted with your Lordſhips juſt and righteous proceedings, to be in any pain for this noble Earl.

Let ſelling of Places, taking of Preſents, or any other the known and uſual Profits attending great Preferment, be for ever aboliſh'd by a plain and explicit Law; and I believe I may preſume to ſay, that no Complaints of this kind will ever be made more; that *Weſtminſter-Hall* will never again be named in an Impeachment, and that your Lordſhips will have no trouble of this kind for the future.

But this, my Lords, I am ſure I may venture to ſay, and I will ſay no more; that if it had been the Fortune of this noble Earl to have liv'd in ſuch happy Days, his Name would never have been tranſmitted to Poſterity in an Impeachment.

Mr. *Strange.* My Lords, we are now come to the Cloſe of the Defence, wherein, to avoid Confuſion, I have hitherto confined myſelf to the particular Part which it was my Duty to open; your Lordſhips will therefore permit me to take Leave of this auguſt Aſſembly with ſome few ſhort Obſervations both upon the Charge and the Defence.

Your Lordſhips did for four Days ſucceſſively ſit to hear this noble Earl arraign'd as the moſt corrupt, oppreſſive, and avaricious Perſon upon Earth: It was done too, my Lords, in a Manner, from which I ſhould have thought the Relation he bears to your Lordſhips would have been a ſufficient Protection; and without which the honourable Managers might very well have diſcharged their Duty to the Houſe of Commons, in laying the Caſe before your Lordſhips.

But, my Lords, whatever Reſentment this Treatment of one of your own Body might raiſe in your Lordſhips, I muſt for my own Part confeſs, that I heard it all with Pleaſure; as it was an open Acknowledgment, that all honeſt Art and legal Liberty were neceſſary in aggravating the Charge, and poſſeſſing your Lordſhips with that Opinion of the noble Earl, that the Gentlemen of the Houſe of Commons deſire you would entertain.

My Lords, the Charge in one general View, conſiſts of an Accuſation againſt the noble Earl, either for doing what his Predeceſſors did before him, or for not doing what it is not pretended they ever did: A ſingular Misfortune to this noble Perſon, that the following ſuch great Examples ſhould in every Inſtance be imputed to him as a Crime.

As to the accepting Preſents for Offices, my Lords, we have fully proved to your Lordſhips, that the ſame was done by the Predeceſſors of the noble Earl within the Bar; and we muſt humbly inſiſt, that if the Statute of *Edward* VI. be taken as laying a Reſtraint upon that Practice, yet having put the Caſe, and ſaid what ſhould be the Conſequence, your Lordſhips cannot go out of that Statute to puniſh the noble Earl.

My Lords, it is the Miſery (I may ſay the Slavery) under which other Nations groan, that the Puniſhment for Crimes is arbitrary and variable, and that he who commits the ſmalleſt Offence may be put to undergo the moſt rigorous Puniſhment: But God be thanked, my Lords, *he hath not dealt ſo with this Nation*, but that *this People hath Knowledge of the Laws*; Crimes here are ſtated, and ſo, my Lords, are their Puniſhments; and give me Leave, my Lords, to ſay, that this is one of the main Channels through which our Anceſtors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your preſent Conſideration puts the Caſe of accepting Money for an Office, and ſays, the Conſequence ſhall be the Loſs of Nomination: There are no Words that declare Offices were not ſaleable by Law, or that they ſhall not be ſaleable for the future, upon which to found a Proſecution by Indictment or Impeachment; though if ſuch Words were in this Act, I ſhould ſtill humbly inſiſt, that as well upon an Impeachment, as upon an Indictment, the Statute, and that only, muſt be the Guide in aſcertaining the Puniſhment.

My Lords, the Articles have beſtowed many Epithets upon this Action; ſuch as illegally, corruptly, extorſively, &c. But your Lordſhips will not find them in this Act of Parliament.

And as to its being an Offence at Common Law, give me leave, my Lords, only to put you in mind of three Provisoes in this Act, which speak the contrary in the strongest Terms. The first is the Clause which confirms all Bargains then made, and which were to take Effect at a future Day. The next is a Declaration to what Offices the Act shall not extend, some whereof are of a publick Nature, as Keeper of a Forest, Manor, &c. And the third is that which takes Notice, that by Law the Judges might dispose of Offices, and therefore leaves them to the full Liberty they had before the Act.

And if in this Impeachment we stand clear as to the selling of Offices, then no Acts or Omissions towards raising the Price (if any such had been proved) will make the Earl criminal, which is the whole of the Charge.

My Lords, your Lordships were told in a very moving manner, that the noble Earl was pursued hither by the united Cries of Widows and Orphans——But we have heard none: No Instance has been given of any one Preference in Judgment, of one Penny taken during the whole Course of his administring Justice to these Kingdoms, or of any one voluntary Complaint that has been made against the Earl; and yet, my Lords, he has been represented as if his Crimes were full-blown, as if he had divested himself of Humanity, and taken Pleasure in the Misery and Distress of his Fellow-Subjects: as one, whose only Motive of Action was inordinate Gain and wicked Lucre; and as one, overtaken by the Commons, triumphing in the Luxury of unpunished Crimes. You have been told too, my Lords, That *in him* Oppression usurped the Seat of Justice; and that *by him* the Beauty of Justice was deformed, and *through his Means* Justice stood afar off, and Equity could not enter.----How little Ground, my Lords, there was for these Complaints, may, I think, be fairly inferred from the Defect of Evidence in this Particular; since, after the strictest Scrutiny both into his publick and private Life, your Lordships have not had one Witness appear at your Bar against him.

But, my Lords, since the Cries of Widows and Orphans were so much mentioned by the honourable Managers; we, who are Counsel for the noble Earl, thought it our Duty to shew your Lordships, that those Cries were not *against* him as an Oppressor, but *to* him as a Reliever. And how little soever this noble Earl thought of having an Account of these Matters brought to your Lordships Bar, yet surely, my Lords, this is now a Circumstance, under which it is lawful *for the left Hand to know what the right Hand doth.* And these Acts of Charity and Generosity, which were not treasured up for your Lordships Bar, but for a greater, are however proper to appear in this Place, in Vindication of the noble Earl against a Charge of Covetousness and Corruption.

And now, my Lords, give me leave to add, That tho' the private manner in which these Charities were performed, has made it necessary for us to enter into a particular Account, and an Account that takes in some of them only; yet the noble Earl has a Merit to plead, of which I am sure there is no occasion to call a Witness. Your Lordships all remember the Time when he presided in the Queen's-Bench, and saw (unmoved) the Tide of Preferment rolling towards a distant Shore. The true Interest of his Country in the present Royal Family was then his steddy Pursuit, and his Merit consisted in advancing it to the utmost; and his Majesty, who was best able to judge of the Greatness of his Services, thought they deserved a Reward proportioned to the most exalted Merit, and therefore added him to your Lordships Body.

E. of *Mac.* My Lords, I beg leave that I may have the liberty to lay before your Lordships some Observations on the several Parts of the Evidence given on both Sides.

Your Lordships will easily imagine, that a Charge of this Nature must have affected me very much, and the great Fatigue I have undergone hath not allow'd me the Liberty to consider every Part so as to make the proper Reflections fit to lay before your Lordships.

I hope your Lordships will give me a little Time to recollect my Thoughts, that I may speak in such a manner as is fitting to your Lordships. I desire your Lordships will give me leave to make my Observations on *Monday* next.

Then the Managers and the Counsel withdrew: and the House adjourned to Monday *Morning next, the seventeenth Day of* May.

Monday, *the seventeenth Day of* May, 1725.

The Eighth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence, as also the other Proclamation, that all Persons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now stood upon his Trial, and they might come forth in Order to make good the Charge.

Lord Ch. Just. *King.* Mr. Serjeant *Probyn*, you may proceed.

Mr. Serj. *Probyn.* My Lords, I am humbly to ask your Lordships Pardon for some Omissions we have made in the Evidence we were instructed to lay before your Lordships in Behalf of the noble Lord impeached the last Day we had the Honour to attend your Lordships upon this Occasion: We had some Witnesses to offer more than were examined at that Time, and we hope your Lordships Indulgence will continue to hear them now; they are but very few, but yet such as we apprehend are extremely material to the noble Lord's Defence. The last Evidence we laid before your Lordships related to several Charities given by the noble Earl, in order to shew that he was not of that avaricious Temper as hath been represented in Support of this Prosecution; and that the constant habitual Course of his Life and Actions, hath been directly contrary to any Disposition of this Kind; but we apprehend it would still have greatly added to the Weight of this Evidence, had it at the same Time appeared to your Lordships what the Funds were, out of which these Charities arose; that the real Estate which this noble Lord hath purchased, does not amount to more than 300*l.* a Year, and that his personal Estate scarce exceeds 2000*l.* When we have shewn this, it must satisfy your Lordships, that the noble Earl hath been much more charitable than, according to his Circumstances, he could afford. There is another Thing I beg leave to take notice of, to obviate an Objection I am apprehensive we shall hear of from the other Side; and that is, that these Charities were not given by the noble Lord out of his own Pocket, in regard there is a Sum of Money called Box-Money, which is laid out and distributed in private Charities by the Chancellor every Year. But to explain any Suggestion of this Kind, we shall shew that this Box-Money, though anciently used to be considerable, yet of late Years it hath not amounted to more than 172*l.* a-Year: And as there have been always particular Objects of Charity recommended to this Bounty, so this Money hath been apply'd by his Lordship in the same manner it was usually apply'd by his Predecessors; and that no Part of this Money ever went in any of those several Charities, we have already given your Lordships an account of.

Mr. Serj. *Peng.* My Lords, we beg Leave, on the Behalf of the Managers, to offer to your Lordships Consideration, some Reasons why they ought not to be permitted, at this time, to go into the Evidence offered after the Indulgence of many Days, and Defence made on the Articles, and the Evidence summ'd up by the Counsel for the Lord impeach'd; and a Day is only given to hear the Lord himself, at his own Desire, to sum up or defend himself against the Charge against him; they ought not now to be allow'd to enter into a new Defence, or to give new Evidence. It is a new Method of Practice, after the Conclusion of the Counsel upon the whole Evidence, to say they have more Evidence to some of the Facts. My Lords, I don't know any thing of that Nature ever allowed, especially after the Examination closed, and an Adjournment for a Day or two. Besides, as to that Part of the new Evidence which the Counsel have opened, relating to the particular Estate and Circumstances of this Earl; how can the Managers be provided to give an Answer to it? There is nothing in the Article leading thereto; they do not charge him with having a great and large Estate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this Case; the Charge of the Commons is confined to particular Sums received. If the Managers had gone into the Enquiry of any other Sum, at least without particular Notice to him, I believe it would have been objected against by the impeached Earl. Therefore to go into this sort of Evidence, where there is no Charge by the Commons, is putting the Commons to answer what is not in Question, which if they do, must lengthen out the Trial unnecessarily. If the Circumstances of his Estate be material, there must then be a further Time given to contradict their Proof, which possibly may be done as to his real Estate: But as to his personal Estate, how is it possible for any Man to give an Account of that? Doth not this lie in his own Knowledge entirely? Nobody can open his Chests or Cabinets at home: So that it is impossible we should know any more of it than what serves his Purposes. Therefore, my Lords, we submit it, Whether they shall be permitted to go into this sort of Evidence? or, Whether your Lordships will enter into any farther Examination?

Mr. *Lutwyche.* My Lords, we think it is of great Consequence to your Lordships, when an Evidence hath been so full, and with so great Patience heard to every particular Article; when that Evidence hath been summed up, and enforced by Counsel, and every particular of the Articles animadverted upon; we think there is no Precedent in any Court of Justice, where new Witnesses have, in such a Case, been permitted to be examined. Witnesses here have been produced; there hath been an Interruption of two or three Days for the noble Lord, at his own Desire, to make his Observations on the Evidence; to offer now to produce Witnesses, that they had omitted to produce before, is perfectly new and unusual. I suppose they had these Witnesses in their Briefs, and, if they had thought fit, they might have called them. I know of no Instance of the like in any Court of Justice; if the Gentlemen of the other Side will tell us the Precedent, they may. I think it is of dangerous Consequence, not only in this Case, but in all other Proceedings in Courts of Justice. If your Lordships think fit to let them into one or two Witnesses, I do not know why your Lordships, with equal Reason, may not let them go over another Course of Evidence.

My Lords, as to the other matter about this noble Lord's Estate, that is not a matter insisted upon by any Evidence that we have given; and I submit it, Whether it is proper, or any way conducive, in this Case, to any thing that is material for your Lordships Judgment in this matter, for this Reason, because if it was material, it is impossible for us to know the Truth of it. We have no Right to examine this noble Lord upon Interrogatories as to his Estate, especially as to his Personal Estate; a Man may in these Days have the Opportunity of being worth 100,000*l.* and People not know where it lies; as to his real Estate, it might be known, if it was material; but we submit it, Whether it is incumbent upon us to enquire, at this time of Day, into the noble Lord's Estate?

It is impossible, in the Nature of the Thing, that your Lordships should have that satisfactory Account, or that we should have such Notice of it as is proper to make any Defence of it to us material; but we submit it, that it is not material at all; and therefore we hope your Lordships will keep to the Rule kept in all Cases in all other Courts of Justice, where People have made their full Defence, or else there would be no End of Things.

Mr. *Plummer.* My Lords, we did not lay to the Charge of this Earl, that he was possessed of a great Estate; we have only laid to his Charge what he hath unjustly possessed, we have only charged him with Matters of Fact, which we think we have made out; and therefore hope your Lordships will oblige him to answer to that, and to that only, and not to go to another Thing we have not charged.

Mr. Serj. *Probyn.* My Lords, we apprehend it is frequently practiſed, that where Counſel have omitted material Evidence, even after Summing up, the conſtant Indulgence of the Courts below lets them go into Evidence to ſupply that Omiſſion.

We take it to be our own Fault. We had in our Inſtructions, and it is in your Lordſhips Breaſt, whether we ſhall not ſupply that Omiſſion; we ſhall not run into a long Evidence, our Witneſſes are but two or three.

Dr. *Sayer.* My Lords, I beg Leave to think, that as we point out a particular Fact, diſtinct from any we have examined to before, there can be no Apprehenſion of any Danger at all; and if, as the Gentlemen have inform'd your Lordſhips, it is what is uſual in Courts below, that ſuch Omiſſions have been always permitted to be ſupply'd, your Lordſhips ſure will act with equal Equity in this Caſe. What we undertake to prove is the Circumſtance of his Eſtate; and though the Gentlemen of the Houſe of Commons did not make it a Matter of Charge in their Articles, yet in his Anſwer the noble Earl takes Notice of it, and it will ſhew that the Earl had not his Heart ſo intent upon Gain, when it ſhall appear that his Fortune is ſo much leſs than the World might have imagined it to be, and when at the ſame Time we ſhew his Generoſity, and that by means thereof his Eſtate was much leſſen'd and check'd.

I would take Notice of the other matter, with regard to the Evidence of the Charity: It is only to explain and prevent a miſtake, leſt it ſhould be imagined that theſe ſeveral Inſtances of Charity were out of the Box-Money, or Fund for Charity in the Court of Chancery. But, I believe, we need not trouble your Lordſhips with this, for that the Noble Earl is ſo well ſatisfied with the Integrity and Honour of the learned Managers of the Houſe of Commons, that he is under no Apprehenſion to have that turn'd upon him. The principal matter is relating to his Eſtate.

As we have in great meaſure left it to the Earl himſelf to ſum up the ſeveral Evidences, and have done but little ourſelves, the Objection of the Evidence being cloſed and ſummed up is not ſo ſtrong as in other Caſes; we ſubmit it, whether your Lordſhips will not indulge us ſo far as to produce a Witneſs or two to this matter.

Mr. *Cem. Serj.* My Lords, we do not aſk this as Matter of Right, but as a Matter of Indulgence. I own the Rule that the Gentlemen of the Houſe of Commons have laid down is a general Rule for the Government of Evidence.

We can't controvert that; but I believe it will not be controverted on the other Side, that ſuch a Piece of Indulgence was hardly ever denied, and we hope your Lordſhips will not deny it upon this Occaſion.

Earl of *Macclesfield.* My Lords, I don't apprehend that this is a Thing ſo very extraordinary, or ſo dangerous, as hath been repreſented. It would be extremely ſevere, if, in a Cauſe of ſo great Length, and ſo much Fatigue, I ſhould have Witneſſes ready to give your Lordſhips an Account of ſome Facts material for my Defence; and my Counſel happening not to call them, although they were attending, and there ſhould be a certain Form that ſhould exclude me from having the Benefit of their Evidence; I don't know what this is founded upon, I never heard of ſuch a Form or Rule.

There is no Inſtance that where Counſel hath been ſumming up the Evidence, and, before the other Side have replied, an Omiſſion hath been diſcovered, that that Omiſſion hath not been allow'd to be ſupplied. And,

I appeal to my Lords the Judges, Whether they have ever known this Piece of Indulgence denied upon any Trial whatſoever in the Courts below. My Lords, with great Submiſſion, the Evidence is not yet finiſhed; I am ſorry I muſt yet give your Lordſhips the Trouble of obſerving a good many Things that have been hitherto omitted: This is a matter the Counſel had Directions about, the Witneſſes were attending, but they were omitted to be called for; I hope your Lordſhips will not, for ſuch a miſtake, exclude me the Benefit of their Teſtimony: Had it been calling freſh Evidence to any matter that hath been examined to before, there might poſſibly be ſome Grounds for an Objection of this Kind; but I mean only to call one or two Witneſſes to freſh matter, that hath not been enquired into before. There hath yet been no Witneſs examined as to the Box-Money, or my real or perſonal Eſtate; and yet thoſe two Things are material, and it may greatly turn to my Prejudice if I have not the Liberty of producing this Evidence in relation to them.

It hath been repreſented that I have an Eſtate vaſtly more conſiderable than in Truth I have; and this matter of the Box-money, as I have been informed, gave Birth to a Report abroad, as if what I gave for Charity was out of that Fund.

As to this latter, I dare truſt the Candour of theſe Gentlemen, that they do not believe it; and if they do not inſiſt that what I gave was out of the Box-Money, it will be needleſs for me to prove that it was not. But as to the other matter, I hope I ſhall not be precluded from having thoſe Witneſſes examined, becauſe it was before omitted; wherefore I humbly beg your Lordſhips Directions thereupon, whether I ſhall be at Liberty to lay their Evidence before your Lordſhips or not.

Mr. *Onſlow.* I would beg Leave to ſet your Lordſhips right as to that of the Box-Money. The Noble Lord inſinuates as if ſomething of that had been mentioned by the Managers; nothing hath been mentioned of it, either by the Evidence or by the Managers.

E. of *Mac.* No, I beg Leave to explain myſelf; I did not ſay the Managers had inſiſted upon it, but only ſaid it is a matter that I have heard without Doors; but I believe I may rely upon their Candour that they will not make it an Objection now, in caſe they oppoſe my giving Evidence to the contrary.

Mr. *Lutwyche.* My Lords, I am a little ſurprized, why the noble Lord mentions this of the Box-Money, when not one ſingle World hath been ſaid of it, either by the Evidence or by the Managers: Why then ſhould this noble Lord himſelf mention it? And why ſhould he call Evidence to a Thing that hath no Manner of Relation to any Thing that hath been ſaid? If his Lordſhip will pleaſe to give us Leave to reply; if we then ſay any Thing of it, he may then give an Anſwer to it; but it is improper now to be giving an Anſwer to an Objection that was never made, and to which the Evidence hath not ſaid one Word.

Lord Steward. If the noble Lord thinks this a Point to be inſiſted on, it is then neceſſary for all to withdraw.

[*Order'd to withdraw, which was done; and being afterwards called in again.*]

Lord Chief Juſtice *King.* Mr. Serj. *Probyn*, it is the Opinion of their Lordſhips, that the Evidence offered by the Earl of *Macclesfield*, with reſpect to the further Account of his Charity, be not now admitted; and they are likewiſe further of Opinion, that the Earl of *Macclesfield* be not now permitted to give Evidence of the Value of his Eſtate, either real or perſonal.

E. of *Mac.* My Lords, your Lordſhips were pleaſed to indulge me to this Day to lay before your Lordſhips what I had to ſay in my Defence againſt the Charge brought againſt me by the Commons, and againſt the Proof ſupporting that Charge, which your Lordſhips with ſo much Patience heard. From the Time your Lordſhips were pleaſed to allow me this Liberty till now, I have applied myſelf with the utmoſt Diligence to prepare myſelf for my Defence.

To this End it hath been neceſſary to look over the Notes taken of the Evidence given on both Sides, and likewiſe of what was ſaid by thoſe Gentlemen who are Managers for the Houſe of Commons. I find it very neceſſary to lay before your Lordſhips many Obſervations on the Evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up ſo much Time, and there being ſuch a Diſtance between the Evidence given on the one Side and the other, I have been employ'd wholly from the laſt Time till now in the Conſideration of it; and I can ſay, with Truth, I have not ſlept five Hours theſe two Nights, and yet I have not been able to get through it, and I am not now prepared to lay before your Lordſhips what I have humbly to offer for my Defence; there are many Things exceeding material to be ſubmitted, and I beg, therefore, that your Lordſhips will indulge me a farther Time, ſo that I may be able to do it in ſuch a manner, as may ſet the Evidence and Obſervations upon it in ſuch a Light as your Lordſhips may paſs a proper Judgment. I don't do this out of delay; I believe your Lordſhips will eaſily imagine I ſhould be glad to have this matter over, whatſoever the Event may be, for I am quite ſpent, and my Strength and Spirits waſted with the Fatigue I have already undergone. My Lords, I have been ſo far from any Delay in the Courſe of this Proſecution, that when I put in my Anſwer, as your Lordſhips were informed by one of the Gentlemen of my Counſel, tho' it was not finiſh'd till between three and four o'Clock in the morning, yet I choſe to get it ingroſs'd, and put in the ſame Day, rather than there ſhould be the leaſt Appearance of any Delay on my Part; and I do not know whether by endeavouring ſo very much to diſpatch this Work, I have not rendered myſelf unfit and unable to go on with it: Human Nature can hardly bear what I have gone through.

At my Years, if I ſhould undertake to do it by To-morrow, I am afraid I ſhould ſink under the Weight of ſuch a Taſk, and not be able to come before your Lordſhips prepared as I ought to be; therefore I hope your Lordſhips will be pleas'd to allow me till the Day after; the Fatigue I have already undergone has been very great, and I hope your Lordſhips will allow me ſuch a Time as you will think competent; the Work I have to do will take up a great many Hours; there hath been Variety of Evidence, I hope your Lordſhips will indulge me till *Wedneſday*; it is of very great moment to me, and I am ſure I ſhould be unwilling to miſpend your Lordſhips Time, and delay this matter unneceſſarily: It really gives me the greateſt Uneaſineſs to find myſelf in that Condition, that I cannot think of being able to do it ſooner; I was before afraid that I ſhould not be able to do it by this Day, but yet reſolved to do all that was poſſible for me, and therefere declin'd aſking then for any longer Time.

I hope your Lordſhips will indulge me; if your Lordſhips knew the Fatigue I have undergone, and the Effect it hath had upon my Health, I am ſure in Humanity you would make no Difficulty of granting me farther Time to prepare myſelf in a proper manner, in a Caſe that is of ſo great moment to me; and I hope the Gentlemen of the Houſe of Commons will not be againſt it; if they ſhould overpreſs this matter, I don't know but the Fatigue of it may bear ſo hard upon my Life, as to ſave your Lordſhips the Trouble of paſſing any Judgment upon this Occaſion.

Mr. Serj. *Pengelly.* My Lords, we don't apprehend the Lord properly applies to us in this Inſtance.

[*All Parties were directed to withdraw, which being done, The Houſe adjourn'd till* Wedneſday *Morning Ten o'Clock, the* 19th *of* May, 1725.]

Wedneſday, May 19, 1725.

The Ninth Day.

THE Lords being ſeated in their Houſe, the Serjeant at Arms made the two uſual Proclamations as on the former Days.

L. Ch. Juſt. *King.* Mr. Serjeant *Probyn*, if you pleaſe to proceed.

E. of *Mac.* My Lords, I am firſt to return my moſt humble Thanks to your Lordſhips, for the Time you have been pleas'd to indulge me with, for the recollecting my Thoughts, and looking over the Evidence that has been offered on either Side, during the Courſe of this tedious Proceeding; that I might be able to put thoſe Obſervations I have made upon it in ſuch a Light, as became one who was to ſpeak in a Caſe of ſo great Importance at your Lordſhips Bar.

My Lords, I have been under ſome Misfortunes in this Proſecution; your Lordſhips muſt, no Doubt, have obſerved the Diſappointments I have met with, in queſtions I aſked of ſome Perſons, who appeared as Witneſſes in the Courſe of this Trial, which it was impoſſible I could have had any Inducement to propoſe, but from my own Knowlegde of the Anſwers that ſhould have been returned. My Counſel, thro' the great Hurry that

that usually attends Proceedings of this Nature, happened not to be instructed in some Particulars, that were extremely proper to have been laid before your Lordships upon this Occasion: Besides that the Variety of the Facts continued to be given in Evidence from one Day to another, has in this particular Case been carried on to such an unusual length, that they have not been able in the end to make themselves so perfect Masters of the Evidence, as the Importance of the Case required.

I should trouble your Lordships with an Apology for my own Inability to supply this at present, both from the extreme Fatigue I have undergone during the whole Course of this Prosecution, and because that my last Illness has broke my Memory to a great Degree. But whatever Difficulties I have laboured under, when I consider your Lordships are my Judges, I cannot doubt but your Candour and Goodness will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to lay before you; and therefore, rather than ask any more Time of your Lordships for preparing myself, I will endeavour to go on now as well as I can.

My Lords, the Charge brought against me is very heavy, as laid in the Articles, and highly exaggerated by the Gentlemen that are appointed Managers by the House of Commons.

That which I think is charged as the Foundation of the whole, is,

My entertaining wicked and corrupt Purposes, to raise and procure to myself excessive and exorbitant Gain and Profit.

This it is that hath made me extortively and illegally take Money, upon the Admittance of Masters, and Disposal of other Offices.

And the being set upon the Gain arising from the Masters Places, with the Desire to advance it, or keep it up, is represented to be the Source of all the rest of the Things complain'd of, which seem to me to be charged only as Contrivances for that Purpose.

This is such Corruption of Heart, and carries with it such a Malignity, that it makes every Action and every Omission criminal; Every rash Word, every Neglect or Imprudence, nay, Things perfectly innocent in their own Nature, or perhaps commendable, are so infected by it, as to deserve the severest Censure and Punishment.

Whether I wait in Expectation of the Application of the Suitors, with Respect to *Dormer's* Deficiency, or of myself endeavour to get it made good, or even pay my own Money towards it, it is all one, so wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Trust in me reposed, contrary to the Duty of my Office, is made the Aggravation of almost every Article.

I shall endeavour to shew your Lordships, that the several things charged upon me are either not true, or not criminal; or if your Lordships shall judge otherwise of them than I do, yet that they were the Effects, not of Wickedness, but of Mistake; and if I have ever done any thing for the Service of my Country, of the Constitution, of his Majesty, and of the Royal Family, and the present Establishment, and for the Administration of public Justice, it might not be unsuitable to the unparalleled Goodness of this Reign, for your Lordships to have Compassion upon the Errors, Mistakes, and Weaknesses of the faithful, steady Servant of a Prince, whose Mercy has been so often extended, in so great a Degree, to the highest Crimes of his bitter Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of something that has been said with Relation to the Answer which I have put in to these Articles of Impeachment, as containing a Plea of a Pardon at the same Time that I insist upon my Innocence; and its not being a full Answer to all the particular Charges in the Articles. As to the first, my insisting on his Majesty's most gracious, general, and free Pardon for all things before the twenty-fourth of *July* 1721,

My Lords, I hope, and am myself of Opinion, that I have not done any thing that is criminal, or needs a Pardon;

But when so many Gentlemen of Learning and great Parts, undertake to make out, that That is a Crime which I thought and still think not so; should I opiniate to that Degree, and be so confident that your Lordships will be of my Opinion, as to refuse the Benefit of a Pardon, which his Majesty has so graciously granted to all his Subjects?

When little Imprudences, and so many Omissions, and even idle Words, loose Talk, and unguarded Expressions, are laid to my Charge as Crimes, and made the Subject-Matter of an Impeachment, and some of them charged without mention of any Time, or the Name of the Cause in which it is pretended they were spoke, or any other Circumstances by which I might be enabled, either myself to recollect or to make Enquiry of others, in order to prepare for my Defence, it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expose the Absurdity of pleading Innocence and a Pardon to the same Offence; what is more consistent than to say, I ought not to be punished, because the Fact charged is no Offence, or if it be one it is pardoned? But had the Gentleman who made it, been pleased to have read the last Act of Grace carefully through, he would have found that it expressly provides, that the Pardon shall support the Plea of Innocence, and upon *Not guilty* pleaded, the Act may be given in Evidence to prove the Person not guilty. And, in the Notion of our Law, it wipes away whatever Guilt there was, and leaves the Person innocent, that is, as a very great Lawyer and a very wise Man expresses it, *it takes away not only* pœnam *but* reatum, *the Guilt as well as the Punishment.*

As to the Reflexion made upon my Answer in another respect, as if it were not full and direct, and that in Chancery, the Court where I had presided, it would be held an insufficient Answer: Probably it might be so; but that is, because that a Plaintiff there has a Right to require a Discovery of all such Facts as are material for his Advantage, upon the Oath of the Defendant. And therefore the Answer is not only the Party's own Defence, but it is to supply the Plaintiff with Evidence, who therefore may except to it as insufficient, so far as it is short of answering to, and giving an Account of all, of every minute Circumstance that he charges.

But do they imagine that to be the Case in a criminal Prosecution? Or that the Defendant there is obliged to furnish Evidence, or to confess any thing that may tend to affect or charge himself? No, my Lords; the Answer there is only for the Defence of the Person accused: And Not guilty is a full Answer.

And, my Lords, I insist upon it, I have given a full Answer to all the Articles at the end of my Answer, where I have pleaded the general Issue, and in express Words said, That *I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged against me*; which is of itself a direct and full Answer, without more.

And though I have set forth other Facts, it is only where I have thought some things might be farther explained. But there is no need to make any Proof of a Word in my Answer, if the Charge in the Articles is not supported by the Evidence given against me.

And I still hope your Lordships will be of Opinion, that though some of the Matters mentioned in the Articles are proved, and indeed some are expressly admitted by me, and others never disputed; yet that none of them is admitted or proved in *such manner as it is charged in the Articles.*

Having said thus much, I proceed to consider what has been offered in *Proof* against me.

My Lords, the Preamble of the Articles is intended for an Aggravation of my Crimes, by shewing what Oath I had taken, which I had violated; and what Favours I had received from his Majesty, and was not satisfied with them.

As to the last, give me leave to say, that I can never express the Sense of my Heart for his Majesty's Favours and Bounties, and that it ought to be a high Aggravation, if I have abused them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodness has exceeded, not only my poor Services, but even my Desires and Wishes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty shall never abate.

As to the Violation of my Oath, no such Crime is made out against me.

The Oath of Office taken by the Chancellor when he enters upon that Office, has no relation to what is laid to my Charge: I have set it forth *verbatim* in my Answer, and no Argument has been attempted to be drawn from it.

But it was said the other Day, that I had taken an Oath upon the Statute of the twelfth of *Richard* II. which I had *forgot, both in my Answer and in my Conduct.*

As to my Answer, I beg leave to observe, that the Answer is suited to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath supposed to be taken on the third of *November* at all mentioned.

The Words of the Preamble, which is the only Part of ths Articles that mentions my taking any Oath, are these:

" And whereas *Thomas* Earl of *Macclesfield*, in or about the Month of " *May*, in the Year of our Lord 1718, by the Grace and Favour of his " Most Excellent Majesty, was constituted and appointed Lord Chan- " cellor of *Great-Britain*, and did *thereupon take the usual Oath* for the due " Execution of that High Office, whereby he did swear well and truly " to serve our Sovereign Lord the King and his People, poor and rich, " after the Laws and Usages of the Realm, and *such other Oaths as have* " *been accustomed*; and the said Earl continued in this great Office," &c.

Where the *other Oaths accustomed*, as well as that particularly *described*, are confined to what I did *thereupon* take, that is, *upon my being made Chancellor in May* 1718; at least to my poor Understanding it appeared so. Nor did I at all imagine, that it referred to what was done the third of *November* after, which was but the same as had been done the third of *November* before.

And accordingly my Answer is confined to the *same Time* that I was sworn Lord Chancellor before his Majesty in Council, the fourteenth of *May* 1718, when I took the Oath of Office set forth in the Answer; and at the same time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of *Richard* II. at *that Time.*

The Words of the Answer are,

" That in the beginning of *May*, in the Year 1718, he the said Earl " was, by his Majesty's great Grace and Favour, appointed Lord Chan- " cellor of *Great-Britain*, and was sworn before his Majesty in Council " the fourteenth Day of that Month; when the following Oath, being " the usual Oath of Lord Chancellor, was administered to him, *viz.* " You shall swear, &c. And the said Earl, *at the same Time*, took the " Oath of Allegiance and Supremacy, but *no Oath of Office besides* that " above set forth."

My Answer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulness, but to its not being charged. It is not charged, and therefore not answered to.

But it is now insisted upon, and great Stress laid upon it, that at the naming of Sheriffs, which is done in the Exchequer upon the third of *November* every Year, I took an Oath upon the Statute of 12 *Richard* II. which extends to the Disposal of the Office of Masters in Chancery.

To judge of the Truth of this new Charge, your Lordships will be pleased to consider what it is that is yearly done the third of *November*, upon that Occasion of naming of Sheriffs.

The Managers were not pleased to open what passes every Year upon the Nomination of Sheriffs, which had been proper before they called the Witness to prove it; if they had, it might have saved me the Trouble of asking any Questions.

But the Examination, and the Testimony of a Witness that spoke indistinctly and low, tended, as I thought, to have the Statute entered in the old Book of the Exchequer in obsolete *French*, and so ill read as hardly to be understood, to pass for the Form of an Oath then

administer'd

adminiſter'd upon the Statute which had been juſt before read in *Engliſh* to your Lordſhips at the Table; and ſo it might be taken to be an Oath conceived in the Words of the Statute, extending to all Nominations of Officers, and to all Times, and not confined to that Occaſion.

I did therefore aſk ſome Queſtions, not to quibble away an Oath, as one of the Managers was pleaſed to expreſs it, but to have the Matter laid before your Lordſhips in its true Light, and which came out to be thus:

The Lords of the Privy-Council and the Judges, being aſſembled for naming Sheriffs for the following Year, at the Time and Place appointed for that Purpoſe, the Act of Parliament of 12 *Richard* II. is read, directing ſeveral Perſons to be ſworn, concering their naming of Sheriffs, and of ſome other Officers ſpecify'd in the Act, and with general Words extending to more; then an Officer gives a Bible to every one of the Privy-Councillors and Judges preſent, who all, one after another, kiſs it; but nothing is ſaid to them by the Officer or any one elſe, nor are any Words ſpoken by them.

I know it has been much doubted how this could be called Swearing, or taking an Oath.

But that is not at all what I inſiſt upon.

There being ſomething ſacred in the Ceremony, I agree the Action ſhould be conſider'd as a ſolemn Undertaking in Nature of an Oath, to obſerve that Statute in the Buſineſs we were then entring upon; and ſo it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And accordingly this is repeated every Year upon the like Occaſion, though the Perſons are the ſame, and has been ſo by me for ſeven Years together, before I was Chancellor, and for as many ſince.

But to extend this farther than that Occaſion, is, I humbly inſiſt upon it, going beyond what the Action then done imports.

The Statute plainly relates to Nominations or Elections, where Numbers of Perſons are called together to name Officers; the very reading the Statute ſhews it, and when I come to ſpeak of the Conſtruction of that Act of Parliament, it will be yet more plain.

And when it provides, "That the Chancellor, Treaſurer, Keeper of "the Privy-Seal, Steward of the King's Houſe, Chamberlain of the King, "Clerk of the Rolls, Juſtices of the one Bench and of the other, Barons "of the Exchequer, and all others, *who ſhall be called* to ordain, name, "or make Juſtices of the Peace, Sheriffs, Eſcheators, Cuſtomers, Comptrollers, or any other Officer or Miniſter of the King, ſhall be firmly "ſworn, *&c.*" I take it to mean that they ſhall be ſworn when they are ſo called together, and met. And the Practice is accordingly.

There are ſome old Statutes that ſay, that the Chancellor with the Council ſhall appoint Juſtices of the Peace, the Treaſurer with ſome others ſhall name Cuſtomers, *&c.* But the Uſage at this Time is, (and it has been ſo for ſome Hundreds of Years) that the naming of Juſtices of the Peace, is in Fact in the Chancellor only; of Cuſtomers and Comptrollers, in the Treaſurer; and many of the Perſons named in the Statute meddle not with naming any of the Officers comprized within either the particular or general Words.

If therefore, my Lords, the Biſhops were deſired to draw up a Form of an Oath to be taken upon this Statute by all the Perſons attending on the third of *November* for the Naming of Sheriffs, I preſume they would confine the Oath to the particular Occaſion.

I ſubmit to their Conſideration, whether they would draw it up ſo, that every one preſent ſhould ſwear that he would obſerve this Statute, or not go contrary to this Statute, in the Nomination of Officers which he has not any Right or Power to name, nor is ever called to name: Whether they would frame ſuch an Oath, whereby the Judges ſhould ſwear that they would not name Juſtices of the Peace, Eſcheators, Cuſtomers, or Comptrollers, for Gift or Brocage, Favour or Affection, when they cannot name them at all, either by Proviſion of Law or by Uſage?

I apprehend this would be an improper, if not a vain Oath.

And a conſtructive taking of an Oath, which is all that can be inſiſted upon here, ought not to be carried farther than would be proper to expreſs in Words at length.

And therefore, as all the Perſons aſſiſting there certainly take the ſame Oath, and many of them have nothing to do with the Choice, or naming of any of the other Officers in the Act beſides Sheriffs; and as this Action yearly repeated on this particular Occaſion, ſhews it to be intended to relate only to Sheriffs; I have always thought that it went no farther than to oblige me; that in the Affair, which we were then entering upon, I ſhould act according to that Statute.

And I am perſuaded, that, in this Caſe, I have the univerſal Concurrence of the Judgments of others. For I do not believe that ever any Perſon that aſſiſted on that Occaſion, had the leaſt Apprehenſion of his then taking an Oath, which related to any thing but that particular Occaſion.

But if they all did take an Oath ſo extenſive as to reach to the Diſpoſal of all other Employments, (which is the Senſe wherein I believe the Managers would have the Words of the Act to be underſtood,) God knows in what Guilt many of them have involved themſelves.

It is a Part of the Statute, and Part of that to which the Perſons called to name Officers are directed to be ſworn, *That none who ſues by himſelf, or by any other, in private or openly, to be in any manner of Office, ſhall be put into the ſame Office, or any other.*

Will theſe Gentlemen urge that every Lord Treaſurer, Lord Commiſſioner of the Treaſury, or other Lords in great Employments, that give Places, or name Perſons for Places to the King, and have once attended at the naming of Sheriffs, have been guilty of a Violation of this Oath, in every Inſtance, where they have named any Perſon to any Office, who, by himſelf, or his Friends, ever aſk for the Place given, or for any other?

I cannot imagine that they will attempt to carry it ſo far. But if they do, I will yet preſume, that your Lordſhips will not, by ſuch a new Conſtruction, condemn ſo many Perſons that are Innocent, or thought themſelves ſo.

Hence I think myſelf not to have taken any Oath upon the Statute of 12 *Rich.* II. which any way extends to Matters in Chancery; and I hope your Lordſhips will think ſo too.

What is the particular Meaning of this Act, and what Arguments may be drawn from the Proviſion therein, I ſhall not trouble your Lordſhips with at preſent, but ſhall reſerve the Conſideration of it for another Place: But as to the Charge of violating an Oath founded upon it, let the Obſervations I have made, from the Frame of the Act and the Nature of the Action, at preſent ſuffice.

The ſubject matter of the firſt Articles, as they ſtand in Order, and which I believe has given riſe to this Proſecution, is the taking Money for the Places of Maſters in Chancery; long practiſed without Blame, though made my great Crime.

What has been urged from the Nature of the Office, the Oath which the Maſters take, and the Commiſſions granted to them, together with the Maſter of the Rolls and the Judges to hear Cauſes in the Abſence of the Chancellor, will not have any Weight in the Queſtion, whether it be criminal to take Money on admitting them.

I beg leave to ſay, that the Office anciently was quite different from what it is now, ſo that it is in a manner forgot what it originally was. One Branch of their Office antiently, and then reckoned of Importance, was the framing Writs, which are now made out by the Curſitors; and that which is their greateſt Buſineſs now, there appear no Footſteps of being done by them, or any others antiently.

Their Buſineſs now is chiefly preparatory to the Determination of the Court of Chancery, upon References made to them by the Court, in order to their ſtating Things to the Satisfaction of the Parties; or reducing the Diſpute to ſome few Heads, in which they differ, for the eaſier Determination of the Court.

And that which they are moſt generally employed in thus, is matter of Accompts.

Very frequently the Parties, after having had the Items examined and proved, agree before the Maſter the whole Accompt, and almoſt always the greateſt Part of it. And if the Parties are diſſatisfied, they are at Liberty, by Objections in Writing which are called Exceptions, to ſtate to the Court the diſtinct Items which they diſpute, by which means the Court is eaſed of the Conſideration of all the reſt of the Items of the Accompt. And the Maſter makes no judicial Determination; but when he makes his Report, has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinced the Parties as far as he could, and then ſtated the whole Accompt ſo as he thinks is right; which at laſt has its Force, not from him, but from the Court, which confirms it if not diſputed, or examines the diſputed Points if deſired.

Upon References to them whether Anſwers are ſufficient, they are to compare the Words of the Anſwer with the Words of the Bill, and ſtate whether they find them full: And if the Parties do not acquieſce in the Maſter's Opinion, the Court takes the Trouble to make the Compariſon.

They are likewiſe Caſhiers, not of the Court but of the Suitors, and always at their Prayer.

And the Parties have this Advantage in having the Maſters for their Caſhiers, that they have a ready Method to compel Payment by Order of the Court, and a Commitment of the Perſon or Sequeſtration, (that is ſeiſing all their Eſtates and Effects,) or both, upon ſuch Order, in a ſhort and cheap way; whereas againſt other Caſhiers they muſt be put to the Charge and Delay of a tedious Suit, if the Money be not paid.

And other Officers, whoſe Places are allowed to be ſold, do the ſame Things, make Reports to ſtate Facts on References, are Caſhiers of the Money brought in, and tax Coſts, which is another thing the Maſters do.

As to the Oath; it is the old Oath, before the Office was ſo greatly changed; what Advice to be given to the King it refers to, will be hard, I believe, to explain, and has not been attempted; but if the Writs requiring their Attendance here were looked into, poſſibly it may be thought, that antiently they attended your Lordſhips in a manner different from what they now do, and have done from before the Time of our Memory.

And as to the Commiſſion to hear Cauſes in Abſence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Office of Clerk of Aſſize, (expreſly allowed in the Statute of *Edw.* VI. to be diſpoſed for Money) that the Clerk of Aſſize is conſtantly joined with the Judges in the Commiſſions of *Oyer* an *Terminer* and Gaol Delivery, for the Trial of Criminals, even for capital Crimes.

To proceed therefore to the Points of the Charge.

It is founded ſingly, upon the *taking Money* for admitting the Maſters into the Office; and the *Manner* of taking it extorſively, without reference to any want of Qualification in the Party admitted; and therefore cannot be maintained, unleſs the taking of Money be in all ſuch Caſes criminal, or that the Manner of taking or extorting it in theſe Caſes make it ſo.

Therefore I will firſt ſpeak to the general Queſtion, whether taking Money upon Occaſion of putting in a Maſter, is in all Caſes criminal in itſelf, or by the Common Law, or made ſo by any Statute which ſubjects it to any Judgment or Puniſhment, which can be prayed in this Proſecution; as I have expreſſed in my Anſwer.

And that which I humbly insist upon as to the first, that is; whether it can be said to be wicked or criminal in itself, or from the Reason and Nature of the Thing, is this:

An Office may be considered in two Respects: First, with respect to the Duty; that is, the Concern of the Public, that the Person be duly qualified to discharge his Office well. Secondly, with respect to the Profit and Advantage; and that is merely private, and concerns the Officer only. And whilst he discharges his Duty well, without Extortion, or other Misbehaviour, the Public is little concerned in it, whether the Profit be more or less. As in those Cases, which are very numerous and of great Consequence, that may be executed by Deputy; provided the Deputy behave himself well, the Public has never concerned itself what his Salary or Allowance from his Principal is, whether it be greater or less.

And as the Person who is put into a very beneficial Office, such as one of these, for his Life, has not any antecedent Right to the Office, and therefore not to the Profits arising thereby; and he that prefers him is not bound to give it him; therefore when he puts him into it, he in effect grants him all the Profits of the Office for his Life: And if the Officer make him a Present for it, either unexpected, by way of Thanks after he is put in, or expected, which he had told him of before, or give it at the Time, or before that he is admitted; I see not any Immorality either in the Giver or Taker. It is money given for Profits to be received during Life.

The Public is concerned only in the Goodness of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in; whether Friendship, Acquaintance, Relation, Importunity, great Recommendation, or a Present.

I agree, that a Person taking a Present, and putting in an unfit Person, when he knew him to be so, or had just ground to believe him so, is criminal: Not because he has taken a Present, but because he has prejudiced the Public knowingly: It may be an Aggravation that he had taken money; but the Crime is, the Wrong done to the Public in the Person advanced. It had been the same Crime, had he done it for the Sake of Kindred, or Friendship, or for Recommendation, or any other Reason.

But if a Person very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Post, and so I who placed him, have well discharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that persuaded me to prefer him, or what he gave me on that Account, whether before or after he was put in? Will any of these Circumstances make me criminal in an Action by which I served the Publick well? If the Publick have all the Benefit it can have, where is the Immorality? Where is the Crime, if I have an Advantage too; especially if Usage has in some Sort annexed that Advantage to my Office, which is taken from his?

Obj. I know it may be objected with great Appearance of Reason, that this Practice is dangerous, it leads to Inconveniencies, it is a Temptation to him that disposes of Places to make ill Officers, and a Temptation to the Officers to extort money and abuse the Subjects, in order to get up their money again.

Ans. But is it therefore a Crime, where the Temptation is resisted, and a very good Officer is put in, and he behaves himself perfectly well?

The Point of the Charge now under Consideration rests singly on this, That I took money for admitting Mr. *Francis Elde* (for instance); and though taking money is a dangerous Practice, and may be a Temptation to let in an ill man, is it therefore a Crime to put in *Francis Elde*, who is not alledged to be an ill man, or any way unfit, and is really an excellent Master?

This Argument concludes, only that allowing it to be generally practised is inconvenient, and may in the Deliberations of the Legislature be properly used to prove it fit to be restrained by a Law: But is not of Force, in a Court of Justice, to prove it to be a Crime in every Instance, because it may occasion a Crime in some.

Farther, as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices is a Temptation to put in Persons unfit; and, without doubt, has often prevailed. Supposing therefore it might be proper matter of Deliberation in the Legislature, how far a Restraint should be put upon it; yet, in the mean time, is advancing a Relation to an Office, which he is fit for, a Crime, because, in other Instances, it has occasioned a Crime, or may do so, or is a Temptation to it? And would it be a sufficient Charge of a high Crime against me, to say that I *illegally* and *corruptly* put into such an Office *A. B.* my Son or my Brother? I apprehend not.

Till a Restraint is laid, the Thing may be innocently done.

If a Restraint be laid, the Law will operate upon it so far as the Restraint extends; but farther than that, and the Consequences declared to ensue thereupon, it will remain as before.

Considering this therefore in itself, and upon the Reason of the Thing, where is the Force of the Argument? You took 5000 *l.* for putting in Mr. *Elde* or Mr. *Thurston*, a very fit Person, and an excellent Master, and therefore you are criminal, because somebody else at another Time may put in another Master not fit, upon his giving a Present.

If this then be not criminal in itself, how do they prove it to be so by the common Law?

The only Case they have instanced as any Authority for that Purpose, is that of *Stockwith* and *North* in *Moor*'s Reports.

But here give me Leave to say, that it was proper and just for the learned Managers to produce, in making out their Charge, all their Arguments on this Head of the Illegality of this Practice, that there might be a proper Opportunity of weighing them, and giving them a satisfactory Answer (if it could be done) at this Time of my Defence, and I presume they have done so. But if they should think fit to reserve any fresh Argument for their Reply, which we shall apprehend may want an Answer, your Lordships will, in that Case, give me Leave to insist upon a Right of taking proper Notice of it afterwards, and not let them reap any Benefit by lying by, in such an unprecedented manner, and expecting your Lordships Judgment, without hearing the other Side upon it.

The only Case, I say, which they have instanced in, is the Case of *Stockwith* and *North* in *Moor*'s Reports, 781. I have looked upon the Case as it is in that Book, and it appears to be thus:

"*North* was fined in the Star-Chamber, for that he, being Sheriff of "*Nottingham* in the 43d Year of Queen *Elizabeth*, took money for the "Gaolership and Bailiwick for that Year; he gave them first to his Ser-"vants, who sold them, but he himself received the money. And this "was adjudged to be letting to Farm of his County, contrary to the "Statute of 4 *Hen.* IV. *cap.* 5. Yet there note, that the Statute itself "gives a Penalty certain and pecuniary, and is *malum prohibitum, non in* "*se.* But the Court took it, that in as much as Corruption follows up-"on the Covetousness of Officers, and they are forced thereto by the "Prices which they give for Things which ought not to be sold; that "this putting to Farm and selling of Offices, is *malum in se*, and "finable."

It appears here, that this was a Prosecution upon the Statute of 4 *Hen.* IV. for the Point adjudged was, that this was contrary to that Statute, and therefore whether what was done, was against the Common Law, or *malum in se*, or not, was not at all in Judgment before the Court.

And the mention of that is introduced as spoke to remove a Doubt, how *North* came to be fined, when a particular Penalty is (as it is there said) given by the Act of Parliament.

But that is a gross mistake in the Reporter; the Act of Parliament is very short, I desire it may be read.

[It was read as follows:]

"*Stat.* 4. *Hen.* IV. *cap.* 5. Every Sheriff shall abide in proper Person "in his Bailiwick for the Time that he shall be such Officer, and that he "shall not let the Bailiwick to farm to any man for the Time he occu-"pieth such Office; and that the said Sheriff be sworn from time to time "to do the same in especial, amongst other Articles comprized in the "Oath of Sheriff."

Your Lordships observe, that there is in this Act only a *prohibitory Clause* against the Disposal of such Bailiwick, but no pecuniary or other particular Penalty of any Kind inflicted by that Statute: So that it could not be a Question whether a Fine was proper, as that Reporter supposes.

The Exactness of the Report, therefore, is not to be relied upon, and what other mistakes may be in it, I know not. Indeed it is a posthumous Work, uncorrect Notes taken for his own use, and not intended to be published.

But however, taking it for Truth, that some of the Judges did speak to the effect in that Report: It is a common Observation, that when Judges are proceeding in the Case of a plain and express Law, Words used by them that tend to discountenance and farther expose the Crime then censured, are of no great Authority.

The very same Thing is done in Lord Chief Justice *Coke*'s 12th Report, with respect to turning arable Land into Pasture; against which there was then an Act of Parliament in being; and farther to discountenance it, it is there said to be *malum in se*.

And in many Places, Usery is said to be *malum in se*, and with greater Colour; and yet I believe a Prosecution for it would scarce be thought maintainable, farther than the Act of Parliament will justify it.

But as to this particular matter of a Sheriff letting this Bailiwick to farm, before it was specially restrained by Acts of Parliament for that Purpose, there are many Footsteps of its being an ancient and allowed Practice.

The Stat. *de attinctis*, *Rast. Sheriffs* 5. containing several Provisions about Sheriffs, directs, that "that Statute shall extend as well to those "which were Sheriffs and other Ministers, that let to lease their Baili-"wicks, as to Sheriffs and other Ministers which hold their Bailiwicks "themselves."

Where the Sheriffs holding their Bailiwicks themselves, or letting them to Lease, which is letting them to Farm, is spoken of as perfectly indifferent.

Nor is the Expression supposed to be used in *Moor*, pretended to be built on any precedent Authority or Fact, but is barely the Reasoning of whoever he was that used it, from the Temptation to which Officers that pay money are exposed; and how just it is, I submit upon what I have laid before your Lordships on that Subject. Though the Danger from that Temptation is much greater in the Case of Bailiffs and Sheriffs that have only ignorant People to deal with in remote Parts in the Country, where it is difficult and chargeable to obtain Redress, than in the Case of Masters in Chancery, that act under the View almost of a Court of Justice, and where Persons wronged have an easy Opportunity every Day to obtain Redress.

So that this loose Expression mentioned by *Moor*, (coupled too with a gross Mistake) not at all to the Point of Judgment, is of very little Force to prove the Case to which it is applied to be against the Common Law, and of less to prove the present Case to be so.

What then is farther offered? Do they shew, that by the Common Custom of *England*, which is properly the Common Law of *England*, the taking money for Offices has been, from Time to Time, punished, or condemned as criminal?

No; it is admitted on the one Hand, that there is not one Instance of its having been punished or condemned as criminal, at the Common Law;

And on the other Hand, it is notorious, that in Fact the greatest Offices have anciently been sold even by the Kings; and that not in a clandestine manner, but so that the Price, and what it was paid for, have been entered upon Record.

The Instances have some of them been mentioned.

Richard, the Son of *Alured*, in the 5th of King *Stephen*, was to pay fifteen marks, that he might sit with *Ralph Basset* for the Pleas of the King, which *Ralph Basset* was then Justicier.

And *Walter de Grey*, in the seventh of King *John*, gave the King five thousand marks to have the King's Chancery for his Life, and the Bishop of *Norwich* engages for the Payment.

I have the Copies of both the Records here in my Hand, if there be any doubt of them.

Nor are our Hiſtories quite ſilent. In *Hollinſhead*, in the fifth Year of *Richard* I. (who was one of the intermediate Kings between the two Kings I have named) it appears what was done, almoſt with the Sanction of Parliament, certainly with their Notice, and not with their Diſlike.

" The King (ſays the Hiſtorian) called a Parliament at *Nottingham*, " and the firſt day of their Seſſion *Gerard de Camville* was diſcharged of " the Office of the Sheriff of *Lincoln*, and diſpoſſeſſed both of the Caſtle " and County. And ſo was likewiſe *Hugh Bardolf* of the County and Caſtle " of *York*, and of the Caſtle of *Scarborough*, and of the Cuſtody and " Keeping of the County of *Weſtmereland*. The which Offices (as he " goes on) being now in the King's Hands, he ſet them on Sale to him " which would give moſt. Hereof it came to paſs, that where the Lord " Chancellor offered to give fifteen hundred Marks beforehand for the " Counties of *York*, *Lincoln* and *Northampton*, and one hundred Marks of " increaſe of Rent for every of the ſame Counties; *Geffery* Archbiſhop " of *York* offered to the King three thouſand Marks aforehand only for " the County of *York*, and one thouſand Marks yearly of increaſe, and " ſo had the ſame committed to his Regiment."

And in the Caſe of *Magdalen College*, in the fifteenth of King *James* I. reported in 1 *Rolls*'s Reports 157, Sir *Henry Hobart* then Attorney General, and ſoon after Lord Chief Juſtice of the Common Pleas, argues from it, as a Principle not to be conteſted, That if any one procure an Office to himſelf for 1000 *l.* of the Gift of the King, the Office is not loſt by the Statute of 5 & 6 *Ed.* VI. which ſhews they think not wicked, not *malum in ſe*, or againſt the Common Law, for the Prerogative cannot extend to what is ſo.

My Lords,

Whoever makes the Grant, or receives the Money, the King or a Subject, the Temptation under which the Officer who paid it lies, to reimburſe himſelf, is the ſame. And if the Strength of that Temptation make the Thing criminal, it will make it ſo in all Inſtances.

It has been taken Notice of by thoſe Gentlemen who are of Counſel for me, that the Proviſoes in the very Statute of 5 & 6 *Edw.* VI. prove, that this is not againſt the common Law, or criminal in itſelf, at the ſame Time that it puts a particular Reſtraint upon the Practice of buying and ſelling Offices, or Deputations to Offices.

Give me Leave to add ſome Obſervations upon the Proviſoes in that Statute.

Sect. IV. contains a Proviſo, that this Act ſhall not extend to any Office whereof any Perſon is ſeized of any Eſtate of Inheritance.

Suppoſe a Man that has an Office of Inheritance takes Money from a Perſon whom he appoints as his Deputy:

Is not that Deputy as liable to be tempted to reimburſe himſelf by Extortion or Corruption, as if his Principal had but an Eſtate for Life?

Can a Deputy's Behaviour turn upon the Title of his Principal? So that 1000 *l.* (for inſtance) paid by him, will certainly make him corrupt, if his Principal holds his Office for Life; but will not make him guilty of the leaſt Miſbehaviour, if his Principal have the Inheritance of the Office?

This Proviſo is therefore plainly founded only upon the Regard the Law-makers had to the *Property* and *Intereſt* of ſuch Owners of an Office, which they would not prejudice, and therefore he is left at full Liberty to ſell the Office itſelf, or a Deputation to it.

But if to take Money from a Perſon who is to have or execute an Office, were unlawful by the Common Law, or wicked in itſelf; it is impoſſible that the Owner of the Office could have a *Right to that wicked and unlawful Gain*; nor could the Law-makers have any Regard to it.

And ſince here they are *careful* not to take it from him, they allow it. They in effect make a formal *Declaration* that it is *lawful*, and that the Proviſion made by that Act is not ſo neceſſary, as that it ſhould in any Degree interfere with his private Property in that Inſtance.

Farther,

Sect. III. makes void all Agreements, Bonds and Promiſes for Money, for any Office or Deputation. But Sect. VI. provides, that the Act ſhall not extend to Agreements, Bonds, *&c.* made or concluded before the firſt of *March* then next.

This ſuppoſes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpoſe, which the Courts of Juſtice were to compel the Performance of.

Does it condemn them as criminal in themſelves, by reaſon of the Danger?

No, on the contrary it does not eſteem the Danger ſo great, as that, to avoid it, the Property ariſing upon theſe Contracts ſhould be taken away, or at all impeached: But leaves a Remedy in a Court of Juſtice to enforce the Performance of a Contract, which muſt neceſſarly cauſe a publick Miſchief, if that were true that it is unlawful in itſelf, and that its Unlawfulneſs ariſes from the Miſchiefs conſequent upon paying Money on that Occaſion.

Had the Makers of that Law been of the Opinion which theſe Gentlemen ſeem to be of, and thought ſuch Traffick a Wickedneſs, it had been impoſſible for them not to have put a Stop to it, and abſolutely diſannulled all Securities and Cautions for the Performance.

I do not ſuppoſe the Form of Expreſſion uſed in this Proviſo will be criticiſed upon, or that it will be urged that the Words of this Proviſo only import, that thoſe Bonds are left *in ſuch Force as they would have been, if the Act had not been made*, and does not make them good.

That would be a poor Subterfuge. The Proviſo makes them not good, 'tis true. Why? Becauſe it plainly ſuppoſed them to be good before; but that Sect. III. would make them void, if this Proviſo did not prevent it; and this Proviſo is on Purpoſe to prevent it, and for nothing elſe.

And would the Makers of a Law, would theſe Gentlemen in making a Law, inſert a Proviſo that Arguments ſhould continue of ſuch Force as they were before, if they thought them of no Force before? Nay, if they thought them not only void, but miſchievous?

The ſaving a Right of Action upon ſuch Bonds, and making a Proviſo in Favour of them, gives them ſuch Countenance, that thoſe that had any ſuch would certainly inſiſt upon them, and the Perſons that were bound would be diſcouraged from diſputing with them of what the Legiſlature did not think fit to deprive them of, and would therefore pay without ſtanding a Suit.

There is yet one Proviſo more in this Act, material to the preſent Purpoſe.

Sect. VII. provides, that this Act ſhall not *extend or be prejudicial to the Lords Chief Juſtices* or *Judges of Aſſize*—— " but *that they may do in every* " *behalf touching any Office to be given or granted by them, as they might have* " *before the making of this Act; any Thing above-mentioned to the contrary* " *thereof in any wiſe notwithſtanding.*

This plainly implies, that at that Time, and before, it was the Practice for the two Chief Juſtices and Judges of Aſſize to take Money for the Offices in their Courts, elſe nothing in this Act could extend to what they *uſually did*, or be of *any Prejudice to them.*

And it ſhews too, that the Law-makers did not diſlike the Practice.

I beg Leave to ſubmit to your Lordſhips, whether this doth not amount to a Declaration of the Law, that the taking Money for Offices, whatever Danger there may be from it in ſome Caſes, does not neceſſarily, in all Caſes, cauſe bad Officers to be made; nor the paying it make the Officer extort: For the Nature of Things changes not with the Titles of Perſons. An Officer that pays Money to a Lord Chief Juſtice, will be under the ſame Temptation to get it up again, as he that pays to a Lord Chancellor.

As to the Wording and Form of Expreſſion of this Priviſo, I take it to be very clear, that the Words [*as they might have done before the making of this Act*] are declaratory; that they might before the making of this Act take Money for Offices; and becauſe in the Caſe of thoſe Officers the Danger was not ſo great, it is ſtill ſaved and preſerved to them.

If it be ſaid that nothing is ſaved to them, but *they doing what they might have done before*, and that they *could not before lawfully take Money for Offices*; I beg Leave to anſwer, that if that be ſo, the Clauſe is perfectly frivolous. A ſtrong Prejudice againſt the Expoſition that makes it ſo in all Caſes, but much more ſo here.

For as the Judes are always Attendants in this Houſe, and this Clauſe greatly concerns them; it is highly probable that it was drawn up and propoſed by themſelves.

And if taking Money for Offices were then eſteemed criminal; if the Notion is right which is now contended for, that taking Money for Offices was againſt Law, was Corruption; and that this Law was then paſſing to lay farther particular Reſtraints upon it; is it poſſible that the Judges could preſume to aſk not to have a Difficulty or Diſcouragement laid upon their being guilty of Corruption, or their doing a Thing unlawful?

Or, is it poſſible that the Lords and Commons ſhould conſent to it?

Or, if the Judges would aſk it, would they not have made it effectual? Would they, by propoſing the Proviſo, in effect, own a a corrupt Practice, and their Reſolution to continue it, aſk Proviſion for it, and be indulged; and yet not aſk what would effectually juſtify them in it?

I hope, therefore, that what is charged againſt me is not condemned by the Common Law or Uſage of this Kingdom. If it be, it properly lay on them to make it out; but they have ſhewn nothing to prove it; not one Inſtance of its being puniſhed at Common Law, or blamed; not one Citation out of the old Books of the Common Law, precedent to the Acts of Parliament made relating to Things of that Kind. On the contrary, I have ſhewn it practiſed in the higheſt Inſtances, without Blame or Cenſure: And that ſeveral Clauſes in the Statute of *E.* VI. were plainly founded upon a Suppoſition of this Practice being allowed by the Common Law, and continue the Allowance of it, in ſome Inſtances, to this Day.

This is what I had humbly to lay before your Lordſhips, with reſpect to the Common Law. And I ſhall now conſider it as it ſtands upon the the Acts of Parliament.

And as to Acts of Parliament relating to this Matter, they have ſuggeſted only two, the Statute 12 *Ric.* II. *cap.* 2. and the Statute 5 & 6 *Ed.* VI. *cap.* 16.

As to the Statute 12 *Rich* II. The Proviſion of this Statute is to bind thoſe who make or name Officers in the Caſes to which it extends, under an Oath to obſerve the Directions of that Statute in their ſo doing. And I hope I have already fully anſwered the Pretence of my having taken an Oath upon this Statute, which extends to any of the Officers in the Court of Chancery. I ſhall now conſider on that Statne, and what may be urged from it, a little more particular. And,

1. As I have already mentioned, I take the Statute of 12 *Rich.* II. to relate only to ſuch Nominations as are in nature of Elections; that is, ſuch where the Nomination is in ſeveral Perſons.

In thoſe Caſes it is common with us to have ſuch Oaths adminiſtred, but not in others. We find them in Colleges, and other Bodies of Men.

The great Uſe and main Intent of ſuch an Oath in thoſe Caſes is, to prevent Combinations, Strife, and Brigues, where the ſeveral Perſons concerned will naturally have ſeveral Views. And the Animoſities and Contentions ariſing thence among ſo great Officers as this Statute takes Care of, might greatly affect the publick Peace.

The Things which cauſe moſt Contentions on ſuch Occaſions, are *Money*, *Affection*, (by reaſon of Kindred or Friendſhip) and *great Solicitations.*

Accordingly this Act extends to all three, and takes care to forbid the the laſt *(Solicitation)* wholly; and the being influenced by either of the former.

The Perſons *called* to name, or make Juſtices of the Peace, Sheriffs, or any other Officer or Miniſter of the King, are *to be ſworn, that they neither name nor make them for any Manner of Gift or Brocage, Favour or Affection; nor any that purſues by himſelf or any other, privately or openly to be in any Manner of Office, be put in that ſame Office, or any other; but that they make all ſuch Officers and Miniſters of the moſt good and lawful, and the moſt ſufficient to their Knowledge and their Conſcience.*

My Lords, in the next Place,

2. The Words of the Statute plainly import as much; that the Nomination there meant, is what is made by ſeveral Perſons when they are called together.

" It

" It is accorded and assented, that the Chancellor, Treasurer, Keeper " of the Privy Seal, Steward of the King's House, Chamberlain of the " King, Clerk of the Rolls, Justices of the one Bench and of the other, " Barons of the Exchequer, and all others who shall be called to name " or make Justices of the Peace, Sheriffs, Escheators, Customers, Comp- " trollers, or any other Officer or Minister of the King, shall be firmly " sworn that they neither name nor make Justices of Peace, Sheriff, " Escheator, Customer, Comptroller, or any other Minister of the " King, *&c.* for Gift or Brokage, Favour or Affection, *&c.*"

I own, that there seems some Difficulty as to this, because I do not know of any law, at that time, that any of these Officers, except Sheriffs, were named by an Assembly of several Persons.

But though there were no law requiring it, there might be an Usage to do it, by some Direction from the Crown for better Information.

And what is now done in relation to Sheriffs, turns in some part upon such Usage continued down to this Time, without any law, that I could ever hear of, for to support it, as to *all* the Persons who now meet to name them.

For by a Statute of 9 *Ed.* II. called the Statute of Sheriffs, printed in *Rast.* Tit. Sheriffs 2. " Sheriffs are to be assigned by the Chancellor, " Treasurer, Barons of the Exchequer, and by the Justices."

By 14 *Ed.* III. *Cap.* 7. *Rast.* 12.

" *Sheriffs shall be ordained by the Chancellor, Treasurer and chief Baron of* " *the Exchequer, taking to them the Chief Justices of the one Bench and of the* " *other, if they be present: And in the Absence of the Chancellor, by the Trea-* " *surer, the Barons of the Exchequer and the Justices. And that shall be done* " *yearly on the Morrow of* All Souls (that is the third of *November*) *in the* " *Exchequer.*"

This is the Statute that fixes the Time and Place now observed.

But as to the Persons, though the Justices of both Benches are in the first Act, yet none of them, but the Chief Justices are in the last. And the Lord Privy Seal, Lord Steward, Lord Chamberlain, and the Clerk of the Rolls, and other Lords of the Council, are in neither. And yet by constant Usage, all these attend at the naming of Sheriffs; and, as they see Occasion, give their Advice and Assistance, and all take the Oath.

And by like Usage, which we cannot now account for, there was probably some such Practice with respect to other Offices.

For it is to make the Statute absurd, which provides that such and such, and all *others that shall be called to name Justices of the Peace, Sheriffs, Escheators*, &c. *shall be sworn to name these Officers without Favour or Affection*, if neither they nor any others were called to name any of these Officers.

3. This is the stronger, because constant Practice, the best Expositor, has thus expounded this Statute.

If the Intention of this Statute were, that all the Particulars first named, that is, Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, Chamberlain of the King, *&c.* were to be separately sworn, as to the respective Officers under each of them severally;

Then this must have been made part of their Oath of Office, or administred at the same time with it, though in a distinct Oath.

But that has never been done, nor has it ever been administred to a single Person at that or any other Time. Which is the strongest Argument possible that it is not what was then meant, or ever understood to be meant, by that Statute. But on the contrary, in the single instance where several are called together to name Officers, that is in the case of Sheriffs, the swearing of them, to observe this Statute on that Occasion, is never omitted to this Day.

Give me leave to observe one thing more, that a Chancellor, a Treasurer may possibly be seven Years in his Office; I believe Treasurers have in fact been all or the greatest part of their Time without ever taking this Oath, which is never taken, unless they happen to assist at the naming of Sheriffs, which there is no Law requiring the other great Officers to attend at, and which is now become little more than a matter of Form, the list settled in that Assembly being every Year departed from in many Counties.

And if this that I have thus offered be the whole meaning of the Statute, then at this Day, as the Usage now is, it has nothing to operate upon but the Nomination of Sheriffs, and therefore extends to no other Cases, and consequently not to any of the Officers in the Court of Chancery.

But may it not be said, that though the Oath required by this Statute extend not to the present Case, yet will not this Provision amount to a Declaration of the Sense of the law-makers, that the Things thus provided against are such as should not be done, and consequently that the doing of them after such Statute will be against law?

To state this distinctly, would take up more Time than is proper upon this Occasion.

But this I beg leave to say, and it will be as well applicable to the Statute of *Ed.* VI. as to this, and perhaps more directly.

Acts of Parliament that contain political Provisions for making Regulations, or for avoiding Things not wicked, but which may be inconvenient, have not always this Consequence, that Actions done contrary to what they designed in the very Cases then in view will be criminal, and much less in Cases not in view.

Our Law is sparing, in making the doing a thing a Crime, which may be rectified and redressed another way.

There are several Acts of Parliament to restrain Ecclesiastical Persons from making long leases, to prevent the Inconveniencies such leases may bring upon their Successors; those Acts declare such leases void, which therefore are against the Intent of those laws; but it was never thought that the making or accepting such leases was criminal.

The Sense of the Law-makers is to have no Consequence, but what necessarily follows from the Provision by them made.

What they intended was, that the Successor, if he pleased, might set them aside; which would have this Effect, that none would take such Leases, or they would do it on Terms advantagious to the Successor, or with a Resolution of being so good Tenants, as that the Successor would not take Advantage of it: So that either the lease would be vacated, or the Inconvenience would be prevented without, which fully answers the End of the Act. And this is very applicable to the Statute of *Ed.* VI.

In this Act of *Ric.* II. The Inconvenience provided against is only in Elections or Nominations by Numbers; the Provision is by taking an Oath.

If such Oath be taken and broke, that is a Crime; for that is the necessary Consequence of the Provision made, Violation of an Oath being undoubtedly criminal. But where no Oath is taken, much more where none is required, I do not see how doing the thing can be a Crime; merely because in some Cases it is in this manner provided against, and would be criminal if in doing it an Oath had been violated.

One thing intended to be entirely prevented in Cases within this Statute is Solicitation, or desiring a Place.

But has it ever been construed, in consequence of this Provision, that if I put a Person into an Office, who ever asked that or any other, I should be a Criminal, though I never took this Oath?

Then the Consequence will be, that the asking a Place, or the modest offering a Man's self for it, (which would be suing or pursuing for it in the Words of the Act,) will lay him under a perpetual Disability of having that Place, or any other.

Nay, since asking a Place is what the Statute has made a Provision to prevent; whoever asks a Place, does a thing intended to be prohibited by the Statute, and is therefore criminal.

Was this ever the Construction of this Act?

Nay, every one that assists in what was thus intended to be prevented will be criminal, and so will every one that asks for another at his Request.

My Lords, at this rate the Statute will be very extensive.

I would beg leave to mention one Case more, and hope the Gentlemen of the House of Commons will not take it amiss, or look upon it as any Disrepect to them.

By the Statute 1 *Hen.* V. *cap.* 1. " *It is enacted, That Knights of* " *Shires be not* chosen *unless* they *be resident* within the Shire where they " shall be chosen, the Day of the Date of the Writ of Summons. *And* " *that the Citizens and Burgesses of the Cities and Boroughs be chosen Men,* " *Citizens and Burgesses*, resiant, *dwelling and free in the same Cities and* " *Boroughs, and* no other *in any wise.*"

The Statute 23 *Hen.* VI. *cap.* 15. recites this last part of that Statute, and enacts, that it be *duly kept in all points.*

And this is the Statute upon which Actions used to be brought, in our time, for false Returns of Members to Parliament.

This is in direct Words a *Prohibition* of any Person's being *chosen* that is *not resiant:* But since the natural Effect of this Provision would be, that (the subject-matter thereof being the Case of a legal Authority conferred by the Choice) Persons chosen, not being so qualified, might in consequence of this Law be rejected.

If this political Provision be not complied with, is there another Consequence to follow, instead of redressing it this way, and the Parties concerned to be therefore made criminal?

Is it criminal in those who chuse for their Representatives in Parliament, Persons not only not *resiant*, but whom they never saw?

Is it criminal in those unqualified persons, to presume to take their Places in the House?

Is it criminal in the other Members, knowing such to be amongst them, not to turn them out *ex officio*, even though no Complaint be made from without Doors?

I think not.

Yet I apprehend that will be the Consequence, if laws of that Nature are thus to be explained, and every Action is to be judged criminal, which any Act of Parliament has made any sort of Provision to prevent.

As to the Statute of 5 & 6 *Ed.* VI. *cap.* 16.

Although it has made Provision against the Sale or Disposal of Offices for money, yet nothing can be inferred from thence in Support of this Prosecution.

But that your Lordships may take a better View of that law, permit me to lay before you a few Observations.

The Preamble sets forth the End for which this Restraint was laid.

" *For* the avoiding of *Corruption* which *may hereafter* happen to be *in the* " *Officers and Ministers* in those Courts, and Places, and Rooms, wherein " there is requisite to be had the true Administration of Justice, or Ser- " vices of Trust:

" And to *the Intent* that *Persons worthy* and meet to be advanced to the " Place where Justice is to be administred, or any Service of Trust ex- " ecuted, should hereafter *be preferred* to the same, and *no other.*"

Here is mention made of *Corruption*, but it is that which may happen *in the Officers appointed*, it *calls not* the *taking money* upon the appointing them *Corruption.*

It in effect says, what I have before said,

That giving and taking money is a *Temptation* to those who dispose Offices, to put in sometimes unfit Persons; to those who buy to extort and be corrupt: And consequently that if this Practice continue, there will be Instances, in which this Temptation will so far be yielded to, that Persons not worthy will *sometimes* be preferred, and those Persons will *some of them* venture upon being guilty of Corruption.

But to avoid all the *Corruption which may happen* in those Instances, and to the intent that this *Temptation* may in no *case prevent*, but that *worthy Persons be advanced, and no other in any* Instance, the Statute is made.

The *main End* whereof is *answered*, if worthy Persons be advanced, and they be not corrupt, but behave themselves well.

What then is the particular Provision made by this Statute? *Not* making way for an arbitrary Punishment, by *declaring it to be Corruption*, or *criminal*, or *against* the Provision of *any former Law*, to give or take money for an Office.

Not declaring that it *shall be criminal* for the future.

Not even enacting, that *no Person shall* take or give money for an Office: which might make the Contravension of this law a Crime for the future:

For it is *remarkable*, that this Statute has not so much as any *prohibitory Words* in it;

But the whole Provision is barely *putting the* Case by way of *Supposition*, " *if a Person do take money*," &c. and declaring the *Consequence*, which Conse-

Conſequence is, that the *Perſon taking* the Money, if it were for an Office *ſhall loſe the Nomination to that Office*; if for a Deputation, he ſhall loſe his Intereſt in the Office: And the *Perſon paying* ſhall be adjudged *a diſabled Perſon* to have, occupy, or *enjoy the Office* or Deputation. That is, as appears afterwards, he is *diſabled, ſo far as concerns himſelf*, his right to have it, and to *continue the taking of the Profits*: But not ſo far as the *Publick has benefit* by him: For by a Proviſo for that Purpoſe, all *Acts done by him are valid*.

The Effect of which is, that the Officer who comes in for Money holds that Office *precariouſly*, which would otherwiſe have been *for Life*, and is *wholly at Mercy*, if he gives the leaſt *Occaſion of Complaint* againſt him; and ſince he that put him in has loſt the Nomination, there accrues to the King a Right to fill the Place with a better man in caſe he thinks fit.

And therefore I will not controvert, but that the Right of Power of Nomination to an Office may, by Proſecution grounded upon this Statute, be taken from the Perſon who enjoyed it, and veſted in the Crown.

But as there is no *ſuch Power of Nomination* to theſe Offices *now in me*; but I *have loſt* it *with the Office of Chancellor*, and therein have ſuffered a *much greater* Loſs than that of thoſe *Nominations* only; No *Judgment can be given againſt me upon this* Act, and therefore neither can there be found upon it any Proſecution againſt me; for that is but a method of praying and obtaining a proper Judgment.

And to adjudge, that upon the Caſe which has happen'd (ſuppoſing it to be within the Words and Meaning of this Statute) any *Puniſhment* ſhall be inflicted, or any *Conſequence* follow, beyond the *Loſs of the Nomination*, is (with great Submiſſion) to go quite out of this Statute.

Thus I have endeavoured to make out what I firſt propoſed, that the receiving a Preſent upon theſe Occaſions is not criminal in itſelf, or by the Common Law, and that there is not any Act of Parliament whatſoever by which the ſame is made Criminal, or ſubject to any Puniſhment or Judgment which can be pray'd in this Proſecution.

My Lords,

All this Reaſoning is greatly fortified by Uſage, by my Predeceſſors; which Uſage is expreſly proved before your Lordſhips by all the Maſters, who could not refuſe giving Teſtimony; that is, all the preſent Maſters admitted by my Predeceſſors, who are indemnified by the Act of this Seſſion for that Purpoſe: And, I think, is proved too by the former Maſters now living, who declined giving an Anſwer to the Queſtion, when aſked, what they gave or knew given; making this their Excuſe, that by our Law no Man is bound to accuſe himſelf, and that to own they had given Money would expoſe them to the Penalties of this Act. For whatever might be the Conſequence of owning they gave Money; there was no Danger in ſaying they gave none. And they might have given an Anſwer in the Negative ſafely, but that the Truth and their Oath would not allow them to do it.

And this Refuſal of theirs to anſwer, was not a Contrivance of mine, they were ſupported in their Objection by the Gentlemen that are Managers who were pleaſed to give their Aſſiſtance to defend them from anſwering the Queſtion.

And might I have been allowed to have given Evidence of what has been from time to time declared, by Parties concerned, who are now dead, it would have been proved much farther.

But I apprehend the Thing is notorious; altho' ſome Proofs have been offered for Form-ſake, yet it was equally well known before; known to all the World.

Give me leave likewiſe to argue farther upon this whole matter from what I ſaid once already, that it is admitted there is not one Inſtance, that ſuch taking Money has been puniſhed either at Common Law or upon Act of Parliament; that this, according to the Rules of our Law, is one of the ſtrongeſt Arguments that it is not puniſhable. For it is not to be preſumed, but that it has been often done; the Statute of *Ed.* VI. takes notice of the Practice, not only of doing it, but of entering into formal Contracts, and Bonds for that Purpoſe.

Littleton, our moſt celebrated Lawyer, upon a Queſtion, whether an Action would lie upon a certain Act of Parliament, reſts upon it as a deciſive Argument in favour of the Negative, that it was never ſeen or heard that any Action was brought upon that Statute; alledging that if any Action might have been brought for this matter, it muſt be taken, that at ſome time or other it would have been put in practice. And the Lord Chief Juſtice *Coke*, in his Commentary upon *Littleton*, obſerves, that as Uſage is a good Interpreter of Laws, ſo Non-Uſage, where there is no Example, is a great Intendment (as he calls it) that the Law will not bear it. Not that an Act of Parliament (as he goes on) can by non-uſer loſe its Force; but that it may thereby be expounded, or declared how the Act is to be underſtood.

This is what I have to ſubmit to your Lordſhips, that the taking Money for Offices is not criminal, which, I apprehend, is the whole Charge in the Articles, except the *manner of taking it* varies the Conſideration, which I ſhall take notice of afterwards.

There is not the leaſt Pretence, that Money was given for putting in Perſons unqualified, the ſuppoſed Crime is ſingly the taking Money.

And as to what has been ſaid by way of comparing it to the Caſe where any judicial Order or Determination is made for a Bribe; give me leave, with great Submiſſion, to inſiſt upon it, that there is not the leaſt Parity at all betwixt that and the preſent Caſe: For in matters of Judgment, if the Party have a Right to what he ſues for, he ought not to be put to buy his own; and much leſs, if he has not a Right, ſhould he be at Liberty to purchaſe of the Judge, that which is the Right of another.

But this here is not matter of Juſtice, but matter of Favour and pure Bounty; whether I put in this Man or that Man into a Place in my Diſpoſal, depended wholly upon my own Choice and Pleaſure; ſo that the Caſes are not at all alike.

A Bribe ſtrikes at the Root of the equal Adminiſtration of Juſtice; it is a profeſſed Byaſs, and can mean nothing but to deſtroy Indifferency, and to render the Judgment partial.

It is therefore diſallowed in all Nations, and in all Ages; and is expreſly forbid by the Law of God. And had the Gentleman who touched upon the Text which condemns Gifts, been pleaſed to cite it at large, it would have appeared to relate to Bribes given in Caſes of Judgment, *Deut.* xv. 18, 19. "*Judges and Officers ſhalt thou make thee in all thy Gates*——
"*And they ſhall judge the People with juſt Judgment. Thou ſhalt not wreſt*
"*Judgment, thou ſhalt not reſpect Perſons, neither take a Gift. For a Gift*
"*doth blind the Eyes of the Wiſe.*"

As to the manner of taking Money in the ſeveral Articles V, VI, VII, VIII, the Caſe ſtands thus:

V. There are in all, eight Articles relating to this matter; but they have proceeded only upon four: The firſt of which is the fifth Article, and relates to the Money taken on Mr. *Kynaſton*'s Admittance.

Upon their own Evidence it appears, that Mr. *Kynaſton* was well recommended by Mr. *Bayly*, a Perſon of a very good Character; that the firſt and only Meſſage brought to me, with relation to his Admittance and the Money to be paid, was this; that he deſired to be admitted on the Surrender of Mr. *Rogers*, and would make a Compliment of 1500 Guineas, or, if I did not think that enough I ſhould pleaſe myſelf; and my Anſwer was, I was pleaſed with the 1500 Guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by repreſenting, that Mr. *Kynaſton* firſt offered 1000*l.* but Mr. *Cottingham* would not propoſe it; that it was worked up by Mr. *Cottingham*'s telling him that he had bought a good Office; that Mr. *Rogers* had told him he uſually made 1700*l.* and ſometimes 2000*l. per Annum* of it, and that he underſtood the Profits aroſe out of the ordinary Profits of the Office, and the Uſe of the Suitors Money together.

As to the Offer of 1000*l.* Mr. *Cottingham*, a Witneſs produced by themſelves, denies it. And Mr. *Bayly*, their other Witneſs, who firſt broke the Affair to Mr. *Cottingham*, and at his Return from him, told Mr. *Kynaſton* that Mr. *Cottingham* ſaid 1500 Guineas would be expected, ſwears, that Mr. *Kynaſton* immediately ſubmitted to what Mr. *Cottingham* had ſo mentioned, only he ſaid he thought it had been but 1500*l.* And this was before Mr. *Kynaſton* ſaw Mr. *Cottingham*.

So that Mr. *Kynaſton*'s Oath is directly contradicted by the Oath of Mr. *Cottingham*, one of their own Witneſſes; and is highly improbable from what Mr. *Bayly* another of their own Witneſſes ſwears.

And as to what Mr. *Cottingham* ſaid about the goodneſs of the Office, he ſwears it was after the 1500 Guineas were agreed to be paid. And indeed upon that depended not ſo much what he was to preſent to me, as what he was to pay Mr. *Rogers*, which had been agreed upon before Mr. *Cottingham* was ſpoken to.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was propoſed to me as a voluntary Offer, when I was at the ſame time told I might have more, if I would inſiſt upon it; without one aggravating Circumſtance, with relation to the Perſon admitted, or what I did.

VI. The next of theſe Articles is the ſixth, which concerns Mr. *Thomas Bennet*, and the Money given me by him, on account of his being admitted Maſter upon Mr. *Hoccocks*'s Surrender.

And the whole of the Fact, ſo far as I was concerned in it or knew of it, was but this: That Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himſelf not ill uſed, and I being then extremely ill, he preſſed to be admitted, for fear (as Mr. *Cottingham* ſwears he thought) of falling into worſe Hands. On *Thurſday*, and in the Nights before and after, I remember I loſt near 50 Ounces of Blood, in about 24 Hours. And that Night Dr. *Mead* told Mr. *Cottingham*, that if the Diſtemper had not a Turn very ſoon, I could not live 24 Hours. On *Friday* Mr. *Cottingham* ſays, the Doctor told him the Diſtemper had a Turn: On *Saturday* morning Mr. *Bennet*, after great Importunity, was admitted while I was in Bed, but Company kept out of the Room as much as could be.

This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet*, who mentions nothing at all of me of his own Knowledge, but of the Kindneſs with which I ſpoke to him, and told him that he was admitted by a dying Chancellor, is their other Witneſs, who is to ſhew invidious Circumſtances. And very ſollicitous he ſeems to be to do it.

He takes care to ſay, that he was ordered to come alone, and bring no body with him; as if it were the better to keep ſecret the Payment of the Money, tho' he knew my great Weakneſs was the Reaſon.

He affects to ſay, the Bank-Notes were taken out in feigned Names, and that it was not thought proper to uſe my Name or his. Tho' upon another Article, when he is examined again, it comes out, that the feigned Name was that of his Clerk, whom he ſent to take out the Notes, and it was merely *Bennet*'s own doing.

He ſays, he offered 1000*l.* to *Cottingham* at firſt, and tells a long Dialogue they had about it, but *Cottingham* himſelf upon his Oath denies it all.

So that here, at laſt, nothing is proved that paſſed with me, but the 1500 Guineas being offered to me and accepted.

And give me leave to obſerve, that the two Sums of theſe two Articles were certainly not paid out of the Suitors Money. For whatever other Objection may be made againſt taking the Preſent before Admiſſion, it has this Effect, to ſhew that it came not out of the Money of the Suitors.

And yet there being a Pretence (without ſtating the Circumſtance of Time, which I have juſt taken notice of) that they were paid out of that Money, and that the Suitors were in danger of being Sufferers; I brought Money into Chancery, to be ſubject to the Orders of the Court.

The two other Articles, the ſeventh and eighth, were upon Admiſſions to Places vacant by Death.

VII. The ſeventh Article concerns the Caſe of Mr. *Elde*; and the Fact, as they have themſelves proved, is thus:

Upon the Death of Mr. *Fellowes*, the former Maſter, 5000 Guineas is offered and given to me by Mr. *Elde*; 6000*l.* is offered by another.

It is admitted, that *Thomas Bennet* about three Quarters of a Year before upon coming into his Place gave his Predeceſſor, who ſurrendered to him, ſeven thouſand five hundred Pounds, and to the Great Seal 1576*l.*

in all 9075 *l.* and that Mr. *Kynaston*, two Years before him, gave his Predeceſſor 6000 *l.* and to the Great Seal 1575 *l.* in all 7575 *l.*

And Mr. *Elde*, a man of unblemiſhed Character, of a good Eſtate, and not one Objection to his Fitneſs, is admitted, though he pays ſo very much ſhort of what others had paid, and leſs than was at the ſame time offered.

And of this that he paid 3400 *l.* was returned to him, and only 1850 *l.* retained.

I will not trouble your Lordſhips in relation to what my private Intentions were in that Tranſaction; if they were capable of being proved, I believe your Lordſhips would not diſlike them.

Some little Reflection has been made upon the money being brought in a Baſket, as if it were for Privacy, and even to conceal it from Mr. *Cottingham*.

Whereas it plainly appears to have been without any Deſign, and only Mr. *Elde*'s making uſe of a Convenience he accidentally had in his Chambers.

But if there had been an Intention to conceal it from Mr. *Cottingham*, why was he the Hand to convey any Thing? Why was he the Perſon to bring up the Baſket? Mr. *Cottingham* knew 6000 *l.* had been offered by another, and might rather gueſs this to be more than leſs.

And had Mr. *Elde* not been himſelf examined (which at that Time it was not expected he would be), and Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000 *l.* for the Place; that another offered 6000 *l.* that he had told me of it; that Mr. *Elde* after delivered him a Baſket, which by its Weight he believed to have Money in it; that he brought it to me; and that Mr. *Elde* was that Day, or very ſoon after, admitted: According to the Candour of conſtruing my Actions, this would have been ſaid to be a convincing Proof, that there was 6000 *l.* in the Baſket, or more: It being impoſſible for the *avaricious Temper of the Earl of* Macclesfield, for his *Impotency of Mind*, his *conſtitutional Weakneſs in Matters of Money*, not to take the greater Sum.

VIII. The 8th Article concerns the Caſe of Mr. *Thurſton*.

There, upon Mr. *Borret*'s Death, 6000 *l.* was offered me by another worthy Gentleman, but Mr. *Thurſton* was admitted.

He ſays he gave upon that Occaſion 5000 Guineas, but that all above 2000 *l.* was returned.

My Lords, ſince what paſſed relative to that matter is not capable of Proof, I will not trouble you with the Particulars of it, which might be material.

Mr. *Thurſton* is likewiſe a Perſon unexceptionable; Mr. Baron *Gilbert*, now one of the Lords Commiſſioners for the Cuſtody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his Favour.

But there is no Objection to him neither, and therefore there needs no Proof.

This is the State of the Fact upon theſe two Articles.

This is ſo far from *Extortion*, the money is voluntarily offered.

So far from *Avarice*, the greater Sum is refuſed, and a leſs taken. And even the greateſt Part of that returned, 3400 *l.* in the one Caſe, and 3250 *l.* in the other.

And the Perſons ſuch, that, were I to go through *Weſtminſter-Hall*, I cannot eaſily pick out two better men.

Upon the whole, all that can be pretended to be in my Hands now, upon theſe four Articles concerning Mr. *Kynaſton*, Mr. *Tho. Bennet*, Mr. *Elde*, and Mr. *Thurſton*, which are all the Managers have proceeded upon, relating to money received from the Maſters, is but 3850 *l.* that is, 1850 *l.* from Mr. *Elde*, and 2000 *l.* from Mr. *Thurſton*; the reſt having been all returned.

And as to that which was given back to Mr. *Thurſton*; he has ſworn, that he was ſent for ſeveral Times, in order to have Part of his money returned, and received it before the firſt Seal after *Michaelmas*, near a month before any Order by the Lords of the Council to call for the Accounts, and while every Thing was in the ſame State as when he paid it, and from his Evidence it cannot be judged to be any Thing but the Effect of Generoſity.

Mr. *Elde*'s was not returned till after the Accounts were begun to be taken, he continuing a long Time in the Country; but when he came to Town he had it.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Tho. Bennet*, upon his diſpoſing of his Office of Clerk of the Cuſtodies or Lunaticks to Mr. *Hamerſly*.

The Evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That *Bennet* having agreed to diſpoſe of his Office to another, ſent me a Preſent voluntarily of 100 Guineas upon that Occaſion, and though I, at that Time, knew that more had been given in the like Caſe, I was contented with that, and accepted it.

This is within the ſame Reaſon as the Caſe of the Maſters; it has been practiſed by my Predeceſſors as a Right of their Office, upon Diſpoſitions of this Office, and others of the like Nature.

Beſides the Proof of what had been paid to the Great Seal, upon another Diſpoſition of this Office; it has been proved, that another of my Predeceſſors, the late Lord *Cowper*, declared his Opinion, that he thought it his Right to have a Preſent: And he having then paſſed a Grant of this very Office, without having had a Preſent, upon the Party's having pretended and aſſured him that it had not been uſual to give any for that Office; he expreſſed great Diſſatisfaction, and declared that he thought he had been impoſed on, that he ſaw no Reaſon why that Office ſhould not pay as well as others of the like Nature: Which implies both the Fact of receiving Gratuities, or Preſents upon Transfers of ſuch Offices, and his claiming a Right to receive them.

As to the Diſcourſe Mr. *Bennet* pretends to have had with Mr. *Cottingham*, Mr. *Cottingham* denies it; and as they both are produced by the Managers to this Point, this is a Claſhing between their own Witneſſes; and that cannot be ſaid to be proved by them, which is affirmed by one of their Witneſſes, and poſitively denied by the other.

And if there had been any ſuch Diſcourſe, it is not brought home to affect me; for there is no Pretence that I knew any Thing of it.

But as to the whole Fact wherein they differ, I think, from the Character that has been given of Mr. *Cottingham*, and what has appeared of Mr. *Bennet*, it will be no Queſtion at all, which of them two ſhould be believ'd.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Subſtance of it is; *That in order to advance and increaſe the illegal and corrupt Gain ariſing to myſelf from the Sale and Diſpoſal of the Offices of the Maſters of the Court of Chancery, in Violation of the Truſt repoſed in me for the Care and Protection of the Suitors, I did admit ſeveral Perſons to the ſaid Offices of Maſters, who at the Time of their Admiſſions were of ſmall Subſtance and Ability, very unfit to be truſted with the great Sums of Money and other Effects of the Suitors lodged in their Hands.*

The Maſters are not by this Article charged with the Want of any other Qualification whatſoever, but that of Eſtate: nor is there the leaſt Proof or Pretence, that they were not in all other reſpects men of Abilities equal to the Duty to be diſcharged by them, honeſt and unexceptionable in Point of Reputation; but the ſingle Objection to them is, that they were Perſons of a ſmall Subſtance.

The Proof offered upon this Article is this:

They have produced three Orders made in the Court of Chancery in the months of *January* and *February* laſt, whereby it appeared that Mr. *Conway*, Mr. *Kynaſton*, and Mr. *Tho. Bennet*, had not at that Time brought in all the money that appeared to be then in their Hands belonging to the Suitors of the Court. This is their whole Proof.

But I am entirely at a Loſs to know how this can be ſtretched to prove, what Ability they were of at the Times of their reſpective Admiſſions, or indeed that they are not of Ability now to pay their whole Balances, merely becauſe on ſuch a particular Day they had not paid their reſpective Balances into Court.

Nor is there the leaſt Proof, that I had any Reaſon to ſuſpect their Ability when I admitted them.

Mr. *Conway* had an Eſtate of between 5 and 6 hundred Pounds *per Ann.*

Mr. *Kynaſton* was repreſented to me as a man of Subſtance: Now that he comes under another Article, to ſwear it down, he owns that he has an Eſtate of 4 or 5 hundred Pounds a-Year, with Timber upon it worth 2500 *l.* and had likewiſe at that Time in money in the Funds, to the Value of two or three thouſand Pounds.

Tho. Bennet was eſteemed a man of a very good Eſtate and Subſtance. He is the Perſon to ſwear himſelf now worth nothing. And, to do it effectually, he ſticks not at owning, that he has mortgaged Part of his Eſtate for more than it is worth. Yet there is upon your Lordſhips Table the Particulars given in by him to the Court of Chancery, wherein his Eſtate, beſides that which he ſays he purchaſed ſince he was Maſter, appears to be about 500 *l. per Ann.* and he owns he had, when he was admitted, a Place for Life of 250 *l. per Ann.* which he after diſpoſed of. He ſays he was worth 20,000 *l.* and had been ſufficient ſtill, but for the Loſſes in 1720, which he owns were not known to me, nor generally ſuſpected.

But, my Lords, theſe two Gentlemen are making their Circumſtances mean, in order to get back the money they paid for their Offices; which they could not do by their own Oaths, directly for their own Uſes: And therefore they have thought fit to keep back ſo much of the money of the Suitors, when called upon to bring it in, that ſo the Suitors may complain to the Court of Chancery, and then their Oaths may be made uſe of, for the Suitors to found a Demand upon againſt their Predeceſſors.

And it is pretty remarkable, that their Deficiencies are neither more nor leſs than the Sums they at firſt paid to their Predeceſſors, and to me, upon their being admitted to their reſpective Offices. In this, therefore, I apprehend your Lordſhips will think their Oaths are of very little Value. It is hardly to be imagined, that they ſhould have been ſo long in their Offices, and have juſt ſaved nothing, nor waſted; and that they are not a ſingle Farthing either richer or poorer.

But whatever your Lordſhips Opinion, with reſpect to that, may be, I own I cannot but think, that there is ſomething very extraordinary in the Attempt; that theſe two men have agreed with two Maſters that were in Poſſeſſion of two good Offices for Life, to give one of them 6000 *l.* the other 7500 *l.* for their Places; and now, that they are got into Poſſeſſion, would have the money back, and continue in the Places too: That is, in ſhort, they are tricking thoſe Maſters out of their Places, under Pretence of buying them.

But whatever their Behaviour or their Eſtates may now be, they appeared to me Perſons of Reputation and Fortune, when they were admitted: And I do not obſerve, that the Article hath ſo much as ſuggeſted that I knew any Thing to the contrary.

One of the Managers wondered that I ſhould let in Perſons of no Fortune; and he ſolves it only by this, that they would give better Prices.

That had been ſomething, if the Price had been given to me; but leaves it incredible, that I ſhould let in any, that I had the leaſt Suſpicion had no Fortune: For the old Maſters to receive 6000 *l.* and 7500 *l.* at the ſame time that they repreſent me acting upon the View of burying the Maſters, and having the whole Price myſelf.

Where I was to have the whole Price, and the Temptation was greater, there is no Pretence I took in men of no Fortune. And is it poſſible to think I would do it, where the Maſters were to have the Price, and I ſo ſmall a Proportion?

Great Streſs has been laid on comparing the Sums in the Maſters Hands, with their Eſtates; in order to ſhew their Unfitneſs to be truſted with thoſe Sums.

How that Proportion is to be adjuſted, I own I am a little at a Loſs. Here is a Maſter that has an Office that brings in a conſiderable Profit, and is worth 5000 *l.* which cannot be run away with: He has a handſome viſible Eſtate of 4 or 5 hundred Pounds a-Year, and a good Reputation. How much money may he be properly truſted with? I do not mean as a Borrower, who may be preſumed in ſome Want, of one Sort or other, becauſe he borrows: but as a Caſhier for the Suitors? There are very few Bankers that have ſuch a Fortune to ſet up with. And I do not ſee that any of thoſe Bankers, that is a man of good Reputation, and good Credit (tho' perhaps he has not a good Fortune of his own) is thought the worſe of by thoſe who deal with him, becauſe he is truſted with very great Sums, far more than he is worth. The more he is intruſted with, the more are his Gains, and the ſafer all think themſelves that have money in his Hands.

There is in the Cloſe of this Article another Charge, That *I did publickly in open Court, falſely repreſent the Maſters admitted by me, as Perſons of great Fortunes, and in every reſpect qualified for the Truſt repoſed in them, to the manifeſt Deceit and Injury of the Suitors.*

My Lords, as to that, I think nothing can more plainly ſhew, than this Article, and what has been ſaid upon it, the forced Conſtructions put upon what I do.

Mr. *Waller* proves, that in *July* 1723, I declared in Court, that *the Maſters were Perſons of as good Fortunes and Abilities as any Set of Maſters had ever been before them.* Which is ſpoke of the whole Body of Maſters, and not of thoſe only who were admitted by me. He ſays he was *aſtoniſh'd at it.* But he has given no Reaſon why. If he knew any thing, that any of them were not ſuch as I deſcribed them; a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practiſer, would have made him ſet me right.

But, my Lords, is there any Reaſon aſſigned, why I ſhould think otherwiſe than I ſpoke?

Mr. *Lightboun* is examin'd, to prove, that he told me, ſome of them were ſuſpicious: But he does not ſay any ſuch thing. All he ſays is, that he took notice to me of Mr. *Dormer*'s misfortune, and told me, he knew not how ſoon the like misfortune might happen to others; which might be, (though they were all ſufficient) if the Perſon, with whom they ſhould depoſit Effects, upon going into the Country, ſhould fail.

But his Expreſſion is a little remarkable; that he cannot ſay he told me any of the Maſters particularly were ſuſpicious, "*For he did not know* "*how far he might be liable to an Action.*" An Action? what! for one Maſter informing the Chancellor of the Circumſtances of other Maſters, in order to have proper Care taken! Could he fear it! Who was to be the Witneſs? What muſt be the ground of the Action, if he told nothing but what was true?

But I think, he ſaid he had not any particular Grounds for his Suſpicion; and he ſays, *I was unwilling to believe it* of any of them. Why? becauſe (as he ſays I told him) *I had had very good Characters of them, and therefore I hoped they were all good Men.*

It was not very kind, in that Gentleman, to call it an *Unwillingneſs* to believe, there was Ground to ſuſpect them; when I aſſigned ſome Reaſons, why I ſhould not ſuſpect them; and he gave me none, why I ſhould.

So that here appears not any Reaſon, why I ſhould believe otherwiſe than what Mr. *Waller* heard me ſay.

But to what end ſhould I ſay it, if I did not believe it? Or how were the Suitors injured, or deceived by my ſaying ſo? Mr. *Waller* was not deceived. Was any body elſe deceived? Or could any one be injured? But they have diſcover'd a reaſon, why I ſaid it. They ſay that Mr. *Fellowes* was juſt dead, and there was a Maſter's Place then vacant: And that fact they have proved. But can any thing be more ſtrained, than their Inference from it? Did I deſign, by ſaying theſe Maſters were men of Fortunes and Ability, to raiſe the Price of that Vacancy; or to tempt Beggars to come in, that cared not what Price they gave? Does not what was then done clear me of all Suſpicion of that kind? Mr. *Elde* was the Perſon then admitted, a Gentleman of very good Eſtate, of very good Character in *Weſtminſter-Hall*, and 750 *l.* more offer'd by another, that was no Beggar neither, refuſed. And after that, Mr. *Thurſton* was admitted, preferably to one that offer'd 6000 *l.* Is it poſſible, that I ſhould give better Proof that I had not that avaricious View in it, that is ſuggeſted?

It was obſerv'd by one of the Gentlemen that] open'd the Evidence, that this was upon a *remarkable Occaſion*, when the Maſter of the Rolls had made an Order upon one of the Maſters, to make a Suitor ſome Compenſation out of his own Money in the Maſter's hands, and I ſet it aſide. And Mr. *Waller* began to tell ſomething of the merits of the Caſe. But a very learned and a very judicious Gentleman, one of the Managers, was pleaſed to ſay, They did not diſpute the Juſtice of my Order: nor is there any Charge of ſuch Injuſtice in the Articles.

XII. The next Article is the 12th, which ſets forth,

" That whilſt the ſaid *Thomas* Earl of *Macclesfield* executed the Office of " Lord Chancellor, an unjuſt and fraudulent method was practiſed in the " Court of Chancery upon the Sale of Offices of Maſters of the ſaid Court, " and upon the Admiſſion of new Maſters, that the Prices or Sums of " Money agreed to be paid for the Purchaſe of the ſaid Offices, and for " the Admiſſion thereinto, were ſatisfy'd and paid out of the Monies and " Effects of the Suitors of the Court depoſited in the Hands of the reſpec- " tive Maſters, ſurrendering their Offices, or dying; either by way of " reteiner of the Purchaſe in the Hands of the Maſter reſigning, or of " replacing the Money diſburs'd for ſuch Purchaſe or Admiſſion by the " ſucceeding Maſter, out of the Money and Effects of the Suitors coming " into his hands; by which Practice the Price and Value given upon the " Sale of the ſaid Offices, and Admiſſions thereinto, during the Time " aforeſaid, were greatly advanced, and ſeveral Perſons of ſmall Ability " and Subſtance were encouraged to contract for the ſaid Offices, upon " a proſpect of the eaſy method of paying for the Purchaſe of the ſame, " by means whereof great Deficiences have incurred in the Offices of " ſeveral Maſters of the ſaid Court, admitted by the ſaid *Thomas* Earl of " *Macclesfield*, which they have not been able to anſwer and make good; " and although the ſaid Practice was notorious and publick, and the " ſaid Earl was well inform'd thereof, and fully acquainted there- " with, yet the ſaid *Thomas* Earl of *Macclesfield*, in order to increaſe his " own unjuſt and corrupt Profit in the ſelling the ſaid Offices and " the Admiſſions thereto (which in conſequence of this evil Practice " was rais'd and receiv'd by him out of the Effects of the Suitors, " for whom he was intruſted) did not at any time, whilſt he con- " tinu'd in his Office of Lord Chancellor, uſe or take any Meaſures " to reform the ſaid Abuſe, or to prevent the ſame; either by cauſing " proper Schedules to be taken of the Money and Effects of the Suitors " deliver'd over and transferr'd, or by appointing any Perſon in his behalf, " to inſpect or ſuperviſe the Transfers or Deliveries thereof, or in any " other manner. But on the contrary, the ſaid *Thomas* Earl of *Maccleſ-* " *field*, unjuſtly, corruptly, and contrary to the Duty of his ſaid Office " of Lord Chancellor (to whom the Superintendency of the ſaid Maſters " and of their Accounts did appertain) did ſuffer the ſaid fraudulent " Practice to proceed and be exerciſed without any Controul or Check, " whereby great Embezzlements have been made of the Suitors Money and " Effects, to their great Loſs, in the Offices of ſeveral of the Maſters of " the ſaid Court, who have not been able to anſwer and pay their re- " ſpective Balances owing upon their Accounts, in breach of the Truſt " repoſed in him for the preſervation of the Eſtates and Effects of the Sui- " tors; to the diſhonour and diſcredit of the ſaid Court, and to the great " injury and defrauding of the ſaid Suitors in a Court of Equity, eſta- " bliſhed for their Relief and Protection."

My Lords, In ſupport of this Article, two of the Maſters, Mr. *Kynaſton* and Mr. *Tho. Bennet*, have ſworn, that their Predeceſſors ſtopt the price of the Places out of the Suitors money, which was to be delivered over to them: and that they gave the greater Price for their Places, becauſe they found this an eaſier way of purchaſing them. Indeed I muſt confeſs, that, according to the manner of proceeding of theſe two Gentlemen, it will come out to be an exceeding eaſy way, which they have diſcovered: ſince, if they can prevail in their preſent Attempt, they will have paid no price at all for them; they are to have their money back again, and not to be in the leaſt impoveriſhed by the Tranſaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the leaſt, but only upon the Oath of Mr. *Thomas Bennet*, who ſwears, that in a Converſation with me about a Treaty between him and Mr. *Hiccocks*, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentioned 9075 *l.* of his Caſh to be in the hands of Perſons of Ability, meaning, as he after explained it, in the hands of Mr. *Hiccocks* his Predeceſſor and myſelf; and ſaid, I was ſorry for it, becauſe it was diſcovering the method of paying for their Places out of the Court money, which I had taken care conſtantly to deny.

This (ſuppoſing my meaning to be what he would have) is ſurprizing. He ſays, that at the beginning of this diſcourſe I was ſo cautious, that I would not ſpeak to him about returning the money I had had, becauſe probably he might be examined about that Converſation in another place. And yet he pretends that in the ſame Converſation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he ſays, I expected he might probably be examined about his Converſation with me?

But I believe your Lordſhips will not give him the leaſt credit, in this or any thing elſe that affects me. I beg leave to remind your Lordſhips that I aſked him whether he did not then tell me, that, if Mr. *Hiccocks* would give him 2000 *l.* he would pay the reſt of the money (which was to ſhew that he was worth at the leaſt all but that 2000 *l.*) He denyed it. My Lords, I then told your Lordſhips I could not diſprove him in that, for I cannot be a Witneſs for myſelf. Therefore I aſked him to another thing, wherein, if he did not tell the Truth, I might be able to falſify him; I aſked him, if he had not ſaid ſo to ſomebody elſe? He poſitively ſaid, No. He ſaid there was ſuch a report, but he denyed the thing. At laſt he did own that he had ſaid, that if Mr. *Hiccocks* would repay 2000 *l.* he would ſtand it, or run the hazard, but never told any body he would pay the reſt; he was not able. But Mr. *Holford* ſwears, that Mr. *Tho. Bennet* ſent a meſſage by him to Mr. *Hiccocks*, that if Mr. *Hiccocks* would repay 2000 *l.* he would diſcharge the Article in the Account, and take care to pay the reſt, and he believed that Mr. *Bennet* was able to pay it, or he would not have carried the meſſage. And another Gentleman ſwears, that he ſaid he would make it up, and a third, that he could or would pay it. So that he ſtands contradicted in this particular, which I apprehend is material, by three Witneſſes.

As to the method of Payment mentioned in the Article, it is ſtated to be, that the *Price of the Office was ſatisfy'd out of the Effects of the* Suitors, *either by way of the Reteiner of the Purchaſe Money in the hands of the Maſter ſurrendering*, or of *replacing the money diſburſed for ſuch Purchaſe by the ſucceeding Maſter, out of the Money and Effects of the Suitors coming to his hands:* and the Methods ſuggeſted for preventing this, are, *cauſing proper Schedules to be taken of the Money and Effects deliver'd over*, or *appointing Perſons to inſpect or ſuperviſe the Deliveries*; but *I took not theſe meaſures, nor any others.*

My Lords, the method of *paying by Retainer* could only be upon *Surrenders.* And why ſhould I there aſſiſt to raiſe the Price? Why aſſiſt to get a higher Price for one, whom I was to have no more to do with, only to have a poorer man come in, that might bring Diſgrace upon the Court and upon me?

As for the other method, the *replacing the money paid*, that is, as I underſtand it, borrowing the money to make payment, and then when the Effects are transferred, diſcharging the Debt out of them: How was that to be hindered? Not by *Schedules*, and ſeeing *the Effects deliver'd* over. The *Delivery of the Effects* is neceſſary to put that method in practice, and is far from hindering it.

But is this delivery over of the Effects ſo very material? Mr. *Meller* did not deliver over the Effects to Mr. *Borret* for ſome time: Had they been ſtill in his hands, had it been the worſe for the Suitors? Whatever a Maſter does not deliver over, he continues reſponſible for, and the Suitors have the ſame Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but ſtopt part for Payment; the conſequence is, that they are compelled to bring them in. Had Schedules been made, and the Effects deliver'd over, and ſo *Kynaſton* and *Bennet* been forced to purſue the other method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

Indeed I never apprehended it neceſſary for me to ſee the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Intereſt of the new Maſter to call for the Effects, and of the old one to have a regular Diſcharge, which I do not ſee how he can have, without an Inventory of the Particulars, and a Receipt upon it; which is what I underſtand to be a Schedule, tho' it be never filed; tho' I apprehend the word Schedule is taken in a different Senſe in the Report to the Council. And this I did believe the Intereſt of the Parties had made them do. Nor has it yet been ſhewn, that it was my *Duty* to look after theſe Transfers. By what Law, by what eſtabliſhed Practice, where does it appear, that a Chancellor is bound to ſee ſuch Schedules made, and the Effects transferred? If it be his Duty, without doubt there is ſome method, by which it may appear he has diſcharged it, in caſes where he has done ſo. But is there ever any Entry made of it? Are the Schedules filed with any Atteſtations, that the Effects were actually delivered over in preſence of Perſons appointed by the Lord Chancellor? The Effects in Mr. *Holford*'s Caſe were deliver'd over, I think, the day of his admittance, in Mr. *Lovibond*'s in about a Week, in Mr. *Bennet*'s in a ſhort time; whether in preſence of Inſpectors, ap-

appointed for that purpose, or not, has not appeared. Yet, my Lords, the Question is not now, Whether it be wiser and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to see it done: But whether it be his *Duty* so that it is a *Crime* not to see it done? If the Suitors desire to have Schedules filed, in order to be the better able to know how much the new Master is charged with; it is their Part to search and make Application; and upon such Application, it is the Chancellor's Part to make proper Orders; which they again are to take Care to draw up, to enter, to prosecute, and see executed. And as to my Desire, and Intention, to increase my own unjust Gain; which is to give the Tincture of Guilt to this, and make it criminal; can it be conceived, that I, who take not Advantage of a higher Price, when I may have it, should, in order to raise the Price, refuse to check a Practice which the Masters are supposed to make use of, to the Prejudice of the Suitors, and only for their own Gain?

XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer*'s Affair; and contain several supposed Stratagems to conceal his Deficiency: all founded upon the same View, and to prevent the Gain upon Sale of Offices from being lessen'd. Without that View to gain, I do not see any Thing in these Articles, that is criminal. And therefore, if, in your Lordships Judgment, I shall stand acquitted of that, upon a full examination how my Heart stood affected in that Particular, I think all must fall to the Ground.

XIII. As to the 13th Article particularly; It sets forth *That from an Apprehension that a publick Discovery of* Dormer's *Deficiency might lessen the unjust Gain I proposed to make to myself by selling and disposing the Offices of Masters, I neglected and declined either to secure his Person or Estate, or to make a proper Inquiry into the Deficiency; but endeavoured by many indirect Practices to conceal from the Suitors the true State and Condition of his Office, as well with respect to his Effects, as to his Debt to the Suitors.* And the latter Part of the Article says, *That upon Motion made in the Court of* Chancery *(after I knew* Dormer *was absconded) to have the Effects of some of the Suitors transferred to another Master for better securing them, I, to delude the Suitors into a Belief that the Effects were safe, and thereby prevent a public Inquiry, there said, That the Parties need not be in haste, that* Dormer *was only gone to take the Air in the Country, that he would return in a little Time, and all would be well.*

As to this latter Part, they have not so much as examined a Witness to prove it: So that what Evidence has been offer'd upon this Article, amounts in truth to no more, than a Proof of *Dormer*'s being deficient. But as to any Endeavour of mine to conceal the State of that Affair, or any refusal or neglect to do my Duty, there is no Proof.

It appears, that he went off in November 1720, that his Clerk and his Servants, by his Order, gave out, that he was only gone into the Country for a while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Christmas*, and then all the Steps were taken that were thought most likely to get as much as possible for the Suitors. His Chambers were searched by some of the Masters, and Direction were given to stop the transferring his Effects in the public Funds. And it was carried on so far, that he was stripp'd of all, and with Tears begged, that Application should be made to me, for some Allowance out of it for his Subsistence; which Mr. *Cottingham* refused, because the Estate fell short, and he knew I could not order him the Money of other People. And it is not now pretended, that any Thing was not discovered by him, but only a Parcel of Hops; and that plainly was not concealed fraudulently; for he made no Advantage of it; the Hops are unsold to this Day.

But the Charge of concealing *Dormer*'s Affair being the Foundation of so many Articles, give me Leave here to say something of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in *November*, and never appearing more in Court, or in his Office, but another put into his Place in *May*; it is impossible his failing was, or could be, kept a Secret. Must not all the Suitors, who had Money in his Hands, know that he was gone? For my own Part, I never imagined it was a Secret. And as they, and their Agents, could not but know what was doing; had they not been satisfied that the Court was taking the best Measures to make up the Deficiency, would they not have made Application for some Relief? I did believe the Masters would make it good; Mr. *Cottingham* swears he told me so from them: He indeed does not now rightly remember the Time, and answered not at first very readily whether it were before, or after *November* 1721, when the second Letter about the Accounts was wrote. But, of necessity, it must be before; because Mr. *Edwards* says, Mr. *Cottingham* told him it would be made up, just about the Time of his being made Master, which was in *May* 1721; and it is not pretended, there ever was any Thought, that it should be made up any other Way, but by the Masters. Mr. *Edwards* says too, some of the Masters told him it would be made up; he does not remember by whom they said it should be made up; but I think he says, he thought, I believe the Thing speaks, it could be by Nobody else but the Masters. And even Mr. *Lightboun*'s Letter in 1722, takes notice of it as a Thing always under Deliberation, how the Masters should make it up; and that he differed from the rest only in the Manner; and insisting that at the same Time care should be taken, that the like Accident might not happen again, and they be exposed to another Contribution. If I was too credulous in believing this, sure it is no Crime. And I am apt to think, your Lordships will be of Opinion, that the Suitors believed the same, or those, whose Money lay so that it might probably continue some Years, would have applied to have an Account taken, and that their Proportion should be reserved. But nothing of that Kind was done by them. Afterwards there breaks out a Dispute between the Masters, and the Master of the Rolls; thereupon Mr. *Lightboun* informs your Lordships, that many Orders were made in prejudice of the Masters in other Branches of their Office; the Language of the Court varied (as he expresses it) in orders; and the Money put into another Channel; whereby they lost, not only any Advantage that might be made of the Money, but many Fees and Perquisites that arose thereupon, and in the other Branches of their Office. Had not this happen'd or should it be cured, I am persuaded that *Dormer*'s Deficiency would all be made good. Contrary measures may prevent it.

There was some little Reflection made upon that Part of the Evidence, which related to the Message I first sent to the Bank; and also for that the Order, which was afterwards sent, and a Copy of it read, was never enter'd with the Register.

But your Lordships have had an Account that the Effect of my Message to the Bank (tho' there was no formal Order made) was, that a Memorandum was entered in their Books, that no Transfer should be made without Leave from the Court of Directors, or Court of Chancery, which had the desired Effect. But it is true I made no formal Order, because I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cause, wherein they were no Parties. And that which was sent after, was only to deliver them from the Restraint they, it seems, looked upon themselves to be under, by that Message; and to answer the Entry in their Book.

And as to its not being enter'd; I must likewise observe, that even the Directions sent in *November* last to the Masters by advice of the Committee of Council, for preparing and bringing in their Accounts, were never entered: And yet the Gentlemen will not imagine, that that could be with a Design to have it kept a Secret; but the true and only Reason of it was, that those Forms are not necessary, but in adversary Suits, or unless there be Occasion to inforce the Execution of such Orders by the Process of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit?

Obj. I did not (say they) secure his Person.

Resp. My Lords, was that a Crime? He was in *Holland* out of my reach. When he came into *England*, it was to deliver up all he had to the Suitors, and on promise of Liberty.

But if I had, would that have been of use to the Suitors?

Obj. I issued no Sequestration to seize his Estate.

Resp. The Estate was got without one, which is much better. The most usual Allowance upon a Sequestration is 6*s.* 8*d.* a Day to every one of the Sequestrators that are employed to put it in execution, which would soon have eat up great Part of the Estate. And I do not know that the Sequestrators would have found out the poor Parcel of Hops, which is all that was not got then; and it was not imbezzled, but has been brought in now without the help of a Sequestration.

Obj. I did not examine him upon Interrogatories.

Resp. I order'd *Cottingham* to propose to the Masters, whether they would have one; and they thought he would make a fair Discovery without, and were afraid lest that Appearance of Distrust and Hardship might drive him away again, but if they should find it requisite, they would apply. No Application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any Thing diverted from the Satisfaction of the Suitors. And if he made a fair and honest Discovery of all, what imports it, whether he were sworn, or not sworn to it?

But I would beg Leave to ask, Why should I neglect what was proper?

The Reason they assign is, That if I had done these Things, it *would have made a Noise* and *brought the Matter out.*

My Lords, what could make a *greater Noise*, than that a Master in Chancery absconded, and no Money was received or paid, nor Business done in his Office from *November* to *May*, and then another put in his Place.

One of the Gentlemen expresses his Astonishment, how it could enter into my Heart, that this *could always be concealed*, or that so ghastly a Wound could ever heal of itself, without the Application of proper Remedies.

My Lords, it is yet more astonishing that it should enter into my Heart to *endeavour to conceal* it, for those Reasons which he supposes I had in view. And I should have thought the Arguments that raised his Wonder at my having done so, strong Arguments that I never did it; and indeed it is *impossible* I should endeavour or hope to conceal that, which I knew was so *notorious* and *publickly* known. Nor was I without Endeavours towards healing the Wound: Some of those Endeavours are attempted now to be made Part of my Crime.

XIV. The 14th Article suggests, "That the said *Fleetwood Dormer* "having towards Satisfaction of the Suitors of the said Court, assigned "to *Henry Edwards*, Esq. (who succeeded him in his Office of Master "of the said Court of Chancery) a Debt of 24046 *l.* 4*s.* or some other "great Sum due from *William Wilson*, a Banker, to the said *Fleetwood* "*Dormer*, to the Intent that the Money received on the Account thereof, "should be applied and disposed of as the said Court of Chancery should "order and direct, the said *Thomas* Earl of *Macclesfield*, whilst he contiued Lord Chancellor of *Great Britain*, for the unlawful Purposes "aforesaid, without Regard to the Interest of the Suitors, by Colour of "his Office, did, in an unwarrantable, clandestine, and unusual Manner, "authorize, direct, and establish, a precarious and trifling Composition "with the said *William Wilson*, upon the Terms of the said *William Wilson*'s "paying the Sum of 1463*l.* 2*s.* 1*d.* and assigning 10,000*l.* Part of a Debt "of 22060*l.* 12*s.* 5*d.* pretended to be due to the said *William Wilson* "from *Edward Poulter*, or to that Effect, in discharge of the said Debt: "And to that End, upon the Report of *John Hiccocks*, Esq. then one of "the Masters of the said Court, without any Attendance ordered or had "thereupon, and without Notice to the said Suitors, did, by a private "Order not made in open Court, order the said *Henry Edwards* to accept "of the said Composition, in full Discharge of the said Debt, which "said *Edward Poulter* was a Person insolvent, and has since absconded "for Debt, and none, or a very small Part of the said 10,000 *l.* has been, "or is very likely to be received."

This Article your Lordships observe relates singly to the Composition with *Wilson*, which is charged to be authorized by me to the unlawful Purposes aforesaid, that is, to *conceal* Dormer's *Deficiency, and keep up the Prices of the Offices.*

Suppose this Transaction had been publick, nay suppose *Wilson* had been openly sued for this Debt; would that have fallen the Price of Offices, or discovered *Dormer*'s Deficiency? If his absconding and assigning his Place to Mr. *Edwards*, did not discover it; would the Proof of his assigning this Debt to Mr. *Edwards* have discovered it? What End then could the Privacy of this Transaction serve?

But

But tho' it does not anſwer the Purpoſe, that is charged; yet it is inſiſted upon to be *prejudicial to the Suitors*, and giving *up a great part of the Money due* to them from *Wilſon*, and *done in a clandeſtine manner*, and *without their Knowledge.*

What Proof then is there, that this Compoſition was prejudicial to the Suitors? A ſmall one it is indeed, but for a deſperate Debt; and what Proof is there that they could have had a better; or that it had been better to have had none?

It is ſaid, that *Wilſon* paid to ſome of his Creditors their whole Debts.

It is true that was ſaid, but it has not been proved. If it had been proved, and the Circumſtances ſhewn, probably it would have appeared, that he had a particular View in paying thoſe their whole Debts, and it might be more beneficial to him to do ſo, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as ſmall as the Sum is, my Lords, give me leave to ſay, it had never been got in for the Benefit of the Suitors, if this Compoſition had not been made. So that 2463*l.* has been got for the Creditors, tho' no more ſhould be recovered from *Poulter*, than the 1000*l.* already got from him; where nothing had elſe been had, for what appears.

Obj. But *Poulter* was inſufficient, and the Debt aſſigned from him worth nothing.

Reſp. As to *Poulter*'s Circumſtances at that time: Some Perſons have been called, who have proved ('tis true) that he was inſufficient at that time, and could not pay more than three or four thouſand Pounds; but the ſame Witneſſes give an Account, that his ill Circumſtances were then known but to four or five Perſons of his Acquaintance, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very ſufficient; he had left off his Buſineſs upon having raiſed an Eſtate; he was of good Reputation; he lived at *Hackney* in a Houſe making a good Appearance, with good Furniture, and a great Quantity of Plate, till the laſt, till the Time of his being put in Priſon, which was not till laſt Year, that he ſurrendered himſelf in diſcharge of his Bail.

But ſuppoſe he was not ſufficient, how does that affect me? I was not obliged to concern myſelf with it, and left the Compoſition to the Management of the Maſters; they made it: *Wilſon* had ſworn an Affidavit in Writing, of his Circumſtances, and that this was as much as he could pay to the Suitors: Mr. *Hiccocks*, a Gentleman of very good Reputation, was the Maſter, he being then ſenior Maſter, to whom I referred the Conſideration of it, according to the Courſe of the Court; he was upon his Oath in what he acted therein, and made his Report, that he was of Opinion this Compoſition would be for the Advantage of thoſe to whom the Money was to be paid. And upon that I grounded the Order.

Obj. But the Suitors had no Notice to diſpute it.

Reſp. The Conſequence of that is only, that Mr. *Edwards* being their Truſtee, and *Wilſon* knowing it, whatever could be done between them would not bind the Suitors, if it were any way detrimental to them: Therefore they have the Benefit of all that has been got in upon it, and yet have ſtill a right to enquire into the true Circumſtances of Mr. *Wilſon*, and to recover, in proportion with his other Creditors, any Effects he ſhall appear to have unfairly concealed.

Upon the whole of this Matter, could the Maſter, or I, have any indirect end to ſerve, by allowing *Wilſon* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then ſhould I deſignedly leſſen *Dormer*'s Fund, which was before deficient, and which I was endeavouring to make up?

Obj. But it is ſaid, that this was by my Direction.

Reſp. Suppoſe it were; they have not proved any thing to induce a Suſpicion that it was not perfectly innocent, nay, beneficial to his Suitors, or probable to be ſo.

But the Proof is only, that Mr. *Edwards* ſpoke to me about it, and aſked me, if he might compound it of himſelf. I thought not: But Mr. *Hiccocks* having afterwards informed him that it was uſual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he propoſed that Method, and I thought it might be ſo done. And he did it.

But whether this was prudent or imprudent; where is the Crime? This tended nothing to conceal *Dormer*'s Affairs: he was known to be broke; and *Wilſon*'s Debt was eſteemed deſperate. There was no other View, nor could be, but to get ſomewhat towards *Dormer*'s Deficiency, and nobody is at all hurt by it.

Obj. But this was unuſual.

Reſp. In what?

Obj. No day was appointed to hear Counſel upon it.

Reſp. My Lords, there was no occaſion for Counſel; there was nothing for Counſel to be heard to; there was nothing for them to argue. The Order is in direct purſuance of the Report.

Indeed, upon careleſly reading the Article, one would imagine the Charge to be, that this was an Order made upon Mr. *Edwards*, without giving him Notice, or hearing Counſel for him. And that would be very unuſual and unjuſt; if it were not that it is ordered upon his own Petition, and at his own Requeſt.

Your Lordſhips will likewiſe obſerve, that this was the 3d of *Auguſt*, after the Seals were over; and if I muſt have appointed it to come on, upon a publick day (not to have it concealed) it muſt have waited till *October*; and by that time *Wilſon*, and his Effects, might probably have been gone, and the Opportunity of getting any thing loſt.

As to ſome few new Obſervations made upon reading theſe Proceedings, I ſee not how they tend to prove any Crime in me.

Obj. They are not filed.

Reſp. That is not my Affair. And if they are never filed, they will affect nobody, and cannot poſſibly do harm.

Obj. Some Lines or Words appeared raſed out; which import that Mr. *Edwards* ſhould be indemnified.

Reſp. If he acted fairly in this Matter, he would be indemnified, tho' theſe Words were out; and if he did not, they ought not to be in.

In ſhort, here is not the leaſt Evidence, but that this Compoſition was made with a View to get as much as could be for the Suitors, out of a deſperate Debt; there is nobody hurt by it; and if it be not of advantage to the Suitors, they may avoid it.

XV, XVI. The 15, 16, and 17th Articles were opened together: But one Gentleman ſpoke more particularly to the 17th, as being of different nature from the others; and therefore I will ſpeak to it ſeparately.

The principal Subjects of the 15th and 16th Articles are 4500*l.* raiſed by the Maſters, and 1000*l.* by myſelf, towards *Dormer*'s Deficiency.

In the laſt Article I ſpoke to, the Crime was, the leſſening *Dormer*'s Effects by a trifling Compoſition; in theſe, increaſing them 5500*l.* is a Crime

At firſt ſight, one would think this commendable; but, by I know not what Fatality, every thing grows criminal by my having any concern in it. My Intention infects all. It is ſaid that I *intended* by it to *carry on my corrupt Purpoſes*, that is, as one of the Gentlemen explained it, to *conceal* Dormer's *Deficiency*.

But all that appears upon the Proofs offered relating to my Intention is, that here was a ſtrong Deſire to make good *Dormer*'s Deficiency; and that way of concealing it is ſurely not blameable.

But then as to the 4500*l.* it is ſaid, that I induced the Maſters to pay it by colour of my Authority.

How is this proved?

Mr. *Conway* produces, and proves, the Receipt he had given him by Mr. *Edwards for* 500*l. voluntarily contributed by him towards Mr.* Dormer's *Deficiency*; and ſays, that he had promiſed it in *February*, and paid it accordingly in *Auguſt*.

Mr. *Edwards* ſays, that in 1721 he received 500*l.* a-piece from all the Maſters, but Mr. *Lightboun*.

Mr. *Lightboun* ſays, that when Mr. *Cottingham* ſpoke to him of it in *February* 1720, he told him, all the other Maſters had agreed to it; but Mr. *Lightboun* refuſed it: That I never ſpoke to him of it till *January* 1722, which was near two Years after; that then I was ſo far from making uſe of my Authority, that when he aſked me, Whether it was my Propoſal or the Maſters; upon its being ſaid, it came from the two ſenior Maſters, he took occaſion to ſpeak more freely againſt it; and though I uſed ſome Arguments with him, yet he ſays I left him to his own Inclinations.

My Lords, theſe are their Proofs. But they are to be helpt out by ſome Conſtructions.

Obj. It is ſaid, that the Letter which I cauſed to be ſent in *February* 1720, to require them to give in their Accounts, was in order to terrify them to come into a Compoſition: for it is ſaid, when that had its effect, and the Money was paid, they were not obliged to bring in their Accounts.

Reſp. This then, I ſuppoſe, is that *Colour of Authority* by which (according to the Charge in this Article) I induced them to contribute.

But in the firſt place, I beſeech your Lordſhips to conſider, whether it can be thought, that any of the Maſters would pay 500*l.* rather than let me know what was in his Hands; which was all the Conſequence of my having an Account? If it cannot; why ſhould it be, without the leaſt Proof, imagined, that I ſhould expect it?

In the ſecond place, I muſt beg leave to obſerve, that the Maſters beſt know, what effect that Letter had upon them, and what was the motive of their advancing that Money; but none of them have ſworn, that they were in the leaſt induced to pay the Money by the fear of that Letter, or by the Apprehenſion of being forced to give in their Accounts if they did not comply. Nor do the Circumſtances ſhew it. For Mr. *Conway* came in but in that *February*, and had but little Money in his Hands, and a very ſhort Account to make. Mr. *Kynaſton* and Mr. *Tho. Bennet*, who are now deficient, were not then Maſters. Mr. *Holford* had got an Account ready, yet he paid. Mr. *Lightboun* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors; and no indirect Practice to bring it about.

And therefore the Charge not being proved, I am, according to my general Plea, *not guilty of the matters contained in this Article, or any of them, in manner and form as they are therein charged againſt me.* And there is no occaſion to make out what I have ſtated in my Anſwer, to have made this matter more clear, in caſe they had given occaſion, by having produced Evidence to mantain their Charge.

However I have ſhewn a ſecond Letter, written by my Order, in *November* following, requiring thoſe Accounts with more earneſtneſs. Mr. *Cottingham* produces the Draught of it, and tho' he will not ſwear poſitively that he delivered or ſent it, becauſe he does not find any Memorandum of it; he verily believes he did, and has not the leaſt ground to ſuſpect the contrary.

Your Lordſhips will obſerve, how very particular the Account was directed to be.

The firſt Letter was wrote the 14 of *February*, 1720. Your Lordſhips will give me leave to read the Copy kept of it.

[*Reads.*] 14 *February*, 1720.

" I am commanded by my Lord to ſignify to you, that you do, with all " convenient ſpeed, lay before his Lordſhip an Account in ſeveral Co- " lumns;

" 1. Of the Cauſe.
" 2. Sollicitor, or Agent.
" 3. The Date of the Order.
" 4. For what Purpoſe the Money was brought in.
" 5. How much was brought in.
" 6. When.

" 7. How

" 7. How much in Hand.
" 8. How much on Securities.
" 9. How much paid out.

A distinct Account *of Securities.*

" 1. Cause.
" 2. From whom the Security is taken.
" 3. What the Security is.
" 4. In whose Name taken.
" 5. For how much each Security.
" 6. The total of the several Securities.
" 7. In whose Hands lodged.

A distinct Account *of Money paid out.*

" 1. Cause.
" 2. By what Order, of what Date.
" 3. When paid.
" 4. To whom."

The second Letter is dated the 7th *Nov.* 1721; and is in these Words: [*Reads.*]

" By my Letter of the 14th of *February* last, I signified to you my " Lord Chancellor's Pleasure, which was, that you should, with all con- " venient Speed, lay your Account before his Lordship, the method " whereof was to be in several Columns, subscribed at the Foot of that " Letter. I am now farther to acquaint you, that his Lordship is very " much surprized to find, that in all this Time no such Account hath " been laid before him; and therefore hath commanded me to tell you, " that it is expected to be delivered on or before the last Day of this " Term; and if this is not complied with, you will oblige his Lordship " (though very unwillingly) to think of other measures, which I doubt " not but you will avoid, by a ready Compliance with what is a second " Time required of you. And to the End there may be no mistake as to " the method of your Accounting, I have subscribed it again at the Foot " of this Letter."

And Mr. *Cottingham* explains what he apprehends was meant by that Passage of *other measures*, that I would make an Order in Form; that is, an Order of Court to be entered with the Register. He tells your Lordships what Representations they made of the Difficulties of drawing up such Accounts: And I did not afterwards insist upon them. And your Lordships will be pleased to observe, that the Letter sent by me, in Form of an Order; in *November* last, by Advice of the Lords of the Council, was for an Account much in the same manner. The Words are these: [*Reads.*] " Dated 3d *November*, 1714.

" Let the several Masters of the High Court of Chancery forthwith " prepare and deliver to me a perfect Account of the money in their " Hands, therein distinguishing in several Columns,

" The Names of the Parties to the Cause.
" The Dates of the Orders for { bringing in } { Money or Securities.
" The Time of bringing in each Sum.
" Particularly expressing the Sums transferred and paid to them at " their coming into their Offices, in the first Place.
" How the same hath been disposed,
" What Sums paid out, and to whom, { when and by what Order.
" What invested in Securities, { when and by what Order.
" Specifying the Securities by Dates, Numbers, &c.
" Where the Securities are at present,
" What money remains in their Hands,
" Where the same now is."

Mr. *Holford* tells your Lordships, that another Account was carried in by my Order, instead of one so particular; for that an Account drawn up in that manner, would have taken up several months: And in *February*, 1721 or 1722, it must have taken up many more; because there were then Masters, who had been much longer in their Offices than Mr. *Holford* the now senior Master had in *November* last been in his: And those Accounts must have gone through their whole Time. And if your Lordships will be pleased to look upon the Report on the Table, it will appear, that the Judges and Directors reported, that no regular Accounts could be taken, unless they were brought down from the Beginning of the Time that each Master had been in his Office; and yet the Lords never insisted on any such Accounts afterwards, (though I had made an Order for them by their Advice) nor the Lords Commissioners since; which what is it, but falling into the same Sentiments that I had done before? The requiring the Dates of the Orders on which money was paid, and the Sollicitors Names (which I found not one of the Masters was able to give me) was intended by me, that I might be able to make some Examination into the Truth of the Accounts that should be given in. And for Want of that, your Lordships know what methods the Lords Commissioners have been forced to take, to have the Accounts of the several Masters printed and published, and dispersed throughout *England* at a public Expence, that People may come in voluntarily to make a Surcharge. And yet it is well known, that the preparing the present Accounts, short as they are, containing only the Balances of Securities and Cash, which the Masters owned to be then in their Hands in each Cause, so took up their Times, that the Business of the Court before them stood still for some Time, and their Attendance in Court was dispensed with. No Wonder then if I did not insist on these Accounts, which were to be attended with so troublesome, so tedious, and so fatiguing an Enquiry.

These are some Facts that I have not indeed examined to; but, with Submission, I do not stand in need of them: If I did, they are notorious; and I believe the Managers, some of them at least, know them, and will not deny them; and the Masters, being your Lordships Attendants, may be asked to them by any of your Lordships who shall think there needs any further Satisfaction to be given concerning them.

Obj. But why then did I not content myself with the shorter Accounts, and take them, at least such as were delivered into the Committee of Council?

Resp. As to those Accounts, I shall beg Leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships entire Satisfaction on that Head.

Upon the 16th Article, I take the Liberty to say as to the 1000 *l.* paid on Mrs. *Chitty*'s Account, I never expected that an Act of Humanity to Mr. *Lockman* should be made a Crime.

The supposed Crime, I think, consists in this, That it was in *farther Prosecution of my unjust and corrupt Purposes, that is, keeping up my Gain in selling Places, by concealing* Dormer's *Deficiency.*

How is this proved?

Mr. *Lockman* tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of *Dormer*'s Effects left; that the Masters were in great Apprehensions of losing the Profits of their Places, and were not willing to advance any money; that he told me of a Composition he had made, that the Time was near; that then I said, I would order *Cottingham* to pay the money; but told him, that if Mrs. *Chitty* had nothing else, he might, by marrying her, make himself worse; for there would be no more money paid her thence. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says, it was about a Fortnight before the 1000 *l.* was paid, that I told him no more would be paid. Upon some Questions put to him by me, he said, he asked for another 1000 *l.* on Account of Mrs. *Chitty*'s Children; But that after I had told him, no more than the first mentioned 1000 *l.* would be paid, which was a Fortnight before it was paid, he asked it no more; and denyed that he applied for the Payment of 500 *l.* or 574 *l.* after I had promised the 1000 *l.*

My Lords, all this, supposing it true, does not prove that I paid this money to conceal *Dormer*'s Deficiency; for he says I told him before, that *Dormer*'s Effects were all gone; and at the Time when I made the Promise of that money, I told him no more of her money would be paid.

And is it rightly collected from this Action, without farther Proof, that my Intention in paying this money, was to *conceal* the very Thing which I at the same Time *expressly published?*

But, my Lords, it is fully proved on my Part by Mr. *Cottingham* and Mr. *Elphinstone*, that this 1000 *l.* was advanced out of a generous Compassion, and not out of any By-end: That his Application was founded on this, that he was to marry Mrs. *Chitty*, and was to have this 1000 *l.* to pay a Composition for his Debts; that I had sent him Word of the Deficiency, and that he could not have the money; so the great Secret was out: But that he afterwards appeared in the utmost Distress and Agony, in Danger of laying violent Hands on himself, and desperate: This Distress moved me; I told him, I would order the money to be paid out of Compassion to him; he afterwards spoke of it with the utmost Acknowledgment: I told him this, and gave the Order accordingly on *Monday*, and it was paid the *Thursday* following, which was the 30th of *July*; and as to Mr. *Lockman*'s Testimony, who denied that he applied for a farther Sum; it has been proved under his own Hand, that he applied for 574 *l.* for Mrs. *Chitty*, on Pretence she could no otherwise spare him the whole 1000 *l.* and this after the Time was appointed for Mrs. *Chitty* to receive the 1000 *l.*

[Here the Earl of *Macclesfield* informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure; and after some Time, the House being resumed, the Earl of *Macclesfield* went on.]

My Lords, when your Lordships were pleased to allow me to retire, I was just upon Mrs. *Chitty*'s 1000 *l.* and had spoke of that Part of the Transaction that related to Mr. *Lockman*. And as to the next, which is the Charge of endeavouring to persuade the Masters to advance that 1000 *l.* and using the Arguments in the Article mentioned for that Purpose,

Upon the Evidence it does appear, that there was a meeting of the Masters at my House in the latter End of *July* last; and some such Arguments used as in the Articles, but not (as is charged) to have a present Purpose of paying the 1000 *l.* answered, but to have *Dormer*'s Deficiency all made good, by small annual Payments out of each Office. A View, which I hope your Lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the Intent of my desiring the Masters to come together, that though that 1000 *l.* was the immediate Occasion that discovered the Effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the Masters to pay it; nor does Mr. *Lovibond* remember it; and Mr. *Holford*'s Expression was (if I took him right) only, that he apprehended it was mentioned *as if* the Masters should contribute to make up that 1000 *l.* However, my Lords, that was not the End which I aimed at and mentioned; and upon the whole Evidence all agree, that the Discourse about the 1000 *l.* was soon over, and ended with my saying, That I would take, or had taken care of it. Mr. *Lightboun* says, he is not sure which of the two Expressions I made Use of. And even Mr. *Tho. Bennet* says, that when I had said so, nothing was afterwards said of that, but of *Dormer*'s Deficiency; and then came in the Discourse of the Parliament. Mr. *Holford* represents it, that after some Discourse of the 1000 *l.* I spoke of *Dormer*'s Deficiency; and particularly of the mischief, which was what Mr. *Edwards* had a little before said, that some had had all, and others none, (which would not at all be cured by Payment of this 1000 *l.*) and that then I mentioned, that that might make great Clamour, and possibly occasion a parliamentary Enquiry: Where, if it was resolved that buying those Places was against the Statute of *Ed.* VI. it might affect me in the Disposal of the Places, and the Masters in the Enjoyment of their Places: He says several Things were proposed, but nothing agreed on. One Proposal was, whether if the Masters were continued on the same Foot they had been, it would not be worth their while to contribute?

The Masters have not had so good memories in this Case as I hoped. But Mr. *Lovibond* does swear, that all or the greatest Part did then agree, that

that if their Offices were eſtabliſh'd, as they had been for forty Years, they would make an annual Contribution towards *Dormer*'s Deficiency. And he heard nobody ſay otherwiſe, only he himſelf (he ſays) did not agree to it.

So that it appears upon the whole, that what I ſaid was not with Intent to ſupply a preſent Purpoſe, as is charged; for I had declared to them, I had taken Care of that, or would take care of it. And if I could, by ſetting ſuch an Example, or by any Arguments I could uſe, induce them to contribute by Payments, as they could be ſpared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of thoſe who had had no part of *Dormer*'s Effects, I ſee no harm; and I am ſure there was no Fraud in it. It is to conceal it, and prevent Clamour or Inquiry about it, only by paying it; which would leave no Room or Occaſion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Propoſal, to have it paid by Annual Payments out of the ſeveral Offices, did not tend to raiſe the Price of them, but on the contrary, by laying a Burden on them, would greatly diminiſh their Value.

Whether the Deſign I had, or the Arguments I uſed, were prudent, or diſcreet, or proper, I ſubmit to your Lordſhips Judgment; but the Arguments were not uſed for the Purpoſes in the Article, but for the Benefit of the Suitors of the Court.

But to give this ſome appearance of a Crime, they are forced to attribute it to criminal Views and Deſigns, of which they have made no Proof, nor ſhewn any Probability, ſcarce Poſſibility, that they were the Principles of this Action.

I might farther obſerve, that the paying the 1000*l.* and leaving the 500*l.* (which in the very ſame Order is directed to be paid to the Plaintiff) unpaid, and the 574*l.* demanded by Mr. *Lockman*, unpaid; would not at all hinder the Deficiency from breaking out.

As to the Expreſſion charged in the End of the Article, to be uſed by me, I agree, I uſed one very near it; but with other Expreſſions along with it (which the Witneſs in Effect owns) that ſhew, I could not poſſibly have any ill Deſign in it; nor could any Inconvenience enſue upon it. No Queſtion had till that time been laid before the Court relating to *Dormer*'s Deficiency: *Chitty*'s was only an Application for Favour, for a Sum then particularly wanted, becauſe there were at that time no Effects; and was paid by me out of Compaſſion; there was no Queſtion of Right about it to be decided, as was here, when the Diſpute was, who was to bear the Loſs, if any, and could be determined only upon Circumſtances. I at the ſame time was ſo far from endeavouring to have it believed, that there was no Deficiency in *Dormer*'s Office, or that I knew not of it, that I declared a great deal, which I knew about that Matter.

As to what they object, that the Order is drawn up in ſuch a manner as implies (as they ſay) my being wholly ignorant of the matter, by directing an Enquiry, whether there was likely to be any Deficiency or not:

Give me leave to ſay, that if I had known more of it; if I had known to a Farthing what *Dormer*'s Deficiency would be; I could not as a Judge found an Order upon my own private Knowledge, but muſt make it in the ſame manner as if I had known nothing at all; and accordingly that Order is worded in the ſame manner, as it muſt have been, if I had never heard of *Dormer*'s Failure before.

Beſides, it had been then talked, that *Wilſon* had not dealt fairly in his Compoſition; and if ſo, and if he were worth it, the Suitors might recover near 22,000*l.* more againſt him. A matter extremely proper for the Maſters to enquire into.

XVII. As to the 17th Article, which relates to Orders for Payment of Monies depoſited with *Dormer*; which Mr. *Edwards* (as is charged) was directed by me to pay, without *regard* to that *Proportion*, which ought to have been obſerved in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cauſe; and only one of them directs the whole Money to be paid out. I ſaid, in my Anſwer, that I did not know that I had made any other Order than that of *Chitty*; but believed the Court might have made others; which gave occaſion, it ſeems, to ſome of the Gentlemen to wonder at the Diſtinction between me and the Court. My meaning was, that ſuch Orders might have been made by the Court in my abſence, for aught appeared; that is, by the Maſter of the Rolls and Judges, with others in Commiſſion for hearing of Cauſes.

But as to what was done by me; the proper Anſwer to this Article, the true one, and I hope a ſatisfactory one, is, that I acted ſo as I thought would be moſt for the Good and Benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was miſtaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me in this Article.

1. Not taking proper Care of the Securities lodged with the Maſters.
2. Not taking Security for the Caſh.
3. Not taking the Maſters Accounts.

There is another thing expreſſed, which is permitting and incouraging the Maſters to traffick with the Suitors Money and Effects. But that I apprehend means only, that the not taking due Care to hinder them, is permitting and incouraging them. So that it does not make a diſtinct Branch of the Article; but is only a ſuppoſed Conſequence of the reſt.

As to the *Securities* and *Caſh*, what I am charged to have omitted doing, was never done before by my Predeceſſors, nor deſired then of me by the Suitors. And therefore, I ſuppoſe, there is a particular Reaſon aſſigned why it ſhould have been done by me, tho' not before; and that is Mr. *Dormer*'s Failure, which is charged to have been chiefly occaſion'd by his taking upon himſelf *unduely to diſpoſe and employ* the Money and Effects of the Suitors in his Hands. And this the Article charges that I knew.

My Lords, as to this particular Reaſon: To add a new Duty to my Office from it, and to lay me under an Obligation to do that, which my Predeceſſors were not obliged to; it ought to be clearly made out that the Fact is true, that this was the Cauſe of *Dormer*'s Failure; that I knew it to be ſo; and that thereby it became my Duty unaſked by the Parties intereſted, to make the new Proviſion expected. But there is no Proof that *Dormer* did unduely diſpoſe of, or employ the Money and Effects of the Suitors in his Hands; much leſs is it proved, that I ever knew it, or had the leaſt reaſon to ſuſpect it; but the contrary.

The Account Mr. *Parkhurſt* gave of what paſſed at the Time of *Dormer*'s going off, was this (which was repreſented to me, and never ſhew'd to be falſe); That Mr. *Dormer*, who was his Uncle, informed him, that having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacation 1720, he knew not where to leave it ſafer than with Mr. *Wilſon*, an eminent Banker; and he left it with him to the Value of 24,000*l.*; that upon his return to Town, he found Mr. *Wilſon* ſtopt Payment; and that therefore he would withdraw himſelf, for fear of a Gaol; that accordingly he went into *Holland*, and wrote a Letter from *Rotterdam* to Mr. *Parkhurſt*, with one incloſed, to be ſhewn to the Maſters, and ſent to me or Mr. *Cottingham*; he gave ſome Account of the Letter, that it ſet forth the Caſe to the effect above; and the Draught thereof is in the Hands of the Managers, which they might produce, if they thought proper. This I took to be the true State of the Caſe; and never heard any thing to the contrary (except Mr. *Lightboun*'s Gueſſes, founded on no Fact, but on the greatneſs of the Sum, which this accounts for another way) till *December* laſt, when I was told that *Wilſon* pretended, he borrowed it of Mr. *Dormer* at an high Intereſt; but as this appears to be ſpoke in excuſe of himſelf, an Afterthought at four Years diſtance is little to be regarded; and however, if it were true, ought not to affect me, to whom it was never diſcloſed. But according to this that I have ſtated above, which was certainly the Truth of the Caſe, or however what appeared to me; *Dormer*'s Failure was not occaſioned by his undue diſpoſing of or employing the Money and Effects; but it was a *Misfortune owing* to the *Year* 1720, and Circumſtances peculiar to that Time; ſo not likley to happen again. On Dr. *Eddiſbury*'s Failure there appeared no Accident, but his own ill Conduct: Yet no Change was made by the Lord Chancellor, as to the Effects, or Caſh, or giving Security.

But it was urged, that tho' this had not been deſired of me by the Suitors, it had been propoſed to me by the Maſters themſelves:

And three of the Maſters were called to prove this. But only two of them pretend to have ſpoke to me about it, Mr. *Lightboun* and Mr. *Kynaſton*. Mr. *Helford*, the 3d, ſays, He never was once with me about it, only he liked ſome things which Mr. *Lightboun* told him he propoſed.

Mr. *Lightboun*'s whole Evidence, taken all together, clearly proves what I ſet forth in my Anſwer; that I had in view three Things: 1. The making good *Dormer*'s Deficiency. 2. Settling Maſters in their juſt Rights. 3. Securing the Suitors from future Accidents. The 1ſt was the Principal, and always uppermoſt with me. The 2d was plainly neceſſary, in order to that. The 3d, for ſecuring the Suitors from future Accidents of that kind, I was likewiſe very deſirous of; but, I own, at that time, while I thought the Maſters then in being Perſons of Ability and Subſtance, and he gave me no reaſon to think otherwiſe, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that, at the Time of Mr. *Lightboun*'s Propoſal, the Maſters were all willing to contribute; only Mr. *Lightboun* ſtood out; and his Reaſon, which in his Examination to the 16th Article he ſays, he upon one Occaſion mentioned to me as ſufficient, was, that it would be a Precedent for his paying other Debts of other Maſters. And upon his Examination to this Article, he ſays, that he told me in Diſcourſe on that Subject, that as *Dormer*'s Accident had happened, the like might again; and ſo often, that it could not be ſupported; and afterwards, that if any thing could be done to make good *Dormer*'s Deficiency, and put things upon a ſecure Bottom, he would be as ready to contribute as any body. He then gives an Account of the Propoſals he made, which he ſays, I deſired him to reduce into Writing for my Conſideration, which he did; the Copy of it was produced and read, and I have the Letter itſelf here in my Hand; and here only, I apprehend, is to be found the Propoſal which is to affect me, and not that which he now from his Memory mentions to be the Propoſal; but differs from the Writing in ſeveral Things; which not being in the Letter, if he had mentioned them curſorily in the Diſcourſe, I muſt have looked upon them as what upon farther Conſideration he did not think proper.

My Lords, The occaſion of my Propoſal was my ſpeaking to him about contributing to *Dormer*'s Deficiency; and both that and the Propoſal itſelf ſhew, that it was really no more, than laying before me the Terms upon which he would contribute.

In thoſe Terms, the principal thing inſiſted upon by him was, that the Money ſhould be continued to be brought before the Maſters; which, I apprehend, had then been broken a little in upon: Which is expreſſed in theſe Words, ſhewing the Improbability, that a Fact objected ſhould happen, "If (as his Words are) the Money be directed as uſual to be "brought before the Maſters, both by your Lordſhip and the Maſter of "the Rolls; *without which the Maſters cannot think themſelves much inte-* "*reſted in the Event of Mr.* Dormer's *Affair.*"

The

The other thing he insisted upon was, that he should be secure from being exposed to the like Inconvenience, by failure of another Master; and therefore what he proposes, in relation to securing the Effects, is not a thing proposed to be done of itself, separately, but in company with the other Regulations.

That part that relates to the Rights of the Masters, was afterwards pressed farther, as it was apprehended they were more broken in upon; and produced the Representation of the Masters, which Mr. *Lightboun* the other day mentioned to your Lordships.

And this likewise explains several parts of his Evidence: It explains what he says, that he pressed me so often to do something, and thought that to be *Irresolution*, which was indeed my *Caution* to proceed upon sure Grounds, in doing a Thing, which, if not perfectly well founded, might have the Appearance of being contrived on purpose to advance, or keep up the Profits of the Offices of the Masters. It explains his Apprehension, that if I did not do it, it would not be done by my Successor, unless the Seal should come into the Hands of a noble Lord, whom he named. It shews, that what he pressed, was not so much for the Masters to give Security, or to make up *Dormer*'s Deficiency, and retrieve the Honour of the Court, as to have Orders made, for the Benefit of the Masters; which I thought ought to go together.

For it wanted no Resolution in me, or in any other Chancellor, to make Orders upon the Masters, to secure the Effects of the Suitors in their Hands; had that been the Thing pressed, and especially if, as is pretended, they themselves desired it. But it might require Resolution to support the Masters against the Claims of an honourable Person, with whom they then had a Dispute.

This View of this matter will make your Lordships consider it in a different light from what the managers have endeavoured to set it in; and that my Slowness did not proceed from my concern for the keeping up of the Masters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the measures desired, and made Orders to prevent the Master of the Rolls from directing, in his Decrees, the money to be brought before the Usher, and from referring Irregularities to the six Clerks; and to settle in their Favour the other matters in dispute (tho' I will do them the Justice to declare, that I do, so far as I have seen of it, think the Masters in the right therein) yet I am apprehensive, that at first sight it would have been matter of Complaint against me, as a contrivance to advance the Offices of the masters; and that the Schemes proposed by Mr. *Lightboun* for giving the Security he represents as sufficient, would not have been thought a Balance to it.

Having said this, give me leave to weigh the Proposals.

And first, his Proposals for providing for *Dormer*'s Deficiency.

The way of doing it, which he proposes, is this: Having stated, in the first Page of the Letter, what he takes to have been the occasion of *this great Deficiency*, he goes on, " which I hope may be provided for, " and the Credit of the Court retrieved and supported by every Master " advancing 2000*l.* or such other Sum as shall be agreed on, out of the " Cash of the Court in his Hands; which being placed out at Interest, " the yearly Income thereof, together with the Produce of Mr. *Dormer*'s " Estate, will answer the Demands that may be expected on his Suc- " cessor, and will in due Time make good the Debt upon the Office."

But as to this, I thought it both impracticable and insufficient; and I told him, and he very fairly owns it in his Evidence, that I could not make an Order of that kind; because it would indeed be ordering one man's money to be put out at Interest, to pay another's Debt.

His next Proposal relates to the *Securities*, lodged in the hands of the Masters, which he thought of the greatest Consequence; because, as he now says, he told me that *Dormer*'s Accident came by trafficking with Securities; which he inferred from a Supposition that there was not then so much Cash in his Hands. This Fact is contrary to the Representation made as above to me, and the Supposition, with respect to the Quantity of Cash, is obviated by his having just received a great Sum out of the Exchequer. And your Lordships have heard from the Report to the Lords of the Committee of Council, that the Masters have brought in all their Securities; so that what Mr. *Lightboun* thought the greatest Danger, has proved to be none at all.

However, to prevent that, which he thought the greatest Danger, he proposes the taking all Government Securities for the Future, in the Names of two or more Masters; his Words are in Page the 2d, " Having " before observed from whence this great Deficiency arose, I submit " it to your Lordship, Whether the taking all Government Securities " for the Future, in the Name of two or more Masters, may not pre- " vent the like misfortune hereafter." He says now, that he proposed them to be taken in the Names of some Masters, and of a third Person; but that is not mentioned in the Letter, nor does Mr. *Holford* mention it in his Evidence.

As to this Proposal, he has now sworn, as the Truth is, that I started a Difficulty upon that head, by objecting that this would not answer all Cases, particularly with respect to the *East-India* and *South-Sea* Bonds, by reason that they are payable to the Bearer. And his Answer was, That there was no necessity of taking these Securities; such might be taken as are transferable in the Books of the Companies.

On consulting others upon this, I found, that as to *East India* and *South-Sea* Bonds, wholly to disallow the taking those Securities would be hard. Many People choose them, because there is little Variation in the Price, only sometimes a few shillings higher or lower; whereas in Annuities, and much more in other Stock, the fall of the Price, by the Time the money was to be paid out, might eat up the Interest and more. That there would be a Difficulty to dispose of those at that Time in the Hands of the Masters; probably the Owners would not consent; it had been their choice, that had determined the laying out of the money upon those Bonds; that to send them to the market all together would occasion a fall of the Price, and a great Loss, which would raise a Clamour, and give great Dissatisfaction.

I thought these several things had great Weight, and deserved most serious Consideration. I then thought of locking up these Bonds in Chests, with two Locks, one to be kept by the Master, to whom they belonged, and the other by the next Master after him, and to take the other Securities in the Name of two Masters.

But I was told by Persons of great weight, that that was but two Masters instead of one, and would not be satisfactory: And should I join more of them, it would occasion more trouble, and possibly more charge; but they were still Masters.

At last I resolved to take the Securities (other than the Bonds) in the Names of two Masters, and a third Person to be named by the Parties. But still I struck at the Bonds, and was never set right in that, till it was too late. But I have now learned, which neither I nor Mr. *Lightboun*, as your Lordships may observe by his Evidence, had skill enough to know, that they might be indorsed to two Masters and a third Person, and so the Property be fixed in them; which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Cash, how that might be made secure, his whole Proposal is contained in these Words, in the second Page: " The Deposit to be " put out at Interest, to raise a Fund for the Payment of Mr. *Dormer*'s " Debt, together with our Office, would in a great Measure be a Secu- " rity for the Cash, with which we should then only be intrusted." By the Deposit he means that of 2000*l.* or such other Sum as should be agreed upon, as I before read to your Lordships.

This is the Nature of his Proposal, with relation to the Security for the Cash; which I apprehended must appear to be neither practicable, as I observed before, nor satisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehensive those that were before dissatisfied, would call it *trifling*.

He then takes Notice of the money being lodged with the Masters very effectually, though it is by way of answer to an Objection, that every Master may not always have such a Sum in his Hand; to which he answers: " *I will venture to say, it's scarce possible that can happen, if the* " *Money be directed as usual by your Lordship and the Master of the Rolls.*" And then he adds (to shew the Stress laid upon this) " *without which* " *the Masters cannot think themselves much interested in the Event of Mr.* " Dormer's *Affair.*" And says in the 3d Page: " If I have the happi- " ness to have offered any Thing thought practicable by your Lordship, " when I have the Honour to be admitted to wait upon you, I hope to " satisfy your Lordship, that I shall with Pleasure contribute, as be- " comes me, to facilitate any Undertaking of this Kind."

I think this proves what I said in the beginning; and I submit it to your Lordships, whether I am criminal in not complying with these Proposals.

My Lords, I have told your Lordships several Thoughts I had about the Securities. Give me leave to mention something of my Thoughts, with relation to the Cash.

I thought to take a small Security would only shew that I was convinced that a Security was necessary, and yet trifled in it; and those that were willing to find Fault, would say, it was done only to amuse the Suitors, and lull them into a false Security.

And till I could adjust the matter of the Securities lodged with them, particularly the *East-India* and *South-Sea* Bonds, no Security, that it would be practicable for the Masters to give, would bear any Proportion to what was in their Hands, when it should be 50, 60, or 80 thousand Pounds.

But if I could contrive to make all the Securities safe, and reduce the Cash into a narrower Compass, by making Orders for putting out the money of Course, whenever, through neglect of the Parties, or otherwise, it should happen to lie beyond such a Time; then a Security might be given by the Masters to answer it.

But, as I told your Lordships, the *East-India* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the Masters behaved themselves, as I expected they would in the matter of their Accounts, I then intended to have laid my Thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Proposal supposed to be made to me, is spoke to by Mr. *Kynaston*, and him only. And though he says all, or most of the Masters, agreed to it, and thereupon he waited upon me about it; I do not find that any of the rest know any Thing of it. I observed, that neither Mr. *Lightboun* nor Mr. *Holford* (both produced to this Article) are examined to this great matter, upon which the Masters are said to be agreed; nor is any other Master called to it, though his account of it is so very imperfect, and stands in need of being explained, as well as supported. As to the Securities, it reaches not all; the Bonds are left under the same difficulty as before. And as to the Cash, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. *Kynaston* and Mr. *Lightboun* say, it is plain they were consulting their own Interest; to keep the Office free from Incumbrances: And their Interest and mine (if I could have any in view) was the same: So that if it was their Proposal, what should hinder me from agreeing to it, but that I thought it insufficient?

The third Thing charged in this Article is, That I did not take the Masters Accounts, that is, Accounts of what Effects of the Suitors they had in their Hands.

My Lords, It is true, this was proved to be done by my Lord *Cowper* at his Entrance into his Office, both the first and second Time; it was done by another noble Lord, as has been proved at your Lordships Bar, once, and I believe it was done by that Lord oftener.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the same Approbation, as it had in those noble Lords. In my Case it would have been asked, What care I had taken to be sure that the Accounts delivered me by the Masters were true? Whether

ther I had ſeen the Securities and Caſh? And what Satisfaction I had, that they were able to make them good? I ſhould, perhaps, have been told, that without that, the bare taking of an Account was of no uſe. And theſe Enquiries were of ſuch a Nature, that if they were to be purſued effectually and with exactneſs, I own I had not ſtrength to go thro' them.

Nor did I think the taking Accounts from the Maſters neceſſary, becauſe I do ſtill take the Liberty to ſay, I was fully perſuaded, all the Maſters were good and honeſt men; and if they were not, I do not ſee it would be of any uſe to take ſuch Accounts. For I would be glad to know, whether if I had taken an Account yearly from every Maſter, he would have been one halfpenny richer or poorer, or at all more able to pay the Suitors?

Obj. It is ſaid, indeed, that all theſe were wilful Omiſſions; and for fear the Price of Places ſhould be ſunk.

Reſp. But of that there is not the leaſt Proof, and the Circumſtances of the Caſe above ſet forth, I hope, give a much more natural account of it. And the Difficulty what to do in ſuch a caſe cannot be expreſſed by any Words I can make uſe of, ſo ſtrongly as by what has paſſed, ſince I order'd the Money and Effects to be locked up, and lodged at the Bank, which were intended (and ſo the Order of the 17 *December* expreſſes it) to continue there only till the Affair could be more maturely conſidered, and a proper Proviſion made for the Security of the Suitors. Five months are now elapſed, and nothing has been yet done: Though the Suitors ſuffer vaſt Inconvenience. For, in order to get any money from thence, there muſt be a Maſter, and a Six-Clerk, and two Directors, and a Certificate from the Regiſter, which occaſions ſo great an Expence, that, in the caſe of ſmall Sums, People do not think it worth their while to go for them to the Bank, but chooſe to be without their Intereſt, rather than come at it through ſo many Difficulties. And if the Lords Commiſſioners, three of them, ſuch great Men, have found this matter too difficult to ſettle to their Satisfaction; is it a Crime in me, that I was not able to diſcover a method for making things eaſy and ſecure?

This Article is cloſed with the great Deficiencies that have happened with regard to the Effects of the Suitors.

But, my Lords, give me leave to ſay, if that Deficiency have not happened by any fault of mine; if thoſe misfortunes, which have befallen ſome of the Maſters, be not owing to any Crime in me; no part of all that is charged in this Article, ought in Juſtice to lie at my door. As I have obſerved before, the great danger, which was at firſt apprehended, and ſo often talked of by Mr. *Lightboun*, related only to the Securities, which the Maſters had in their Hands; but that which happened related to the Money only. And tho' this Accident fell out, whilſt I had the Great Seal, yet it might as well have happened in my Predeceſſor's time, ſince nothing that I have done has given the leaſt occaſion to it.

But is there, at laſt, any Deficiency made out to be in theſe Maſters, by which the Suitors are to be Sufferers?

Mr. *Thompſon* has been called as a Witneſs to prove theſe Deficiencies; but he has only ſhewn an Eſtimate of *Borret*'s Deficiency, and that ſome of the preſent Maſters had not paid in their Balances at ſuch a time; and how much the farther Sums they were to pay amounted to.

But have the Suitors therefore loſt the money? No, my Lords, that does not appear; but on the contrary,

Mr. *Conway*, one of them, and whom they have themſelves produced as a Witneſs, has ſworn, that he has aſſigned an Eſtate ſufficient to pay all his Deficiency.

One of the managers was pleaſed to own that he meant by Deficiencies, the money not yet paid in, nay the money not paid in at the time of making the Orders ready; and did admit, that ſince thoſe Orders, there had been Satisfaction or Security for the moſt part.

But, my Lords, it is the Loſs of the Suitors, that alone can give ground to complain.

The Order concerning Mr. *Tho. Bennet* mentions his Deficiency to be only 7500 *l.* and 1575 *l.* repreſented by him to be in the hands of his Predeceſſor and me.

The latter Sum of 1575 *l.* is brought into Court. And we have ſhewn that Mr. *Hiccocks*, his Predeceſſor, has petitioned, that he may pay in the 7500 *l.* which is the whole Deficiency. And here appears a conſiderable Eſtate, of I think 750 *l. per annum* of Mr. *Bennet*'s beſides.

Mr. *Kynaſton*'s Deficiency is repreſented to have been before *Chriſtmas* 26,908 *l.* 11 *s.* 3 *d.* ¾; ariſing all, but what he ſaid was in my hands, and the hands of Mr. *Rogers* his Predeceſſor, only hence, that his Caſhier was dead inteſtate, and Adminiſtration diſputed; and ſo he could not come at the money.

There is paid in by me		1575 *l.*		
There is offered to be paid by Mr. *Rogers*, and will be paid - -		6000		
A Debt from Mr. *Delahay*, which he ſwears a juſt one, is aſſigned - - -		20,850		
	In all	28,425		
And the Deficiency being computed at	—	26,908	11	3¾
This exceeds it in the Sum of - -		1516		

And he has an Eſtate of between four and five hundred Pounds a-Year, and Timber of the Value of 2500 *l.* to make good any part that may not be got from *Delahay*'s Eſtate, though his Effects are in one of the Reports mentioned to have been then found to be in *London* alone above 20,000 *l.* And I have heard that the Lords Commiſſioners have ordered them to be brought into Chancery, and that 16 or 18 thouſand Pounds are actually brought in.

What is ſaid to be Mr. *Borret*'s Deficiency, is the foot of an Account, which the Report that repreſents it, and Mr. *Thompſon* in his Evidence, ſay could not be properly taken.

And when fully examined into, there may come out to be no loſs there neither. Mr. *Godfrey* ſwears Mr. *Borret* to have been in good Circumſtances when admitted; to have an Eſtate; to have ſold an Office for, I think, 5000 *l.* upon the Occaſion of his coming in Maſter; to have lived with ſmall Expence, his Wife's Father maintaining his Family. And, as he enjoyed the Office four Years, there can be no great Deficiency, and probably will be none at all.

But, my Lords, it is extremely hard upon me, if by their producing an uncertain Eſtimate, I am to be obliged to ſtate the Accounts of one, who is dead, whoſe Adminiſtrator is Sollicitor againſt me, without their ſearching into his Papers and Affairs, and giving a perfect Account how they ſtand. It is exceeding hard, give me leave to ſay, that your Lordſhips ſhould be judging upon me as criminal, from Facts of this kind, to which I am an entire Stranger, when there is nothing like Proof, that there will be a Farthing Deficiency at laſt, but only that the money is not yet come in.

I beg leave to obſerve one thing more, That the Maſters, that are now called the deficient Maſters, are not one of them in Cuſtody; though it is made an Article againſt me, that I did not commit Mr. *Dormer*, who was in *Holland*. Therefore, ſince they are at Liberty, it muſt be taken for granted, that the Lords Commiſſioners had good Reaſon not to commit them; and yet their Deficiency, which is not a Crime in them, ſufficient to juſtify the committing them, is to be made a Crime in me, ſufficient to ſupport a Charge of High Crimes and Miſdemeanors. Your Lordſhips ſee how far this ought to affect me; and I ſubmit, upon what I have ſaid, whether it can ſupport the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts: It charges,

"That whereas his moſt Sacred Majeſty, out of his Fatherly Goodneſs "to his People, did in or about the month of *November* laſt, direct an "Enquiry to be made into the Accounts of the Maſters of the ſaid Court "of Chancery, to the Intent that proper methods might be taken for the "Security of the Suitors of the ſaid Court; the ſaid *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his "Majeſty's moſt Honourable Privy Council, in order to obſtruct the ſame, "and to prevent a Parliamentary Enquiry into the State and Condition "of the Offices of the ſaid Maſters, in Breach of the ſeveral great Truſts "repoſed in him, did give Advice and Encouragement to the ſaid Maſters "to aſſiſt and ſupply each other with money and effects, and did repreſent to the ſaid Maſters, that it would be for their Honour and Service, "to appear able and ſufficient; and that if they made a bold Stand now, "it might prevent a Parliamentary Enquiry, or to that Effect; and did "perſuade ſeveral of them to make falſe Repreſentations of their Circumſtances to his Majeſty, by adding a Subſcription to their reſpective Accounts deliver'd to the ſaid Earl, to be laid before his Majeſty, to the "Effect following, *viz.* That they were able to anſwer the money and "Securities in their Hands, and were willing to pay the ſame to ſuch Perſons as were entitled thereunto; although the ſaid Earl knew, or had "good Reaſon to believe, that ſeveral of the Maſters were not then able "to anſwer the Balance of their Accounts, nor are they yet able to ſatiſfy or make good the ſame; and when the ſaid Maſters were afterwards "required to produce the Caſh and Effects of the Suitors in their Hands, "ſome of the Maſters, according to ſuch Advice and Encouragement "given by the ſaid Earl, did ſupply others of them with Caſh and Effects, "to make a falſe Shew and Appearance of their Ability and Readineſs to "anſwer the Balance of their Accounts."

My Lords, the two things, which are made the Heads of the Charge in this Article, relate to the Subſcriptions of ſome of the Maſters written under their Accounts; that they were able to make good the Balances; and their afterwards producing Caſh, to make a falſe Shew and Appearance of their Ability. As to the firſt; I take it, that the material part of the Charge is, that I *perſuaded* them to make *falſe Repreſentations* of their *Circumſtances* by a *Subſcription* which I *knew, or had good Reaſon to believe, was falſe.*

As there is not the leaſt Proof offered that I knew or had reaſon to believe the Subſcription falſe, this Charge I think intirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that when Mr. *Holford* brought in his Account, purſuant to my Order, he (without my knowing any thing of it) had wrote a Subſcription at the End of it, to this Effect: "I have all theſe Securities ſtanding in my Name, as "in this Account is ſpecify'd, and will procure Certificates from the pro"per Offices, that I have and had them before this Account, if your "Lordſhip require it; and as to the money, I am ready to give your "Lordſhip Satisfaction to a Demonſtration, that I have it in my Power "to anſwer it to every Perſon, that ſhall appear to be entitled to it, and "who can give me a legal Diſcharge."

They ſay, I read it, and ſpoke of it with Approbation.

There were only Part of the Maſters ready with their Accounts; and Mr. *Lovibond* was the next, that delivered me his, and he had wrote to the ſame Effect in Subſtance; only as to the Caſh, he wrote that he was ready to give Security.

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My Lords, every Body knows that he was able to answer it; and he swears he had it ready; and was able to have paid it the next Day; and he appears to have lent 10,000 *l.* to a Brother Master on that Occasion. I was therefore surprized to see him make use of an Expression, which looked as if he were not able to pay the money. And upon that it was that he says I recommended to him to make use of the same Expression, as had already been used by Mr. *Holford*; and so accordingly he did.

Thomas Bennet had subscribed before he came thus: "I have all the Securities standing in my Name as in the within Account are specified, "as also the Tallies, Orders, and Bonds in my Custody;" but had said nothing of the money: He swears, that I said I wished all would make use of the same Form as Mr. *Holford* had done: And that it would be for their Honour and Service to appear able and sufficient. He says, That Mr. *Lightboun*, as I remember, asked what was the meaning of bringing it before the Committee? and that I said, it would be a means to prevent a parliamentary Enquiry; that I did not ask him whether he was able, but directed him to write; I suppose he means by the general Direction; for I do not apprehend he says, that I spoke it to him in particular: And it is not pretended, that he made the least Scruple of signing it as true, or expressed any Backwardness in it; and he in Effect owns he did not. But he informs your Lordships how extremely tender he was, not to write any thing but what was strictly true; and that therefore, in his Subscription, he took Care to leave out the Words *to a Demonstration*, which are in Mr. *Holford*'s. And Mr. *Holford*'s Subscription running, *And as to the money, I am ready to give your Lordship Satisfaction TO A DEMONSTRATION, that I have it in my Power to answer it to every Person that shall appear to be entitled to it*, &c." Mr. *Bennet* could not come quite up to this; but he subscribes, "*And as to the money, I am ready to give your Lordship Satisfaction, that I am able to answer it to every Person that is entitled thereto.*" This, therefore, that he has subscribed, is, I suppose, if he is to be credited, *exactly true:* And if so, I have not persuaded *him to make a false Subscription.*

Mr. *Kynaston* says, it was *recommended* to them by me, to make such a Subscription as Mr. *Holford*'s; that I said, it would look well to the Council, and prevent farther Enquiry or parliamentary Enquiry, or some other Enquiry, he knows not which; so he complied. But, my Lords, his Subscription is not what I recommended. Mr. *Holford* only undertakes to shew he had it in his *Power to answer the money*, &c. that is, that he either had the Money or Effects, which being disposed of, would raise it. But Mr. *Kynaston* goes farther, he says, I am ready *to pay it* to the *Persons entitled.*

Mr. *Lightboun* heard nothing spoken of the Subscription; he went away to finish his Accounts, which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had said to the others, he, without Scruple, subscribed without my speaking to him.

Mr. *Edwards* says he was able to pay it.

Mr. *Lovibond* was called last; but I before gave an Account what he said.

So that of the six Masters who made Subscriptions, I spoke only to five.

Three of them have proved themselves able; and I believe no Body doubts it.

Mr. *Thomas Bennet* made no Objection or Difficulty, and has been curious not to let his exceed the Truth.

Mr. *Kynaston* has voluntarily gone beyond what I desired. And I make no Question but he thought himself *able* to answer it, though I doubt his being *ready*.

But is there the least Evidence offered, that I knew Mr. *Kynaston* and Mr. *Thomas Bennet* were not able, or had Reason to believe or suspect it? No; on the contrary, Mr. *Lovibond*, their own Witness, who is one of the Masters, and conversant among them, told your Lordships upon his Oath, that by their Conversation he believed they were able to make good their Accounts.

In the mean Time, your Lordships observe, that these deficient Masters had all their Securities ready, and voluntarily subscribed so to their Accounts, without my speaking to them. In which Point Mr. *Lightboun*, under the last Article, thought there was the most Danger.

As to the Words, *That it would be for their Honour or Service to appear able and sufficient*;

I will not be positive as to the Words, whether it were *to appear able*, &c. or *to make it appear that they were able*, &c. In a fair Construction, the Sense of the first is the same as the latter.

When Mr. *Holford* subscribes, That he is able to pay to every Person, who shall *appear* to be entitled; or, if I should say, Mr. *Thomas Bennet appears* not so fair or able a man as I formerly thought him; does it import only a false Shew?

As for what is said of *preventing a parliamentary Enquiry*;

Mr. *Thomas Bennet* represents it to be spoke in Answer to the Question, What was the meaning of bringing it before the Committee? And says, my Answer was, That it would prevent a parliamentary Enquiry.

If I said it, the Reason is obvious, and the Thing innocent.

It is notorious, that the last Summer there was a great Clamour against Masters in Chancery, which was heightened by some Disputes they caused in the Court of Chancery; that it was generally believed that it would come into Parliament; and I am persuaded it would have come into Parliament something sooner, if the Committee of Council had not taken this matter into Consideration.

I am likewise persuaded, that had the Masters all been able to make good the money in their Hands, and proved that they were so; and that they had behaved themselves well; and that the Lords of the Committee, after finding their Accounts right, had proceeded to advise proper Regulations, the matter would never have come into Parliament with respect to them, whatever it might as to me.

And as to them, I believe they were not desirous to have the matter in Parliament, because of the vast Trouble it must give them, had there been nothing else in it. And it was natural for me to think, that nothing would more tend to make them easy, in complying with what the Committee should think fit, than by letting them know, that if it gave them Trouble in one Respect, it would ease them more in another.

And so far I thought it for the King's Service, and my Duty, to hasten the Accounts before the Council, and to use all means I could to have Things carried on with Speed and Effect; that such Members of Parliament as had their Eyes on this Affair, might plainly see, that proper measures were effectually carrying on by the Lords; so that there would be no Occasion to take up this Affair in Parliament, or for the Legislature to interpose.

But as to my own Share, I freely own I had not the least Apprehension of what has since befallen me.

I was so far from obstructing the taking these Accounts, that Mr. *Holford* has informed your Lordships, that when the first Order was such as would require a very long Time to be complied with, I pressed them not to make use of that as an Excuse for Delay, but to bring in an Account of their present Balances, and to let the Lords know the Reason, and then to ask Time for more perfect Accounts, if such should be required, which were not.

As to their making a *false Shew* of Cash *pursuant to my Advice and Encouragement*,

They have not offered a Word of Proof of any Thing said or done by me, or by my Order, concerning any Part of that whole Affair; if they had, I am sure whatever had appeared to be done by me, would at the same Time have appeared not capable of the Construction in the Article.

But instead of that, they have given a confused uncertain Account of something that passed between Mr. *Cottingham* and the Masters; but never called Mr. *Cottingham* to bring it home to me, nor any way shewn that I knew any thing of it, either before or after. Nor do I really understand it at last. I do not apprehend that Mr. *Cottingham* advised them to furnish one another with money, but upon good Security; nor did they do it. Nor do I see what harm it is, if a Master, having Occasion for money, borrows it of another Master upon good Security.

The only Person that they seem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he seems to justify himself too.

But if not, there is no Proof nor Ground of Supposition that I was any way privy to it, or assisting in it, or that I had any the least Share whatsoever in it.

And therefore I am not Guilty.

XX, XXI. On the 20th and 21st, nothing has been offered.

My Lords, I have now gone through all the several Articles that have been *endeavoured to be supported* against me; and I think I may say as I did in the Beginning, that except those relating to the Disposal of Places, which are of another Kind and another Consideration, all the rest must, to be made criminal, turn upon that Aggravation in the Articles, from my *inordinate, wicked, and corrupt Designs of procuring to myself excessive and exorbitant Gains and Profits by divers unjust and oppressive Practices after mentioned.*

It is such a *corrupt Heart* only can change Actions, that in themselves are innocent, and some of them perhaps commendable, into so many Crimes.

And yet it is very extraordinary, and scarce possible to be conceived, but that if there had been such a corrupt Heart, it must have broke out upon some other Occasion of my Life. Not one Instance of my whole Life has been yet produced to shew it.

Several of those under me have been examined; several Officers immediately attendant on me, that received considerable Profits and Salaries, to the Amount of three or four thousand Pounds *per Annum*, and more; if I had set my Heart upon Gain, a certain Profit might have been there yearly made, amongst those whom I had wholly at mercy, and in private. But there has no Appearance been found of any Thing of that Kind: And is it not more likely that I should have laid Hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Masters Offices?

The Value of such an Expectation is a mere Trifle; and with respect to the Probability of its happening, it was exceeding uncertain, whether I should have an Opportunity of putting in one single Master.

Three Masters have happened to die in my Time; and two of those in less than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the last Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are 24 Cursitors; only one has died in my Time: 30 Commissioners of Bankrupts; only one died in above six Years.

Surrenders of the Offices of Masters are rarely till after 16 or 17 Years, sometimes 30 or 40 Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more so.

Little therefore was to be hoped from the Profit to be made by Masters Places.

My Lords, in the next Place I apprehend, that it appears I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all those Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) see, whether there be the least mark or Symptom of this impotent Desire of Gain!

What I did proves beyond all Contradiction, that I never had any such Views as these they lay to my Charge.

I took not the Advantage I might have done; I took a less Sum, when a greater was offered; and Part of the money was returned again to Mr. *Elde* and Mr. *Thurston*. And when Mr. *Thurston*'s money was returned, only for being more than it was expected to be, every Thing was in the same State as when it was paid.

And possibly your Lordships will think, from some other Evidence given, that amassing a great Estate was never my View; and that rapacious and base Ways of getting money are not consistent with my Way of laying it out.

As this is a full Answer to the Charge of my Desire of Gain; and the whole *malignity* of *all I am charged with* arises from that supposed Principle of my Actions; without this, though there should have been Im-

prudence,

prudence, Indolence, too great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakneſs, there has been nothing wicked.

And, if your Lordſhips are ſatisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

My Lords, Having thus gone through all my Obſervations, it may poſſibly be expected I ſhould cloſe them with offering ſomething in General: But I think it properer to forbear.

I am not conſcious to myſelf, that it is neceſſary in this Caſe to apply to the Paſſions; which is a common Artifice to aſſiſt a weak Defence. If I have done any publick or private Good (of which laſt ſome Specimen has been laid before your Lordſhips) it will, I am confident, have its full Weight.

I ſubmit my whole Life and Conduct to your Lordſhips Judgment; and rely entirely upon your Juſtice for my Acquittal.

Mr. *Plumner*. My Lords, I am not going to make any Obſervations upon this Speech; neither did I interrupt the Lord in making it. But one thing I am to ſay for Form Sake: We produced to your Lordſhips a Copy of a Letter writ from Mr. *Lightboun* to my Lord, he hath now read the Original Letter; I deſire that the Original may be delivered into Court, that we may have the Peruſal of it.

E. of *Macclesfield*. I believe the Gentleman is perfectly in the Right of it. It is here.

[The Houſe adjourned to *Friday* Morning next, at Ten a-Clock.]

[*Friday*, *May* 21. The 10th Day.]

THE Lords being ſeated in their Houſe, the Serjeant at Arms made Proclamation for Silence: As alſo the other Proclamation, That all Perſons concerned were to take Notice, that *Thomas* Earl of *Macclesfield* now ſtood upon his Trial, and they might come forth in order to make good the Charge.

Lord Chief Juſt. *King*. Gentlemen of the Houſe of Commons, you may proceed.

Mr. Serj. *Pengelly*. My Lords, The Part aſſign'd to me in this Impeachment againſt the Earl of *Macclesfield*, is to reply to his Defence upon the *Fifth*, *Sixth*, *Seventh*, *Eighth*, *Ninth*, *Eleventh*, *and Twelfth* Articles.

Before I enter into the particular Examination of the Objections made againſt the Charge of the Commons contained in theſe Articles, and of the matters alledged, either in Juſtification, or Excuſe of the Lord Impeached; I ſhall take the Liberty of obſerving,

That your Lordſhips are now exerciſing a Power of Judicature, reſerved in the original Frame of the *Engliſh* Conſtitution, for the Puniſhment of Offences of a publick Nature, which may affect the Nation; as well in Inſtances, where the Inferior Courts have no Power to puniſh the Crimes committed by the ordinary Rules of Juſtice; as in Caſes within the Juriſdiction of the Courts of *Weſtminſter-Hall*, where the Perſon offending is, by his Degree, raiſed above the Apprehenſion of Danger, from a Proſecution carried on in the more uſual Courſe of Juſtice; and whoſe exalted Station requires the united Accuſation of all the Commons of *Great Britain*, by their Repreſentatives in Parliament.

This High Juriſdiction may be exerciſed for the Preſervation of the Rights of the Lords and Commons, againſt the Attempts of Powerful Evil Miniſters, who depend upon the Favour of the Crown;

Or, it may be put in Execution for the Eaſe and Relief of a good Prince, whoſe Honour has been betray'd by a corrupt Servant; and yet, whoſe Clemency makes him unwilling to puniſh; ſo that it becomes neceſſary for his faithful Commons to take into their Care the Proſecution of ſuch an Offender.

Former Reigns have ſupply'd your Journals with many Examples of the firſt Kind.

The preſent Reign produces an Inſtance of the latter Sort, wherein the Commons bring before your Lordſhips in Judgment a Peer offending, with the greateſt Ingratitude, againſt a moſt juſt, and moſt merciful Sovereign.

For, the King's Royal Munificence beſtowed upon this Earl, in the moſt abundant meaſure, could not exempt the Inferior Officers from his Exactions, nor protect the Suitors and their Properties in the King's own Court of Chancery.

The general Crime charged upon the Earl, in *Five* of theſe Articles, is *Extortion by Colour of his Authority as Lord Chancellor*.

The Offence alledged in the other *two* Articles, is *groſs and wilful Negligence in his Office, to the great Damage and Loſs of the Suitors of the Court, but to his own private Gain and Advantage*.

The particular Exactions are his taking *One Hundred and Five Pounds* from Mr. *Thomas Bennet*, for accepting the Reſignation of the Office of *Clerk of the Cuſtodies* in the Court of Chancery, in order to obtain a New Grant to Mr. *Hugh Hamerſley*, and procuring the ſame to paſs the Great Seal accordingly.

His exacting *Fifteen Hundred Guineas* from Mr. *Kynaſton*, for the admitting him to be a Maſter of the Court of Chancery, upon the Reſignation of Mr. *Rogers*.

His exacting the like Sum of *Fifteen Hundred Guineas* from Mr. *Thomas Bennet*, for the admitting him to be *a Maſter* of the ſame Court, upon the Surrender of Mr. *Hiccocks*.

His exacting the Sum of *Five Thouſand Guineas* from Mr. *Elde*, for the admitting him to be *a Maſter* of the ſame Court, upon the Death of Mr. *Fellowes*.

His exacting the like Sum of *Five Thouſand Guineas* from Mr. *Thurſton*, for the admitting him to be *a Maſter* of the ſame Court, upon the Death of Mr. *Barret*.

The laſt Article relating to Mr. *Thurſton* is charged with this Aggravation, *That the former Maſter was Dead Inſolvent, greatly indebted to the Suitors of the Court; and that the Earl did not ſecure a juſt Satisfaction to the Suitors*.

And the Exaction of the *One Hundred and Five Pounds* from Mr. *Tho. Bennet*, is alledg'd to be done when the Earl was *one of the Lords Juſtices*.

Theſe Miſdemeanors, as well as all the other Offences, of which the Earl is now accuſed, were committed by him *whilſt he executed the Office of Lord Chancellor*.

I

From whence the Earl and his Counſel take Occaſion to make a Triumph upon the ſuppoſed Juſtice and Regularity of his Adminiſtration and Conduct, when he preſided in the Court of King's Bench; becauſe the Commons have not produced any miſbehaviour in the Execution of that Office wherewith to furniſh out an Article againſt him.

This may be an Inſtance of the Lenity of the Commons, but it is no Proof of the Earl's Innocence; who beſt knowing his own Behaviour, declines to abide the Examination of his Actions during the ſix Years of his Continuance in the Office of Lord Chancellor;

But flies to a Sanctuary for Indemnity and Diſcharge; which ſhews, that the Earl eſteem'd himſelf more ſecure under Shelter, than upon a Juſtification of his Conduct.

And the Succeſs of the Commons, in the very ſtrong and full Evidence, which they have laid before your Lordſhips in maintenance of thoſe Articles, upon which they have proceeded, leaves very little Reaſon to imagine that they would have fail'd in their Proof, if they had extended their Inquiry into his former Life, or had enter'd into the reſt of the Articles.

And after the ſtrict and long Examination of Witneſſes, which has entertain'd your Lordſhips for ſo many Days, I may venture to ſay, that the Conſiſtency and Uniformity of the Proof given in Support of the Accuſation of the Commons, upon ſo many different Heads, are ſufficient to convince all the World of the Neceſſity which there was, for the Honour of the King, and the Welfare and Satisfaction of the Nation, to carry on the preſent Proſecution;

And, I hope, have already fully ſatisfied your Lordſhips of the Truth and Juſtice of the Commons Impeachment.

But as there have been ſeveral Objections made on the Behalf of the Earl impeach'd, as well to the Foundation of the Charge itſelf, and to the Event and Conſequence of it, as to the Sufficiency of the Evidence of the Facts alledged; it will be neceſſary for me to give an Anſwer to theſe Objections, and to maintain the Charge in theſe Reſpects; which I ſhall proceed to do by ſhewing, that *the Impeachment is well founded*, and that *the Facts in the Articles* before ſtated *have been plainly and fully prov'd*.

The Earl himſelf began with inſiſting, That his General Oath of Office has no Relation to the Offences charg'd; and that no Inference can be made to his Prejudice from the Tenor of that Oath.

But the Earl's Remembrance, or Explanation of his Oath, is very defective; he has ſet it out at large in his Anſwer, and thereby he ſwears, that *He will well and truly ſerve the King and his People in the Office of Chancellor, and do Right after the Laws and Uſages of this Realm*; which comprehends the Obſervation of every thing, which is Part of the Duty of, or incident to his Office,

And the avoiding of every illegal and unjuſt Action in the Execution of it.

And the Omiſſion of any Part of his Duty, or the Commiſſion of any Offence againſt the Duty of his Office, is a Breach of this Oath of Office, altho' the Particulars are not enumerated in the Oath; and the contrary Opinion will open a Door to the Commiſſion of all manner of Injuſtice and Rapine by Civil Officers.

The Earl likewiſe relies upon it, That the whole Charge turns upon his wicked and corrupt Intent and Views alledg'd in the Introduction, which (as he ſays) have not been made appear;

But theſe will be apparent from the Proof of the ſeveral Facts charg'd; which, if they are unlawful and unwarrantable, and do tend to the raiſing Money by corrupt and extorſive meaſures, will manifeſt that Intent, and prove it as ſtrongly as if he had declared his Deſigns in open Court; for ſuch Acts cannot be done with a good and honeſt Intention.

The main Objection againſt the Article is, That there is no matter of a Criminal Nature contained in the Money Articles; or if there is a Crime, yet that there is no Puniſhment annexed or incident to it, which your Lordſhips can now inflict upon the Earl, after he is removed from his Office.

In Anſwer to which I ſhall inſiſt, That,

The Earl's ſelling theſe Offices, or diſpoſing of them for Money taken by him before the Admiſſion of the ſucceeding Officers in the manner alledged and prov'd, is an Offence at the Common Law, and puniſhable by Fine and Impriſonment, upon Indictment or Information; as well where the Money was taken for an Admiſſion upon a Reſignation, as upon a Death.

To make out this, it muſt be conſider'd, That

The King having the executive Power, or the Adminiſtration of Ordinary Juſtice, lodged in Him, is in Conſequence obliged to provide and appoint capable and ſufficient Officers, neceſſary for the due Execution of Juſtice, in his ſeveral Courts, for the Benefit of His Subjects: His Coronation Oath proves this.

And accordingly the Crown has always paid the Salaries or Fees of the Lord Chancellor, and other principal Officers of Juſtice, and alſo of many inferior Miniſters, out of the Royal Revenue; and other ſubordinate Miniſters were maintain'd by the chief Officer, to the End that the Subject ſhould not be expoſed to Exaction or Oppreſſion, under Pretence of any Demand of Fees or Reward by the Miniſters of Publick Juſtice for the Execution of their Offices; which is the Source of all that Corruption, which at any Time ſprings up in the Courts of Juſtice.

The Antient Law of *England* was, that none having any Office concerning the Adminiſtration of Juſtice, ſhould take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free and at Liberty to do Juſtice. *Stat. Weſtm.* 1. cap. 10. *A.* 3. *Ed.* 1. *Co.* 2. *Inſt.* 176, 209, 210. *Co.* 3. *Inſt.* 143, 147, 148.

And ſeveral Charters of former Kings, and Statutes declaratory of the Common Law in that Reſpect, have been made to inforce the due Obſervation thereof, as,

Stat. Weſtm. 1. 3 *Ed.* I. c. 26. 20 *Ed.* III. c. 1.

My Lord *Coke*, 3 *Inſt.* 146. ſays, the 20 *Ed.* c. 1. is only a Commandment of the King; and that there is no Record of any ſuch Act in any Parliament Roll, and yet neceſſary to be printed, becauſe the 4*th* Chapter of this Parliament refers to the Pains contained in it. *Co.* 2. *Inſt.* 74, 176, 209, 210.

Yet, if it be only the King's Charter, it is a Declaration of the Common Law at that Time; but it is printed in Old *Raſtal*'s Edition of *Statutes*, Fol. 89, and in all the reſt of the printed Statutes.

Co. 3.

Co. 3. *Inst.* 224, 225.
Co. 3. *Inst.* 146. cap. 68.
of Bribery, Extortion, &c.

' ITem, *Que null Chanceller, Tresorer, Gardein de Prive Seal, Counsel-*
' *ler du Roy* *; *serementez a Counseil du Roy, ne null autre Offi-*
' *cer, Judge, ne Ministre du Roy, prenant Fees ou Gages de Roy, pur*
' *lour ditz Offices ou Services preigne en null Menere en Temps avenir ascun*
' *Manere de Done ou Brocage de nully pour lour ditz Offices et Services, a*
' *faire sur Peyn de respondre a Roy de la Treble de ceo que issi preignont,*
' *et de satisfier la Partie et punys al Voluntes de Roy, & soit dischargez de*
' *son Office, Service, & Counseil pur toutz jours, &c.*'

20 *Ed.* III. cap. 6. and more particularly the Act of 11 *H.* IV. *Rot. Parl. Num.* 28. by which it is enacted,

' ITem, That no Chancellor (*this High Officer is mentioned in the first Place by Name*) Treasurer, Keeper of the Privy Seal, Counsellor of the King
' * sworn of the King's Council, nor no other Officer, Judge, nor Minister of the King, receiving Fees or Wages of the King for the said
' Offices or Services, take in no manner in Time to come, any manner of
' Gift or Brocage of any Person for doing their said Offices and Services,
' upon Pain to answer to the King the Treble of what they so take, and
' to satisfy the Party, and to be punish'd at the King's Pleasure, and
' shall be discharg'd from his Office, Service, and Counsel for ever, *&c.*

* *N. B.* The printed Books have mistaken this Word:

This Statute is enter'd on the Parliament Roll of that Year, amongst the Records in the Tower; it is not indeed enter'd on the Statute Roll: But the Parliament Roll is the Original, and is the Warrant for the Statute Roll, and is therefore of greater Authority.

In the Margin of the Roll is enter'd thus, *viz.*

Respectuatur per Dominum Principem & Consilium.

For which Reason my Lord *Coke* says it was never printed in the Book of Statutes, of which he highly complains; and therefore has recited it at large, and caused it to be printed in his 3d *Inst.* Fol. 146. c. 68. *of Bribery, Extortion,* &c. and c. 101. *of Judgments and Executions,* Fol. 224, 225. which is one of the first Books relating to the Crown Law, read by the Students of the Law, and was thus published by that great Man, to impress an early Abhorrence of every thing which may tend to Exaction and Extortion; and must have often come under the Consideration of the impeach'd Lord.

These Statutes have indeed been opened, and alter'd by subsequent Statutes, as to several inferior Officers; and some small Fees have been anciently allow'd, and permitted in particular Cases;
Co. 2. *Inst.* 74, 209, 210. but it has been observ'd, that from such Indulgences many Oppressions of the People have ensued.

But the Common Law and the several Acts of Parliament before-mention'd, do not only still remain in Force, with respect to the Lord Chancellor, but have been confirmed and inforced by other Statutes.

And the Great Charter of our Liberties, *Magna Charta,* c. 29. *Co.* 2. *Inst.* 55, 56, does imply this,

Nulli vendemus Justitiam aut Rectum;

which, according to my Lord *Coke*'s Comment,

Is spoken in the Person of the King, who in Law is present in his own Courts of Justice, and repeating these Words, which (says he) *extend to the End, which is Justice, and to the Mean, whereby Justice may be attained, which is the Law;* or, as it must be understood, the Administration of the Law by the Officers of Justice; unless it can be supposed, that the Statute provides against the lesser Evil, but allows the greater Mischief; that it prohibits the Sale of a particular Decree or Order, which may be right and just in itself;

But leaves the King's superior Officer at Liberty to sell the whole Body of the Suitors of the Court in the Gross, to the Exaction and Oppression of the under Officers, in the Fees which they shall demand against Law and Right.

So that if the Earl impeach'd had exemplified this Rule of my Lord *Coke* in the Court of Chancery, where he immediately represented the King's Royal Person; and once in a Term sitting in Court between his Masters, who paid for their Places out of the Suitors Effects, had repeated to the Suitors this glorious Declaration,

Nulli Vendemus Justitiam;

He must have made a very inconsistent Figure, in the Opinion of the meanest Capacity.

It will then be plain, That as to such Offices, which are in the immediate Gift and Disposal of the Crown, they cannot in their own Nature be saleable or disposed of for Money; because the King himself cannot be supposed to suffer them to be put to Sale.

And the Ministers of the Crown, who have no immediate Right in the Office, and are only to execute and confirm the King's Pleasure in the Disposal of the Office, cannot sell that which is not their own;

Nor ought, nor can they lawfully take any Fee or Reward, for accepting Resignations, or making new Grants, or Admissions into Places, or for conferring inferior Offices, with which they are intrusted by Virtue of their own Office; which would be the taking Money for the doing of their Office, contrary to the Law, and the before-mentioned Statute.

But there is another very good Act of Parliament, which has been read at your Lordships Table, and proves this Practice of selling such Offices, to be an Offence at the Common Law, *viz.*

Co. 1. *Inst.* 134. *a.* 12 *Rich.* II. c. 2. intituled, *None shall obtain*
Co. 3. *Inst.* 145, 147, 148. *Offices by Suit or for Reward,*

Item, *It is accorded, that the Chancellor* (by express Name) *Treasurer, Keeper of the Privy Seal, Steward of the King's House, the King's Chamberlain, Clerk of the Rolls; the Justices of the one Bench, and of the other; Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King, shall be firmly sworn, That they shall not ordain, name, or make any such Officers, nor other Officer or Minister of the King for any Gift or Brocage, Favour or Affection.*

The Act proceeds farther in a different Form of Expression, and to another matter:

Nor, that none which pursueth by him, or any other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other; but that they make all such Officers and Ministers of the best and most lawful Men.

The Earl apprehended the Stress of this Statute, and how much it pressed upon him; and therefore has endeavoured to distinguish himself, not only out of the Oath, but out of the intire Act, by objecting, that this Statute, and the Oath therein directed, only extend to such Nominations as are made in the Nature of Elections, by an Assembly of all these great Officers and Ministers, when they are called *together* for that End; which Word (*together*) is of his own inserting, to serve his Purpose; as in the Case of *Sheriffs,* and not to their single and separate Nomination of Officers, in Right of their respective Offices by themselves.

This is the Earl's own Objection, and not of his Counsel, and will (if allow'd) expound away the whole Act, in all the express Instances mentioned in the Statute, save one;

For there is but one Officer named in the Act, who is nominated thus in an Assembly or publick Meeting, which is *Sheriff*; and all the rest are ordain'd, and made by the great Officers separately, in their own Right; as *Justices of Peace* by the Chancellor; and *Escheators, Customers, and Comptrollers,* by the Lord Treasurer.

And the rest of the Words of the Act, *viz. Or any other Officer or Minister of the King,* will be totally expunged by this nice Interpretation.

But the Words plainly mean, that every one of these Officers, who by virtue of his Office, shall be call'd (not call'd *together*) by Command of the Crown, or in Execution of his Office, to name or make any inferior Officer, shall be sworn; for they never are all call'd together, unless on the Nomination of Sheriffs.

The Earl, for more Security, and for the Sake of better Company, objects farther; That the Argument from this Act and the Oath will go too far; for then they are sworn not to prefer any *who make Suit or Application for any Office.*

But that is no Part of the Oath; and they are only sworn so far as the Statute extends it, which is to the former Part; and this Clause in the Conclusion of the Act is only directory, and introduces a new Instruction to the great Officers, but does not carry on the Purport of the Oath; for the Words are, *It is Accorded that the Chancellor,* &c. (in the Affirmative) *shall be sworn, that they shall not name,* &c. and the Sentence which follows is a new Clause, beginning with a Negative, *viz. Nor, that none which pursueth, &c. shall be put into any Office,* &c. and refers to the Person applying, and not to the Officer appointing.

So that this latter Part of the Statute ought to be observ'd; but the Officer is not required to be sworn to the Observation of it.

This Statute takes it for granted, that the contrary Practice of naming subordinate Officers for Gift or Brocage was unlawful before, at the Common Law; since it does not create or enact it to be an Offence, but provides an additional Constraint or Obligation upon the superior Officer by an Oath, not to commit the Offence; and it still remains an Offence at the Common Law, and don't depend on that Statute, but is a great Offence, altho' the Oath be not taken.

This Statute contains the most extensive and general Words, and mentions Officers of many Sorts, and different Degrees, as well high as low, relating to the Peace, publick Justice, and the Revenue; and that no Officer, of any kind whatsoever, in the King's Service, nam'd or ordain'd by the great Officers of State, might escape or be omitted, the Act concludes the Description with these Words, *Or any other Officer or Minister of the King;*

And therein manifestly comprehends both these Offices of *Clerk of the Custodies,* and of *Masters in Chancery:*

For this Statute refers to Officers who are only nam'd or recommended to the King by the Chancellor, *&c.* and yet are constituted by the King's Letters Patents, as *Justices of the Peace, and Sheriffs,* whereby the usurped Fee for Recommendation is declared illegal; and also to other Officers, who are immediately constituted and appointed by the chief Officers, by Authority deriv'd from the King, and by virtue of the Trust in them reposed for the King's Honour and Service, and for the Benefit of his People, as *Escheators and others*; and thereby the other pretended Fee for Nomination is condemned.

Sheriffs and *Escheators* named in the Act, are Officers relating to the Administration and Execution of Justice; and *Escheators* more especially, to Inquisitions touching Idiots and Lunaticks, and the Commissions and Proceedings thereon; which is the chief Part of the Trust and Office granted by the Letters Patents to Mr. *Hamersley, as Clerk of the Custodies,* and which was resigned by Mr. *Tho. Bennet*; and it will appear by the Patent itself, that this Office in the Court of Chancery, has a very near Relation to the Office of Escheator; and the Grant very fully describes the Nature and Antiquity of this Office.

And as to the Nature and Antiquity of the Offices of *Masters in Chancery,* they appear fully from the Oath taken by every *Master* upon his Admission, which is of the same Import and Effect, in many things, with the Oath taken by the Lord Chancellor himself, *viz.*

To serve the King and his People, and to counsel the things that toucheth the King; to prevent the Disheritance of the King, or Fraud to his People; and not to disclose the Counsel which he shall give touching the King; and to redress Damage or Fraud in the keeping the Great Seal, and to advise the Chancellor thereof, &c.

And also from the ancient Commissions produced and read, giving the Masters Authority, by the Name and Description of *Masters of the Court,* to hear Causes, and make Decrees (in like manner as the Judges Assistants)

Assistants) in the Absence of the Chancellor; and to punish Contempts, and to do other like Acts of Jurisdiction; and likewise from the actual Exercise of their Offices in making Reports and Taxation of Costs, and the manner thereof proved by some of the Masters (and not contradicted) as that a *Subpœna* issues immediately upon the Master's Taxation of Costs, without any Order or Confirmation of the Lord Chancellor; that their Reports in other Instances are turned into Decrees of Court, if not alter'd upon Exceptions, and from many Authorities in the Law Books.

By all which it is evident, that the Offices of *Masters in Chancery* are judicial Offices, or Offices which partake of a judicial Authority and Nature; and do touch and concern the Administration and Execution of Justice in that Court; and that the *Masters* are associated for that Purpose to the Lord Chancellor, as alledged in the Articles.

But upon this Occasion it will be proper to recite more particularly the Authority of the Statute of

A. 13 *Edri.* I. called *Westm.* 2. cap. 24. *Et quotiescunque de cætero evenerit in Cancellaria, quod in uno casu reperitur breve, & in consimili casu cadente sub eodem jure, & simili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciendo, vel atterminent querentes in proximum Parliamentum, &c. & de consensu jurisperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Justitia perquirenda.*

Co. 2. *Inst.* 405, 407. Those here called *Clerici*, were at this Time, and before, called *Magistri Cancellariæ*, and were associated to the Lord Chancellor; of whom Fleta saith,

Cui associentur Clerici honesti & circumspecti, Domino Regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant pleniorem, quorum Officium sit supplicationes & querelas conquerentium Audire & Examinare, & eis super qualitatibus Injuriarum ostensarum, debitum Remedium exhibere per brevia Regis.

The granting and issuing the Writ, or first Process, upon the Prayer of the Plaintiff, or Party prosecuting, is the first judicial Act of the Court, upon the Commencement of a Suit.

And this proves strongly, that the King, by his Royal Office, confirmed by this Act of Parliament, did at his own Expence, and not at the Charge of the Suitor, provide these *Clerks or Masters*, to the End that no Subject who had a Right, should be without a Remedy in the King's Courts;

Ne curia Domini Regis deficiat conquerentibus in Justitia perquirenda.

And the Nomination of these *Masters* is only intrusted with the Lord Chancellor, as representing the King, and for the Relief of the Subject.

13 *Edri.* I. *Stat. Westm.* 2 *cap.* 24, 50. *Co.* 2. *Inst.* 407, 486. *Co.* 1. *Inst.* 54. *b. John Webb's Case*, 8 *Co.* 48, 49. *Co.* 3 *Inst.* 82.

So that it is a Breach of his Trust, in the Lord Chancellor, to confer any of these Offices *for Gift or Brocage*, or to name and appoint unfit and insufficient Persons; since it is the Duty of his high Office to provide a Supply of proper Officers to carry on the due Execution of Justice in that Court.

But it is said, That it has not been constantly used to put all the *Masters* into Commission, and that in the Commission 9 *Oct.* 4 *Ed.* VI. *four* of the *Masters* only were in Commission; and when they are in Commission, that they have no Authority to act without the Presence of the *Master of the Rolls*, or *one* of the *Judges*; and therefore these Commissions did not give them a judicial Authority.

These Commissions, as well as the Office of a *Master*, subsisting so antiently, shew, that *they* were to be taken Notice of, and comprehended within the Statutes made to prevent the Sale of *Offices of Justice*; and of late Times they have all been put into the Commission, as appears by the late Commissions granted to the present *Masters*, since the Earl had the Custody of the Great Seal, and produced at the Table; and (without entering into the Dispute between the *Master of the Rolls*, and the *Masters in Chancery*, touching Jurisdiction, wherein the Earl, in his Defence, has declared, he thought the *Masters* were in the Right) the Judges themselves in these Commissions are only authorised to hear Causes, and make Decrees, with the Presence and Concurrence of *two Masters*; so that the Authority under this Commission is not less of a judicial Nature, from the Number of Persons necessary to make a Court, no more than it can be argued from the same Reason, that the *Judges* in that Commission are not *judicial Officers*, because they cannot make a Decree without *two Masters*.

And although the Commission is not properly incident to the Office of *Master*, as annexed thereto; yet as it has always attended upon, and accompanied the *Office*, it proves, that the *Masters* from the first issuing these Commissions, have been always invested with a general, judicial Power, if they had not enjoyed such Authority before.

But it is not necessary to rely entirely upon that Point; for if these *Offices* were only *ministerial*, yet they concern *the Administration and Execution of Justice* in the Court of Chancery, and, as such, are under the Regulation of the like Offices at the Common Law, and are fully within the Description of the Statutes of 12 *Ric.* II. and 5 and 6 *Ed.* VI. And this,

According to the Earl's Opinion, when he endeavoured to terrify the Masters to contribute to Mr. *Dormer*'s Deficiency.

And as the Earl impeached, in Right of his Office of Lord Chancellor, was only intrusted with the Nomination of the *Masters* for the Service of the King, and for the common Benefit of all the King's Subjects; these Offices are no more saleable, or to be disposed of for money, than if they had remained in the immediate Gift of the Crown, by Grant under the Great Seal.

It was objected, that *Masters in Chancery* are not expressly mentioned in the Act of 12 *Ric.* II. and that the Statute is a penal Law, and ought to be construed strictly, and ought not to be extended by Equity to these *Officers:*

But the constant Rule of Exposition of Statutes of this Nature contradicts that Assertion; for,

Statutes made for the Furtherance and Advancement of Justice, for the Suppression of Extortion and Oppression, which *(says the Book) are horrible and odious Crimes*, shall have a benign and favourable Interpretation.

Beawfage's Case, 10 *Co.* 101, 102. *Twine's Case*, 3 *Co.* 82. *Gooch's Case*, 5 *Co.* 60. *Booth's Case*, 5 *Co.* 77. *Powlter's Case*, 11 *Co.* 34.

And upon this Occasion permit me to repeat the Words of that great man, the Lord *Coke:*

Extortion is no other than Robbery, but is more odious; for Robbery is open, and has always the Appearance of Vice; but Extortion puts on the Visage of Truth, and is more difficult to be tried and discerned, and is for the most Part accompanied with the damnable Vice of Perjury in the breaking that Oath which the Officer took when he was admitted to his Office; which proves the Import and Effect of the general and usual Words in an *Oath of Office*. Beawfage's Case, 10 *Co.* 101, 102. Co. 3. *Inst.* 149.

And here I cannot help taking Notice of the Attempt of the Earl impeached, by his own cross Examination of Mr. *Eyres, the Officer of the Exchequer*, and the Questions proposed by himself relating to the manner of his being sworn pursuant to the Statute of 12 *Ric.* II. *viz.* The Earl asked him,

What was it that you did read? Did I say any Thing? Or what did I do? Or to that Effect?

The Officer answers, *I read over the Statute out of the Exchequer Book in Old French; and after I had read it, I carried the Bible to the Lord Chancellor, &c. who, at the Conclusion, kissed the Book, but he said or repeated nothing. But this has been the antient Form, which I have observed for forty Years, and I believe has been always used.*

In this Instance, your Lordships saw an Endeavour of the late *supreme Officer of Justice*, to explain away, or turn to Ridicule, the strictest and most solemn Tie and Obligation upon his Conscience and Honour, imposed by Authority of Parliament for the preventing Corruption; whereby the Earl did then (though since upon the Observation made by the World of such his Behaviour, he has a little recollected) shew, that his calling God to Witness to his Promise for the Observation of an Act of Parliament made against that Vice, deserved to be as little considered by him, and to have as little Influence upon his mind,

As *Oaths* taken by Traders at a certain Place, for their better Accommodation in carrying on a prohibited or fraudulent Traffick.

This is a full Explanation of his Reserve in an equivocal Answer, where he says, *That when he took the usual Oath of Office, he at the same time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth.*

Although he could not but understand the meaning of the Introduction to the Articles, alledging, *That he did take such other Oaths as have been accustomed*; and could not but remember his repeated Observations of the Ceremony, at least, which he had annually practised under this Statute.

But the Earl's Counsel have made it necessary to enter farther into this Transaction, by their insisting, that here was no *formal Oath* prescribed or taken, no Entry or Registry kept of it; and that the reading over the Statute is merely an Admonition or Exhortation by the Officer to the whole Assembly.

And the Earl has insisted, That it is not an *Oath of Office*, because an *Oath of Office* (as he expressed it) is taken once for all, but this is repeated annually; and if it is an *Oath of Office*, yet it is not particularly charged in the Articles, nor referred to in any manner, because the Articles suppose it to be taken *at the Time of his coming into the Office*, which was in *May* 1718; and this Oath, at the soonest, could not be taken by him till the *November* following.

To this I answer, That the manner of administring this *Oath* is in the most solemn and significant Form possible; for the repeating an *Oath* briefly to observe the Statute in all Things, or containing a short Abstract of the Substance of it, would not be near so explicit and directory, as the reading over aloud, by a proper Officer of the Court of Exchequer, the *Act of Parliament* itself, the *Chancellor* at the End *kissing the Bible*; an Exhortation, which ought to make the deepest Impression upon the Conscience of a righteous Magistrate, when confirmed by the Sanction of a promissory Oath.

And to say, that it is no *Oath of Office*, because he repeated it annually, is to contradict the Act itself, which enjoins him to take it *as Chancellor*, and in the actual Execution of his Office: and the Repetition of it annually, upon this great Occasion of nominating Sheriffs, demonstrates the Opinion of our Ancestors, of the Importance and Consequence of the Observation of it, for the Service of the King, and the Benefit of his Subjects; because there can be no other Time more memorable, or more likely to engage Attention to it, than in so publick an Assembly proceeding to appoint the *Sheriffs* of the several Counties of the Kingdom, upon whose Power, Fidelity, and Justice in the Execution of their Offices, not only the Properties, Liberties, and Lives of the Subjects of this Kingdom so much depend, but even the Security of his Majesty's Person in any Time of Danger; and the very Being of the *House of Commons*, upon the just and fair Returns which ought to be made by *Sheriffs*, upon the Election of *Members* to serve in *Parliament*.

Can this Statute then be treated and called obsolete, which is thus publickly proclaimed every Year, to enforce the more exact Observation of it?

And to say, That the Articles are confined to such *Oaths of Office*, as were taken by him on his first Appointment, is an equivocal Interpretation peculiar to the *Answer*; for the Articles refer generally to *all such Oaths* which have been accustomed to be taken by the Lord Chancellor by reason of his *Office*. And this *Oath* ought to have been taken by him upon his first Appointment, if the Usage of administring it at this annual Season had not been an Excuse for his postponing it to that Time; and from that Usage it has followed, that this *Oath* is not taken by any of the Officers at any other Time; but it was the Earl's Duty to observe this good and wholesome Law, as well before his taking this *Oath* as afterwards.

And the Earl could not have forgotten this his solemn Engagement without Design; it was for his Interest not to mention it; and he might flatter himself, that the Managers would not have taken Notice of it.

And as to the Difference in the Form of administring *this Oath* from the common method, it is not material; for the usual Form is not essential to the Oath itself, it being sufficient that there is a calling *Almighty God* to be a Witness of the Truth of the Earl's Promise, by his touching the *Holy Scripture*. Co. 3 *Inst.* 164, 165.

But

But whether the Oath be constantly or usually taken in Practice, or not, it will not alter the Law; and the Crime of selling these Offices for *Gift* and *Brokage* still remains, notwithstanding the Neglect of this additional Obligation to refrain from the Commission of it.

The Objections made by the Earl and his Counsel upon this Head, have occasioned this Digression.

The next Part of the Earl's Defence is a direct Justification of the Fact of which he is accused; and, not contented to leave it to his *Counsel* (for whose Excuse it might have been said, that they were willing to try every thing) the *Earl* himself has insisted upon it, that his taking these Sums of money *is lawful*; because, as *Lord Chancellor*, he had a *Right of Recommendation* of Mr. *Hamersly*, as an Officer appointed by Patent under the Great Seal, and also the *Right of Nomination and Admission* of the *Masters*, solely in himself; and a man may dispose of and dispense his own Favour upon what Terms he pleases; and Officers may give money for their Places, and yet be good Officers, as it is suggested.

But some Instances of a very extraordinary Nature were cited out of the *History of the Exchequer*, to prove that *Chancellors*, Judges, and other Officers of Trust, had purchased their Places of King *Stephen* and King *John*; viz. *That* Richard Fitz-Alured *gave King* Stephen *fifteen Marks to hear Pleas*; *and* Walter de Gray *gave King* John *five thousand Pounds to have the King's Chancery for Life*; and other Officers there named.

Madox's *Hist. of the Exchequ.* 43. 743. *He says it may seem strange, and excuses it.*

Mr. *Madox*, the Collector and Publisher of this *History of the Exchequer*, 43, 44, mentioning these Instances, says, *That in the time of King* Stephen, Geoffrey *the Chancellor fined in three thousand and six Pounds and a Mark for the King's Seal. This I understand to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal.* But at the same time Mr. *Madox* the Publisher makes this honest Reflection upon his Precedent;

Which Precedent, says he, *may justly seem strange to us at this Day; but it seemeth that in those times things of the like kind with this were sometimes done.* Which Observation the Counsel, or the *Earl* himself, were not pleased to repeat.

And some Instances were cited out of the *Roman* Law, where Part of the Revenue of the Emperors did arise out of Perquisites of this Kind; from whence it was inferr'd, that the taking these Sums for Sale of Offices, was not against Natural Justice.

But these are of no Authority in this Kingdom, when they are repugnant to the Law of the Land, and have never been receiv'd; and the *Common Law* of *England* must be the Rule of Justice in this Case.

And Mr. *Dupper*, the Earl's late *Under Secretary* of the *Bankrupts*, was produced, to prove by his Opinion and Observation, that no Office whatsoever passing by Grant under the Great Seal ought to be surrender'd or granted without an Acknowledgment (as he called it) to the Chancellor or Keeper; and that he had formerly communicated these his Thoughts to the *Earl* and his Secretary Mr. *Cottingham*.

And your Lordships, upon Recollection of the Evidence, will find the Use and Improvement they were pleased to make of this Advice, in the Case of Mr. *Thomas Bennet*'s Surrender.

But in Answer thereto, it appeared upon the Evidence in regard to Mr. *Hamersly*'s Office of *Clerk of the Custodies*, that there being no Salary annexed to the Place, it did belong to the *Secretary of State* to recommend or to obtain the Sign Manual; so that the Earl's Desire of Gain in this Instance carry'd him beyond the Limits of his own Office, where he had no Right of Recommendation, to raise the poor low Sum of *One hundred and five Pounds*, at the Time when he was *One of the Regents*; and thus he join'd his Share of the *Royal Authority* to his Power of *Lord Chancellor*, in order to get and secure to his own private Use so considerable a Sum as *One hundred and five Pounds* from an exhausted Master! A strong Evidence of his corrupt Intent and Views.

This single Exaction overturns the whole Fabrick of Merit, supposed to be raised by the few scatter'd Instances of Charity, which he has been pleased to divulge in Evidence.

But if the Authorities cited for the Earl to this Purpose prove any thing, they prove too much; that the Offices of the *Judges* in the *Supreme Courts of Justice* were lawfully to be bought and sold at the Common Law, before the Act 5 *Ed.* VI. which is an Opinion that the *Earl* himself, in his *Answer*, did not think convenient to disclose or insist upon; and it is going a long way back for an Example to prove the Lawfulness of an Action, which he could not find without the Assistance of an Antiquary.

He might have brought more recent Instances from Countries, where unlimited Power does prevail, and where Justice itself, and the Places in which it is to be dispensed, are not to be attained without a Bribe.

But it seems as if the Lord impeached had an early Inclination to look out for a Precedent, to give him a Countenance in such like Practices; yet he found none publish'd to the World, except in the Reigns of *two Princes*, whose arbitrary Behaviour produced that memorable Law, *the Great Charter of our Liberties*, first pass'd in the Form of a Charter *ann'* 17 *Joban'*, and confirm'd *ann'* 9 *Hen.* III. wherein it was at that time found necessary to declare by a Law, *Nulli vendemus Justitiam aut Rectum.* Magna Charta, *cap.* 29. Co. 2. *Inst.* 55.

From which Declaration of the Crown it necessarily follows, that the Administration and Execution of Distributive Justice to a free People, are not to be esteem'd the Property or Estate of a Great Officer, to be raised or increased by his Sale of the subordinate Offices of Justice; but are the great Prerogatives of an *English* Prince, to be exercised freely for the Safety and Ease of the Subject, without introducing Expence and Charge upon the People, in their Application for Justice and Right.

And when a Doctrine of this dangerous and destructive Nature to the Rights and Liberties of the whole Nation, as it expose their only Security to Sale for money, is thus avowedly and openly justified and insisted upon at your Lordships Bar, by a *Peer* of your House who has borne the high Office of *Lord Chancellor of Great Britain* in the first Reign under the Act of Settlement of the Crown: Your Lordships will take the best measures to render the Subjects secure in their Expectation of Justice, by a suitable and public mark of your Detestation of so licentious an Opinion; and thereby convince the Nation, that even the mere Suggestion of such a corrupt Principle is an undeserv'd Reproach, and highly injurious to his Majesty's Administration.

Yet if it should be supposed, by way of Argument (which has not been proved, and therefore cannot be admitted) that the Sale of these Offices has been of late tolerated, for the greater Increase of the Perquisites of the first Officer of the Crown, in the principal Court of Justice; yet the Earl's raising and receiving these exorbitant Sums, above double to any Instance before his own Time, which he has made appear, upon a Pretence that the Business of the Court of Chancery was very much advanc'd during his Residence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his method of Practice there can be no Distinction between a Present and a Price; for he made the *most* always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took *fifteen Hundred Guineas* for his Good Will and Approbation merely; and when he admitted upon a Death, he took *five thousand Guineas* at the least, altho' the Office was greatly in Debt; as in *Borret*'s Case, where the Suitors will lose upwards of *twelve thousand Pounds* of their Effects, by the lowest Computation.

As for the small ancient Fees which have been paid to the Great Seal for Time immemorial, upon the sealing every Patent, these are out of the present Question; and where Usage beyond Time of memory has allow'd the Receipt of these little Sums, it will be presum'd (if there was Occasion for it) that some Act of Parliament had pass'd to make it lawful.

And when it is said, that a good Officer may give money for his Place, and may resist the Temptation of Extortion; it is what the Law of *England* would not trust to human Frailty; and if all the Actions and Behaviour of the best of the *Masters*, with respect to their Fees, their manner of Proceeding upon References, and their disposing and trafficking with the money of the Suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in Evidence upon this Trial, but that the Temptation and Inclination to Profit, towards reimbursing themselves the money advanced to the *Earl*, and the preceding *Master*, have overcome their most steady Resolutions to Virtue and Self-denial.

As to the citing particular Cases, wherein the Sale of Offices Judicial, or of the like sort with those in Question, have been determin'd to be illegal at Common Law, I apprehend it is not necessary; for that the Reason of the Common Law, and the Purport of the several Statutes mention'd, do fully and sufficiently maintain the Validity of the Articles in that respect.

And the Managers might more properly call upon the Earl and his Counsel for Authorities or Judgments to the contrary.

But matters of a corrupt Nature are always privately transacted, and no Witnesses, or at most very rarely, are to be produced besides the Parties concern'd.

And if the Earl will produce any Instance in the Books, where such a Transaction has been mentioned, I may engage to shew him at the same time, that it has been holden illegal.

The Authority already cited by a Learned Manager is express:

Stockwith *cont'* North, *Moore* 781. North *was fined in the* Star-Chamber, *for that he being Sheriff of the County of* Nottingham *did take money for the Gaolership and the Bailiwick for his Year; and at first he gave them to his Servants, who sold them,* Noy 102. *but himself received the money; and this was adjudged to be a letting to Farm of his County, contrary to the Statute of* 4 Hen. IV. cap. 5. *Yet there note*, says the Reporter, *that the Statute itself gives a Penalty certain and pecuniary, and it is* malum prohibitum non in se. *But the Court held, that in as much as great Corruption ensues from the Greediness of the Officers, and they are inforced thereto by the Prices which they give for Things which ought not to be sold, that this setting of Offices to Farm and Sale, is* malum in se, *and finable.*

But the Earl objected, that this Opinion is extrajudicial; and the Court were mistaken in one part, when they say, *that the Statute* 4 Hen. IV. *did inflict a Penalty*; whereas it did not, but only *prohibited the letting to Farm the Bailiwick*, which was lawful before, and therefore properly finable, as a Breach of the Act.

In Answer to which, it is plain upon Perusal of the Book, that that Part relating to the Act 4 *H.* IV. imposing a Penalty, is only the Note of the Counsel, or Reporter, who took that particular Offence to be only *malum prohibitum*; and whether the Court did impose that Fine by Force of the Statute, or as warranted by the Common Law, it will not weaken the Authority; because the Court expressly declare it to be their Opinion, *that the selling of the Office of Gaoler was* malum in se, *and finable*; which shew'd the Judgment of the Court on that part of the Question; so that there is no mistake to be imputed to the Court.

And my Lord *Coke*, in his 3 *Inst. fol.* 146. *cap.* 68. *of Bribery and Extortion*, and *fol.* 224 & 225, *cap.* 101. *of Judgments and Execution*, describes these Crimes as *Offences at the Common Law*, and puts his Examples accordingly, which may be there consulted.

So in the Case of *Smith* and *Mall*, 2 *Rolls*, Rep. 263. and *Linley*'s Case, *Hutton.* 70. where it is holden, *That if any Judge or Officer takes more than the usual Fees, he is punishable by Indictment at the Common Law.* Which necessarily implies, that they are punishable at the Common Law, for taking money where no Fee at all is due.

The strict Definition of Extortion is, *When any Person, Colore Officii extorquet Feodum non debitum, plusquam debitum, aut antequam debitum.* *Hutton.* 52. 53. *Co.* 3. Inst. 149, 150. *Beawfage*'s Case, 10 *Co.* 101, 102. *Dive* and *Maningham*, *Plowden*, 68. a *Co.* 1. Inst. 368. b. Sir *John Bingley*'s Case, *Poph.* 149. *Rex & Gever*, 1 *Sid.* 91.

But largely, *Extortion is taken for any Oppression by extort Power, or by Colour or Pretence of Right. Co.* 1. Inst. 368. b.

But it is urged by the Earl and his Counsel, that it appears from the Statute 5 & 6 *E.* VI. that the buying or selling of these Offices was lawful at the Common Law, and is not prohibited by the Statute 12 *Rich.* II. and that the Statute of *E.* VI. neither declares nor creates any Crime, but only imposes a special and particular Penalty, by Loss of the Office or Disability, and therefore the Earl having been dismiss'd the Great Seal, there can be no Punishment inflicted upon him.

It is agreed by them, that the Statute 5 and 6 *E.* VI. includes both the Offices of *Clerk of the Custodies*, as an Office of Clerkship in a Court of Record; and of the *Masters in Chancery*, as Officers touching the Administration and Execution of Justice, in point of Description.

And upon reading the Act it is evident, that this Statute in the *Preamble*, and throughout the whole Act, treats this way of dealing, as *a Corruption*, and illegal in its Nature, and expreſly calls it ſo.

The Preamble ſays, *For the avoiding of Corruption, which may happen hereafter to be in the Officers and Miniſters in thoſe Courts and Places, wherein there is Requiſite to be had the true Adminiſtration of Juſtice or Services of Truſt.*

And this Statute carries the Puniſhment farther, but does not take away the Puniſhment of it as a Miſdemeanor at the Common Law, by Fine or Impriſonment upon Indictment.

And there is not any *Proviſo* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court; but in conſequence, when it mentions other Courts in a *Proviſo*, muſt more ſtrongly be intended to include them in the Act.

The *firſt Proviſo* extends to Offices of a private Nature, and to Offices of Inheritance, and cannot relate to any *judicial Office*, nor to either of theſe Officers, who hold only for Life; although, where the Nature of the Office has allowed it to become inheritable, it makes it alienable; but no ſuch Inſtance is to be met with in the Caſe of *judicial Offices*.

The *ſecond Proviſo* is to prevent any Perſon's being ſurprized into the Penalty unwittingly, before Notice of the Act, or by a Retroſpect. And although the Statute takes Notice that divers Perſons did make ſuch corrupt Bargains, it is only by Way and with an Intent of preventing, and not of legitimating them; and it leaves them all as they ſtood at Common Law, until that Day appointed by the Act was paſſed.

And the *laſt Proviſo* does nothing more, and leaves the Juſtices to act upon their own Knowledge and Diſcretion in the Law, according to the Nature of the Office, without caſting any Imputation upon them unneceſſarily.

But ſo exceeding cautious was the Legiſlature, that there is not any Expreſſion, in any Part of the Act, to declare or enact ſuch Bargains in the Caſes excepted, to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that although the *Earl* of *Macclesfield*, by his being diſmiſſed from the Office of *Lord Chancellor*, is not liable to ſuffer the additional Puniſhment, contained in this Act, of Loſs of his Office: Yet he will ſtill be liable to the Puniſhment at Common Law, and upon the ſeveral other Statutes, and accordingly remains open and ſubject to your Lordſhips juſt Sentence.

For where a Statute does give or impoſe a new Penalty, for a Matter which was an Offence at the Common Law, the Proſecutor may purſue either of the Remedies; although where a Statute makes or creates the Offence, that Remedy muſt be taken which the Statute gives.

Regn' cont. Wigg' Pas' 4. *Anne Banco, Regin' Salk.* 460. *Com' Leiceſt. & Mandy* 2. *Sid.* 32. Dr. *Huſſey*'s Caſe, 9. *Co.* 74. *Cranbank*'s Caſe, 2. *Rolls Rep.* 49. *Burgen*'s Caſe, 1. *Ven.* 13. 1. *Sid.* 409.

Thus I have gone into this long Debate, to ſhew that the *Commons* have founded their *Articles* upon the general Rules of the Common Law, ſupported and inforced by divers Acts of Parliament.

As to the Proofs;

I ſhall now take Notice of the *Evidence* upon the particular *Articles* aſſigned to me, and ſhall obſerve not only upon the Proofs given by the *Commons* in maintenance of thoſe *Articles*, but likewiſe upon the Examination made on behalf of the *Earl* impeached, and in his Defence.

As to the *money Articles*, I ſhall make this general Obſervation upon the Evidence, that it has been agreed by all the Witneſſes examined thereto, as well by Mr. *Cottingham*, the Earl's *Secretary*, and on theſe Contracts his Lordſhip's Broker, as by the *Maſters* themſelves, and their Agents, that the whole Tranſaction was done and finiſhed, and the Money actually paid and delivered into the *Lord Chancellor*'s own Hands (except Mr. *Thurſton*'s *Five Thouſand Guineas*, which were delivered to another for his Lordſhip's Service) before the Reſignation of the former Officer was accepted, and before the Admiſſion and Swearing of the Succeſſor.

So that the principal Point and main Streſs of the *Articles* are thus in fact agreed upon by both Parties.

But as to theſe *Articles*, and more particularly with reſpect to the *One Hundred and Five Pounds* received from Mr. *Thomas Bennet*, and the *Fifteen Hundred Guineas* each received from Mr. *Kynaſton* and Mr. *Bennet*, the *Earl* and his Counſel have ſuggeſted a Deficiency in the Proof, ariſing from a Contrariety in the Evidence given by Mr. *Cottingham*, the Earl's *Secretary*, to what has been ſworn by Mr. *Bennet*, Mr. *Kynaſton*, and Mr. *Charles Baily*; and, upon the Credit of the *Secretary*'s Teſtimony, would ſuppoſe that each of theſe Sums proceeded firſt from the free and voluntary Offer of the *Maſters*, and was not inſiſted upon by the *Earl* or his *Secretary* before-hand, as charged in the *Articles*, and proved by the *Maſters*, but only accepted and received by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Tranſaction, and the Circumſtances of the Perſons, do very ſtrongly ſupport the Credit of the *Witneſſes* produced by the *Commons*, and the Probability of their Teſtimony, who have proved every Part of thoſe *Articles*, in the very Words of them: and Mr. *Cottingham* himſelf has confeſſed enough to maintain the *Articles* in Subſtance, although he ſhould be credited in any Circumſtance wherein he varies from the other *Witneſſes*.

As to the *ninth Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* ſo large a Sum for his Admiſſion to the Office of a *Maſter*, which he had borrowed of his *Brother*, and who had paid no Admittance Money for this Place of *Clerk of the Cuſtodies* to the *former Chancellor*, the Earl *Cowper*; and who had likewiſe been informed by his Brother Mr. *John Bennet*, that nothing was paid by him to *Earl Cowper* upon his being admitted to the ſame *Office*, and that *Lord Cowper* himſelf had declared to Mr. *John Bennet* that there was nothing due upon his Admiſſion; that Mr. *Thomas Bennet*, under theſe Circumſtances, ſhould of his own Accord firſt propoſe a *Preſent* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And *Cottingham* himſelf has owned, that he told Mr. *Thomas Bennet* that ſomething was expected, and that he carried the *Propoſal* of *One Hundred and Five Pounds* to the *Earl*, who accepted it, and thereupon he received the money from Mr. *Bennet*, and paid it over to the *Earl*; after which the *Earl* then took the whole Care upon himſelf of expediting the *Sign Manual* and the *Patent*.

Now, *Cottingham* being the Factor employed by the *Earl* in all theſe Bargains, who has been avowed by the *Earl* to be his Agent, and has been produced as his *Witneſs*, and ſupported by him; every Thing that *Cottingham* declares and acts in compleating theſe Contracts, will be conſidered as the Act of the *Earl* himſelf, and his own bartering; eſpecially, when *Cottingham* (as he depoſed before your Lordſhips) did not conclude the Bargain, until he had received the *Earl*'s Approbation thereof; and when the *Earl*, at the End, confirms the whole by his Receipt of the Money.

And a *Lord Chancellor*'s expecting ſomething, or a Sum of Money, be it more or leſs, and this his Expectation declared and notified by his *Secretary* to the Perſon applying to be admitted into the Office, is a peremptory Demand, and an inſiſting, when the *Lord Chancellor* alone, and no other, has the Power of taking the Reſignation, or making it effectual by paſſing the new Patent, and of admitting the new Officer.

But this Matter has been explained and confirmed by the Evidence of *Dupper* the *Under Secretary*, the *Earl*'s own *Witneſs*, upon whoſe Authority the *Earl* relied, who acquainted your Lordſhips, that upon *Cottingham*'s telling him of the intended Surrender of Mr. *Thomas Bennet*, *Dupper* ſaid, there ought to be an Acknowledgment to the *Great Seal*, and he had heard that Money had been given, which *Cottingham* himſelf at firſt doubted of; but *Dupper* ſoon ſatisfied both the *Earl* and his *Secretary* that Money might be aſked.

This confirms the Evidence of Mr. *Thomas Bennet*, that Nothing was ſaid about Money to be given, or an Expectation of Something at his firſt Meeting with *Cottingham*, but it was introduced by *Cottingham* at their ſecond Meeting; which muſt be after this Advice and Information of *Dupper*, and that then the Reſolution was taken of expecting a Sum of Money.

This argues the Diffidence of the *Earl* impeached in ſetting up this Pretence, and his Suſpicion of the Illegality of it; yet the Opinion of the Perſon adviſing, and the *Earl*'s own Inclination to Gain, were too powerful to be reſiſted.

But to remove the Foundation of this *Objection*:

The Point or *Charge* of theſe *Articles* lies in the taking theſe Sums by the Earl, *colore officii ſui*, as *Lord Chancellor*, and without Right, which is *Extortion* and *Corruption*.

And if he did receive theſe Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crimes charged upon him, in how artificial a Manner ſoever he tranſacted theſe Matters.

It will amount to the ſame, whether they propoſed the Sum to him, or he made the Demand upon them; yet if Something was expected by him, and he declined doing the Duty of his *Office*, until that Something was offered and paid to him, it is an *Exaction* and an *Impoſition*, which is *criminal*, and maintains the *Articles*. *Co.* 3. *Inſt.* 148, 149. *E. Middx.*'s Caſe.

And it is remarkable, that the *Earl* would never give Credit for his *Preſent*, but always had it ſafe in his own Hand, before he admitted the *Officer*.

It has been attempted, on behalf of the *Earl* of *Macclesfield*, to prove that former *Chancellors* have uſed to claim and receive Money upon the taking Surrenders, and making new Grants of this *Office*; but herein the *Earl* has failed, and has not been able to give legal Proof of any one Inſtance of that Kind, upon the Change of this Office of *Clerk of the Cuſtodies*.

For *Dupper* did not ſee any Money paid on that Occaſion, nor knows any Thing of it, of his own Knowledge, but only copied an *Account* which he came by very oddly, wherein (as he ſays) there was an *Item* to that effect; and his Evidence depended meerly upon Hear-ſay, and ought to have no Regard.

The Evidence of Mr. *Oker* turns againſt the *Earl*; for although there were Surrenders in both the Times, when *Earl Cowper* held the *Great Seal*, yet Nothing was paid or taken by him; and upon the Surrender of *Thompſon* to *Edwards* in the late *Queen*'s Time, it was ſaid that Nothing was given; and upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, whilſt *Earl Cowper* enjoyed the Seal under his *Majeſty*, nothing was paid or claimed.

And the ſuppoſed Intimation or Opinion of *Lord Cowper*, which *Oker* mentions, was between theſe two Surrenders, which makes it very unlikely that *Earl Cowper* ſhould make ſuch a Declaration; yet if ſuch Diſcourſe there was, it is plain, that, upon better Conſideration, the *Lord Cowper* departed from ſuch Pretenſion, and diſcovered no Expectation of any Thing, upon the laſt Surrender and Grant of this *Office*.

And as Nothing was taken by *Lord Cowper*, upon the Surrender of Mr. *John Bennet* to Mr. *Thomas Bennet*, it will be proved, that, on the Surrender of Mr. *Edwards* to Mr. *John Bennet*, *Lord Cowper* refuſed to hear of a Preſent, when it was hinted at, and declared that Nothing was due to the *Great Seal*.

But this *Defence*, which is founded upon a ſuppoſed Uſage to receive a *Fee* for permitting ſuch Surrenders, and from thence would infer a Right, or an Excuſe to the *Earl* impeached, in doing the like, is a Proof and Confirmation of the *Article*, as charged by the *Commons*; That the *Earl* did inſiſt upon the Money, as his *Right* and *Due*.

ART. V. As to the Bargain with Mr. *Kynaſton*, it appears from his Teſtimony, and the Evidence of Mr. *Charles Baily*, who paid the Money, that Mr. *Kynaſton* endeavoured to obtain the Admiſſion at a lower Rate. At firſt he offered but *one thouſand Guineas*; and at the End Mr. *Baily* underſtood it to have been agreed for at *fifteen hundred Pounds*; and when Mr. *Cottingham* ſaid *fifteen hundred Guineas* were expected, *Baily* did not proceed till he had informed Mr. *Kynaſton* therewith, who anſwered, that ſince Mr. *Cottingham* had mentioned that Sum, he muſt ſubmit, and do accordingly.

And this Diſpute, upon the Difference between *Pounds* and *Guineas* only, explains the Manner of theſe Dealings; That they were formal Contracts and Bargains between the *Secretary* and the *Maſters*, at the beſt Price that could be got; and though there was no haggling with the *Earl* himſelf, (as *Cottingham* expreſſed it at one of theſe Dealings) yet he had a faithful *Steward*, who could and did haggle very well for him; and when the *Secretary* had done his utmoſt, the *Earl* accepted the Price which had been agreed upon.

ART.

ART. VI. As to the *fifteen hundred Guineas* paid by Mr. *Thomas Bennet* for his Admission, and the Manner of making that Bargain, Mr. *Bennet*'s Evidence of his first offering *one thousand Guineas*, and *Cottingham*'s Refusal of it, saying, He hoped Mr. *Bennet* would not lower the Price, and the hazard of his being refus'd, and that there was no haggling with my Lord, and at last agreeing for *fifteen hundred Guineas*, is supported from the usual Behaviour of *Cottingham*, as well as from the Probability of the thing itself; that a man may reasonably be presumed to endeavour to save what he can, and when he is purchasing, to get it at the cheapest; altho' (as it has appeared upon the Examination) Mr. *Bennet* had little Reason to expect that a succeeding *Chancellor* would be satisfied with his Circumstances, and admit him.

Upon the *Earl*'s Defence against the Charge contained in these two *Articles*, it was prov'd by Mr. *Goldesbrough* the *Register*, that the *Earl*, about the 23d of *February* last, had paid those *two Sums* into the *Court* of *Chancery*, to be apply'd for the Benefit of the *Suitors*; and this is offer'd either in his Discharge, or as a Merit. But this was done several Days after the *Impeachment*, and after *publick* Complaint had been made against the *Earl* upon these *two Instances*, and is a very proper example of the *Earl*'s own Construction of a *voluntary Present*; for after the *House of Commons* had taken this Affair into their Consideration, and had demanded Justice and Satisfaction from the *Earl* by a *Parliamentary Prosecution*, the *Earl* then did *freely and voluntarily*, and *of his own accord*, make a *Present* to the *Suitors* of the *Court* of these *two Sums*, which he had, in the like free and voluntary manner, receiv'd as a Present from Mr. *Kynaston* and Mr. *Bennet*.

But this Action contradicts his whole *Defence*; and shews that he was convinc'd that he had no Right to receive or detain the *Money*, and was afraid to keep it any longer.

ART. VII. and VIII. As to the *two five thousand Guineas* receiv'd by the *Earl* of Mr. *Elde* and Mr. *Thurston*, it is prov'd that the Price was settled between *them* and Mr. *Cottingham*; and when Mr. *Elde* (of whom the Earl express'd so good an Opinion) offered *five thousand Pounds*, *Cottingham* said *Guineas were handsomer*; and the particular method of Payment shews the inward Rebukes of his Conscience, and his Fear of a Discovery.

And these *two Facts* shew the Prevalency of his Avarice, above any other Passion. For in Mr. *Elde*'s Case, he broke thro' the Obligation of Gratitude and Friendship to him, to receive his money in a cover'd manner, *in a Basket*. And in Mr. *Thurston*'s, he tried to beguile his Fear of a Discovery, by suffering the money to come to him thro' a private and unsuspected Hand.

And these *two Instances* were of so nice a Nature, that his faithful *Secretary* own'd, that he was not admitted into the Secret. For it appears that the *Earl* either knew or suspected there would be a *Loss* in *Borret*'s *Office* by his Insolvency, tho' it was not reduc'd to any Certainty; and it now appears, at the least, to amount unto *twelve thousand Pounds*.

But the *Earl* left the *Suitors* of the *Court* to bear that Loss, and never took care to procure a *just Satisfaction* to *them*. Which the *Commons* urge both as an Evidence and an Aggravation of his Guilt; since he therein preferr'd his own private Gain to that Security, which his *high Trust* required him to have provided for the *Creditors* of the *Court*.

And the returning great Part of these *two sums*, after the Confusion and Disorders of the *Court* became publick; and Part of Mr. *Elde*'s money, after the *Masters* had been call'd upon to bring in their *Cash*, and which upon Mr. *Elde*'s Evidence may be reasonably presum'd to have been made use of by him to make a false Shew before the *Commissioners*; are rather Decrees against himself, than any Extenuation of his Guilt.

And as to the *Earl*'s great merit, which he so largely dwelt upon, and so often repeated, that he might have had *six thousand Pounds* from Mr. *Lucas*, which he relinquish'd, to accept of *five thousand Guineas* from Mr. *Elde*; The *Managers* will call Mr. *Lucas*, who (in answer to Mr. *Elde*'s Testimony) will prove, that when he offer'd the *six thousand Pounds*, it was upon this *express Condition*, that if the *Money* of the *Suitors*, or the *Cash*, was taken out of the *Masters* Hands on a *Parliamentary Enquiry*, he should have a Return of some Part; and that the *Earl* should indemnify him against all Deficiencies.

So that the *Earl* did not refuse Mr. *Lucas*'s *six thousand Pounds*, from a Dis-inclination to the Sum, if he could have kept the whole securely; but because *five thousand Guineas* paid absolutely, was better than *six thousand Pounds* subject to a Condition of refunding, and incumber'd with an Engagement of Indemnification.

But the *Earl*'s chief *Defence* is rais'd from the Practice of his *Predecessors*, who (as he pretends) led him into these mistakes; and he has prov'd *seven hundred Pounds* to have been paid by Mr. *Lovibond*, about *twelve Years* since, and *eight hundred Pounds* by Mr. *Holford*, and *five hundred Pounds* by Mr. *John Bennet*, in the Year 1716, upon their respective Admissions into the *Offices* of *Masters*; and from thence insists, that altho' he can't claim the exact Sum of *fifteen hundred Pounds* receiv'd by himself upon Admissions, as a certain and establish'd *Fee* or Perquisite, because he has taken *twice* as much as his *Predecessor* did; yet this *Practice* gives him a Right to a *Present*, and it was in his *own Discretion* to declare the *Sum*, as he should think reasonable, according to the late Increase of the Business of the *Court*.

But, *a Present* altogether uncertain in the *Quantum*, and depending in this manner upon the Pleasure of the Person who is to receive it, seems to differ very little, if at all, from a *Price*.

The *Earl* insists likewise, that the Denial or Refusal of some other of the *Witnesses* to answer his *Questions*, is a farther Proof that they paid money.

This shews that the *Earl* thinks he wants the Proof very much, when he makes use of such an Argument to raise Evidence.

The *Witness* refuses to answer such *Questions*, which he is not oblig'd by the Rules of *Law* to resolve, concerning the manner of his Admission; and the *Commons* cannot call *Witnesses* to contradict or explain that which has never been deliver'd in *Evidence*.

Yet the *Earl* desires your Lordships to believe this as *Evidence*, tho' you never did hear it, and to act and vote, upon *your Honour*, as if you had heard and admitted it.

But howsoever the *Earl* may have directed himself, he can never think that such an unjust Insinuation will prevail upon *your Judgment*; or that he can thereby move *your Lordships* to give up *your Honour* in the highest Exercise of your *judicial Power*.

And these *two* or *three* late Instances, which he has produced, cannot change the *Common Law*, or repeal the several *Acts of Parliament*, whereby they are declar'd illegal; and if he makes use of them as *Precedents*, he ought to take them with all their Circumstances, which upon the whole matter rather turn against him. For Mr. *Holford* and Mr. *Lovibond* were at that time, and still continue Men of Substance; and Mr. *John Bennet* was of Ability at the Time of his Admission, altho' in the Year 1720, he sustain'd several Losses, which impair'd his Estate. And *they* all paid the *Sums* of *Money* mentioned out of their *own Estates*, and no Part of it out of the *Suitors Cash* or *Effects*: And the whole of the *Suitors Effects* was deliver'd over to *them* by an *Account* with which *they* stood charg'd.

So that altho' these few Instances were not animadverted upon, either because they were not publickly known, or that no Inconvenience did ensue therefrom; yet they will afford no Excuse to the *Earl* impeach'd, for taking *double* or *treble* the Value of those *Sums* upon his Admission of *Masters*, who were Persons of *small* or *incumber'd Estates*, and who were necessitated to employ the *Cash* and *Effects* of the *Suitors* in the Payment for their *Offices*, and for their *Admissions*; and thro' whose Insolvency so great a *Loss* and Damage has come upon the *Suitors*.

But an *Officer* of *publick Trust* and *Service* ought to look well to his *Precedents* before he follows them; and if he will pursue an illegal or unjustifiable *Precedent*, he does it at his Peril, and must answer for the Consequences; especially in the Situation of the *highest Officer* in the *Kingdom*, who was intrusted with the Administration of *public Justice*, in the *supreme Court of Law and Equity*; and whose *Duty* it was, as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuses, which at any Time may have crept into the *inferior Courts* of *Justice* to the Injury and Oppression of the *Suitors* of other *Courts*, as to prevent or suppress Corruption and Extortion in the *Court* where he more immediately presided.

ART. XI. As to this *Article*, the particular Circumstances of Mr. *Kynaston* and Mr. *Thomas Bennet* have been prov'd, and the Deficiencies in their *Offices*, and how unequal they were to the *Trust* of the *great Sums* and *Effects* deposited in their Hands.

By the *Orders* of the *Court*, which have been read, it appears that Mr. *Kynaston*'s Deficiency amounts to 26,908*l.* 11*s.* 3*d.* 1*q.* and Mr. *Bennet*'s to 16,075*l.* Mr. *Kynaston* had about 50,000*l.* in money and effects of the *Suitors* in his Custody, and Mr. *Thomas Bennet* near 100,000*l.*

This is likewise a high *Breach of Trust* in the *Earl*, and is an Offence against the Statute of 12 *Rich.* II. *cap.* 2.

12 *Ric.* II. *cap.* 2.—*But that they make all such Officers and Ministers of the best and most lawful Men.*

Which Words in the Law import Sufficiency of Substance, as well as Capacity.

And the Statute 2 *Hen.* VI. *cap.* 10. takes it for granted, that the superior Officers were before that Time under the Obligation of the Common Law, or some former Statute to that Effect; when by the said Act, 2 *Hen.* VI. *cap.* 10. *Co.* 4. *Inst.* 114. intituled, *What manner of inferior Officers shall be appointed in the King's Courts*, it is enacted, *To the Intent that better and more sure Government be had in the Courts of our Lord the King, for his Profit, and Ease of his People, which have to pursue and to do in the same*; it is ordained and established, *That all the Officers made by the King's Letters Patents Royal within the said Courts, which have Power and Authority by virtue of their Offices of old Times accustomed, to appoint Clerks and Ministers within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers, for whom they will answer at their Peril, which be sufficient, faithful, and attending to that which pertaineth to them in Performance of the Business, as well of the King as of his People.*

This Act would have been extended farther, if it had been esteemed necessary.

The frame of both these *Statutes* does shew the Bent of the *English Constitution*, to provide for the Ease and Benefit of the *Subject*.

But the old Rule *respondeat superior*, will hold against the *Earl* in this Case, especially when it appears by the Evidence of Mr. *Goldesbrough* the *Register*, a Witness produc'd by the *Earl*, that this Practice of paying money generally into the Hands of the Masters, was not in use at his first coming into the *Register*'s *Office*, about the Time of the Revolution. So that the *Earl* impeach'd took upon himself the Disposition of the *Suitors* money, without a proper Ground and Justification.

And the Offence contained in this *Article* does not depend upon his Knowledge, that the Persons admitted were insufficient and unable; but that the *Earl* did not require and take full Satisfaction and Evidence in a proper manner, to make it manifest that *they* were able and sufficient, as had been done by his *Predecessors*; particularly when Mr. *Holford* was admitted *Master*, his Father was obliged to settle a *real Estate* upon him of good Value.

The *Earl* ought either to have advanc'd Persons equal to the great *Trust* and *Charge*, or to have reduced the *Trust* and *Deposit* to the Condition and Circumstances of the Person, as his *Predecessors* had done.

So that it is evident the *Earl* had only in view the Price and Profit of the Sale of the *Office*, which would rise highest upon the Inability and Unfitness of the *Officer*.

And it was therefore very properly said by one of the *Earl*'s Counsel, that he weigh'd the *Masters* before he admitted them.

But he weigh'd them only for the Sake of the Price they were to pay to himself; and when he had done with them, he left them of very little Weight for the Security of the *Suitors*.

His false, tho' memorable *Declaration* in open *Court*, upon the 21st. of *Jan.* 1723, explains his whole *Scheme*, when he publish'd from the Bench, *That the present Masters were Men of as great Fortunes as any Set of Masters had ever been.*

The Words were prov'd by Mr. *Waller*, and have not been contradicted by any *Witness*.

At that time Mr. *Dormer*'s *Deficiency* had taken Air; and Mr. *Waller* upon his Examination said, The suspicion of several of the Masters was then so strong, that this Publication rais'd Astonishment in the Hearers. But there was then a *Vacancy*, and an *Office* to be sold. Mr. *Fellowes* died 19 *Jan.* 1723, and it became necessary to give the *Office* a Reputation.

And altho' the Insufficiency of some of the *Masters* had been decently intimated to the *Earl* by Mr. *Lightboun*, upon his several Proposals, and the *Earl* may be presum'd to know the general Apprehensions of the World; yet in this solemn manner the *Earl* became an Officer to himself, to proclaim his own market.

ART. XII.

ART. XII. The Practice and Injury to the *Suitors* can hardly be more aggravated than is expreſs'd in the *Article* itſelf.

And it has been prov'd in every particular neceſſary to ſupport the *Article*; and no Proof has been offer'd on the Part of the *Earl* to contradict or extenuate the *Charge*, by making appear his Vigilance, or any Care or Regard to prevent the fatal Conſequences of the *Practice*.

The particular *Methods* of preventing this Fraud ſpecified in the *Article*, are only to ſhew the Practicability of ſome ſort of meaſures proper to have been put in Execution, in order at leaſt to render the corrupt *Practice* and Abuſe difficult, altho' they had not prov'd compleat in all reſpects to redreſs and prevent them.

And by the *Witneſſes* call'd on the Part of the *Earl* himſelf, it was expreſly prov'd, that ſome of theſe *Methods* had been practiſed with Effect in the time of his *Predeceſſors*, and that no *Loſs* had happen'd to the *Suitors* during that Regulation.

An *Account of the Suitors Caſh and Effects* was brought to the then *Lord Chancellor Harcourt* by Mr. *Holford*, as the *Account* of his *Predeceſſor*, before he was admitted; and he was thereupon aſk'd if he would be bound by that *Account*, and ſtand charged accordingly? To which he agreed, and his Subſtance was ſufficient to anſwer it.

The *Caſh Money* was for ſome Years lock'd up in the Hands of the *two junior Maſters* in *Lord Chancellor Cowper*'s Time.

And it has been prov'd, that the *total Accounts* of *all the Maſters* have been taken *three* ſeveral Times within a few Years; that is, *twice* by *Lord Cowper*, and *once* by *Lord Harcourt*.

And altho' the *Earl* ſeems either to doubt of his Authority, or of the Poſſibility of doing this in his own Time; it can be prov'd, that he requeſted to ſee the *Accounts*, and to be inform'd of this method, and accordingly had a Sight of the *Books*, and made an Appearance of putting it in Execution.

Beſides, the late *Accounts* deliver'd in by the ſeveral *Maſters* before the *Commiſſioners* named for that Purpoſe, ſhew, that ſuch an Attempt was practicable, and might have been compleated in a reaſonable Time.

But the *Earl* of *Macclesfield*, by his own Confeſſion, is guilty of a total Neglect of all Meaſures; and never proſecuted one honeſt and real Step towards the ſuppreſſing this Abuſe.

He might have given Directions and made *Orders* for the ſecuring the *Suitors Effects*, in the ſame manner before the late *Inquiry*, as he has done ſince.

His *Secretaries* and *Agents* might have ſuperviſed the Obſervation of theſe *Orders*; and have attended to inſpect the compleat *Tranſfer* of the *Suitors* Effects, as well as to receive his *Lordſhip*'s extorted *Præmium*.

And if after the *Earl* had taken theſe, or any other probable Meaſures, the *Maſters* had broken their *Truſt*, the Fault would have lain upon the Diſhoneſty of the *Maſters*, and not upon the Connivance or Negligence of the *Lord Chancellor*.

But upon this *Article* the *Anſwer* of the *Earl impeach'd* is directly falſified: For he declares upon his *Honour*, upon that *Honour* which is communicated to him from the Privilege of the whole *Order of Peers* (but of which he himſelf has only made a Shew or Appearance) that he was totally ignorant of this *Practice*; although it appears in *Proof* to have been a matter publickly known during his *Adminiſtration*. It was one Inducement to Mr. *Kynaſton*, and the ſingle Temptation to Mr. *Thomas Bennet*.

This *Notoriety* is a reaſonable *Evidence* to charge the *Earl* with the Knowledge of a fraudulent Tranſaction propagated under himſelf; eſpecially when the Pretence of his Ignorance muſt ariſe from the wilful Neglect of his *Duty*.

But expreſs *Notice* is prov'd out of his *own Mouth* by Mr. *Thomas Bennet*; and farther, that the *Earl* had been uſed to proſtitute his *Honour* by a Courſe of Denial of this Fact upon former Occaſions.

For Mr. *Bennet* in his *Account*, which he had deliver'd in to the *Judges*, had inſerted this remarkable *Item*, viz. *Item* 9075*l. in the Hands of Perſons of Ability*; which included the 7500*l.* paid to Mr. *Hiccocks*, and the 1575*l.* paid the *Chancellor* for his *Admiſſion*.

Mr. *Kynaſton* alſo in his *Account* had inſerted an *Item* to the ſame Effect for a *like Sum*.

Mr. *Thomas Bennet* went ſoon afterwards to the *Chancellor*, who enter'd into Diſcourſe with him thereupon, and ſaid: *I am ſorry you have given in your Account in this manner; it was the worſt way in the World: for all the World will now judge, that you paid for your Office out of the Suitors Money; and what hath been ſo much ſuſpected will now be diſcover'd, which I have always taken ſo much Pains to deny, whenever I was aſk'd the Queſtion:* And wiſh'd *he had been acquainted with Mr.* Bennet's *Neceſſities before Mr.* Bennet *had given in that* Item; or to this very Effect.

The Probability of the Truth of this *Evidence* ſtands confirm'd from the Nature of the Thing, and the State of the *Account* itſelf, which has not been contradicted by the *Earl*; and ſeems farther ſtrengthened by an Opinion which the *Earl* had entertain'd, and which he dropt in his *Defence* on *Wednesday*, viz. *That the Suitor was not the worſe by this Method; for by this Detention the former Maſter remain'd ſtill reſponſible, and* as he obſerv'd *by Mr.* Meller's *retaining ſome Part of the Suitors Effects, the Deficiency in Mr.* Borret's *Office was not ſo large.*

This ſeems a ſtrong Symptom of the *Earl*'s Knowledge of the *Practice* when it had obtained his *Approbation*.

But the *Money* retain'd by Mr. *Meller* was no part of the *Price* of the *Office*, but were other *Sums and Effects* which he retained in his Hands, and never paid over to Mr. *Borret*, upon the repeated Application and Requeſt of the *Suitors*, who doubted Mr. *Borret*'s Sufficiency.

But, ſuppoſe the former *Maſter* had died, or fail'd with theſe *Effects* in his Hands; how ſhould the *Suitor* have come to a full and legal *Proof* of this Tranſaction? And how many Perſons was he to proſecute, to diſcover and receive his own *Money?*

The Importance of this Part of Mr. *Thomas Bennet*'s Teſtimony has given Occaſion to the *Earl* and his Counſel to object to his *Credit*; and an Endeavour has been uſed to make out, that Mr. *Bennet* has contradicted himſelf, and has deny'd here at *your Lordſhips Bar* upon his *Oath*, what he had formerly declared to other Perſons.

For that Mr. *Bennet* being aſk'd (with an Intent to prove his Ability to pay the reſt of his Deficiency) *Whether he had not ſaid, that if Mr.* Hiccocks *would pay him back two thouſand Pounds, he would pay the reſt himſelf, Mr.* Bennet *denied he had ſo declared*; and yet, as they urge, the contrary is ſworn by Mr. *Holford*, Mr. *Thurſton*, and Mr. *Elde*.

In Anſwer to this Mr. *Holford* gave in Evidence, that Mr. *Bennet* ſaid, that *if Mr.* Hiccocks *would pay him back two thouſand Pounds, he would take Care that the reſt of the Money ſhould be raiſed.* But Mr. *Bennet* did not ſay, *he had the Money*, tho' Mr. *Holford* believed he had by his manner of ſpeaking.

Mr. *Thurſton* depoſed, that Mr. *Bennet* declared *he would make up the reſt himſelf*; but afterwards told him, that *all he had in the World would not pay it:*

And Mr. *Elde* ſwears to the *ſame Effect*.

And this Teſtimony does not contradict, but rather confirm Mr. *Bennet's Evidence*. For he made no direct *Declaration* of his *Ability* to pay the reſt, but being liable to the *Suitors*, he ſeem'd to be willing to get what he could from Mr. *Hiccocks*.

Beſides, his Diſcourſe at theſe Times cannot ſtand in Competition with his *Oath*, according to the common Rules of *Evidence*; and a *Witneſs's Credit* is not to be taken away upon an *uncertain Expreſſion*, prov'd by each of the *Earl*'s own *Witneſſes* in *different Words*, when from the Ambiguity of it there cannot poſſibly be any *voluntary Contradiction*.

But the *Commons* will confirm the Truth and Fairneſs of this Teſtimony of Mr. *Bennet*, by proving that the *Earl* had expreſs'd the ſame Concern and Diſlike of the Manner of theſe *Accounts* in reſpect of theſe *Items* to others, before any *Parliamentary Enquiry*.

There is likewiſe another matter of Fact, which aſſiſts the Proof of this Article, which is, That the *Price* of the *Office*, and of the *Admiſſion*, are comprehended in the *Accounts* of the *Maſters Deficiencies*, and make the greateſt Part of Mr. *Bennet's Deficiency*, and near a *Moiety of* Mr. *Kynaſton*'s:

Which manifeſts the Danger and Injury of this unjuſt Practice to the *Suitor*, whoſe Eſtate is thereby put upon the Hazard of the *Maſter*'s good or bad Succeſs, and his Property loſt with a *deficient Maſter*.

And here the *Corruption* and *Miſbehaviour* of the *Earl* appear with the higheſt Aggravations.

The extorted Profit made by the *Earl* is raiſed out of thoſe *Effects* which are depoſited in the *Court* upon the *Faith* and *Honour* of the *King's Adminiſtration* under the Care of the *Chancellor*, as *chief Truſtee*, by whoſe Connivance (if not Conſent) they are thus imbezzled; and the miſerable *Suitor* muſt either ſit down with the *Loſs*, or be forced to expend his little remaining Subſtance in a tedious *Proceſs* to recover back his own *Eſtate* thus waſted and converted by the *Maſters*.

Unneceſſary Delays and Protractions of *Cauſes* are the unavoidable *Conſequences* of this *Practice*; and in this manner the Buſineſs of the *Court*, and the Profits of the *Maſters Offices* have been increaſed by the Purſuit of the Parties after their own Effects, which in the Concluſion terminates in ſo heavy a *Loſs*.

The late *Orders* made upon the *Petitions* of Mr. *Hiccocks* and Mr. *Rogers* ſince the *Impeachment*, and ſome ſince the *Trial* commenced, tho' not proved to have been as yet comply'd with, and at beſt are but Depoſits to attend the Event of the Conteſt between the former and the preſent *Maſters*, have been made uſe of by the *Earl* in his *Defence*; which is a new Attempt in him to make a falſe Shew and Appearance of Reſtitution and Satisfaction.

Altho' if it was a real and a compleat Return of the *Principal Money*, it would be a very ſmall Excuſe and Extenuation for the vaſt Prejudice done to all the *Suitors* of the *Court*, by the locking up their *Money*, *Effects*, and *Securities*, and ſtopping the *Payments* thereon for ſo many Months, beſides the Loſs of *Intereſt* on the *Caſh*, and their being hinder'd from the *Employment* of their *Money*.

The *Earl* has not adventured to enter into a particular Diſcharge of the *total Deficiency* aſſigned by the *Commons*, upon the *Evidence* of Mr. *Thompſon*, and collected from the *Accounts* ſtated upon the late *Enquiry*, amounting to more than *one hundred thouſand Pounds*. Nor has he given any *Anſwer* to the great *Loſs* which the innocent *Suitors* ſuſtain by the Inſolvency of the two deceaſed Maſters, *Dormer* and *Borret*.

This *great Confuſion* and *Damage* brought upon a *Court*, where the Eſtates of the moſt wealthy Subjects, as well as of leſſer People, do ſooner or later come, became a *National Concern*, not merely from the Extenſiveneſs of the *Loſs* to the particular *Suitors*, but likewiſe from the apparent *Danger* thereby ariſing to the *Publick*.

This *general Ruin* awaken'd the Care and Zeal of the *Commons in Parliament* for *Juſtice* to their *Fellow Subjects*.

This introduced the *Charge* againſt the *Earl* in the *Twelfth Article*, which has been proved as it is alledged, *viz. That by this unjuſt and fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of Offices of Maſters in Chancery, has in Conſequence been raiſed and received by him out of the Effects of the Suitors of the Court, for whom he was intruſted; in Breach of the Truſt repoſed in him for the Preſervation of the Eſtates and Effects of the Suitors, to the Diſhonour and Diſcredit of the Court, and to the great Injury and Defrauding of the Suitors, in a Court of Equity eſtabliſh'd for their Relief and Protection.*

My Lords, if the *Miſdemeanors* of which the *Earl impeach'd* ſtands *accuſed*, were not *Crimes* by the *ordinary Rules* of *Law* in *Inferior Courts*, as they have been made out to be; yet they would be *Offences* of a *publick Nature*, againſt the *Welfare* of the *Subject*, and the *Common Good* of the *Kingdom*, committed by the *Higheſt Officer* of *Juſtice*, and attended with ſo *great* and immediate *Loſs* to a multitude of *Sufferers*; and as ſuch, they would demand the Exerciſe of the *extraordinary Juriſdiction* veſted in *your Judicature* for the *Public Safety*, by virtue whereof *your Lordſhips* can inflict that *Degree and Kind of Puniſhment* which no other *Court* can *impoſe*.

When theſe *Offences* have been proved upon the *Earl impeach'd*, of what Conſideration in Judgment can the *Earl*'s miſtaken and miſplaced *Charities* be? Can they alter the *Facts* charged upon him? or turn *Extortion* and *Fraud* into Liberality and Piety? Can the Merit of a few private Good Works atone for the Plunder of the *whole Body of the Suitors of the Court of Chancery*, upon whom this *Earl*, by his *Miſbehaviour*, has brought a *Deficiency* of *one hundred and eight thouſand Pounds?*

He depends upon the Prayers and Wiſhes of thoſe few, who have been the Partakers of his *Bounty*, without being Sufferers by his *Crimes*. But the *Voice* of the *Commons* for *Juſtice* againſt this *Great Offender*, not only includes the Complaints of the *particular Sufferers*, but the *Acceuſation* of an *injured Nation*, whom the *Earl* had endeavour'd to cut off from the *Protection*, which ought to be deriv'd to them from the *Father of his People*.

The *Commons* having now maintain'd the *Truth* and *Juſtice* of their *Charge* againſt the *Earl impeach'd* upon theſe *Articles*, leave him to *your Lordſhips* juſt Determination.

Mr. LUTWYCHE.

My LORDS,

I am commanded to assist in the Reply; and since I was obliged to bear my share in this Prosecution, I was willing it should be such as would give me an Opportunity of hearing what would be said and proved in the *impeach'd Lord's Defence*, before I spoke freely upon the matters in Judgment before your Lordships.

And I may now venture to say, as he was unfortunate to bring so heavy a Charge upon himself, he has still been more unfortunate in his Defence; I submit it to your Lordships Observation, whether any Part of the Evidence offered by the Managers has not been confirmed, nay, enforced upon him, by his own Evidence; and some of the Charges upon him he has endeavour to evade by such Excuses and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the first Witness produced on the Part of the Commons, his Lordship was pleased to make it a Question, Whether he took the Oath directed by the Statute of 12 *Richard* II. The Objection seemed to be, that tho' the Statute was read, and his Lordship kissed the Bible, yet he was sworn to nothing. This was so surprizing to all that heard it, and the Report of it raised such Indignation, that it might have been expected his Lordship would have drawn a Veil over this Part of the Case, and have taken Care that it should not be mentioned again; but instead of that, his Counsel, nay he himself, have thought fit to bring this Point into Dispute in his Defence, and his Lordship does not even yet fully own that he took the Oath.

The Statute has been represented as obsolete, read in Old *French*, and not regarded, and the Oath not duly administred; that the Officer said nothing to his Lordship, nor he to the Officer.

The Witness told your Lordships, that at a meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately kissed the Book; and that this was the usual method of taking the Oath prescribed by that Statute.

My Lords, I would observe, that if there had been any thing in the taking of the Oath that his Lordship thought not regular, it was his Duty, who was the Chief of that Assembly, to put them in a right method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a shew of taking an Oath, and yet, by some nice Distinctions, endeavour to persuade himself or others that he is not sworn.

I do not know but most of the Old Oaths that are taken, may by the like Arguments be evaded, as well as this; the very Oath of Office set forth in this Lord's Answer is, *You shall swear*, &c. and in that Case a nice Distinguisher may as well say, that he repeated nothing, and that there are not Words *de præsenti*, whereby he is sworn. But where is the Defect in administring this Oath? The Officer reads out of the Statute, That the Chancellor, Treasurer, *&c.* shall be sworn, and then they kiss the Book.

I do not see there is much Difference between saying, The Chancellor, Treasurer, *&c.* shall be sworn (they being at the same time present) and saying, *You* the Chancellor, Treasurer, *&c. shall swear.*

I shall therefore have the Charity for the Noble Lord to think and take it for granted, that he was sworn as the Statute required, and that he understood the Statute, tho' it was read in Old *French*, and that he did not prevaricate, when he did this solemn Act.

Supposing therefore that the Statute 12 *R.* II. is in Force, and that the Oath was really taken; the next Consideration is, what the Law is upon the several Facts and Circumstances proved against the impeached Lord in relation to his selling the Offices of Masters in Chancery.

The Answer put into the Charge of the Commons says, The Masters freely and voluntarily sent a Present without admitting any particular Sum; we say that particular Sums (and those very exorbitant) were insisted on, and a Bargain driven for the Offices, as much as could be in any Case by way of Brokage: nay, the very Benefit of having the Suitors Money comes into the Consideration of the Price.

The Words of the Statute of *R.* II. are general, and in Point of Reason it should extend to this Case above others; because the Offices of Masters in Chancery do not only concern the Administration of Justice, but are in some measure judicial; they transact a great Part of the Business of the Court, and have usually been in Commission together with the Master of the Rolls, and the Judges, for hearing of Causes.

Lord Chief Justice *Coke* in his *Third Institutes*, p. 145. places this Offence of selling Offices under his Chapter of Bribery, where he states the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Pension, Robe or Livery, Gift, Reward, or Brokage of any Person that hath to do before him any way, for doing his Office*, &c. He comments upon the Words of this Definition, and more particularly upon those Words, *of any Person that hath to do before him any way*, and he takes Notice, that it is not confined to taking Money, where a Suit is depending; but also where any in a judicial Place doth any thing for Gift or Reward by Virtue or Colour of his Office, tho' there be no Suit at all depending.

For Example, (says he), *If the Lord Treasurer, for any Gift or Brokage shall make any Customer, Comptroller, or any Officer or Minister of the King, this is Bribery: For he ought to take nothing in that Case by the Statute of* 12 R. II. This Example also proves, that the Statute is not confined to the Construction that has been endeavoured to be put upon it, that it relates only to Cases, where the Chancellor, Treasurer, *&c.* meet together, as they do, when they nominate Persons for Sheriffs; for the Example is of the Lord Treasurer alone.

But, My Lords, we insist upon it that this, as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Case that was cited out of *Moor*'s Reports, 781. takes it to be so, of a Sheriff selling the Office of Gaoler, and his Bailiwick; but there was an Objection made to the Report of that Case, that it says the Statute, 4 *H.* IV. *c.* 5. gives a Penalty certain and pecuniary; whereas that Statute gives no certain Penalty, and therefore it might be a right Resolution upon that Statute. But the Declaration of the Court, upon which the Party was fined, was because the Offence was *malum in se*; and tho' that Statute of 4 *H.* IV. gives no Penalty, yet I think the Statute 23 *H.* VI. *c.* 10. does give a Penalty of 40 *l.* in the same Case of a Sheriff, and yet the Party was fined at the Discretion of the Court. The same Case is also reported in *Noy*, 102. where he takes no Notice of any Penalty, and the Report is in these Words: "*N.* was Sheriff of *Nottingham*, 43 *Eliz.* and took Money for the Offices "of Gaoler and Bailiwick, and he first gave them to his Servants, who "sold them, but he himself had the Money." And he was fined for that, for it is contrary to 4 *H.* IV. *cap.* 5. And also by the Court, That that is a Corruption, and a great Cause of Oppression in the Officers, and such Sale of Offices is *malum in se*, and fineable.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, the Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold for taking Money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, that the Difference between this Case and taking a Bribe for Judgment in a Cause is, That in the one Case the Party has a Right to have Judgment, but in the other Case no man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary, and the same Argument would prove, that it is lawful for him to take Money from every Judge that comes into *Westminster-Hall*. It is well known, that the Chancellor generally recommends in that Case, and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely this is such a Doctrine, as is not fit to be proclaimed to the World, and would tend to universal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox*'s History of the *Exchequer*, p. 43. where he says, in the Reign of King *Stephen*, *Geoffrey* the Chancellor, fined in 3006 *l.* 13 *s.* 4 *d.* for the King's Seal. This the Author understands to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himself observes, that this Precedent may justly seem strange to us at this Day. And truly so it may, for, in the Instance before your Lordships, instead of paying Money to the Crown for the Office, here are very great Sums of Money paid by the Crown for an Acceptance of it.

But what does this Precedent tend to? Is it to prove the Office of Chancellor likewise saleable? This is so entirely new, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the same Author, *p.* 42. says, That the Ancient Historians say little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Business of his Office was at that Time, and nothing pertinent to the matter before Your Lordships is to be collected from it. It is very strange to suppose the Common Law, that is founded upon Reason, should admit the highest Place of Judicature to be filled by those that come in by such corrupt methods. And therefore we must beg leave to insist, that it was an Offence at Common Law, as well as by the Statutes.

But suppose this matter rested only upon the Statute of *Edward* VI. I do not see but it is an Offence and Misdemeanor in his Office of Chancellor to sell these Places of Masters in Chancery, and that he is answerable for it before Your Lordships as a Crime.

This Statute is made against buying and selling of Offices (for that is the Title of the Statute). And shall it not be an Offence cognizable before your Lordships, for a Chancellor to put in Officers in a manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Breach of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom; but more especially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to see that proper Persons be appointed according to Law; instead of that, by this method he shews them a bad Example on their very Admission into the Office, and introduces them by Corruption in the first Instance, even by the very Act of Administring the Oath to them.

If this Great Officer should be liable to no other Punishment, than an Incapacity of Nominating again to the same Office, the Act would have little Effect, and that Penalty would signify very little; since his own Office is during Pleasure.

My Lords, I shall now proceed to reply to the Defence that has been made on the Thirteenth and all the subsequent Articles, which is the Province more particularly assigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dormer*, instead of taking proper Steps for obtaining a Satisfaction by regular and justifiable methods, the Earl of *Macclesfield* neglected and declined those methods, and by many indirect Practices endeavoured to conceal the true State and Condition of the Office; lest a publick Discovery of the Deficiency should lessen the unjust Gains he proposed to make by the Sale of the Offices of Masters in Chancery.

Upon this Article the impeached Lord has said, he thinks it hard that these Miscarriages should be charged upon him; that this Affair about *Dormer* was a Misfortune that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this unfortunate Lord had done what became him in his high Station upon the Failure of this Master, God forbid that the misfortune upon the Office should any ways have been laid to his Charge; if he had been desirous to have proceeded in a regular method, he might very easily have done it; the Paths of Virtue and Justice would have been easy, he need not have found himself at the End of Four Years surrounded with such insuperable Difficulties.

If a fair, plain, and open method had been taken for enquiring into, and stating the Debt due to the Suitors, and the Account of *Dormer*'s Effects to satisfy it, there could have been no Danger to the Chancellor, whatever the Deficiency had been; but the Truth was, he could not part with those vast and exorbitant Prices, to which he had at that Time raised the Places of Masters; he found the sweet of that Gain, and was willing to run some hazard for it.

Though it was known that *Dormer* was gone, yet the *Quantum* of the Deficiency was not known; and if it had been publick, the money might probably have been taken out of the Master's Hands; a parliamentary Enquiry might have ensued, and he might have lost those exorbitant Profits, which he afterwards actually made of those Places; and these were the true Reasons of the Concealment, and of the clandestine Proceeding that followed; nothing else hindered him from proceeding with Safety to himself by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been observed by the Counsel in this Case, that it is more expeditious against an Officer of the Court than another; and it is certainly so. There might have been a Sequestration against *Dormer* in a very little Time, and that would have entituled the Court to the Possession of his Effects for the Benefit of the Suitors; which in a great measure answers what was objected of the Necessity of *Dormer*'s coming over, and having his Liberty in order to transfer his Stock. It was likewise said, that it was necessary for the Discovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely, if a Chancellor will take upon him to grant a man his Liberty, when he is to make Satisfaction to the Suitors, he ought to take care that the Consideration for the granting him his Liberty should be performed.

But it is said, What Harm has happened by not taking those methods?

My Lords, Here are two remarkable Instances of the Consequences of this Neglect, by which it appears neither the Debt to the Suitors was known, nor the *Quantum* of the Effects that there were to pay it.

Mr. *Edwards* told your Lordships, That the Deficiency of *Dormer* was at first about 25,000 *l.* but that about a month ago he discovered a farther Debt of about 1500 *l.* Here there is a very great Deficiency concealed: On the other Side, the Effects of Mr. *Dormer*, that should have gone towards paying this Debt, have been concealed and lessened by the want of such an Examination. Your Lordships heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth seven or eight hundred Pounds, that lay concealed four Years, and were not discovered till lately. The Counsel, indeed, said, They were only a Parcel of musty Hops that had been found. But if he had been examined on Interrogatories, in all Probability he would have discovered them at first, and they had been worth 5 or 600 *l.* more than now, and the Suitors would have had the Benefit of them; 5 or 600 *l.* is a considerable Sum in Mr. *Dormer*'s Effects; and no one can tell but there might be other Instances of the like Kind.

What is the Answer his Lordship gives to this gross and wilful Neglect? He tells your Lordships, That he gave Directions to the two senior Masters, to make Enquiry into *Dormer*'s Affairs and Accounts; *he left it to them*, and that they did not think it requisite to examine him upon Interrogatories, or to use him with Hardship.

It is very extraordinary, that in a matter of that great Concern, he should content himself with a parol Direction; Orders from a Lord Chancellor, that are in Earnest, are always in Writing; nor can they be enforced unless they are so; and therefore there must be some private Reasons for these extraordinary Proceedings.

Another Thing that was insisted on, was, That the Earl (as he expresses it in his Answer) was made to believe, that the Masters would make good the Deficiency. What Reason had he to believe it? They never told him so; in a matter of that moment, he had no reason to depend on an Hear-say Evidence. He knew this was to be an Undertaking for the Debt of another, which could not by Law be obligatory, unless reduced into Writing.

My Lords, I cannot account for these Things, either in the Chancellor, or those Masters that had the management of this Affair, unless it be (as the Article charges) to conceal the Deficiency of the Office, I mean the *Quantum* of that Deficiency; and that both the Chancellor and the two senior Masters thought it their Interest to do so, that all of them might share in the Sale of the Places: The two senior Masters were desirous (as was mentioned by the Evidence) to sell out, and the Chancellor was ready to receive his Share of the money.

The Fourteenth Article is the Article about the Composition with *Wilson*; and I must beg Leave to say, notwithstanding what has been insisted upon, That it is a clandestine, unusual, and unwarrantable Proceeding. We did take the Liberty on our Evidence to this Article to observe to your Lordships, That the Petition of Mr. *Edwards* (on which this Composition is founded) takes Notice that *Dormer* was indebted to the Suitors of the Court in several considerable Sums of money; which should have been a Caution to the Chancellor to have taken a more than ordinary Care in this matter; but instead of that, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Hiccocks*'s Hands, which was a Demonstration that it was not filed at the Time when the Order was made for establishing this Composition, nor has been since.

My Lords, If there be but an Affidavit annexed to a Petition, care is usually taken to order that it shall be filed; but it was not thought convenient in this Case to have any thing publick.

My Lords, The Earl of *Macclesfield*, in his Defence to this Article, begun with a Copy of a Judgment obtained by *Wilson* against *Poulter*, that was signed 22d *December*, 1721, and is for 18,774 *l.* whereas the Debt pretended to be assigned by *Wilson* is 22,060 *l.* So that though the Judgment was for all that *Wilson* could pretend to (for aught appears) yet the Debt pretended to be assigned, is mentioned to be above 3000 *l.* more than what the Judgment is for; which is a farther Objection to this Composition that did not appear before.

The next Point the Earl examined to, was the Sufficiency of *Poulter*, in order to prove the Assignment of *Poulter*'s Debt to be valuable; and there were two or three Brokers produced on this Account.

They were very unlucky Witnesses to prove the Man's Ability, for they happened to be the very Persons to whom he had declared his Insolvency; one of them (*Scott*) was employed to go to Mr. *Wilson* to compound with him.

But then a very notable Distinction was taken by the Earl himself, that though *Poulter* disclosed to these Witnesses that he was insolvent, and that they were let into the Secret; yet all other People took him to be a good man. The Evidence produced to prove this, were only those that knew he was insolvent, and not one of all those others that it is said took him to be solvent.

But we hope we have made it plain (and if it were necessary, we could make it clear beyond Dispute) that *Poulter* was a broken man at that Time.

Another Objection was, How does it appear that a better Composition could have been made?

My Lords, Those that presume to take upon them, without a lawful Authority, to make a Composition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Case on the Examination of Mr. *Edwards*, that *Wilson* (when he was afterwards charged with it) owned he had paid several others their full Debts; and 'tis notorious that he kept his Shop open till lately.

My Lords, The Answer to our Objection, That no Notice was given to the Suitors of this Reference about the Composition, carried in it (I thought) something extraordinary. It was said both by the Earl of *Macclesfield* and his Counsel, that whatever the Lord Chancellor did, could not bind the Suitors, they not having Notice, and therefore the Suitors might recover the whole from *Wilson*, and nobody was hurt.

My Lords, There is something very shocking in this Excuse; it strikes some Horror to think, that this poor ignorant man (*Wilson*) should be made to believe upon the faith of a Court of Justice, that his Composition was in full Discharge of his Debt, if there was at the same time a Reserve, that it might be set aside for want of Notice to the Suitors; the Excuse seems to carry in it a greater Guilt than the Crime charged. This unfortunate man (*Wilson*) was living at the Beginning of this Trial, but has since laid violent Hands on himself, and he is dead: I make no Reflection what might be the Occasion of it.

My Lords, I did mention that upon the absolute Order made for Mr. *Edwards* accepting this Composition, it was ordered to be accepted, with this Addition to the Order, *viz. Of which give Notice forthwith.* I mentioned it, that the Earl might have explained what he meant by directing Notice after the Composition was ordered to be accepted, or to whom Notice was intended to be given; I have heard no Answer to that, but what the Earl was pleased to say about the Articles, that on reading them, he thought he had been charged with compelling Mr. *Edwards* to accept of a Composition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice should have been given to the Suitors, and that before the Composition was ordered to be accepted; that is what the Article charges, and what the Managers insist on, and no Answer is given to that Objection.

It was said, That if it had been set down to be heard in the ordinary Course (it being the Third of *August*) in Vacation Time, it could not have come on till the next Term.

I believe that Lord knows it has very often happened, that particular Petitions have been heard in Vacation-Time, if Necessity required it; and I don't understand why there needed to be such a Fondness for having this done so much in haste, unless it were for the Purposes charged in the Articles. There was likewise something said by the Earl, of the striking out of the Prayer of Indemnification, that if it were justifiable, it needed no Order to indemnify; and if it were not justifiable, it ought not to be in: but what we say is, that it looks like a Diffidence whether it was justifiable or not, and since it was put into the Prayer of the Petition, that Mr. *Edwards* might be indemnified, if the Chancellor thought it not justifiable, he ought to have let Mr. *Edwards* know it, as much as he ought to have let Mr. *Wilson* have known, that the Composition would not be good without the Suitors being Parties. As there is no tolerable Account given for such an extraordinary Proceeding, we submit to your Lordships, whether it is not rightly charged to be for the unlawful Purposes mentioned in the Articles. If a Commission of Bankruptcy had been taken out against *Wilson*, the *Quantum* of the Debt to *Dormer*, and consequently of the Loss of the Suitors, must have been known, and other Suitors might have been alarmed, and a thorough Reformation might have happened, which might have ended in the taking away the money from the Masters, and the Price of the Places would have been lowered, which was always most carefully avoided.

My Lords, I now proceed to reply to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjust Purposes, and to conceal the Deficiency, did call for the Accounts of the Masters, not with any Intent of examining them, or to secure their Effects, but to terrify the Masters, and oblige them to contribute 500 *l.* a-piece; and after that Purpose was served, did not oblige them to bring in their Accounts.

The Sixteenth is, That he persuaded the Masters to pay the 1000 *l.* ordered to Mrs. *Chitty* for the like Purposes.

And the Seventeenth is, For letting all the money belonging to *Dormer* be paid away to some of the Suitors, without observing a Proportion, to which all were equally entitled.

To the Fifteenth, the Earl of *Macclesfield* says in his Answer, That he did really call for the Accompts with an Intent to examine them, and that he might regulate matters, and that after the 500 *l.* was paid, still he called for the Accompts; for that there was a Letter sent in *November* 1721, to the Masters, insisting upon having them; but as to this second Letter, as Mr. *Cottingham* did not speak at all positively to it, but that *he believed, but could not be positive that it was sent, and that he had taken no memorandum of it*, &c. we must beg Leave to acquaint your Lordships, that this second Letter was never sent; and every one of the Masters will give your Lordships that Account: But supposing it had been sent, can any one imagine that the Chancellor would not have pursued that Direction, and have had those Accompts, if he had really intended it? What is the Excuse at last? He had required so many Particulars in the Accompts, that it was almost impracticable to do it. My

Lords, if the Charge in the Articles be true, it answered the Design the better, that it should be difficult; we say it was done to get from the Masters 500*l.* a-piece to quiet Matters for the present, and when that was done, there was no more Use made of that Order. But what is most wonderful of all is, that, tho' in four Years Time it was so difficult a Work that it could not be done; yet, when the Committee of Council had called for the Accompts, the Earl of *Macclesfield* used such Diligence, that he procured them to be ready in a Week's Time; and tho' all the Directions and Particulars which he had required, were not observed, yet it seems they were all that were necessary and sufficient, and it was hoped such as would prevent a Parliamentary Enquiry.

The Earl in his Answer values himself much upon this Expedition, not considering how inconsistent it was with the Difficulties which were made an Excuse for not having it done Four Years before.

It was insisted on, upon this Head, that *Mr. Lightboun* did not pay, and yet he brought in no Account; but however, Nine of the Masters did pay, and the Chancellor well knew it would have looked very partial to have proceeded against one single Master, and not the rest; that would have been too bare-faced, and so Mr. *Lightboun* escaped too; besides there was not a Total Despair even of him, for he was several Times afterwards spoke to about making good his 500*l.*

It was said likewise, the Business of the Court must have been at a Stand, if these Accompts had been pursued.

My Lords, if it had been so, it had been more for the Reputation of the Court, and for the Benefit of the Suitors in general, to have had some Time employed about this necessary Work; and if there had been a willing Mind, one long Vacation would have been sufficient without any Interruption to the Business of the Court.

After all these Excuses the Earl is pleased to say, if he had taken the Accompts, it would have signified nothing unless he went farther.

My Lords, if he never begun, he could never bring any thing to Perfection; and in his Answer he confesses it was necessary to have the Accompts in order to make Regulations. But after all he is forced to come to this Conclusion (as he says in his Answer) *to go on in the same Road his Predecessors had done*; tho', by the way, it has appeared to your Lordships, that it is not the same Road; for his two immediate Predecessors did call for the Accompts, and had them.

The Sixteenth Article is grounded on the Persuasions to pay 1000*l.* (ordered to Mrs. *Chitty*) to prevent a Parliamentary or publick Enquiry, and that the Earl afterwards paid the same himself to Mr. *Lockman*, &c.

My Lords, we called Six or Seven Witnesses to this Article, and did observe at that Time the Earl in his Answer said, He believed he did not persuade the Masters to pay this 1000*l.* And his Lordship was pleased to say, when he spoke in his Defence, That he still believed, that he did not persuade them to pay it.

My Lords, it is very strange that there should be any Doubt made of it; the Occasion of the Meeting, and the Nature of the Thing plainly shews it. First Mr. *Cottingham* went to Mr. *Lightboun*, and told him, that there was a present Occasion for this 1000*l.* that it was proposed he should pay the 500*l.* (which he should have paid before) and the other Masters 50*l.* a-piece, which would make up the 1000*l.* When the Masters were going to the Lord Chancellor's, they discoursed among themselves, that their going was upon Occasion of another Call for Money.

When the Chancellor came to them, he mentioned the pressing Necessity there was for paying this 1000*l.*

Mr. *Edwards* particularly says, that he represented to them this Matter of 1000*l.* as *a thing of Consequence, a very pressing Occasion of a Sum of Money immediately to be paid; he said, I do not know what the Consequence may be; Clamours begin to grow strong. I do not know but it it may come to a Parliamentary Enquiry.* Mr. *Lovibond* says, that my Lord told them, *This was a Matter that required great Expedition, for one that belonged to the Prince's Court*, and all of them understood there was a Proposal to pay the 1000*l.* and that was the Occasion of the Meeting. All the Masters that have been examined on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (says the Noble Lord) persuade them to pay the 1000*l.* but I persuaded them to pay all *Dormer*'s Deficiency.

My Lords, there is no Evidence to support this Distinction, but, on the contrary, there were Arguments used for the advancing of this Money. And if he was not able to persuade them to pay this 1000*l.* there was no Likelihood of prevailing on them to pay the whole.

My Lords, another Matter insisted on in Relation to this Article was, that the Money which was paid to *Lockman*, was paid out of Compassion; *Lockman* says he took it as his due, and I think he was in the right; he gave an Assignment of the Order, when it was paid; and certainly this can in no Sort be added to the List of this Noble Lord's Charities, that he has been pleased to publish; but the Discourse with the Masters before shews plainly what were his Inducements for paying it; he feared the Consequence if it were not paid, and chose rather to do it, than venture those Enquiries that the not paying it might occasion.

I think the Earl seems to agree, in Substance, to the Declaration at the End of the Articles, that was made the Fifth of *December* last, *viz.* that he *had heard of* Dormer's *Deficiency, but knew nothing of it but as publick News*, &c. A strange Declaration to come from the Bench at the End of Four Years, during which Time were all these Transactions about *Dormer*'s Deficiency! Then it was that he was pleased to refer it to Mr. *Edwards*, to enquire whether there was likely to be a Loss of any Money, when at that Time he knew very well that all *Dormer*'s Money was gone, and Mr. *Edwards* had none in his Hands.

The Seventeenth Article is for ordering and permitting *Dormer*'s Money to be paid out without Regard to Proportion; this was a manifest Injustice, and so discoursed of between this Lord himself and Mr. *Edwards*; and the Answer that is given to it, is, That we have produced but Four Orders made by the impeached Lord for such Payments.

My Lords, I think it not material whether the Orders were made by himself, or the Court; he was warned several Times of the Consequence; he took the Management of these Matters to himself, and let Things run on, hoping the Money would last his Time; and now all is gone, and paid away, and many distressed People are left without any thing. In the Cause of *Jett* and *Jones*, the Orders that were read, appeared to be made by this Lord himself; and the Parties have been so lucky as to have got their whole Money, whilst others are in the utmost Necessity without any Subsistance.

The Consequence is, that the rest of the Suitors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compassion is of another Consideration; but their legal Right is taken away by him that should have protected them.

An Objection was made by the Counsel, That there was no fixed Fund of *Dormer*'s Effects, from which to have settled a Rule of Proportion. This is excusing one Fault by another: First, Care is taken not to have an Accompt settled; and then that is made an Excuse for not settling a Proportion.

The Eighteenth Article relates to the Masters Trafficking with the Money; which was as notorious, as that there was such a Place as *Exchange-Alley*.

The Year 1720 has been mentioned both by the Earl and his Counsel, and it was so fatal a Year, that surely, if a Reformation were ever to be made, it should have been upon that Occasion. I think there is but little Difference, whether they traded with the Money themselves, or put it into another's Hands at high Interest, and permitted them to trade with it. Could any one imagine that *Dormer* let 24,000*l.* lie in *Wilson*'s Hands for nothing? Mr. *Cottingham*, upon the Examination of my Lord's own Counsel, gave Evidence, that *Wilson* insisted he allowed high Interest for it. And it was well known it was in the Power of all the Masters to traffick with the Money, and this after express Warning by one of the Masters to the Chancellor not only by Word of Mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection: one Thing that was proposed was so easy to be done, that there is no Excuse it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the Masters from disposing of the Securities.

This might very easily have been done. The only Answer that was given, was, that it would not answer all the Securities.

This was made a Reason for doing of nothing, and there was such a Backwardness to do any thing of this Kind, that the meanest and most trifling Excuse was sufficient to satisfy his Lordship, not to take any Step towards it.

My Lords, upon this Article the impeached Lord was pleased to mention some of his Predecessors, and also his Successors: As to his two immediate Predecessors, he doubts the taking the Accompts by him in the manner they did, would have been thought of no Use.

My Lords, I am apt to believe a good Use might have been made of it; it would have put a Check and Restraint upon the Masters, they would have acted with more Caution, when they knew the Balance was a Charge upon them, and that it might be called for at any Time; and if his Lordship had those Accompts, I dare say he would have seen that there was ten Times as much Cash in the Masters Disposal, as there was in one of those Predecessors Time. And it might have been of Use to him to have seen what prodigious Sums of Money were in their Hands, and how great the Danger was.

As to the present Commissioners, the Noble Lord was pleased to say, the Difficulties of making the Masters accompt have appeared by their Proceedings.

My Lords, they have been sufficiently taken up with endeavouring to compel the Masters to give Security for the Deficiencies incurred in this Lord's Time. The Difficulty was not so much in taking an Accompt, as in making good the Deficiency.

They have been forced to take what Security they could get from the Masters from Time to Time, and I wish the Deficiency do not still come out worse than is expected; no one can yet say what it will be.

My Lords, the Nineteenth Article was founded on the Endeavours of the Lord impeached, to deceive His Majesty in Council, by persuading the Masters to make false Representations of their Circumstances to His Majesty, by a Subscription to their Accompts, and by assisting one another to make an Appearance of Ability.

This, my Lords, was the sad Conclusion of this long Scene of Iniquity; when it was become necessary, and it was no longer to be avoided, that there should be Accompts delivered in. There is an Attendance on the Chancellor; and one of the Masters having concluded his Accompt with a Representation of his Ability and Readiness to pay the Money, the rest are persuaded to do it in the like Manner, without so much as asking them concerning the Truth of it; and there is one Instance that was very remarkable, which was in the Case of Mr. *Lovibond*, that where he, of his own Accord, could go no farther than to say he was able to pay or give Security to pay; that was not thought sufficient by this Lord, because it would imply a Diffidence that the Money was not then forth coming; and therefore those Words about Security were not to be mentioned. Others of them that were no ways capable of producing the Money, were induced to make the like Subscription.

When it was expected the Money should be produced, then Mr. *Dixon* and Mr. *Cottingham* have a Meeting with the Masters to consult what was to be done; then it was that Proposals were made for the Masters to assist each other, and to get Goldsmiths Notes and other Effects to shew to the Judges.

It has been objected, that the Managers did not think fit to call Mr. *Cottingham* and Mr. *Dixon*.

My Lords, we called the Masters that were present at that Meeting, who gave Your Lordships an Account of that Transaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cottingham* and Mr. *Dixon* (that were his Servants and Agents) to contradict that Evidence; if this Lord had no Concern in that Matter, he would certainly have called them to that Purpose, and his not examining them to it, greatly confirms our Evidence.

Your

Your Lordſhips may remember the many Inconſiſtencies, Evaſions, Equivocations, and Inſufficiencies in his Lordſhip's Anſwer to the Articles of Impeachment, which have been obſerved and plainly made out by the Managers for the Commons.

My Lords, He was pleaſed to make a Diſtinction between an Anſwer to Articles of Impeachment, and an Anſwer to a Bill in Chancery; that the Plaintiff in a Cauſe had a Right to a full and plain Diſcovery, but that the Caſe before Your Lordſhips differs. My Lords, I would beg leave to mention, that there was an Inſtance of an Impeachment before Your Lordſhips, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Streſs upon the Inſufficiency and Evaſions in the Anſwer. The Perſon then impeached had very hard Names given to him on that Account, and *even his Silence was* inſiſted on as *a Confeſſion of his Crimes.*

As to the Noble Lord's Charities, I beg leave to ſay, that, as it is a great Addition to the merit of Charity, to have it kept private, it was the more extraordinary theſe Charities ſhould be now publiſhed; becauſe I do not ſee they are any ways material to the Matters before your Lordſhips. Here are plain Facts charged and proved, and if in a Caſe of this Kind theſe Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the moſt meritoriouſly charitable, ſhould firſt be juſt. The Lord ſhould have firſt conſidered thoſe Suitors that he had injured; he ſhould firſt have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before your Lordſhips the whole Circumſtances of this Caſe: There needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the moſt perſuaſive Eloquence, and when they have Juſtice on their Side, they will have Weight with Your Lordſhips.

My Lords, The Caſe before Your Lordſhips is founded on Corruption, and a Series of Fraud to ſupport that Corruption. The People had long murmured at it, but the Grievance increaſed at laſt to ſuch an intolerable Degree, that it became a National Concern, and there was an unavoidable Neceſſity of a Parliamentary Proſecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope your Lordſhips will give ſuch Judgment as will be conſiſtent with your Lordſhips Honour and Juſtice.

Mr. Serj. *Pengelly.* My Lords, we ſhall beg leave to call a Witneſs or two; the firſt to the Imputation endeavoured to be thrown upon Mr. *Thomas Bennet*'s Character, in relation to the Diſcourſe that paſſed between him and the Earl. We ſhall ſhew that he declared it at that very Time, or ſoon after the Lord had ſpoke it to him. We deſire alſo to examine Mr. *Lucas*, who applied for the Maſter's Place. It was inſiſted, That the Earl was offered 6000 *l.* and actually refuſed to take it; but took 5000 *l.* from Mr. *Elde* and Mr. *Thurſton* for the Maſter's Office: We ſhall ſhew how that happen'd.

(Mr. *Richard Lucas* ſworn.)

Mr. Serj. *Peng.* We deſire that you would inform my Lords, whether you made any Application to the Earl of *Macclesfield*, or to Mr. *Cottingham*, about coming into the Maſters Office at the Time when Mr. *Elde* or Mr. *Thurſton* were admitted, and what paſſed?

Mr. *Richard Lucas.* My Lords, Upon the Death of Mr. *Fellowes*, being perſuaded by ſome Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. *Cottingham*; my Lord *Macclesfield* being then out of Town, I thought it proper to go to his Secretary.

Lord Chief Juſtice *King.* Pleaſe to ſpeak up.

Mr. *Richard Lucas.* I ſay, upon the Death of Mr. *Fellowes*, I was perſuaded by ſome Friends to make Application for the Maſter's Place: and upon that, I went to Mr. *Cottingham*, and told him the Affair I came about. He told me, Mr. *Lucas*, you know you have formerly had ſome Talk with me about an Affair of this Nature; it is to no Purpoſe for me to recommend you to my Lord, unleſs you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000 *l.* There was ſome Talk paſſed between us beſides, but it being ſo long ago, and not expecting to be called to give an Account of it, I cannot now recollect it. One Thing I can recollect that he intimated to me, That my Lord *Macclesfield* had ſome intentions of making ſome Orders, or doing ſomewhat that ſhould be for the Eaſe or Advantage of the Maſters; but his Lordſhip would not do it that Time, becauſe it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. *Cottingham* in the Hall, and aſked him, If he had ſpoke to my Lord about me? He told me he had; but that my Lord was pleaſed to enquire into my Circumſtances, and did think it proper that ſome Security ſhould be given by the Maſters; and I being immediately to be put in by his Lordſhip, it was the more incumbent upon him to ſee what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000 *l.* Security. I told him, That after ſuch Time as I had parted with 6000 *l.* I could not take upon me to ſay, I could myſelf make up a Security to the Value of 10,000 *l.* but what with the Aſſiſtance of Friends, and mine own Eſtate, I might poſſibly do it. Upon talking of the Matter with my Mother, ſhe was very willing to join in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord *Macclesfield*, or to his Secretary; but to one or the other it was. I ſent it by my Servant, and I was informed by Mr. *Cottingham*, That his Lordſhip had a Sight of it. But afterwards being uneaſy at giving ſo large a Sum of Money, and conſidering from the Talk that then was, that theſe Matters might come into Parliament, I was adviſed, and I thought it proper, to have ſome better Hold upon his Lordſhip, to make ſome Return, in Caſe any thing ſhould happen to leſſen the Value of the Place: Upon that, I did write a Letter, I cannot remember the whole Contents; but I pretty well remember the Subſtance, which was, That I would undertake to give the Security required to the amount of 10,000 *l.* I believe, I did alſo mention my real Eſtate, which was near 300 *l.* a Year, to be a part of the Security, and I did add, That notwithſtanding the preſent Diſputes between the Maſter of the *Rolls* and the other Maſters, and the talk there was of bringing it into Parliament, I was not at all uneaſy; becauſe I could ſecurely depend upon his Lordſhip's Generoſity, that he would take it into his Conſideration, in Caſe any thing happened amiſs in the next Seſſion of Parliament; I can't remember exactly the Words, but my Lord *Macclesfield* has the Letter; if I am miſtaken, his Lordſhip will ſet me right.

Mr. Serj. *Peng:* Upon this Letter of your Expectation of being repaired; if any thing happened, had you any Anſwer?

Mr. *R. Lucas:* The next thing I heard, was, That Mr. *Elde* was in the Place, and Mr. *Cottingham* was pleaſed to ſay, he was a particular Acquaintance of my Lord's, and therefore had it.

Mr. Serj. *Peng.* When Mr. *Cottingham* told you this, what Anſwer did he return as to my Lord's Approbation of the Propoſal?

Mr. *R. Lucas.* He ſaid, to the beſt of my Remembrance, That my Lord was pleaſed that I offered 6000 *l.* at once, provided I would give Security, if that ſhould be thought proper.

Mr. Serj. *Peng.* Since you was diſappointed when Mr. *Elde* came in, What paſſed when Mr. *Thurſton* came in? Whether did you renew your Application then?

Mr. *R. Lucas.* I was, with Abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. Serj. *Peng.* What were your Fears?

Mr. *R. Lucas.* My Fear was about the bringing this Matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, his Lordſhip's Chaplain, and, if I pleaſed, he would go to him, and get him to ſpeak to my Lord about it.

Mr. Serj. *Peng.* What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. *R. Lucas.* I cannot ſay whether my Brother had a direct Commiſſion from me to mention that I was then ready to give 6000 *l.* but it was my Apprehenſion, and the Apprehenſion of all thoſe that knew this Affair, that I ſhould not come in under ſo much; I am not very poſitive that ſuch a Direction was given. I did mention another thing to my Brother, to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the ſeveral Offices of the Maſters, and that I was not without Apprehenſion, that if I ſhould give 6000 *l.* to come into this Place, I might from time to time be called upon for ſeveral Sums of Money in order to make good paſt Deficiencies; and I thought that it would be unreaſonable for me to be brought into any Contribution for making good thoſe Deficiences, when I had no Concern in them. I then deſired it might be mentioned. As for the Anſwer, I never ſaw Mr. *Ellis*.

Mr. Serj. *Peng.* What Orders did you give to your Brother? Did you give him any Order to pay the Money without Conſideration of being liable to the Deficiencies?

Mr. *R. Lucas.* I gave him no Order at all, I thought it was not come to bear yet.

Mr. Serj. *Peng.* Was there any thing paſſed after that?

Mr. *R. Lucas.* I conceive, my Lords, you won't think it proper for me to give an Account of what paſſed between Mr. *Ellis* and my Brother.

Mr. Serj. *Peng.* I deſire to know, whether your Brother had any Orders and Directions from you to go on?

Mr. *R. Lucas.* I have told you every thing I can recollect; I only told him, I deſired him to ſpeak to Mr. *Ellis* to recommend me to his Lordſhip, upon the Foot I have mentioned, *viz.* on the Foot of the former Propoſals.

Mr. Serj. *Peng.* Had your Brother any Authority from you to give 6000 *l.* without being ſecured from the Deficiencies?

Mr. *R. Lucas.* Six thouſand Pounds was the Sum to be given, and I deſired my Brother to mention the Deficiencies, and that I ſhould not be underſtood to be ſubject to any of them.

Mr. Serj. *Peng.* Was it to be given abſolutely without Reſerve, or with Regard to be ſecured from the Deficiencies?

Mr. *R. Lucas.* I did deſire that the Buſineſs of the Deficiency might be explained, and that it might be underſtood that I would not be anſwerable for any of them.

(Mr. *Edward Lucas* ſworn.)

Mr. Serj. *Peng.* I deſire you would inform my Lords, whether you received any, and what Directions from your Brother, upon the laſt Vacancy, when Mr. *Thurſton* came in, of the making Propoſals for your Brother's coming into that Office?

Mr. *E. Lucas.* Soon after Mr. *Borret*'s Death, my Brother expreſſed an Inclination to me of ſucceeding in that Office: I told him, I had an Acquaintance with Mr. *Ellis*, my Lord *Macclesfield*'s Chaplain; and if he would give me any Commiſſion, I would communicate it to Mr. *Ellis*, I believing that a proper Way of communicating it to my Lord. My Brother did deſire me to go to Mr. *Ellis*, and to inform him myſelf, that he had ſo juſt a Senſe of my Lord's Honour and Generoſity, that he believed he might leave the Terms to be fixed by my Lord himſelf. I went to Mr. *Ellis*, and did tell him as my Brother had deſired me. Mr. *Ellis* ſaid, He did not much care to concern himſelf in the Affair; if it had been to recommend to a Living, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of theſe Offices, and explained to him the Nature of the thing, and perſuaded him to lay this Matter before his Lordſhip. Upon which he was then pleaſed to ſay, He would go to my Lord (who was at *Kenſington*) the next Day, and bring me an Anſwer.

Mr. Serj. *Peng.* Had he any Directions either as to the Price, or the Terms?

Mr. *E. Lucas.* I don't know of any Directions he had, either as to the Price, or the Terms.

Mr. Serj. *Pengelly.* What did you say about the Security, and the Deficiencies in the several Offices?

Mr. *E. Lucas.* This was another Conversation, about a Week or ten Days after; after Mr. *Ellis* had brought me an Answer, then I remember my Brother gave me Directions to consult with Mr. *Ellis*, whether it was not proper to make my Lord a direct Offer of 6000 *l.* but then it would be reasonable, that he should be indemnified or secured from any Damage, or Deficiency by any of the precedent Masters; and that he should not be called upon to make good any such Deficiency. I told Mr. *Ellis* this, and he said, there was no Room for this, there might be Deficiencies in some other of the Offices, but he had heard there was no Deficiency in Mr. *Borret*'s Office. I had likewise heard so, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon these Terms.

Mr. Serj. *Peng.* Did you hear any Thing more about it?

Mr. *E. Lucas.* About a Week after Mr. *Ellis* writ to me, That my Lord *Macclesfield* had approved of Mr. *Thurston*.

Mr. Serj. *Peng.* Please to recollect, whether your Direction was about *Borret*'s Deficiency only, or about all the Deficiencies in general?

Mr. *E. Lucas.* My Directions from my Brother were about all the Deficiencies; *Dormer*'s Deficiency ran in his Head, and he thought it unreasonable, that he should be obliged to contribute to any Deficiency precedent to his coming in Master.

Mr. Serj. *Peng.* Did you communicate this to Mr. *Ellis*?

Mr. *E. Lucas.* I did communicate it to Mr. *Ellis*; if not in such express Terms, yet to that Effect, that it was unreasonable that my Brother should be obliged to contribute to make up those Deficiencies that were precedent to his being Master; I am sure I added those Words, that he should not be obliged to contribute to make up those Deficiencies that were precedent to his being Master.

Earl of *Macclesfield.* My Lords, I submit, whether it be not proper, that Mr. *Ellis* be called before this Mr. *Lucas* goes away.

(Mr. *Ellis* called; but not examined again immediately.)

E. of *Mac.* Mr. *Lucas*, I desire that you would declare to my Lords over again, what you have given in Evidence.

Mr. *E. Lucas.* The first Time I saw Mr. *Ellis* was at my Mother's House, immediately after Mr. *Borret*'s Death. I then told him of my Brother's Intention to purchase a Master's Place, and that my Brother had so thorough a Sense of my Lord's Honour and Generosity, that he would leave the Terms to my Lord himself. Mr. *Ellis* was not at first inclineable to concern himself in it, but upon telling him what Steps my Brother had taken in regard to it; he said, out of Friendship to me, he would engage in it, and go to my Lord, and bring me an Answer. This was the first Conversation. Mr. *Ellis* did the next Day bring me an Answer from my Lord.

Mr. Serj. *Peng.* What was the Answer my Lord sent?

Mr. *E. Lucas.* The Answer that Mr. *Ellis* brought was, That my Lord had no Objection to my Brother; he did remember, that he had been formerly recommended to him, but that there was some other Person proposed by some of the Masters, of whom he expected a farther Recommendation, and could not now give any other Answer to it: He also told me, That he apprehended, if that Person did not succeed, my Brother might have the Refusal. I said, it was indifferent whether my Brother then succeeded or not; because my Lord told him, That one or two Masters were inclinable to sell, and if they did, he might have an Opportunity of buying of those Masters. This passed on the second Conversation.

Mr. Serj. *Peng.* Go on.

Mr. *E. Lucas.* The third Conversation was some time afterwards at my Lord *Macclesfield*'s own House in *Lincoln's-Inn-Fields*. I went by my Brother's Directions, meaning to consult with Mr. *Ellis* in a friendly manner, whether he did think it advisable to make his Lordship a direct Offer of 6000 *l.* I said, If he gave it, it was reasonable that he should be indemnified from any Damage that should happen by Reason of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he said my Lord had not spoken to him about that, that he could not have every Opportunity he desired to speak with him; that as to the Deficiencies, he had heard there was none. I said, I had likewise heard so; but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon those Terms. This, to the best of my Remembrance, is the whole I know of the matter.

Mr. Serj. *Probyn.* I only would beg Leave to ask this Question, When the first Proposal was made to Mr. *Ellis*, whether he did propose a certain Sum?

Mr. *E. Lucas.* I don't remember I did; but I think I told Mr. *Ellis* my Brother had formerly offered 6000 *l.* and I told Mr. *Ellis* this, and did lay before him all the Circumstances of that Affair, to make him the more inclinable to engage in it.

Mr. Com. Serj. I desire he may be asked, whether any Terms besides were mentioned, than what Mr. *Lucas* has mentioned before?

Mr. *E. Lucas.* I don't remember there were any other Directions then given, I can't be positive, but that he was willing to leave it to my Lord's Honour and Generosity. And, my Lords, I can swear positively, that till the first Day of these Proceedings, when I met Mr. *Ellis* in the Court of Requests, I never knew that he had offered my Lord *Macclesfield* 6000 *l.*

E. of *Mac.* My Lords, we beg Leave that Mr. *Ellis* may give an Account of what Proposal he made to me from Mr. *Lucas*.

Mr. *Ellis.* My Lords, the Account Mr. *Lucas* has given your Lordships, is true in all the Particulars, as far as I can remember at this Distance of Time, though there are a good many that I could not have recollected of myself, only as to this one, his not impowering me to offer this 6000 *l.* I should not have gone to my Lord, unless I had had some particular Offer to mention. I particularly remember I made him that Offer, and I am as certain, that Mr. *Lucas* did speak to me to make the Offer of 6000 *l.* for this Reason, that I never knew that Mr. *Lucas* had offered 6000 *l.* before by Mr. *Cottingham*, till this Impeachment begun; when Mr. *Lucas*, being here, acquainted me, that he had made that Offer to my Lord.

Mr. *E. Lucas.* I desire Mr. *Ellis* may be asked, whether ever he told me, that he offered Lord *Macclesfield* 6000 *l.*?

Mr. *Ellis.* I believe I only did tell him in general, that I had made his Lordship the Offer which he had desired me to make, and in general likewise, that my Lord was well satisfied with it.

Mr. Com. Serj. I desire he may inform your Lordships, whether, when he told Mr. *Lucas*, that he had made that Offer which he had desired him, he did enquire what that Offer was?

Mr. *Ellis.* No, my Lords, he did not.

Mr. Serj. *Pengelly.* My Lords, they have called Mr. *Ellis* to confront Mr. *Lucas*; but they agree together in all the material Circumstances. Mr. *Ellis* says, what Mr. *Lucas* swears is true in every Particular, unless in Relation to the Offer of 6000 *l.* In all the rest Mr. *Ellis* confirms Mr. *Lucas*'s Evidence.

Mr. *E. Lucas.* I don't positively swear that I did not give him that Commission, but to the best of my Remembrance, I did not give him that Commission.

E. of *Macclesfield.* I desire Mr. *Ellis* may be asked, when he made the Proposal to me, whether he mentioned any Condition whatsoever?

Mr. *Ellis.* No, my Lords, I did not mention any Condition.

Mr. *E. Lucas.* Till after the first Conversation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition; I gave an Account to your Lordships of two different Conversations.

E. of *Mac.* When the Answer was brought, that I was satisfied with the Proposal, what did he do farther upon it?

Mr. *E. Lucas.* My Lords, Mr. *Ellis* did not tell me, that my Lord *Macclesfield* was satisfied with the Proposal, but that my Lord *Macclesfield* had no Objection to my Brother, and he had formerly received a Recommendation of him; but at present another Person was recommended by some of the Masters, whom he expected to be farther recommended.

Mr. *Plummer.* My Lords, I desire Mr. *Ellis* may be asked, how long, before Mr. *Thurston* was admitted, was the Conversation about giving Security, that Mr. *Lucas* might be indemnified from the Deficiencies?

Mr. *Ellis.* My Lords, in one of the last Conversations, which was after I had spoken to my Lord *Macclesfield*, Mr. *Lucas* might say something about having Security. But I don't recollect it with any Certainty; if he did, it was some Days before Mr. *Thurston* was admitted.

Mr. Serj. *Probyn.* I desire he may inform your Lordships, whether he ever told my Lord *Macclesfield* any thing of this Discourse about Security?

Mr. *Ellis.* No.

Sir *Geo. Oxenden.* He says, he never told my Lord *Macclesfield* of that Conversation: I desire to know if he told my Lord *Parker*?

Mr. *Ellis.* No, my Lords, I told Nobody at all.

Mr. *Strange.* My Lords, I beg Leave to make one Observation; a learned Manager was pleased to observe upon the Appearance of these two Witnesses together, that now the Evidence of Mr. *Lucas* is confirmed by Mr. *Ellis*: Your Lordships are pleased to remember, that Mr. *Ellis* was our Witness, and was first examined; and therefore I should apprehend the Observation may be turned much properer the other Way: That the Evidence of Mr. *Ellis*, who was our Witness, and was first examined, is now confirmed by Mr. *Lucas*.

E. of *Mac.* My Lords, I desire he may inform your Lordships with relation to the Discourse that passed betwixt them about the Deficiencies; whether the Objection did not relate singly to them?

Mr. *Ellis.* I don't well remember what passed upon the Subject of the Deficiencies; what I have said to your Lordships before, I remember full well, because a particular Circumstance made me recollect, that Mr. *Lucas* did say, he had heard there was no Deficiency in Mr. *Borret*'s Office; which I had heard too; but at what Time that Discourse was, I can't recollect; it might be as he represented it.

E. of *Mac.* Mr. *Lucas* said to you, That he was willing to treat upon those Terms?

Mr. *E. Lucas.* Upon those Terms, or to that Effect, I did say.

Mr. *Plummer.* I only would make this Observation; both these Evidences confirm this, that Mr. *Lucas* was an inquisitive man, and would not part with his 6000 *l.* so easily as to ask no Questions.

Mr. Serj. *Peng.* We beg Leave now to call a Witness as to the second Letter or Order, supposed to be sent in *November*, 1721, to all the Masters. Mr. *Cottingham* could not take upon himself to say, that it was delivered; he had kept a *Memorandum* of the first, but none of that, and he believed he might say it was delivered; we deny any such Letter was delivered, and beg Leave to ask as to that particular Point.

(Mr. *John Bennet* called.)

Mr. Serj. *Peng.* I desire he may be asked, whether in *November*, 1721, any second Letter or Order, of the Purport of the first Order, was sent or delivered, in relation to the Masters bringing in their Accompts?

Mr. *J. Bennet.* My Lords, I never saw any such Letter.

Mr. Serj. *Peng.* Did you ever hear of it?

Mr. *J. Bennet.* I never heard of it before, till I heard Mr. *Cottingham* read it at the Bar.

Mr. Serj. *Peng.* Did you receive any Account from the other Masters, that they had received any such Letter?

Mr. *J. Bennet.* No, my Lords, never.

Mr. Serj. *Peng.* Do you recollect any Discourse between my Lord *Macclesfield* and your Brother, relating to your Brother's Account?

Mr. *J. Bennet.* I don't recollect the whole.

Mr. Serj. *Pengelly.* What do you recollect?

Mr. *J. Bennet.* My Lord hath declared to me, That he wondered Mr. *Kynaston* and my Brother ſhould put ſuch an *Item* in their Accompts, which would make a Diſcovery, that the Maſters had bought their Places with the money of the Court, which might be of miſchievous Conſequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. Serj. *Pengelly.* When was this? About what Time?

Mr. *J. Bennet.* About *Chriſtmas* laſt.

Mr. Serj. *Probyn.* We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the ſame Purpoſe to ſupport what was given before, but new matter, and therefore not proper.

Mr. *Lutwyche.* We apprehend it is very proper, becauſe Mr. *Thomas Bennet*'s was objected to, and this confirms his Evidence.

[Mr. *Holford* called.]

Mr. Serj. *Pengelly.* My Lords, we deſire he may be aſked, whether this Letter, or Order, of *November* 1721, was ever communicated to him by Mr. *Cottingham?*

Mr. *Holford.* No, my Lords, I never heard of it till now lately.

Mr. Com. Serjeant. I deſire Mr. *Holford* would inform Your Lordſhips, whether there were not then ſeveral Maſters ſenior to him; and whether it is not uſual to leave thoſe Letters, or Orders, with the Senior Maſters?

Mr. *Holford.* I don't know that ſuch Order, or Letter, was left at that Time. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me.

Mr. Com. Serjeant. I deſire he may be aſked the other Part of the Queſtion, Whether it is not uſual to leave Orders, wherein the Maſters are generally concerned, with the ſenior Maſters?

Mr. *Holford.* It is not; but the Uſage generally is to be left at the Public Office. It might be left with the Senior Maſter, for aught I know.

[Mr. *Lovibond* called.]

Mr. Serj. *Pengelly.* Did you ever hear or know of this Letter or Order of *Nov.* 1721?

Mr. *Lovibond.* I never heard of any ſuch Letter or Order, till I heard it read at this Bar.

[Mr. *Kynaſton* called.]

Mr. Serj. *Pengelly.* Mr. *Kynaſton*, will you give my Lords an Account, whether you heard of this Letter or Order of *Nov.* 1721?

Mr. *Kynaſton.* I ſuppoſe you mean the Letter which Mr. *Cottingham* read.

Mr. Serj. *Pengelly.* The ſame.

Mr. *Kynaſton*, I never heard of it, till I heard it read at this Bar.

Mr. Serj. *Pengelly.* I hope this will explain Mr. *Cottingham*'s Want of memory, when he ſaid that he could not remember it.

[Mr. *Lightboun* called.]

Mr. Serj. *Pengelly.* I deſire to aſk you, whether you know any thing of this Letter of *Nov.* 1721?

Mr. *Lightboun.* I never heard of it, till I heard it at Your Lordſhips Bar from Mr. *Cottingham.*

[Mr. *Edwards* called.]

Mr. Serj. *Pengelly.* I deſire he may be aſked, whether he ever heard of this Letter of *Nov.* 1721?

Mr. *Edwards.* I never heard of ſuch a Letter, till I heard it mentioned at this Bar.

Mr. Serj. *Peng.* So that, my Lords, we apprehend this Letter, when written by Mr. *Cottingham*, was a Pocket-letter to be made uſe of on any proper Occaſion. The Managers have done with their Evidence and the Witneſſes; they ſhall call no more. We humbly apprehend, that we have cleared up the Reaſon, why the Lord took 5000*l.* rather than 6000*l.* It was from Hopes of greater Gain in having 5000*l.* abſolutely, without being liable to refund, than 6000*l.* liable to ſuch a Contingency. Upon the Evidence we ſubmit the whole matter to Your Lordſhips Determination.

Mr. Serj. *Probyn.* My Lords, we will be ſhort in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was inſiſted upon by us, that there was Care taken in diſpoſing of theſe Offices, and that my Lord *Macclesfield* having perſonal Knowledge of one Gentleman did prefer him before another, whom he did not know, though he had leſs money from him, than he could have had of the other. It is agreed by Mr. *Lucas* and his Brother, that there was a propoſal of 6000*l.* made upon this Occaſion: Mr. *Ellis* tells you, Mr. *Lucas* gave him Orders to propoſe it to my Lord *Macclesfield* without any Terms whatſoever: He never mentioned any Terms, or intimated any Condition or Reſtriction to my Lord *Macclesfield.* Upon that his Lordſhip was pleaſed to direct a proper Enquiry to be made, what Security he was able to give for the Diſcharge of his Office; here there was 6000*l.* propoſed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5000*l.* This doth not ſhew any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this ſhews that the Earl could not do this out of an immoderate Deſire of Gain, when 6000*l.* was propoſed to be given; but he preferred another whom he knew to be well qualified for leſs money; ſo that we apprehend this is an Evidence which is much in favour of the Earl. As to the other matter, the Maſters not knowing of this Letter, your Lordſhips obſerve what Evidence was given by Mr. *Cottingham.* This is a Tranſaction ſome time ago; he ſays that he writ this Letter by the noble Lord's Order, that he cannot now ſay to which of the Maſters he delivered it, or whether it was perſonally delivered by him, or by one of his Clerks. Your Lordſhips will obſerve, that there were two Maſters Senior to Mr. *Holford*, *viz.* Mr. *Hiccocks* and Mr. *Fellowes*; and it might probably be delivered to one of them; one of them is ſince dead, the other is yet living; but we were not aware of the Objection, and ſo have not him here. This doth not impeach Mr. *Cottingham*'s Credit or his Evidence, ſo far as it concerns the Earl.

Mr. Com. Serj. My Lords, I will not enter into a ſtrict Comparing of the Evidence; we apprehend that what Mr. *Ellis* ſwore ſtands confirmed in every thing by Mr. *Lucas*, and we have Reaſon to thank the Gentlemen of the Houſe of Commons for this Evidence. There was one material Part of our Evidence, that the Earl had a thorough Intention of entering into the Regulation of thoſe matters; but by Diſputes ariſing in relation to the Juriſdiction of the Maſter of the Rolls, he was hindered.

Now the Evidence of Mr. *Lucas* corroborates our Proof on this Head; he ſaith, that Mr. *Cottingham* told him, tho' Security had not been taken, yet at preſent the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give; there was not only an Enquiry into his preſent Circumſtances, but likewiſe an Intimation that Security would be expected. This ſhews the Earl's Intention; and if the Thirſt of Gain had ſwayed him, Mr. *Lucas* would never have had thoſe Bugbears to affright him from giving ſo much money. Upon the whole, it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield.* My Lords, I beg leave to ſay a very few Words upon what hath been newly offered, as to the Evidence to take off my having preferred 5000 Guineas with a Perſon I thought a better man, to 6000*l.* with another, whom I thought a good man. I apprehend it is not taken off at all by any Thing that has yet been offered. Mr. *Lucas* owns that at the firſt Time there was an Expectation of Security, and he has given your Lordſhips an Account that he aſked what Security was expected; and was anſwered I think to the Value of 10,000*l.* and that what he ſpoke of the Deficiency, was only that he ſhould not be liable to farther Orders to be made upon him for Contribution to the former Deficiencies of other Maſters; and in the latter Time, when the Clamour was greater, Mr. *Ellis* offered me 6000*l.* abſolutely without any Condition, and I ſaid I approved of the Perſon and of the Offer, but I had another Gentleman then under Conſideration. Their Evidence indeed varies as to the Particulars of the Converſations they had upon this Subject: But whatever Diſcourſe paſſed between them, unleſs it came to my Knowledge, it ought not to affect me. I never heard, nor is it ſo much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatſoever annexed to the Propoſal made by Mr. *Lucas.*

Mr. *Ellis* has been aſked this Queſtion, and has ſworn poſitively he mentioned none at all to me; ſo that there is not the leaſt Pretence that the Reſtriction, ſuppoſing Mr. *Lucas* annexed any to the Propoſal (which I muſt obſerve is flatly contradicted by Mr. *Ellis*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the Letter of *November* 1721; your Lordſhips will remember, that when I ſpoke of that, I entred upon it as a Thing not at all neceſſary for me; becauſe they had not proved the Article, that the Letter writ in *February* was with an Intention to terrify the Maſters into a Contribution; but all the Proof they produced was, that the Maſters had paid a voluntary Contribution, and upon that they made ſome Obſervation; but not one of the Maſters ever gave your Lordſhips an Account that they did it by Reaſon of, or under the Terror of this Letter: they have called every one of them, and not one hath ſaid ſo, but agreed that they had paid it as a voluntary Contribution; ſo that there is no manner of Occaſion for what hath been ſaid about this Letter. Mr. *Cottingham* did ſay before your Lordſhips, that he thought the Letter was ſent, and he had no Reaſon to believe the contrary; but indeed he had no memorandum of its being ſent. It is very extraordinary to ſuggeſt, that this ſhould be a Pocket Letter. Can any Perſon imagine that that Letter was calculated for an Occaſion like this? Was there any Apprehenſion of this Proſecution in 1721? My Lords, it is not worth while to trouble your Lordſhips with any more Remarks about ſo groundleſs a Pretence. In the Reply there hath been ſomething new offered to your Lordſhips to make out my receiving money from the Maſters to be an Offence at Common Law; and there have likewiſe been mentioned ſeveral Acts of Parliament, to neither of which I have had any Opportunity of giving an Anſwer before; I therefore apprehend I have a Right to take Notice of them now. And firſt I beg leave to obſerve to your Lordſhips, that every one of theſe Acts of Parliament relates plainly to Judges who take Bribes, or take money for doing their Duty, or for doing thoſe Things they were bound to do; they lie upon your Lordſhips Table, and if your Lordſhips will but look upon them, you will find all to be ſo.

That of *Magna Charta* is plainly ſo, that Juſtice ſhall be adminiſtred to the Party without paying for it.

So the Statute of 12. *R.* II. that they ſhall.——

Mr. Serj. *Pengelly.* My Lord cannot be regular to reply to us on that Statute.

Earl of *Macclesfield.* The Statute is, that they ſhall not make any Officer for Brokage.

Sir G. *Oxenden.* We muſt ſubmit it to your Lordſhips, whether this can be regular; the noble Earl hath had his Defence, we have replied; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordſhips Table; and your Lordſhips will conſider it.

Earl of *Macclesfield.* I will not take up your Lordſhips Time any farther in inſiſting upon it; but I hope at leaſt thoſe Gentlemen will not oppoſe my taking notice of one Thing that is new, though not any part of the Articles, which is what the Gentlemen have ſaid with relation to *Wilſon*'s Compoſition not being binding upon the Suitors of the Court; that it is matter of Horror that *Wilſon* ſhould truſt to the Faith of a Court of Juſtice, and upon that enter into a Compoſition, which at laſt ſhould not be effectual and binding. To that give me leave to anſwer, that if *Wilſon* had acted honeſtly, and given a fair Account of his Eſtate and Effects in this Caſe, and it had appeared upon the whole, that he could not pay more than according to this Compoſition; and at the ſame Time that it muſt be a real advantage to the Suitors to have received their Proportion of what he was able to pay, without the Expences of a Statute of Bankruptcy; in that Caſe he would have the Benefit of it: But in Caſe he could have paid more, and this appeared only to be a fraudulent or unfair Compoſition, it would be no way concluſive upon the Suitors; and as he ought not to reap any

Benefit, so neither would they suffer any Prejudice by it upon that Supposition.

Mr. Serj. *Peng.* The Managers are entitled to the Reply and Conclusion.

As to our Evidence newly given, it proves in the strongest manner, that if there was a Reason for distinguishing between 5000 *l.* and 6000 *l.* it was because the 6000 *l.* was attended with an Incumbrance; and if it be said that the Earl had no Notice of it, it is prov'd that his Agent, or the Person whom he employ'd, had this Account deliver'd to him, and knew it; and we appeal to the Letter which is in their Hands. And therefore this is so far a Confirmation of the other Part of the Charge of Neglect when Security was offered. Why was not the Person accepted? Why Mr. *Elde* preferr'd?

Mr. *Lucas*'s Directions to his Brother, and his Transactions are confirm'd by Mr. *Ellis*, my Lord's own Chaplain; and the only Reason why the Bargain was not concluded, was, because of the Privilege insisted upon by the Person to be indemnified from all Contributions and Charges.

E. of *Macclesfield.* I beg your Pardon, if I trouble your Lordships once more, in relation to a Piece of new Evidence, which I did not before reflect upon; I am under a very great Disadvantage from these Gentlemen, who are for tying me down to very great Hardships, so that if any thing slips my memory, at what they call the proper Time, it must at this rate be lost for ever. I would take Notice of one Thing, with relation to what Mr. *Thomas Bennet* said of what I spoke, of denying that the Masters paid for their Offices out of the Suitors money; they are attempting to prove that I knew of their doing so, and they prove it by shewing, that I said I had always denied it. But, my Lords, is there any of the Masters that came in in my Time, that says I knew any such thing? No, my Lords, not one of all those Masters that came in in my Time, and appear to have transacted in this manner; there are only two, Mr. *Kynaston* and Mr. *Thomas Bennet*; but is there any of them, or any other, that pretend that I knew they did so? Here are two Persons that paid for their Offices out of the Suitors money; and because I told one of them afterwards, admitting what he said to be true, that I had heard it said it was so, and deny'd it; Is it from thence to be concluded that I knew it was really so? My Lords, I beg leave to observe as to the matter of the difference of the Prices; I gave Evidence of the difference of Prices in other Offices, and their Rise from 50 *l.* to 500 *l.* in one Instance, and from 200 *l.* to 800 *l.* in another.

Mr. Serj. *Peng.* We are unwilling to interrupt the Lord; but now for him to go back again into the whole, is a greater Right than his Lordship is entitled to; therefore from the Duty we owe to your Lordships, we hope every Thing that is regular shall be observ'd.

E. of *Mac.* I submit, if your Lordships think I am irregular; in the Confusion my Papers were in when I made my Defence from them, the Notes relating to this and some other matters were overlook'd: But as to the Reply, I must beg leave to make one general Observation, That the Gentlemen have thought the Arguments used by me in that Defence, either such as they could not answer, or such as needed no Answer, since they have not attempted to answer any of them; and which of the two, I must leave to your Lordships Determination.

Mr. *Onslow.* My Lords, in the Course of our Reply, we made use of the Statute of *Henry* IV. We have it not printed, but we have an attested Copy in Writing, and the Original Roll; if your Lordships please, this attested Copy may be brought up to your Lordships Table.

[Mr. *Nicholas Paxton* sworn.]

Mr. *Paxton.* My Lords, I examined this Copy with the Deputy-keeper of the Rolls in the *Tower*, and it is a true Copy.

E. of *Mac.* Whether that Parliament Roll be in the Nature of a Journal or a Statute Roll, wherein the Act of Parliament is enter'd?

Mr. *Paxton.* My Lords, the Officer is here; he will give your Lordships an Account.

Mr. *Lutwyche.* It is quoted by my Lord *Coke* to be of the same Nature as a Parliament Roll.

[Mr. *Holmes* called.]

Mr. Serj. *Peng.* Mr. *Holmes*, Where is this Roll kept?

Mr. *Holmes.* My Lords, I am Deputy-keeper of the Records.

Mr. Serj. *Peng.* Where?—Mr. *Holmes.* In the *Tower*.

Mr. Serj. *Peng.* What Roll is that?

Mr. *Holmes.* It is the Parliament Roll of the 11th of *Henry* IV.

E. of *Mac.* I desire he may inform your Lordships whether there be any Difference or Distinction between the Parliament Roll and the Statute Roll?

Mr. *Holmes.* There are a great many private Acts enter'd upon the Parliament Rolls, that are not in the Statute Rolls; what is in the Statute Roll was sent down by Writ into the several Counties to be proclaim'd in the several County Courts.

Mr. Serj. *Peng.* Whether that is not the Original Roll?

Mr. *Holmes.* This is the original Roll.

E. of *Mac.* I apprehend the Parliament Roll contains the Petitions, and the King's Answer.———Mr. *Holmes.* It doth.

E. of *Mac.* Before it comes to be published as a Law, is it not drawn up in Form, and enter'd upon the Statute Roll?

Mr. *Holmes.* The Petition is a piece of Parchment; after it hath passed King, Lords, and Commons, then it is entred on this Roll.

Mr. *Onslow.* Whether the King's Assent is not entred upon this Roll?

Mr. *Holmes.* There is *le Roy le Veut.*

Lord *Lechmere.* I desire, for your Lordships Satisfaction, that he may read what is upon the Parchment Roll.

Mr. *Holmes* reads it, &c.

Parl. Rot. N° 28. 11 *H.* IV.

Respectuatur per Dominum Principem & Concilium.

Item, QUE nul' Chaunceller, Treforer, Gardein de Privie Seal, Counseller du Roy, Serementz a Counseill du Roy ne nul' autre Officer Juge ne Ministre du Roy parnant fees ou gages de Roy pur lour ditz Offices ou Services, preigne en nulle manere en temps avenir aseun manere de doun ou brocage de nully pour lour ditz Offices et Services, affaire sur peyn de respondre a Roy de la treble de ceo que issi preignont, et de satisfier la Partie et punys al volonte de Roy, et soit dischargez de son Office, Service, & Counseill pur toutz jours, & que cheseun qui vorra pur suer en la dite Matier eit la suit sibien pur le Roy come pur luy mesmes & eit la tierce partie de some de qui le parties soit ducment convict.

Le Roy le Voet.

E. of *Mac.* What is there in the margin?

Mr. *Holmes. Respectuatur per Dominum Principem & Concilium.*

E. of *Mac.* That I may not be misunderstood in this matter, and accused of going to quibble away an Act of Parliament; your Lordships will give me leave to observe, in the first Place, That supposing this to be an Act of Parliament, it relates to Cases where Judgments are given, or where the Parties have a Right, and not any way to me or to my Case; and having premis'd this, your Lordships will see how this matter stands. Here are two Rolls, the one is in the Nature of a Journal, wherein an Entry is made of the several Proceedings, and there are in it great Numbers of Petitions to the King by the Commons; whereby they pray, That Acts may be made, and the King's Answers upon them: The Answer it may be is agreeing to some Part of what they pray, or sometimes to no Part, but a Provision made quite different from what they pray. At that Time the Judges drew up the Acts afterwards in Form, and thence then those Acts were entered upon the Statute Roll; and they were promulgated at that Time by Proclamation on Writs issued to the Sheriffs of the several Counties. Now this hath in the margin of the Parliament Roll, *Respectuatur per Dominum Principem & Concilium.* When the Judges came afterwards to draw up the Statutes of this Parliament, in order to publish them, there being a *Respectuatur* set upon this in the Parliament Roll; they forbore to draw it up amongst the rest, and it is not entred upon the Statute Roll at all, nor ever printed in any Statute Book since, nor was it ever publish'd by the Sheriffs, nor consequently sent to the several Courts of Justice, nor ever taken Notice of by them as a Law: for the Reason of that maxim, That the Courts of Justice are bound to take notice, *ex officio*, of public Laws, and not of private Laws, was because the public Laws were transmitted to them under the Great Seal. The Fact then in this Case doth appear to be, that when the Acts of this Parliament of 11 *Hen.* IV. came to be drawn up and promulgated, this having a *Respectuatur* enter'd upon it, was not entred upon the Statute Roll, and so not published; this is the Fact. However, it doth not concern me, nor doth it relate to the present Case at all, as I observed to your Lordships before: If I had made a Decree for money; if I had refused a Writ or *Subpœna*, unless the Party had paid me money, then I had been within the Statute, but not in this Case.

Mr. *Lutwyche.* We say this Statute doth concern him: But as to what he saith, that there is an Entry in the Margin, *Respectuatur per Dominum Principem, &c.* this is taken Notice of in the 3d Institute, where my Lord *Coke* particularly affirms, that this is an Act of Parliament in Force, and is upon the Parliament Roll, and takes notice of *Respectuatur*, &c. that it was in Fact done by the Prince, the Son of King *Henry* IV. but without Authority; and that notwithstanding such Respite, this Act of Parliament is in full Force.

Mr. *West.* Supposing it to be an Act of Parliament, it extends to the Earl's Case; but whether it be an Act of Parliament or no, is a Question that the Noble Earl now makes. I thought it had been the common Learning, that all the old Laws were Petitions from the Commons, and the King's Answer to them; and that they were entred upon the Parliament Roll; and that the Parliament Roll was only a Voucher to the Statute Roll. I could give many Instances where that Voucher was not pursued, and the Statute Roll drawn up different from the Parliament Roll; and that was the very Reason of altering the manner of passing Laws into the method that is now used. This is my Lord Chief Justice *Hale*'s Account in one of the modern Reports.

Mr. *Plummer.* The Earl impeach'd hath principally insisted on two things; the one is the taking a less Sum of money for a Master's Place when vacant, when he had a greater Sum offer'd him; and that therefore it follows, that he hath not made corrupt Advantages in order to raise his own Fortune, and that he is Innocent. He hath called the Negotiator in this Affair to prove, That when he was offer'd 6000 *l.* he took 5000 *l.* The Commons have by their Witness explain'd it; and this matter is now fully clear'd, and your Lordships have the whole before you; and I will make no farther Observation upon it.

The second Thing that he lays great Weight upon is, that he called for the Accounts of the Masters, notwithstanding the 500 *l.* a-piece was paid in. Upon examining the Witnesses, it doth not appear that any of the now Masters knew any thing of it. I leave it to your Lordships Consideration, whether, if the Earl of *Macclesfield* had been in earnest, he would not have had a Return of that Order. It doth not appear there was ever any Account given in; therefore when these two Points are made plainer against him now than they were on our first making good the Charge, tho' he seems to say the Sting of the Impeachment is taken out, yet it is plain the Sting is not taken out of it, but it still remains; and your Lordships will give such Judgment as is just and legal.

Then the Managers for the House of Commons and the Counsel withdrew, and then the House adjourned.

Tuesday, 25 May, 1725. *The 11th Day, the Lords being seated in their House, and the Managers being come, and seated as before, the usual Proclamation was made for Silence.*

L. C. J. *King.* MY Lords, Your Lordships having heard the Evidence in this Case, have agreed upon a Question, which is severally to be put to your Lordships in the usual Order. The Question is this, Is *Thomas* Earl of *Macclesfield* guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or not Guilty, upon your Honour.

L. C. J. *King. Robert* Lord *Walpole*, What says your Lordship? Is *Thomas* Earl of *Macclesfield* guilty of High Crimes and Misdemeanors charg'd upon him by the Impeachment of the House of Commons, or not Guilty?

Lord *Walpole*, Guilty, upon my Honour.

[*The same Question was severally put to the rest, whose Names and Votes are as follow.*]

Nicholas Lord *Lechmere*,	Guilty, upon my Honour.
Matthew Lord *Ducie*,	Guilty, &c.
Thomas Lord *Onslow*,	Guilty, &c.
Allen Lord *Bathurst*,	Guilty, &c.
Thomas Lord *Foley*,	Guilty, &c.
Samuel Lord *Masham*,	Guilty, &c.
Thomas Lord *Trevor*,	Guilty, &c.

Guilty

Thomas Lord *Mountjoy*,	Guilty, upon my Honour.
George Lord *Hay*,	Guilty, *&c.*
John Lord *Gower*,	Guilty, *&c.*
Henry Lord *Herbert*,	Guilty, *&c.*
John Lord *Ashburnham*,	Guilty, *&c.*
James Lord *Waldegrave*,	Guilty, *&c.*
Charles Lord *Lynn*,	Guilty, *&c.*
Charles Lord *Cornwallis*,	Guilty, *&c.*
Charles Lord *Bruce*,	Guilty, *&c.*
William Lord *Brooke*,	Guilty, *&c.*
James Lord *Compton*,	Guilty, *&c.*
William Lord *Hunsdon*,	Guilty, *&c.*
Hugh Lord *Clinton*,	Guilty, *&c.*
John Lord *Delawar*,	Guilty, *&c.*
Algernon Lord *Percy*,	Guilty, *&c.*
William Lord *Abergavenny*,	Guilty, *&c.*
Stephen Lord Bishop of *Exeter*,	Guilty, *&c.*
William Lord Bishop of *Bristol*,	Guilty, *&c.*
Edward Lord Bishop of *Chichester*,	Guilty, *&c.*
Richard Lord Bishop of *St. Davids*,	Guilty, *&c.*
John Lord Bishop of *Norwich*,	Guilty, *&c.*
John Lord Bishop of *Carlisle*,	Guilty, *&c.*
William Lord Bishop of *Bangor*,	Guilty, *&c.*
Joseph Lord Bishop of *Gloucester*,	Guilty, *&c.*
Thomas Lord Bishop of *Ely*,	Guilty, *&c.*
White Lord Bishop of *Peterborough*,	Guilty, *&c.*
Samuel Lord Bishop of *Rochester*,	Guilty, *&c.*
John Lord Bishop of *Oxford*,	Guilty, *&c.*
John Lord Bishop of *St. Asaph*,	Guilty, *&c.*
Richard Lord Bishop of *Winchester*,	Guilty, *&c.*
William Lord Bishop of *Durham*,	Guilty, *&c.*
Edmund Lord Bishop of *London*,	Guilty, *&c.*
George Lord Viscount *Torrington*,	Guilty, *&c.*
Simon Lord Viscount *Harcourt*,	Guilty, *&c.*
Richard Lord Viscount *Cobham*,	Guilty, *&c.*
Henry Lord Viscount *Tadcaster*,	Guilty, *&c.*
Henry Lord Viscount *Londsdale*,	Guilty, *&c.*
William Lord Viscount *Hatton*,	Guilty, *&c.*
Charles Lord Viscount *Townshend*,	Guilty, *&c.*
Lawrence Lord Viscount *Say and Seal*,	Guilty, *&c.*
Thomas Earl of *Pomfret*,	Guilty, *&c.*
Bennet Earl of *Harborough*,	Guilty, *&c.*
William Earl of *Cadogan*,	Guilty, *&c.*
Talbot Earl of *Sussex*,	Guilty, *&c.*
George Earl of *Halifax*,	Guilty, *&c.*
John Earl of *Bristol*,	Guilty, *&c.*
Thomas Earl of *Strafford*,	Guilty, *&c.*
Washington Earl of *Ferrers*,	Guilty, *&c.*
Archibald Earl of *Ilay*,	Guilty, *&c.*
Henry Earl of *Deloraine*,	Guilty, *&c.*
John Earl of *Stair*,	Guilty, *&c.*
George Earl of *Orkney*,	Guilty, *&c.*
Charles Earl of *Selkirk*,	Guilty, *&c.*
James Earl of *Findlater*,	Guilty, *&c.*
David Earl of *Buchan*,	Guilty, *&c.*
John Earl of *Rothes*,	Guilty, *&c.*
George Earl of *Cholmondeley*,	Guilty, *&c.*
William Earl of *Albemarle*,	Guilty, *&c.*
Frederick Earl of *Rochford*,	Guilty, *&c.*
Richard Earl of *Scarborough*,	Guilty, *&c.*
Montague Earl of *Abingdon*,	Guilty, *&c.*
William Earl of *Yarmouth*,	Guilty, *&c.*
Richard Earl of *Burlington*,	Guilty, *&c.*
Charles Earl of *Carlisle*,	Guilty, *&c.*
Nicholas Earl of *Scarsdale*,	Guilty, *&c.*
Robert Earl of *Sunderland*,	Guilty, *&c.*
William Earl of *Denbigh*,	Guilty, *&c.*
Edward Earl of *Warwick*,	Guilty, *&c.*
George Earl of *Northampton*,	Guilty, *&c.*
John Earl of *Leicester*,	Guilty, *&c.*
Henry Earl of *Lincoln*,	Guilty, *&c.*
Thomas Earl of *Pembroke*,	Guilty, *&c.*
John Marquis of *Tweedale*,	Guilty, *&c.*
James Duke of *Chandos*,	Guilty, *&c.*
William Duke of *Manchester*,	Guilty, *&c.*
Philip Duke of *Wharton*,	Guilty, *&c.*
Thomas Duke of *Newcastle*,	Guilty, *&c.*
Peregrine Duke of *Ancaster*, Lord Great Chamberlain,	Guilty, *&c.*
John Duke of *Roxburghe*,	Guilty, *&c.*
James Duke of *Montrose*,	Guilty, *&c.*
John Duke of *Montague*,	Guilty, *&c.*
Charles Duke of *Grafton*, Lord Chamberlain,	Guilty, *&c.*
John Duke of *Greenwich*, Lord Steward,	Guilty, *&c.*
William Duke of *Devonshire*, Lord President,	Guilty, *&c.*
William Lord Archbishop of *Canterbury*,	Guilty, *&c.*

L. C. J. *King.* My Lords, Your Lordships have unanimously found *Thomas* Earl of *Macclesfield* guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

[*Then the Managers of the House of Commons and the Counsel withdrew*; *and then the House adjourned.*]

Wednesday, 26 May, 1725. *The 12th Day.*

[*The Lords being sat, and the Managers being come, the usual Proclamation was made for Silence.*]

THEN the Gentleman Usher was commanded to call in the Earl of *Macclesfield*, who being come to the Bar, the Speaker acquainted him, that the Lords had fully considered of his Case, and had unanimously found him guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons.

E. of *Mac.* I attend your Lordships, in Obedience to your Lordships Command; but I am persuaded, that if your Lordships knew what I suffer, your Lordships would not have required this of me, the rather as I did not intend to make any Exceptions in relation to the Proceedings, or give your Lordships any farther Trouble. I am now to expect your Lordships Judgment; and I hope that you will be pleas'd to consider, that I have suffered no small matter already in the Trial, in the Expence I have been at, the Fatigue; and what I have suffered other-ways; besides the cruel Distemper which this hath brought upon me. I have paid back 10,800 *l.* of the Money already, I have lost my Office, I have undergone the Censure of both Houses of Parliament, which is in itself a very severe Punishment. My Lords, the Deficiency of Mr. *Dormer* doth sound large, 25,000 *l.* but, my Lords, it was not through my Fault that the Deficiency happened, nor was that Master put in by me; on the contrary, with great Difficulty, it is reduced by my means to 10,000 *l.* less than otherwise it would have been. My Lords, all the Loss that can be sustain'd by any thing charged against me, is only what some of the Suitors might have had more for their Proportion, than they can do now out of Mr. *Dormer*'s Effects. His Debt came to about 47,000 *l.* his Effects to about 13,000 *l.* which is about a fourth Part: I don't find there is one Suitor hath made his Complaint that he hath not received his Five Shillings in the Pound, Mrs. *Chitty* hath received her Share.

Mr. *Onslow.* My Lords, we must submit to your Lordships. This was proper when the noble Lord was making his Defence; but it is not so in Arrest of Judgment. Your Lordships have found him Guilty of the Fact, and he is now arguing in Defence of it: If he hath any thing in Arrest of Judgment, he may say it, and the Commons are here ready to answer it.

I was very unwilling, my Lords, to interrupt the Earl, and do it now with great reluctancy; but it is for the sake of Regularity in your Lordships Proceedings; and we must appeal to your Lordships, whether the Noble Lord is not now going into the Repetition of what he said in his Defence?

E. of *Mac.* My Lords, I submit whether this be not proper in mitigation of your Lordships Sentence; but whether it be or be not, I leave myself to your Lordships Justice and Mercy; I am sure neither of them will be wanting, and I entirely submit. I don't know whether your Lordships will be pleased to dismiss my Attendance at this Time, or whether your Lordships will require me to come again under this very great Uneasiness; I submit it to your Lordships.

Then the said Earl, as also the Managers, were directed to withdraw; and the House ordered *Thomas* Earl of *Macclesfield* to be committed to the Custody of the Gentleman Usher of the *Black Rod*; and then proceeded to the Consideration of what Judgment to give upon the Impeachment against the said Earl, and afterwards adjourned to *Thursday* Eleven of the Clock, the 27th of *May*.

Thursday, 27 May, 1725. *The 13th Day.*

A Message was sent to the House of Commons by Mr. Baron *Page* and Mr. Justice *Denton*, to acquaint them, That the Lords are ready to give Judgment against *Thomas* Earl of *Macclesfield*, if they with their Speaker will come and demand the same.

Hereupon a Motion was made, and the Question proposed, That this House will demand Judgment of the Lords against *Thomas* Earl of *Macclesfield*; which occasioned a warm Debate, that lasted till Five in the Afternoon, when the previous Question being put, that the Question be now put, it was carried in the Affirmative by a majority of 136 Voices against 65; and then the main Question being put, it was resolv'd, That this House will demand Judgment against *Thomas* Earl of *Macclesfield*. This done, the Commons resolv'd, *Nem. Con.* That the Thanks of this House be given to the Members who were appointed the Managers of the Impeachment against *Thomas* Earl of *Macclesfield*, for their faithful Management in their Discharge of the Trust reposed in them. Hereupon Mr. Speaker gave them, they standing up severally in their Places, the Thanks of the House, as follows:

GENTLEMEN,

" IT is with the greatest Chearfulness that I obey the Commands of the " House on this Occasion; and yet I was never, on any Occasion, " more sensible of the Difficulties of performing them as I ought; but I " have this Satisfaction in this Motion's being made when I least expected " it, that my not being prepared may be some Excuse for those Defects, " which I should not have been able to have supply'd, had I had never so " long a Time for Consideration.

GENTLEMEN,

" You have maintained the Charge of the Commons, with that Force of " Argument, Beauty of Expression, and Strength of Reason, as would " have gained you the highest Applause in the most flourishing of the " *Grecian* Commonwealths; and I may add,

Nec dignius unquam
Majestas meminit sese Romana locutam.

" But I shall not enlarge farther on this Part of your Praise, being sensible " that I am not able to express myself in a manner suitable to the Dignity " of the Subject; your own Tongues are only equal to such an under- " taking; and were I able to do it, your Modesty would not permit it: " I shall therefore proceed in obeying the Commands of the House, in " such a manner, as you yourselves may hear it, not only without " Offence, but I hope with Satisfaction; by endeavouring to set in their " proper lights the great and lasting Benefits your Country will receive " by your faithful Discharge of your Duty.

" You have stopp'd the Cries of Orphans, and dried up the Tears of " the Widow; even those who must ever be insensible of the Benefits " they receive, Ideots and Lunatics (and such only can be insensible of " them) will be Partakers of the Fruits of your Labours.

" But you are more particularly intitled to the Thanks of this House, " by having made the Prosecutions of the Commons against great Offen- " ders, practicable; The Power of Impeachment, that Sword of Venge- " ance, which the Constitution has put into the Hand of the Commons, " and which, when drawn by Party-Rage, when directed by the Malice " of Faction, or wielded by unskilful Hands, has too often wounded that " Constitution it was intended to preserve, has now, by your able Ma- " nagement, turn'd its Edge to its proper Object, a Great Offender; " and if the Wound it has given should not be so deep, as many expect; yet " you may be very sure, it can never be imputed to the Want of Strength in " your Arm: And I hope and trust, from your prudent Conduct through " the

"the whole Progress of the Trial, that this great Privilege of the Commons "will ever remain a Terror to evil Doers; and that it may be a Praise to "them that do well, the House has unanimously come to this Resolution:

"*Resolved*, Nemine Contradicente, *That the Thanks of this House be* "*given to the Members, who were appointed the Managers of the Impeach-*"*ment against* Thomas *Earl of* Macclesfield, *for their faithful Management* "*in their Discharge of the Trust reposed in them.*"

A Message was brought from the House of Commons by Sir *William Gage* and others to acquaint the House of Lords, That the Commons, with their Speaker, do intend immediately to come to demand Judgment against *Thomas* Earl of *Macclesfield*; and do desire that the Painted Chamber, and other Passages to the Lords House, may be cleared forthwith.

The Messengers were called in, and told, That the Lords had given Order as desired.

Which was done accordingly.

Then the Commons with their Speaker, being present at the Bar of the House, the Lord Chief Justice *King*, Speaker of the House of Lords, directed the Gentleman Usher of the *Black-Rod* to bring *Thomas* Earl of *Macclesfield* to the Bar; who, after low Obeisances made, kneeled until the said Lord Chief Justice acquainted him he might rise.

Then the Speaker of the House of Commons said as follows:

"My Lords,

"THE Knights, Citizens, and Burgesses in Parliament assembled, in "the Name of themselves, and of all the Commons of *Great-Bri-*"*tain*, did at this Bar impeach *Thomas* Earl of *Macclesfield* of High Crimes "and Misdemeanors; and did exhibit Articles of Impeachment against "him; and have made good their Charge:

"I do therefore, in the Name of the Knights, Citizens, and Burgesses "in Parliament assembled, and of all the Commons of *Great-Britain*, de-"mand Judgment of your Lordships against *Thomas* Earl of *Macclesfield*, "for the said High Crimes and Misdemeanors."

Then the Lord Chief Justice *King*, Speaker of the House of Lords, said:

"Mr. *Speaker*, the Lords are now ready to proceed to Judgment in "the Case by you mention'd.

"*Thomas* Earl of *Macclesfield*, The Lords have unanimously found you "Guilty of High Crimes and Misdemeanors, charged on you by the Im-"peachment of the House of Commons, and do now according to Law "proceed to Judgment against you, which I am ordered to pronounce:

"Their Lordships Judgment is, and this High Court doth adjudge,

"That you, *Thomas* Earl of *Macclesfield*, be fined in the Sum of Thirty "Thousand Pounds unto our Sovereign Lord the King; and that you shall "be imprisoned in the *Tower* of *London*, and there kept in safe Custody, "until you shall pay the said Fine."

Then the Speaker with the Commons withdrew, and the Earl of *Macclesfield* was taken from the Bar.

Ordered, "That the Speaker of this House do give Order for the Print-"ing and Publishing the Trial of *Thomas* Earl of *Macclesfield*; and that no "other Person but such as he shall appoint, do presume to Print the same.

Ordered, "That the said Earl of *Macclesfield* be committed to the *Tower* "of *London*, there to be kept in safe Custody until he shall pay the above-"mentioned Fine of Thirty Thousand Pounds to the King; and that the "Gentleman-Usher of the *Black-Rod*, in whose Custody the said Earl at "present is, do him safely convey to the said *Tower*, and deliver him to the "Constable thereof, or in his Absence to the Lieutenant, or Deputy-Lieu-"tenant of the same; and that the said Constable, Lieutenant, or Deputy-"Lieutenant do receive the Body of the said Earl, and him keep in safe "Custody there, until he shall have paid the said Fine."

Then the House adjourned to *Monday* 31, *May*, 1725;

And the Earl of *Macclesfield* was conveyed to the *Tower*, where he continued Prisoner for some Time till he paid his Fine.

CXCVI. *Proceedings in the Trial of Captain* John Porteous, *for* Murder. *Published by Order of the House of Lords.*

Curia Justiciariæ S. D. N. Regis tenta in Novo Sessionis Domo Burgi de Edinburgo, *Quinto Die Mensis* Julii, *Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros,* Andream Fletcher *de* Milton, *Justiciarium Clericum, Dominum* Jacobum Makenzie *de* Royston, *Magistrum* Davidem Erskine *de* Dun, *Dominos* Gualterum Pringle *de* Newall, & Gilbertum Elliot *de* Minto, *Commissionarios Justiciarii, dictos S. D. N. Regis.*

Curia legitimè affirmata.

Intran.

JOHN PORTEOUS, lately one of the Captain-Lieutenants of the City Guard of *Edinburgh*, present Prisoner in the *Tolbooth* of *Edinburgh*, Pannel. INDICTED and ACCUSED at the Instance of *Duncan Forbes*, Esquire, his Majesty's Advocat for his Highness Interest for the Crimes of Murder and Slaughter, and others, as is more fully mentioned in the Indictement raised against him there annext. Setting forth, THAT WHERE, by the Law of God, the Common Law, the Municipal Law and Practice of this Kingdom, and the Laws of all other well-governed Realms; Murder and Slaughter, maiming and wounding with mortal Weapons, any of the Subjects of such Realms, and the ordering, commanding, and causing any Band, or Number of Men, armed with Firelocks, and other mortal Weapons, to fall upon, wound, murder, and destroy Numbers of His Majesty's Subjects, innocently and lawfully assembled, by firing sharp Shot amongst them, whereby Multitudes are, or may be endangered, and many Men, Women, and innocent Children are, or may be killed or wounded, without any just Cause or Occasion, and without lawful Warrant, more especially when committed in the publick Streets of a City, by a Person lawfully commissioned by the Magistrats thereof, to command such Band of armed Men for the Preservation of Peace and Order, and for the Defence of the Inhabitants, and others resorting thereto; are Crimes of a high Nature, and severely punishable: YET TRUE IT IS, and of Verity, That he the said *John Porteous* had presumed to committ, and was guilty and accessary, or art or part, of all and every, or one or other of the forsaid Crimes aggravated as aforsaid; IN SO FAR AS, upon the Fourteenth Day of *Aprile* last, or one or other of the Days of the said Month, when the deceas't *Andrew Wilson*, sentenced to be hang'd to Death by the High Court of Justiciary, was to be executed at the *Grass-market* of the City of *Edinburgh*, he being at that Time one of the Captain-Lieutenants of the Town Guard of the said City, lawfully commissioned by the Magistrats and Town Council thereof; and in the ordinary Course of Rotation with the other Officers of the said Guard, being order'd to attend at the said Execution to preserve the Peace, and support the Executioner in the Discharge of his Duty, having under his Command a Detachment of about Seventy Men, he did then attend in the said *Grass-market* accordingly, and after the said *Andrew Wilson* had hung upon the Gallows, erected for his Execution, until he was dead, at least for a considerable time, and so long as there was ground to conclude he was dead; he the said *John Porteous*, shaking off all Fear of God, and Respect to his Majesty's Laws, and conceiving a most wicked and malicious Purpose of destroying, wounding and maiming Numbers of his Majesty's Subjects, the Inhabitants of the said City of *Edinburgh*, and others there assembled at the said Execution, without any just Cause or necessary Occasion, ordered the said Detachment of the Guard, under his Command to fire upon the People so assembled at the said Execution; and the Men, at least severals of them having fired, as it seems he apprehended, over the Heads of the Multitude, so as to avoid doing them harm, he with Threats and Imprecations repeated his Commands to fire, calling out to them to level their Pieces and be damn'd, or Words to that Purpose; and at or about the same Time, he levelled the Firelock that was in his own Hand, taking aim at *Charles Husband*, Servant to *Paul Husband*, Confectioner in the *Abbay* of *Holy-rood-House*, and most wickedly and murderously fired at him, whereupon he immediately dropped to the Ground, having received a Wound by a Bullet or large Drop of Lead on the left Side of his Head, which pierced into his Brain, and another large Wound likewise by a Bullet or large Drop of Lead on the left Side of his Neck, and a third Wound in his Body, and a fourth Wound in his left Hand, at least a mortal Wound, or Wounds, whereof he died in some short Space thereafter; AT LEAST, he did so level his Piece, and appeared to take his Aim at some one of the innocent Multitude who happened to stand directly over-against him, and he did fire, and upon his so firing, the said *Charles Husband*, at least one or other of the Persons particularly after-mentioned, or more of them, did immediately drop to the Ground, having received a mortal Wound or Wounds, whereof they soon after died. And by his said Example and Command, severals of the said Guard, to the Number of Twenty, less or more, did at the same Time with him, or soon after him, fire upon the innocent Multitude, whereby all, or one or more of the following Persons received mortal Wounds, whereof they soon after died, *viz*, *Archibald Ballantyne*, Son to *John Ballantyne*, younger Dyster in *Dalkeith*, received several Wounds, with Bullets or large Drops of Lead, which pierced into his Body, at least a mortal Wound or Wounds in his Head or Body, whereof he died a few Days thereafter; and *John Anderson*, Son to *George Anderson* in *Craighead*, Drover, received a Wound in the Head with a Bullet or large Drop of Lead, at least a mortal Wound or Wounds in his Head or Body, so that he died in few Hours thereafter; and the following Persons were grievously maimed, hurt, and wounded, to the great Danger of their Lives, *viz*. *Margaret Arthur* alias *Airth*, Residenter in the *Cannon-gate*, near the *Water-gate* thereof, *Jean Peal*, Servant to *James M' Dowal*, Merchant in *Edinburgh*, *David Wallace*, Journeyman Wright in *Edinburgh*, *James Philip* late Servant to *Lauder* Esquire, Residenter in the *Cannon-gate*, *David Kidd* Taylor in *Edinburgh*, *Patrick Spalding* Apprentice to *David Mitchel* Jeweller in *Edinburgh*, *James Lyle*, and *Alexander Wallace*, both Servants to *James Wright* Staymaker in *Edinburgh*, *John Miller* Taylor in *Edinburgh*, *David Ogilvie* Writer in *Edinburgh*, and *James Nivan* late Servant to *William Sellars* Writer in *Edinburgh*, Residenter in the *Potter-Row*: AT LEAST, the said Persons were so killed, wounded, and maimed, by the firing in manner, and by the Direction, as aforsaid, and by the second firing aftermentioned; for not contented with the Barbarities thus committed, after he had with the said Company or Detachment of the City Guard marched towards, or into the Place or Street called the *West-bow*, he, without just Cause or Occasion, again ordered the Men under his Command, to face about and fire upon the People, and at or about the same time, he fired a Musket or Firelock that was in his own Hand, having either reloaded, or caused to be reloaded his own Piece, or taken another out of the Hand of one of the Guard; and severals of the said Guard did, upon that second Example and Command of his, fire upon the Multitude, whereby *Alexander M' Neil* Son to *Edward M' Neil* Indweller in *Morton-hall*, received a Shot in the Head with a Bullet or Lead-Drop, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, so that he died thereof in a few Days thereafter; and *Margaret Gordon* Servant to *William Ogilvie* Taylor, in Saint *Mary Wind* in *Edinburgh*, received a Wound in the Head above the left Eye, with a Bullet or large Drop of Lead, which pierced into her Brain, at least a mortal Wound or Wounds in her Head or Body, so that she died thereof in a short Space thereafter; and *Henry Grahame* Taylor in *Cannon-Gate* received a Wound in the Head, with a Bullet or large Drop of Lead, which pierced into his Brain, at least a mortal Wound or Wounds in his Head or Body, of which he died in a few Hours thereafter: AT LEAST, by this, and the other Firings by him, and by his Order and Example above-mentioned, all or one or more of the Persons particularly above-recited, as having been killed, received mortal Wounds, of which they soon after died, and all or one or more of the Persons above-recited, to have been wounded, were grievously maimed, hurt, and wounded, to the great Danger of their Lives: AT LEAST, at the Time and Place aforsaid the said Persons above-named and mentioned to have been respectively killed and wounded, were all, or one or more of them, wickedly and maliciously slaughtered, murdered and wounded, by Wounds severally given them by mortal Weapons: AND HE WAS GUILTY, art and part, of the Slaughter, Murder and wounding of all, or one or more of them: ALL WHICH, or any Part thereof being found proven by the Verdict of an Assize,

Aſſize, in Preſence of the Lords, Juſtice General, Juſtice Clerk, and Commiſſioners of Juſticiary, he ought to be moſt exemplarly puniſh'd with the Pains of Law, to the Terror of others to commit the like in time coming. *Sic Subſcribitur*, *Ch. Areſkine, A. D.*

Purſuers.	Prolocutors in Defence.
Duncan Forbes, Eſq. his Majeſty's Advocate.	Mr. *James Grahame*, junior.
Mr. *Charles Erſkine*, his Majeſty's Solicitor.	Mr. *Henry Home.*
Mr. *Hugh Forbes*, his Majeſty's Advocate-Depute.	Mr. *Alexander Lockhart.*
Mr. *Patrick Haldan.*	Mr. *James Leſsley.*
Mr. *Hugh Murray, Kinnynmont.*	Mr. *James Holburn.*
Sir *James Elphinſtoun.*	Advocates.

The Libel being openly read, and Debate *viva voce*, in Preſence of the Judges, Pannel, and Jury, the Lords ordained both Parties to give in their Informations to the Clerk of Court, in order to be recorded, and the Purſuers to give in theirs againſt *Friday* next, at ſix o'Clock at Night, and the Prolocutors for the Pannel to give in theirs againſt *Tueſday* thereafter, and continued the Cauſe till *Friday* the ſixteenth inſtant, and ordained Aſſizers and Witneſſes then to attend, and the Pannel to be carried back to Priſon.

July 12th, 1736.

Information for his Majeſty's Advocate for his Highneſs's Intereſt, againſt John Porteous, *late Captain Lieutenant of the City Guard of* Edinburgh, *Pannel.*

THE Pannel is charged by the Indictment, with murdering, ſlaughtering, maiming, and wounding, divers of his Majeſty's Subjects, by firing with his own Hand, and cauſing and ordering a Band of armed men under his Command, to fire upon a multitude of innocent People, aſſembled to ſee an Execution in the *Graſs-Market* of the City of *Edinburgh*, without any juſt Cauſe or Provocation, contrary not only to the Laws of God and Nature, and to the good and laudable Laws of this and all other well-governed Realms, but alſo contrary to the expreſs Duty of his Office, who was one of the Commanders of the City Guard, intended to preſerve the Peace of the City, and to protect the Inhabitants thereof from all Violence; and who was on that Occaſion entruſted with the Command of a large Detachment of the ſaid Guard to preſerve Peace and Order, to ſecure the Execution of a Sentence of the High Court of Juſticiary, and to prevent all Riots and Tumults, whereby the Execution of the ſaid Sentence might be diſappointed, the Laws might be violated, and the People aſſembled might be hurt or deſtroyed.

The Indictment ſets forth, particularly, That at the Time and Place libelled, where a great multitude of innocent Perſons of all Ages, and of different Sexes, were lawfully aſſembled, to ſee the Execution of *Andrew Wilſon*, ſentenced to be hanged by the High Court aforeſaid; the Pannel having under his Command a Detachment of ſeventy armed men of the City Guard, and having conceived a moſt wicked and malicious Purpoſe of deſtroying, maiming, and wounding Numbers of his Majeſty's Subjects, the Inhabitants of the ſaid City, and others aſſembled at ſaid Execution, without any juſt Cauſe or neceſſary Occaſion, ordered the ſaid Detachment under his Command to fire upon the People ſo aſſembled; that the men under his Command, having probably, in his Apprehenſion, fired over the Heads of the People, he, with Threats and Imprecations, repeated his Commands to fire, calling out to them to level their Pieces, and be damn'd; that at or about the ſame time he levelled the Firelock that was in his own Hand, taking Aim at one *Charles Husband*, and fired at him, whereupon he immediately dropt to the Ground, having received Wounds, whereof he inſtantly died; at leaſt, that he levelled his Piece, ſeeming to take Aim at ſome one in the Croud, and fired it; and that upon his firing, the ſaid *Charles Husband*, or one or other of the Perſons in the Indictment mentioned dropt, having received Wounds by Bullets, of which they inſtantly died; and that by his Commands and Example, ſeveral of the City Guard under his Command, fired upon the innocent Multitude, whereby the Perſons particularly mentioned in the Indictment, were killed, maimed, and wounded.

The Indictment further charges, that not contented with this Barbarity, the Pannel, after he had marched off his Detachment towards, or unto the Place or Street called the *Weſt Bow*, again ordered the men under his Command, to face about and fire upon the People, and at or about the ſame time, fired a Muſket or Firelock that was in his own Hand, having either re-loaded, or cauſed to be re-loaded the Piece formerly fired by him, or having taken another out of the Hand of one of the Guard; and that ſeveral of the ſaid Guard did, upon that ſecond Example and Command, fire upon the multitude, whereby the Perſons deſcribed in the Indictment, were killed or mortally wounded: And the Indictment concludes in common Form, that the Pannel is guilty, or Actor art and part of the Crimes aforeſaid, or one or other of them.

The Charge in this Indictment is ſo heinous, that one ſhould have imagined it would have been decent in the Pannel, to have made no Objection to the Relevancy, and to have founded upon no Defence for avoiding the Effect of the Libel, if true, but to have contented himſelf with a flat Denial thereof, repoſing himſelf upon his Innocence, if he is truly not guilty of the Facts alledged, without any other Deſire, but that of having a fair Examination of unbyaſſed Witneſſes, to be produced by him as well as the Proſecutor, in order to diſcover the real Circumſtances of the Tranſaction.

But his Procurators, it ſeems, thought it their Duty to move every Objection againſt the Relevancy of the Lybel, and to offer every Defence that their Invention could ſuggeſt from a particular Relation of the Circumſtances of the whole Tranſaction, which they laid before the Court upon the Pannel's Information, and which they offered to prove, to make good their Defence.

They informed the Court, therefore, on behalf of the Pannel, That the Magiſtrates apprehending, that ſome violent Attempt might be made for reſcuing *Wilſon*, the Offender ſentenced to be hanged, had ordered the Pannel to attend the Execution, with the greateſt Part of the City Guard, to ſupport and protect the Executioner in the Diſcharge of his Office, with Directions to repel Force by Force; that to make thoſe Directions effectual, Powder and Ball were by the Town Treaſurer delivered out of the Town's Magazine to the City Guard, the morning of the Execution, with Directions to load their Pieces: That beſides this Precaution, the Danger of the Reſcue appeared to the Magiſtrates ſo great, that they deſired of General *Moyle*, and obtained a Detachment of the regular Troops, who were poſted near to the Place of Execution, in order to ſupport the City Guard, if there had been Occaſion; and whoſe Commanders were told, that the Lord Provoſt would give them Authority to fire, if it ſhould prove neceſſary; that the Pannel with the Town Guard attended accordingly the Execution; that when the Offender was hung up on the Gibbet, the Magiſtrates retired from the Scaffold, and repaired to a Houſe over againſt it in the *Graſs-Market*; that after the Offender had been hung up for ſome Time, the multitude became unruly, and began to fling Stones of great Size, and with great Violence, that ſome of the Guard were thereby hurt; one had his Shoulder-blade broke, others were bruiſed, and the Timber of the Drum was beat to Pieces; that the Inſolence of the mob growing ſtill greater, and they preſſing from all Sides upon the Guard, the Pannel, who apprehended they might have intended to carry off the Criminal, who by this Time was cut down, in order to attempt the recovering him to Life, found it neceſſary for him to keep off the multitude by Threats and Menaces; that to this End he preſented his Piece, firſt to one Quarter, and then to another, calling to the People to ſtand off, and threatning that if they did not, he would fire; that nevertheleſs, he neither fired himſelf, nor gave any Orders to fire, but, on the contrary, when ſome of the Guard, provoked by the Hurts they received, had, without his Orders or Authority, preſumed to fire, whoſe Example was followed by ſeveral others, he did all he could to prevent that miſchief, by commanding them to deſiſt, and actually did beat down the muzzle of one of the mens Pieces, who was preſenting it in order to fire; that finding he could not be obeyed, he endeavoured to march off his men, and prevailed with ſeveral of them to follow him ſome ſmall Way up the *Weſt-Bow*, when again ſome of thoſe men who followed him, provoked by what he did not know, faced about, and fired towards the *Graſs-Market*; that the firſt Notice he had of this Firing was by hearing it, which made him turn about in order to ſtop it; that at this laſt Place he neither fired, nor gave Orders to fire; that he marched as many of his men as he could gather together back to the City Guard Room; that there he prevented the mens cleaning their Pieces, that the guilty who fired might be diſtinguiſhed from the innocent who did not fire; that his own Piece had not at that Time been at all fired; that conſcious of his Innocence, and that he had on this, as well as on every former Occaſion, done his Duty with Patience and Temper, he preſented himſelf before the Magiſtrates, whereas nothing was eaſier for him than to have made his Eſcape, and that in their Preſence the Firelock which he had in his Hand was preſented, and appeared not to have been at all fired; and that therefore it was impoſſible the Lybel, as lybelled, could be true.

From this, which was ſaid to be the State of the Caſe, the Procurators for the Pannel contended firſt, That the Lybel was inſufficient, as not deſcribing with proper Accuracy the particular Part of the Street where the Perſon ſuppoſed to be ſhot by the Pannel ſtood, and his Situation with reſpect to the Pannel at the Time, becauſe thereby the Pannel was deprived of the Opportunity of making his Defence, by founding it particularly on Circumſtances which he might avail himſelf of, if the Poſition and Situation had been diſtinctly deſcribed.

To this it was and is anſwered, That the Lybel is as particular as the Law requires, deſcribing the Street where the Execution was had, which is all that the utmoſt Scrupuloſity could expect in ſuch a Caſe. Minute Circumſtances cannot be known to the Proſecutor, or certainly diſcovered, but by Proof upon the Trial: Every Circumſtance of the Pannel's own acting muſt be known to him; and therefore, if from the Poſition or Situation in which he was at the Time of the Firing, he can ſhow that it was impoſſible he could have killed the Perſon whom he is charged to have ſhot, deſcribing and proving thoſe Circumſtances, he may have Advantage from them, but cannot object to the Proſecutor, that he did not minutely deſcribe a Situation that was not known to him, and which deſcribing, perhaps erroneouſly, might miniſter an unjuſt Occaſion to a Criminal to eſcape Juſtice: Wherefore this Objection to the Form of the Indictment ought to be repelled.

But in the ſecond Place, The Procurators for the Pannel, very unneceſſarily, one ſhould think, if he is innocent of firing, or ordering to fire, and in ſome Degree inconſiſtently with that Plea, alledged, That the delivering out Powder and Ball to the City Guard; the ordering ſo great a Detachment to attend; the calling for the regular Troops to ſupport the Town Guard; the Intimation to the Commander of thoſe Troops, that they ſhould have Orders to fire, in caſe of Neceſſity; and the Direction to the Pannel to ſupport the Execution of the Sentence againſt *Wilſon*, and in caſe of a violent Reſcue or Deforcement, to repel Force by Force, amounted to a flat Order from the Magiſtrates to fire, when it became neceſſary: And that the violent Aſſault made by the mob, as aforeſaid, with Stones, which were to be conſidered as lethal Weapons, in order, as the Pannel believed, to carry off the Offender, in Hopes of recovering him to Life, made it neceſſary to repel Force by Force: Wherefore theſe Circumſtances to infer the Order, and the violent Aſſault of the mob as mentioned, ought to be ſuſtained and admitted to Proof, as a total Defence againſt the Indictment, at leaſt as Circumſtances fit to mitigate the Puniſhment, and reſtrain it from the *pœna ordinaria*; ſince the Pannel being *verſans in licito*, and engaged in the Diſcharge of a lawful Piece of Duty, if any Exceſs was committed by him, it ought not to be attended with capital Puniſhment, but ought to be corrected *extra ordinem*, according to the Degree of the Exceſs.

To this it was anſwered, That though it were true, which is not at all upon the Part of the Proſecutor denied, that the Magiſtrates, upon juſt Apprehenſions of Diſorders, and an Attempt for a violent Reſcue of the Criminal, who was ſentenced to die, had ordered Powder and Ball to be diſtributed to the Guard, had increaſed their Numbers, had obtained Aſſiſtance from the Commander of the regular Troops, with Aſſurance, that

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in caſe of Neceſſity they ſhould be authorized to fire, had directed the Pannel at all Hazards to ſupport the Execution, and prevent a violent Reſcue, and had even told him, that in caſe of Neceſſity he was to repel Force by Force, it will not in the leaſt follow, that thoſe Orders could in any Degree juſtify him, except in caſe of Neceſſity, except there had been an Attempt towards a violent Reſcue, which could not otherwiſe have been prevented, and except all the proper Precautions for diſſipating otherwiſe the Mob, and for legitimating the Act of Firing upon them, had been previouſly made uſe of.

For, in the Firſt Place, No Order from any Civil Magiſtrate whatever, can juſtify a Barbarity ſo horrid, as that which is charged on the Pannel. Had the Provoſt, and all the Magiſtrates of *Edinburgh* been preſent on the Spot, and had they ordered him to fire upon the Innocent People, when there was no juſt Cauſe for ſo doing, thoſe Orders indeed might ſubject the Magiſtrates, as well to the Penal Conſequences that attend Murder, but could not on the leaſt acquit him, who was not at all bound to obey ſuch illegal Orders, and who therefore acted at his Peril.

In the Second Place, It is not at all pretended, that the Pannel had any Orders expreſſed or implied to fire, except the Violence of an Attempt to reſcue, not otherwiſe avoidable, made it neceſſary. Had that been truly the Caſe, Firing poſſibly might have been the Pannel's Duty, the reading the Proclamation undoubtedly would have made it juſtifiable; and this the Magiſtrates knew, when they ordered Ammunition to be diſtributed, and invited the regular Troops to their Aſſiſtance: But till it became neceſſary, when there was no Hazard of a Reſcue, before any Diſorder was ſought to be quell'd by the legal Precaution of reading the Proclamation, which is intended to intimidate Rioters, and to ſeparate the Innocent from the Guilty, by giving due Notice to all thoughtleſs People, who without any Malevolence are mixt with the Multitude, to ſeparate from the ill Meaning, it was the moſt Cruel, as well as unjuſtifiable Act, that has at any Time been heard of, to make uſe of the Weapons that were put in the Hands of the Guard, for the Security of the Peace and of the People, to deſtroy ſo many Innocents, who had not in any Degree offended.

For, Thirdly, Tho' the Pannel mentioned the flinging of Stones, and the Size of ſome of them, with ſome Hurts received therefrom, yet the Libel charges, and he admits that the Criminal was cut down before this trifling Provocation prevailed with any one to fire: His Duty then, ſo far as concerned the Execution of the Sentence, was over: He alledges no Danger, nor can he in thoſe Circumſtances of a Reſcue, no Invaſion with Fire Arms, or other mortal Weapons, fit to deforce or deſtroy a Detachment of Seventy diſciplined Men, with loaded Pieces and ſcrewed Bayonets: How then can the Exigence, or the Orders defend him? If his Act had been abſolutely neceſſary, ſome Defence might have been founded on that Neceſſity joined with his Orders: But when his Allegations, tho' they were true, do not point out the leaſt Neceſſity, and are in reality founded on nothing elſe than the cuſtomary Impertinence on ſuch Occaſions, of flinging Dirt and Stones at the Executioner, tho' the Provocation thereby given might perhaps juſtify a Cholerick Man, for drubbing any of the Actors for their Wantonneſs, yet to be ſure, it could not juſtifie the Slaughtering of the Offender, far leſs can ſuch Impertinence in a few Boys, or other idle People, excuſe the firing ſharp Shot upon an Innocent Multitude, whereby Numbers of his Majeſty's Subjects were deſtroyed: And therefore it ſeems to be beyond all doubt, the Pannel can find no Shelter from thoſe Orders, or the Duty he imagines lay upon him to fire; and muſt therefore ſtand or fall, upon his being, or not being Guilty of the Facts charged upon him.

The Procurators for the Pannel endeavoured to find an Argument for him, in a late Reſolution of the Court, which ſuſpended a Sentence of the Court of Admiralty, proceeding upon an *Interloquitor* that found it neceſſary for Soldiers, who happened to kill in the Execution of their Duty, when by Order attending Cuſtom-houſe Officers, to prove, that the killing was neceſſary for the Defence of their Lives, inferring from this Reſolution, that the Court did not think it neceſſary for the Pannel to prove, that he was in Danger of his Life: And tho' all that their Obſervation neceſſarily implies were granted, they could have no Benefit by it, becauſe in this Caſe the Pannel neither does, nor can aver, that the Firing which he was perſonally guilty of, and ordered, was neceſſary for ſecuring the Execution of that Truſt that was committed to him, or for preſerving the Rights of the Crown, or any Subject.

Where a Man has by Law Weapons put in his Hand, to be imployed, not only in Defence of his Life when attack'd, but in Support of the Execution of the Laws, and in Defence of the Property of the Crown, or Liberty of any Subject, he doubtleſs may uſe thoſe Weapons, not only when his own Life is put ſo far in Danger, that he cannot probably eſcape without making uſe of them, but alſo when there is imminent Danger, that he may by Violence be diſabled to execute his Truſt, without reſorting to the Uſe of thoſe Weapons: But when the Life of the Officer is expoſed to no Danger, when his Duty does not neceſſarily call upon him for the Execution of his Truſt, or for the Preſervation of the Property of the Crown, or the Preſervation of the Property or Liberty of the Subject, to make uſe of mortal Weapons, which may deſtroy His Majeſty's Subjects, eſpecially Numbers of them, who may be innocent, it is impoſſible, from the Reſolution of the Court of Juſticiary hinted at, to expect any Countenance to, or Shelter for the inhumane Act.

And upon a Principle very near allied to this, the Pannel's Pretence, that being *verſans in licito*, and intruſted with the Execution of legal Orders, any Exceſs, that for lack of Diſcretion he may have been guilty of, cannot be puniſhed *pœna ordinaria*, ought to be repelled; for it's obvious, the Truſt repoſed in him, and the Duty expected from him, was no more than to ſee the Execution perfected, and to reſiſt any violent Attempt to reſcue, which ſhould diſappoint the Execution of the Law. Now when the Sentence of the Court of Juſticiary was executed, when the Criminal was hanged and cut down, before any Perſon fired, the Truſt repoſed in the Pannel, and the Duty expected from him ceaſed; he was no longer an Officer employed, to that end for which the Fire Arms were loaded, and his Actions came to be eſtimated of by the ſame Rules, that would have made them lawful or unlawful upon every ordinary Occaſion, where no particular Danger threatned, and where no neceſſary Service was in view.

And therefore, as in ſuch Caſes, the Pannel muſt be convinced, that nothing ſhort of being conſtituted in immediate Danger of Death without firing, could juſtify him or his Guard for making uſe of loaded Fire Arms, he muſt in conſequence acknowledge, that in the caſe in Queſtion, no Danger of Life, which he could not have avoided, having threatned him and his Guard, he was abſolutely inexcuſable for firing, and that therefore his miſchievous and temerarious Act muſt be attended with the higheſt Penalty.

An armed Man who aſſaults, and without juſt Cauſe deſtroys another Man tho' armed, and in no particular Truſt or Confidence with him, the Law conſiders and demeans as a Murderer; but when the Captain of a City Guard, who has an armed Force committed to his Care, for the Good and Safety of the Community, thinks fit, upon any ſlight Offence or Provocation, to turn thoſe Arms, and that Force upon a Crowd of Citizens lawfully as well as innocently aſſembled, he is, in Addition to the Slaughter and Deſtruction that enſues, guilty of the moſt notorious Breach of Truſt, and for an Example to others, whom it may be neceſſary for the Good of the Community to truſt, ought to be puniſhed in the moſt ſevere manner. Men ſo truſted are under double Tyes, for beſides the general Obligations of Duty and Humanity, a particular Confidence is repoſed in them, which at the Peril of their Lives they ought to anſwer.

The Procurators for the Pannel complained, That in the Indictment he was charged with a wicked and malicious Purpoſe of deſtroying, wounding, and maiming Numbers of his Majeſty's Subjects; and by the Pannel's ſober and modeſt Deportment on former Occaſions, and the whole Circumſtances precedent to the melancholy Accident now in Queſtion, endeavoured to ſhew that he had no premeditated malicious Deſign. But this again was to no purpoſe: The Proſecutor never heard, nor, ſo far as he knows, did ever any Man before this time, complain of the Wickedneſs or Inhumanity of the Pannel, and he has received no Information, by which he can be induced to think, that for any conſiderable time before the Fact complained of, the Pannel had premeditated the deſtructive Action of which he is accuſed. But then his Procurators very well know, that firing and ordering to fire, imply, and are Proof of a wicked and malicious Purpoſe of deſtroying thoſe that are fired at: *Malitia* and *Propoſitum præcedunt ictum*, in the Conſtruction of Reaſon as well as Law, and whoever wilfully murders and deſtroys his Majeſty's Subjects, muſt be demean'd as a Murderer, if his malicious Purpoſe preceded the drawing of the Tricker, or giving the Orders, one Moment, as much as if it had been preconceived a whole Year.

Theſe Shews of Defence, rather than Defences being removed; the next thing that comes to be conſidered, is the Hiſtory of the Pannel's Behaviour, during the melancholy Tranſaction, which his Procurators offered to prove, and inſiſted, would, if proved, be a ſufficient Defence againſt the Facts charged in the Lybel.

But in this the Proſecutor can by no means agree, for he takes it to be extremely plain, that every ſingle Circumſtance alledged by the Pannel may be true, and yet it may alſo be true, that he with his own Hand fired, and killed one or more of the innocent People, and that he ordered the Men under his Command to fire.

It may, for Example, poſſibly be true, that he, at ſome Period or another of the Action, called out to the Multitude to ſtand off, or that he would fire; that he at ſome one Point or another of Time prohibited the Men to fire, and ſtruck down the Pieces of ſuch as were preſenting them; and yet it may alſo be true, that he at ſome other point of Time gave the preciſe Word of Command to fire, and actually fired the Piece that was in his Hand: Before he loſt his Temper he might have threatned only, before he took the Reſolution of annoying, as well as after he ſaw Miſchief done, he might have endeavoured to prevent a particular Act of Inhumanity; but his doing ſo at certain Periods, is no concluſive Evidence, that at other Points of Time his Conduct might not have been very different.

Were his giving Orders, or actual firing dubious, the Circumſtances mentioned for the Pannel might create a ſtrong Preſumption for him: But if it ſhall be proved, as it is charged in the Lybel, that he actually fired the Piece in his Hand oftner than once, and gave poſitive Orders to fire; what can it avail him, that, at ſome other Periods of the Fray, he behaved himſelf in a different manner, ſince both the one Allegation and the other may be true:

But the Procurators for the Pannel inſiſted, That though the Propoſition they undertook to prove was in ſome degree a Negative, yet it was ſo circumſtantiated as to be capable of a poſitive Proof; for they ſaid that credible Witneſſes could be produced, who would inform the Court and Jury, that during the whole Fray, they kept their Eyes upon the Pannel, and were attentive to his Actions; and that they could take upon them to ſay, that thorow out the Scuffle he did not fire his Piece, nor order the Guard to fire, but that he threatned to fire, which might by Perſons at a diſtance who heard the Word Fire only pronounced, be miſtaken for a Command, and that he preſented his Piece only in a menacing Poſture, but without firing, which might have miſled the Spectators into an Opinion that he did fire, though he really did not; if any one who was near him happened to diſcharge his Shot about the ſame time.

This reaſoning however is manifeſtly defective, becauſe the Evidence of the Witneſſes, who ſhall ſay, they did not ſee or hear, bears no Proportion in point of Weight, to the Teſtimony of thoſe, who ſhall upon Oath poſitively ſay, that they did hear or ſee.

And beſides the obvious Reaſon for maintaining this Diſtinction in the common Caſe, there is a particular Conſideration that ſupports it, in the caſe of a Fray or Tumult, where Shots are fired, Murder enſues, and there is a general Confuſion and Surprize. No one could poſſibly be ſo intereſted in keeping his Eyes upon the Pannel, when it could not be foreſeen there would be occaſion to give Evidence touching his Behaviour, as not to be lyable to be carried off from that Object, upon any freſh Surprize that happened in the Tumult: The firing of a Shot, the flinging of a Stone, the extraordinary Behaviour of any one of the Multitude, or of the Guard, might imperceptibly have drawn the Eyes and

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Attention of any Spectator from the Pannel, to that new Object, and prevented his seeing or hearing what he said or did in the mean time: And therefore no Witness, or Number of Witnesses, who should take upon him or them to say absolutely, That the Pannel did not at any Period of the Fray fire, or order to fire, would at all be credible; at least most certainly they could not be credited against such Witnesses as should positively say, that they saw or heard him fire, or order to fire.

If Witnesses shall say against the Pannel, that they saw him present his Piece and fire, and for their *Causa Scientiæ* shall aver, that they observed Fire and Smoke issuing out of the Muzzle of his Piece, and a Man drop down dead in the Place towards which he pointed it, will that Evidence be sufficiently contradicted by Persons who may say they observed no such Thing, or that others of the Guard fired about the same Time, and at the same Place? It is humbly thought it cannot, because this is setting up a Negative Evidence only against positive, which neither Law or Reason permits.

And if credible Witnesses shall aver, That the Captain distinctly ordered the Guard to fire, can it avail him that other Witnesses heard him threaten the Croud, that if they did not retire he would fire, without hearing the positive Orders for firing given? In a Tumult every Individual cannot possibly hear every Thing that passes; but then it is no Evidence that particular Words were not uttered in a Fray, that some Persons present at a Fray, did not hear or attend to them.

And the Pannel in framing his Defence on this Article, does not seem to have attended to what is expresly libelled against him, That in great Anger he said to the Men under his Command, upon their firing over the Heads of the Multitude, Level your Pieces, and be damn'd. Will this Circumstance, should it be proven, be at all consistent with that part of the Defence, which tends to render the Expression Fire dubious? If the Pannel's Passion moved him to utter the Expression, Level your Pieces, and be damn'd? is it at all doubtful in what Sense the Word Fire was pronounced? These Things are, 'tis thought, too plain to be further insisted on.

The only remaining Circumstance, on which the Procurators for the Pannel seemed to lay Stress, was the Condition of his Firelock, when the Action was over, and his voluntary presenting himself before the Magistrates, when he could have made his Escape; from which they would have inferred, an Impossibility that he was guilty of actual firing, his Firelock appearing not to have been discharged, and a strong Improbability that he was conscious of having given any criminal Orders, since without Necessity he freely presented himself to Justice.

Now as to these Matters, it must be observed, First, That the Condition in which the Pannel's Firelock appeared, can yield no Evidence for him: A Piece that has been fired may be re-loaded, and so cleaned and brushed-up, as to leave no Vestige or Mark of the former Firing; and the Piece which the Pannel made use of in firing, might have been changed, and another produced to the Magistrates in the Room thereof.

But *2dly*, The Indictment no where avers, that the Pannel made use of his own Piece when he fired. Where he is first charged with firing, no more is said, than that he levelled the Firelock that was in his Hand, and fired it at *Charles Husband*. Now the Firelock that was in his Hand, might have been that belonging to another Man, as well as his own: And in the other part of the Indictment, where he is charged with firing, it is said that he made use of a Musket or Firelock that was in his Hand, having either re-loaded, or caused to be re-loaded his own Piece, or having taken another out of the Hand of one of the Guard: So that the Lybel in every Article of it may be true, and proved; and yet it may be also true, that the Pannel did not fire his own Piece.

And as to the Article, That the Pannel, conscious of no Guilt, appeared voluntary before the Magistrates, when he could easily have made his Escape: It can possibly infer no Presumption for his Innocence, if the Facts charged in the Indictment are made good. Whoever shall be satisfied by the Proof, that the Pannel acted in manner lybelled, must be convinced that he was governed in his Actions by no Principle of Discretion, and must therefore lay no weight upon an Act of his, which can yield no Inference, unless he is supposed to have been governed by Discretion and Prudence.

Having thus run over the several Circumstances of the Pannel's Narrative, the Prosecutor apprehends, he may safely conclude, that they cannot jointly or separately, be sustained as a Defence, against the Charge laid in the Indictment: Because, tho' every Circumstance alledged were undeniably proved, the unhappy Pannel might nevertheless be guilty, and a positive Proof of the Facts charged must necessarily prevail with every unbiassed Jury-man, to join in a Verdict against him.

The Prosecutor is nevertheless far from wishing, that the unfortunate Pannel should be deprived of an Opportunity of laying every Circumstance that may make for his Defence before the Jury by Proof, tho' he humbly insists they cannot be sustained as a Defence Relevant to assoilizie from the Indictment. It is possible the Fact may come out otherwise in the Trial, when Witnesses are upon Oath, than it did when the Examination was taken in the Precognition; and should the Proof of the Indictment be in material Circumstances defective, the Evidence offered for the Pannel may have its weight; wherefore, so far as the Forms of the Court will allow, the Prosecutor makes no Opposition to the indulging the Pannel to bring what legal Evidence he can, for the Information of the Jury.

It is far from being the Interest of the Crown, or of the Publick, that an innocent Man should suffer; but it is greatly the Interest of both, that a fair and strict Inquiry be made, where the Guilt lyes, when a Massacre so cruel and so dangerous happens, to the End, that if the Officer, who has Power put in his Hand, for the Preservation of the Peace, and for the Protection of the People, should, from any unjust Motive whatever, make use of that Power in Breach of the Laws, to the Destruction of the People, he may be made an Example to restrain others in the same Circumstances, from the like monstrous and dangerous Abuses in time coming.

In respect whereof, *&c. Sic subscribitur,* *Dun. Forbes.*

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July 13th, 1736.

Information for John Porteous, *late Captain Lieutenant of the City Guard of* Edinburgh, *against his Majesty's Advocat.*

THE Pannel stands indicted at the Instance of his Majesty's Advocat, for his Highness's Interest, for the Crimes of Murder, and Slaughter, Maiming, and Wounding; and the Facts charged against him, from whence these Crimes are pretended to be inferred, are these following; That the Pannel being one of the Captain Lieutenants of the said City Guard, was by the Magistrates of the City, ordered to attend with a Detachment of about seventy Men of the said Guard, at the Execution of *Andrew Wilson*, sentenced to be hanged by the High Court of Justiciary; and that the said *Andrew Wilson*, having hung upon the Gallows, erected for his Execution in the Street called *The Grass-market*, until he was dead, at least for a considerable Time, and so long, that there was Ground to conclude he was dead, he the said Pannel, conceiving a wicked and malicious Purpose of destroying, wounding, and maiming the Persons, Inhabitants of the said City, and others assembled at the said Execution, did, without any just Cause or necessary Occasion, order the said Detachment under his Command to fire upon the People so assembled; and that some of the Men having fired, as it would seem the Pannel apprehended, over the Heads of the Multitude, with Intention to avoid doing them harm, he the said Pannel did with Threats repeat his Commands to fire, calling out to the Men to level their Pieces, and be damn'd, or Words to that Purpose; and that at the same time he levelled the Firelock that was in his own Hand, taking Aim at one *Charles Husband*, and having fired the said Firelock, the said *Charles Husband* immediately dropt to the Ground; having received a Wound or Wounds by Bullets or large Drops of Lead, whereof he died in a short Space; and that by the Pannel his said Example and Command, severals of the said Guards, to the Number of about twenty, did at the same Time, or soon thereafter, fire upon the innocent Multitude, by which Fire two other Persons were killed, and several others wounded, maimed, or hurt; and that the said Pannel having thereafter marched off the said Detachment of the Guard into that Part of the Street aforesaid called *The West-bow*, he did again, without any just Cause or Occasion, order the Men under his Command to face about and fire upon the People; and that at this Time, the said Pannel did fire a Musket that was in his own Hand, having either reloaded, or caused to be reloaded, his own Piece or Firelock, or taken another out of the Hands of one of the Guard; and that severals of the said Guards did upon that second Example and Command of the Pannel's, fire upon the Multitude, by which Fire three other Persons were killed; at least that, by the said Firings of the Pannel, or of the Firings of the other Men in the said Detachment of the Guard, proceeding from the Pannel's Order and Example, the several Persons mentioned in the Indictment to have been killed, maimed, or wounded, were all respectively killed, wounded, or maimed: Whereby the Pannel is guilty of the Killing, Wounding, or Maiming the said Persons; at least is Art and Part thereof, or accessary thereto; from whence the Indictment concludes, That the Pannel ought to be punished with the Pains of Law, *i. e.* Capitally.

To this Indictment the Pannel pleaded not Guilty; for that he had, at no time, during the Execution of *Andrew Wilson* aforesaid, given any Order, or shewed any Example to the said Detachment of the Guard then under, or that ought to have been under his Command, to fire upon the Multitude so assembled; and that he did at no time fire any Piece or Firelock himself upon the said Croud; that tho' it might be true, that at, or about the Time of the said Execution, several Persons were killed and wounded by the Firings of that Detachment of the Guard, which indeed ought to have been under the Pannel's Command, and which he does, with great Grief and Sorrow, regrete; yet that, as such Firing proceeded wholly from the Men in the said Detachment, without any Order or Example from the Pannel, so he could not be charged therewith, however fatal or tragical the Consequences of such Firing may have proved.

That tho' the Pannel, as conscious of his own Innocence, could safely rest his Trial upon the Denial of the Facts aforsaid, and upon such Proof, as he could bring, by the Evidence of Multitudes of Persons of undoubted Credite, who happened to be present, close by him, during this unhappy Scene, that he was nowayes instrumental in the Killing or Wounding the said Persons, but that, upon the contrary, he did all that was in his Power to prevent and restrain the said Firing upon the Multitude; yet, that he was advised by his Counsel, that they could not, during the conducting of his Trial, consistent with their Duty, suffer him the Pannel to omit or abandon any Defence that was competent to him in Law; and that therefore, as by the Law of *Scotland*, the Pleading to an Indictment, upon supposed Facts, is no legal Admission of such Facts, the Pannel was at Liberty to plead any other Exception that lay against the Form of his Indictment, or even to plead, that tho' such Firing had proceeded from his Order or Example, yet even in that Case, such Firing, and the Consequences wherewith it was attended, was not sufficient to support the Charge against the Pannel, of the Crimes of either Murder, Slaughter, Maiming, or Wounding, or to render him obnoxious to the Pains libelled.

And in the Entry of the Debate, the Procurators for the Pannel ask Liberty to offer to the Court, a full Recital of the Behaviour of the Pannel, during the Execution of the said *Andrew Wilson*, and for some short Space previous and subsequent thereto; and also, to offer a short Relation of what they apprehend was the Cause, that the Execution of the said *Andrew Wilson* was attended with such an unusual Confluence of People, and was ordered to be guarded and overseen by such a numerous and unaccustomed armed Force.

The said *Andrew Wilson*, along with one *Robertson*, and others, had been sentenced to Death by your Lordships, for robbing one of the Collectors of his Majesty's Revenue of considerable Sums of Money of the Publick; and while they lay under this Sentence, they were allowed, as usual, to go to the Church adjoining to the Prison, for the Benefite of Divine Service, under the Custody of a small Detachment of the City Guard;

Guard; and while the Convicts were thus at Church, *Robertſon*, one of them, found means to eſcape from his Keepers of the Guard, by ſuddenly jumping over a Pew, and getting out at the Door of the Church; his Retreat apparently being favoured by the Mob, or loweſt Sort of the People, he eaſily made his Eſcape, without having been ever ſince overtaken.

From this Eſcape of *Robertſon*'s, ſo favoured by the Mob, and from ſtrong Surmiſes and Suggeſtions, that, at the Execution of *Wilſon*, a Reſcue was intended by the Mob, which indeed there was a reaſonable Ground to apprehend; becauſe the Commons have imbibed a pernicious and abſurd Conceit, as if the Robbing of the Publick Money, was a Crime more pardonable, than private Robbery: Therefore it was, as the Pannel apprehends, that the Magiſtrates of the City, from a Senſe of their Duty to prevent the Execution of the Laws being any further defeated by the Reſcue of *Wilſon*, took the ſtrongeſt Precautions that the Execution of him ſhould be made effectual.

In Conſequence whereof, as would ſeem, the Provoſt of the City ſent for the Pannel, in whom, he muſt take the Liberty to ſay, Confidence was generally put upon thoſe difficult Occaſions, and told him, that there being great Apprehenſions of a Mob at *Andrew Wilſon*'s Execution, that therefore there was a Neceſſity to be well prepared to prevent their Deſigns; and for that end, that he would have the whole City Guard to attend at the Execution, he having given Orders to the Town Treaſurer to furniſh the Men with Powder and Shot, and ſuch other Military Ammunition as might be neceſſary for the Uſe of the Men in maintaining the Peace of the Town, and ſupporting the Execution of the Laws. And this Conference with the Provoſt happened upon the *Monday* preceding the Execution of *Wilſon*, which followed on the *Wedneſday* thereafter. But it ſeems the Magiſtrates of the City, not thinking even this Precaution ſufficient, upon the *Tueſday* thereafter, the Provoſt ſent the Pannel with a Letter to General *Moyle*'s Reſiding near the City, and Chief Commander of the Forces in *Scotland*, telling the Pannel, that the Import of this Letter was, deſiring from the General an Order for a Party of the Regiment lying in the *Cannon-gate* to enter the City (a Thing very uncommon, except in the Caſe of urgent Neceſſity) in order to over-awe the Mob, and thereby maintain the Peace during the ſaid Execution.

It ſeems this Letter to the General induced him to ſend a verbal Meſſage in return thereto, by a Perſon of known Honour and Veracity, Major *Pool*, of that Regiment now lying in the *Cannon-gate*, who told the Provoſt, that the General wanted to know of him, what part the King's Troops were to act, and what Precautions had been taken for preventing any Inſult or Invaſion that might be made upon the Troops, or what Length theſe Troops might go in the caſe of Tumult or Diſturbance. To which the Provoſt made anſwer, That there was no reaſon to apprehend any Inconveniency would happen to the King's Troops, becauſe he would have them only to parade, for a Terror to the Mob, in a Street called the *Lawn-Market*, removed from the Sight of the Execution, but at a ſmall Diſtance only, where nevertheleſs they would be ready at a Call in caſe of Neceſſity; but that he had ordered the whole Band of the City Guard to attend at the Execution it ſelf, with proper Arms and Ammunition, namely, Slug Shot, with Orders to repel Force by Force, and even to diſcharge their Arms among the Mob in caſe of Reſiſtance.

On *Wedneſday* the Day of the Execution, in the Forenoon, the Pannel attended the Provoſt, and told him, That in Obedience to his Commands, the Men were all ordered to be in Readineſs, their Arms put in order, and loaded; whereof the Provoſt approved, and told the Pannel, That he was to be ready betwixt Two and Three in the Afternoon, with his Guard, and to draw out until the Party of the King's Troops from the *Cannon-gate* paſt him; and that ſo ſoon as the King's Troops were drawn up in the *Lawn-Market*, the Pannel, with the City Guard ſhould forthwith march to the Priſon, and conduct the Priſoner to the Place of Execution, without allowing him firſt to go to the Town's Council-houſe, as uſual, ſtill with Intention, as would ſeem, to prevent any Opportunity of Reſcue, or Diſturbance upon that Head; and at this Time in the Forenoon the Pannel humbly propoſed to the Magiſtrates of the City, that they would ſend a Proclamation through the Town, as a Caution to ſuch innocent unwary People, as might by Curioſity be drawn to the Sight of the Execution, warning them of their Danger, in caſe any Diſturbance ſhould happen, or attack be made upon the Guard. And accordingly *George Lindſey*, one of their Clerks, made a Scroll of the ſaid Proclamation to be ſent through the Town; but for what Reaſon it was not proclaimed, the Pannel knows not, and at the ſame time the Pannel remembers ſome one or other of the Common-Council of the City propoſed in caſe of Diſturbance, the reading of the Riot Act, and for that Purpoſe ſent for a Dozen of Copies of the Act to a Bookſeller's Shop, in order to diſtribute them among the proper Officers of the Law, authorized to read and proclaim ſuch Act; but it ſeems at no time either of thoſe Propoſals were put in Execution; nor at the Time of the ſaid Execution, did any Officer of the Law, authorized to proclaim ſuch Act, attend with the Pannel.

A ſhort ſpace before the Pannel marched with his Men from the Guard-houſe, towards the Place of Execution, he was heard ſay, That he had no Cartrages in his Box; on which a Corporal told him, that he would get him ſome; and accordingly the Corporal did, in preſence of ſeveral of the Men, open the Pannel's Cartrage Box, wherein it was obſerved that there were no Cartrages, and put three Cartrages therein, with one of which the Pannel loaded his Piece, and immediately marched away with the Men.

When the Criminal was conducted to the Scaffold erected for his Execution, the Detachment of the City Guard were poſted on the Street, in a Circle ſurrounding the Scaffold, in order to keep off the Mob; but becauſe of a certain Building, called the *Corn-market*, nigh adjoining to the Scaffold, part of the Men did alſo incircle that Building. And here it may not be improper for the Court to caſt their Eye upon a Plan of the Ground, and the Poſture of the Men, in order to have a clearer view of the Deſcriptions to be hereafter mentioned.

So ſoon as the Criminal was thrown over the Ladder, and ſo left hanging upon the Gibbet, the City Baillies immediately withdrew nigh to, directly oppoſite, and in view of the Scaffold, but without leaving any Order or Officer of the Law to attend with the Pannel: And it had happened, that ſome ſhort Space before the Act of Execution, while the Miniſter was aſſiſting the Criminal by Prayer, the Pannel had gone up to join, leaving his Piece with the Serjeant; and ſo ſoon as publick Prayer was ended, or ſome ſhort time after, and the Convict left to his own private Devotion, the Pannel took back his Piece in his Hand, and afterwards came off the Scaffold, and poſted himſelf at the Weſt End of the Detachment of the Guard.

So ſoon as the Convict had been hung up as aforeſaid, and that the City Baillies had withdrawn from the Scaffold, the Mob became to be troubleſome, intending, as would ſeem, to uſe this laſt Shift, immediately to cut down the Criminal, and endeavour to bring him to Life by bleeding; an Expedient, which when timeouſly applied, has on many other Occaſions been known to be attended with Succeſs, and the Mob fell a-murmuring, that they would have him inſtantly cut down, and if it were not quickly done, they would do it themſelves: And at this time they preſſed hard upon the Guard, ſtriking at them with Sticks, ſeizing of their Fire Arms and Bayonets, and throwing exceeding big Stones at the Guard; one whereof cut a Drummer to the Skull, another broke one of the Men's Shoulder Bones, another wounded one of the Men's Legs, and ſeveral others of the Men were wounded, whereby they are yet unable to do Duty: The Truth of all which can be atteſted by their common Surgeon, who is by the City ordered to attend them upon all Exigencies.

This Inſolence in the Mob alarm'd the Pannel, and ſtill obſerving it to encreaſe, he was apprehenſive that the Mob might obſtruct the perfecting of the Execution; for no Criminal can be cut down from the Gibbet, but upon the Order of a City Baillie, upon a Judgment that the Criminal has hung up until he is compleatly dead, agreeable to the Sentence, which always commands ſuch Convict to be hang'd until he be dead; therefore it was that the Pannel ſent a Meſſage to the Baillies, to know if he ſhould ſuffer the Criminal to be cut down from the Gibbet; who brought back an Anſwer, That the Convict was to hang there yet for a Quarter of an Hour.

At this time the Mob wax'd exceeding bold, became very turbulent, and preſt hard upon the Guard, and while the Pannel was endeavouring to keep off the Crowd from preſſing among the Soldiers, at one End of the Scaffold, ſome of the Convict's Friends, aſſiſted by the Mob, catched an Opportunity and cut him down without any Order: And tho' the Convict, being thus cut down, was in the Poſſeſſion and Keeping of the Mob, who were endeavouring to recover him to Life, by cauſing the Veins of both Arms to be opened: Whether it was that they were apprehenſive, that the Guard would recover him out of their Hands, as having been cut down without Order; or that the Officers of the Law were deſigned to ſee to his Interment, and that he was executed to death; or that the Convict's Body was intended to be given to be anatomized by the Surgeons, as is ſometimes practiſed, where Perſons of low Degree or notorious Offenders are ſentenced to Death; or from whatever Motive it proceeded, the Mob began to inſult and attack the Guard; And upon this Attack it was, that the Man aforeſaid had his Shoulder Blade broken; and another ſo bruiſed, that he has been never able to do Duty ſince; and the Timber of the Drum was broke by the force of an exceeding large Stone that was thrown, and ſeveral others of the Men were hurt and wounded.

This Violence in the Mob ſo alarmed the Pannel, that he made a Step or two forwards to the Weſtward of the Scaffold, turning about his Face towards the Weſt Port, from whence the throwing of the Stones moſtly proceeded; and having put his Piece to his Shoulder, he levelled it at the Mob, and pointing it around to them, threatened with an audible Voice, That if they would not be at Peace, and leave off throwing Stones, and attacking the Men, he would fire among them; but immediately recovered his Piece without firing it; the Threats being only intended to intimidate the Mob.

But unfortunately upon this enſued the whole Tragical Scene; for no ſooner had the Pannel ſtept forward, threatening to fire as aforeſaid, but one of the Men came up from behind him, and running by him upon his Right Hand, inſtantly diſcharged his Piece; upon which one of the Crowd dropt down, ſuppoſed to be *Charles Huſband*, and which *Charles Huſband* will upon Proof be found to have been the Perſon who tumultuouſly ſtept in and cut down the Criminal.

Immediately upon this firſt Fire, another of the Guard came up to the Pannel, with his Piece preſented and cocked, and aſk'd if he ſhould fire; to which the Pannel anſwered with ſome Vehemence, No, by no Means, and ſtruck up his Piece, bidding him go to his Rank, and actually thruſt him thereto.

After the Example of this firſt Fire, ſeveral more of the Men were heard to diſcharge their Pieces, but upon what Provocation the Pannel cannot tell; theſe Shots having been at a conſiderable Diſtance from the Pannel, proceeding, as is ſuppoſed, from ſuch of the Men as were ſtanding at the South-weſt Corner of the *Corn-market*; whereas, as has been noticed, the Pannel was ſtill ſtanding at his former Station, to the Weſt of the Scaffold and Gibbet.

The Pannel not knowing the fatal Conſequences of thoſe Shots, but ſuſpecting however that Miſchief would happen, ſeeing the Men had been ſo raſh as to fire without Orders, thought it was the beſt Courſe he could take, to lead off the Men of the Guard as ſoon as he could; and for that end he called aloud to them to follow him, and after having given Orders to the Serjeants to gather them together (for it was impoſſible to bring them into Ranks by the confuſion of the Mob) he marched off as many of them as he could find, by the North-ſide of the Scaffold, towards the Foot of the *Weſt Bow*, and towards a Parcel of the Men, whom one of the Serjeants had got together at the Foot of the *Bow*; but as he was going to join that Parcel of the Men, he heard a Piece fired near him, with which he was a good deal ſurprized, and yet more, when he obſerved two or three People fall to the Ground, and which Obſervation was the firſt thing that greatly alarmed the Pannel, as knowing

knowing from thence, that certainly Miſchief was done: But it is certain that this fatal Shot did not proceed from the Pannel, but from a certain Man in the Guard, that can be well proven; who, after having fired this Shot, immediately retired amongſt the Croud, and then gote himſelf joined to the Party: And ſurely the Magiſtrates of the City will remember, that when a Precognition was taking of the ſeveral Facts and Occurrences upon this tragical Day, that a certain Perſon told them, That if they would be pleaſed to ſiſt the whole Band of the Guard before them, he would point out the Man who made this laſt Fire, but the Magiſtrates overlooked this Offer.

As ſoon as the Pannel ſaw there was no reſtraining the Men from Irregularities, he marched off ſo many of them as he had gote together, without taking time to forme them into any Order; giving Orders at the ſame time to the Serjeants, to beat and preſs off the reſt with all manner of Diſpatch. Upon which he obſerved thoſe that had ſtraggled come off partly from about the Scaffold, and partly from Eaſt-end of the *Corn-market*, and fall into the Rear; and while the Pannel was thus marching up the *Bow*, upon the Front of the foremoſt Part of the Men, and had come as far as the Turn of the *Bow*, he heard ſome dropping Shots firing in the Rear, and about thirty or forty Paces diſtant from him, which he ſuppoſes may have proceeded from thoſe Men who were ſtraggling upon the Eaſt-ſide of the *Corn-mercate*, nigh to the Head of the *Cow-gate*, but upon what Occaſion the Pannel knows not; but being alarm'd with the Shots, he looked back, ſuppoſing the Men might be attack'd by the Mob, and obſerving no Marks of any ſuch Attack, he thought the moſt prudent Courſe he could take was forthwith to march off the Men.

It falls here to be noticed, That all this Firing, from firſt to laſt, and whereby ſo much Miſchief has been done, laſted not above two or three Minutes; and therefore, conſidering the Violence of the Mob, and the ſtraggling Situation of the Men of the Guard, and ſuppoſing the Truth of the above Narrative, which will be atteſted in proper Time by the Oaths of many Gentlemen of undoubted Veracity; and who had fair Opportunity of Obſervation at the Time, it is left with the Court, and to every impartial By-ſtander, whether the Pannel could well have done more for the Safety of the Burgh; conſidering that it ſhall alſo be proved, that during theſe few Minutes of Firing, accompanied with great Hurry and Confuſion, the Pannel gave ſeveral repeated Orders to the Men to reſtrain from firing; but obſerving thoſe Orders prove ineffectual, he endeavoured to ſweep them off the Field with all Manner of Precipitation.

The Pannel marched on with the Men to the Guard-houſe, and as he thinks with Coolneſs and Deliberation, paſſing by the King's Troops in the *Lawn-market* (a Thing generally eſteemed ſomewhat inconſiſtent with Guilt, eſpecially ſuch horrible Guilt as he is charged with.) Upon his Arrival at the Guard-houſe, he drew up his Men there, ſending a Serjeant to the Provoſt for Orders, which were brought, That they ſhould wait on their Arms till the King's Troops paſt; and ſome of the Men in waiting, offering and attempting to clean their Guns, but the Pannel diſcharged it, and would not allow it to be done; mean Time a certain Perſon of Credit came up to the Pannel, and aſked if he had fired? To whom he made Anſwer, He had not; but the Perſon not being ſatisfied with the Anſwer, put his Finger into the Muzzle of the Pannel's Piece, and after having rubbed it about, and after having alſo viewed the Lock, ſaid to the Pannel, I ſee you have not fired, and I am glad of it.

The King's Troops having paſſed the Guard, the Pannel filed off the Men into the Guard, and ordered the Serjeants to keep them cloſe till further Orders, and by all means not to ſuffer them to clean their Pieces: And at the ſame Time the Pannel delivered his Carabine, loaded as aforeſaid, at the Guard Door, to one of the Guard, neither entering the Guard himſelf, nor any other Houſe, but went immediately to the Provoſt: Thus his own Piece was brought back loaded, and apparently without having been fired, and the other two Cartrages which he had gote at the Guard were found upon his Return in his Cartrage Box.

When the Pannel went up to the Provoſt, ſome Perſon there preſent alledged he had ſeen the Pannel fire, which he contradicted, and beg'd the Provoſt to ſend for his Piece, which he told he had deliver'd at the Guard as aforeſaid, and that it would appear from inſpecting of her, that ſhe had not been fired: And the Piece being accordingly ſent for, and brought up to the Council Chamber, and after being ſtrictly inſpected, it was agreed by all preſent that ſhe had not been fired; and in this Condition ſhe ſtill lies loaded, in the Cuſtody of the Magiſtrates along with the Cartrage Box, containing the two Cartrages, as aforeſaid.

Though the Pannel has a pretty important Prize at Stake, yet he reſts in full Security, that he will prove to the Conviction of the Court every Article above recited, and a good deal more in his Behalf to be hereafter mentioned: And if it ſhould here be made Matter of Wonder, how ſuch different Accounts as are given of this Matter can conſiſt together, ſeeing Numbers of People are impreſſed with the Guilt of the Pannel, and that even good, well-meaning People, who were preſent upon the Spot, perſiſt in affirming that the Pannel was guilty, by both firing himſelf, and giving repeated Orders to fire:

The Pannel can give no other Account of this Matter than in this Way. A miſerable Slaughter was, ſomehow or other, committed within the Town. The Guilt muſt be laid to ſome-body's Door; and whether any Art might be uſed to lay the heavy Load upon the Pannel, in order to draw the Attention of the Multitude from another Point in View, the Pannel ſhall not ſay; but intreats upon the Honourable Court, and every candid Reader, who may happen to take up this Information, to look into the *Caledonian* Mercuries of the fifteenth and nineteenth of *Aprile* laſt, Papers ſuppoſed to be publiſhed by Authority; where will be found a moſt charitable Account of the Matter, touching this misfortunate Pannel, who was then lying in cloſe Confinement, without any Body being allowed Acceſs to him; and of conſequence, could have no Opportunity of vindicating himſelf, until once the Prejudices were deep-rooted and rivetted, ſo as even to catch the unwary, though well-meaning, Part of the People; and theſe beatiful Relations of this Tranſaction, are adorned with ſome witty Sarcaſms, very proper to this melancholy Occaſion, and painted out with ingenious Reflections, and quaint rhetorical Invectives, very ſuitable to the Authors of theſe hiſtorical Relations.

And indeed the Authors of theſe Accounts of the Matter, whoever they are, have the Impudence to affirm, and the Wickedneſs to endeavour to fix it upon the Pannel, as an Inſtance of Premeditation and Felony forethought, that the Pannel had ordered the Detachment of the Guard to load with Ball and Slug-ſhot, before they marched from the Guard: And this worthy Author affirms, that ſuch doing was unprecedented, and ſuch as the Pannel would not pretend Orders for; notwithſtanding that it is now, with his uſual Candor, admitted by his Majeſty's Advocat in his Information againſt the Pannel, and dare not be denied, but that the Pannel had Orders to ſee the whole Men's Pieces loaded with Bullet and other Shott, and even to fire thoſe Pieces amongſt the Mob in caſe of Exigency.

The Prejudices againſt the Pannel being once artfully rooted, it was an eaſy Matter to catch the giddy Mob, who are not able to look back and decern the true Springs and Cauſes of Things: For ſuch is the Nature of human Paſſions, that if they are once artfully moved, they will be apt to miſguide the Underſtandings, even of Perſons of Obſervation; and thus the Speat having once been created againſt the Pannel, it grew into a Torrent, and flew like a Train of Fire, every one adding Fewal to the Flame, and Sparks originally increaſe into a mighty Combuſtion: And ſo, in like manner, Things entirely of themſelves innocent, may be multiplied into horrid Cruelties and ſavage Barbarity.

It might alſo operate to the Prejudice of the Pannel, that this Scene was acted in a very ſhort Space, attended with great Commotion and Confuſion. Words and Actions might be miſconſtrued (whereof more particular Notice ſhall be taken hereafter) whereby Perſons even of Judgement might be deceived, and thereby fall into the vulgar Notions. And here it cannot be deemed an uſeleſs Digreſſion in the Pannel to give a Caution to all Gentlemen, who may happen to be called in Evidence upon this Trial, (for 'tis feared the Mob are not capable of this Advice) not to affirm Things upon Oath, except their Obſervations have been accompanied with all that Certainty which thoſe Senſations wherewith Mankind is endued, can admit of; becauſe any inconſiderate Raſhneſs to the Prejudice of the Life or Fame of the Pannel, cannot fail, for hereafter, to be attended with very painful Stings of Remorſe.

It was obſerved for the Pannel, as a Thing that could not be denied, that upon many former Occaſions, he had been fingled out as the fitteſt Perſon to maintain the Peace of the City, by quelling of Mobs and Tumults; and that he had never hithertofore, during all the many Occaſions on which he had been employed, ever diſcovered any imprudent Raſhneſs or cruel Temper in the Exerciſe of his Command, but had expoſed his Perſon to very great Danger, rather than involve the City in Blood, or proceed to ſuch Extremities, as the Law even would have entirely juſtified.

It was alſo obſerved in Behalf of the Pannel, that it was no new Thing for the private Men in the City Guard, who, though they are tolerably acquainted with Diſcipline, yet are not ſubject to the military Law, to take upon them to fire upon the Multitude, without any Order from their Commander, whereof the following Inſtances are offered, and which cannot be denied; to witt;

That at the Settlement of Mr. *Wotherſpoon*, as a Miniſter in the Weſt Church Pariſh, a Party of the City Guard under the Pannel's Command, did, one or more of them, in the Rear Ranks, within the Weſt-gate of *Edinburgh*, while the Pannel was marching on their Front, face about and fire upon the Mob, without any Order, and by which Fire ſeverals were dangerouſly wounded; and the like happened in a few Years ago, after the Execution of one *Campbel*, when a Detachment of the City Guard were conducting the Corps of the Perſon executed, which was delivered over to the Surgeons of *Edinburgh*, by Order of the Magiſtrates. And the ſame Thing happened a few Years ago at a Race at *Leith*, where the Party of the Guard was commanded by Captain *Lind*, whereby ſeveral Perſons were wounded. And another Inſtance was given, where the ſame Irregularity happened, within theſe few Moneths, at the Execution of *Brown* the Smith, when the Detachment of the City Guard was commanded by both Captains, *Lind* and *Ferguſon*. And, indeed, innumerable other Inſtances might be given of the Raſhneſs of the Men in this Particular, which it is needleſs to condeſcend upon, becauſe they are notourly known in the City.

It may alſo deſerve Notice, that the private Men of the Guard might be prompted to fire without Orders, partly from Reſentment, that *Robertſon* before-mentioned had eſcaped out of their Hands, and partly from being encouraged by the general Order they heard was given by the Magiſtrates to fire, in caſe of Reſiſtance: for it is now found, that ſeverals of them were heard to ſay, before they went out to the Execution of *Wilſon*, that now they had gote Arms and Ammunition put in their Hands, and therefore would not fail to uſe them, in caſe they were attacked, or any Reſiſtance made.

Theſe Obſervations 'tis humbly thought cannot fail to operate in Favour of the Pannel, in caſe the Proof of the Libel ſhall be attended with any Uncertainty or Dubiety: And although the Pannel is not ſo weak of Judgement, as to imagine that ſuch Preſumptions can prevail againſt poſitive and certain Proof; yet he doubts not, that in due Time, when the Proof is led, ſuch Obſervations muſt have Weight with the candid Jury.

One Thing more we muſt obſerve in general, That as he has been employed for theſe many Years paſt, as the Scourge of the Mob, though never once known to proceed to Extremities; yet ſuch Station of his may be the Cauſe of drawing Reſentment from the lower Sort of the People againſt him.

The Pannel has juſt Reaſon to aſk the Forgiveneſs of the Honourable Court for dwelling ſo long upon Generals; but 'tis hoped, from what is above noticed, and that this is the firſt Occaſion he had of vindicating himſelf from the Aſpertions and Prejudice of his Adverſaries, he may merit the Pardon of the Court.

And now to proceed to the Particulars in the Indictment: And whereas it ſets forth, That the Pannel conceiving a moſt wicked and malicious

Purpoſe

Purpoſe of deſtroying, wounding, and maiming Numbers of his Majeſty's Subjects, Inhabitants of the City of *Edinburgh*, had acted the ſeveral Matters and Things charged in the Indictment: The Pannel muſt obſerve, that the Circumſtances of the Caſe naturally exclude any Suppoſition of premeditate Malice and Reſentment in the Pannel, becauſe 'tis impoſſible to conceive, that the Pannel ſhould have retain'd any Malice againſt a Multitude of Perſons, of whom he neither had, nor can be ſuppoſed to have had, any Acquaintance: And tho' it was admitted, that the Circumſtances of the Caſe do exclude any ſuppoſed long premeditated Malice; yet it was urged, that in Law every wicked Action does preſume Malice, though inſtantaneous to ſuch Wickedneſs committed.

To which it was anſwered in Behalf of the Pannel, That the Circumſtances of the Caſe, as laid in the Indictment, do even exclude any Preſumption of Malice accompanying the Acts charged in the Indictment; becauſe every Action muſt be conſtrued in the moſt favourable Senſe; and therefore the Actions charged againſt the Pannel, muſt even be conſtrued to have proceeded from a Principle of Duty in the Pannel, in maintaining the Peace of the Place, and in ſupporting the Authority of the Laws, and the guarding of that Execution of them, which was committed to him by lawful Authority.

In the next Place, An Exception was taken to the Indictment, as not having been laid with ſufficient Certainty; the Indictment no where expreſſing the particular Places of that large Street wherein the Guilt is charged to have been committed, whereby the Pannel was precluded from making his Defences with Certainty: For had it been laid in the Indictment at what Places in the Street the particular Perſons, affirmed to have been killed and wounded, were ſo killed or wounded; the Pannel might have had an Opportunity of proving, from the Circumſtances of his Situation at the ſeveral Periods, that it was impoſſible that ſuch Wounds could have been received from his Hands. And tho' it may be true, that ſuch Part of the Indictment as charges the Pannel's Order to fire, would be of univerſal Influence, and reached over the whole Circumſtances of Guilt charged in the Indictment, yet as actual Execution made by the Pannel was charged ſeparate from his Order to fire, ſuch Proof of Innocence, whereof the Pannel pleaded an Opportunity, might have afforded him a Defence againſt ſuch Part of the Indictment as charges his own Firing and Killing.

To this it was anſwered by his Majeſty's Advocat, That the Lybel was as particular as the Law required, deſcribing the Street where the Execution was committed, which is all that the utmoſt Scrupuloſity could expect in this Caſe: Becauſe minute Circumſtances cannot be known to the Proſecutor, or certainly diſcovered, but by Proof upon Trial, and that every Circumſtance of the Pannel's own acting muſt be known to him. And therefore, if from the Poſition or Situation in which he was at the Time of the Firing, the Pannel can ſhew that it was impoſſible he could have killed the Perſon whom he is charged to have ſhot; by deſcribing and proving theſe Circumſtances, he may have Advantage from them, but cannot object to the Proſecutor, that he did not minutely deſcribe his Situation, which was not known to him; and that by the deſcribing of which, perhaps erroneouſly, the Proſecutor might miniſter an unjuſt Occaſion to a Criminal to eſcape Juſtice.

To which it was replied for the Pannel, That tho' it is true that, in moſt Caſes, the deſcribing the Street where the Guilt was committed, would be a ſufficient Deſcription; yet, that, in the preſent Caſe, where it was laid in the Indictment, That in a Crowd or Multitude, various Shots were fired by different Hands, and thereby Wounds given; 'tis even neceſſary to deſcribe the particular Place of the Street where ſuch Wounds were received, in order to form a Judgment from whoſe Hands thoſe Wounds had proceeded. The Pannel might have fired eluſory, or in the Air, and the Wounds received may have proceeded from the Shots of others: That tho' the Pannel knows his own Poſition and Situation, and can prove them; yet ſuch Proof could not avail him, nor be received by the Court in the Point of Relevancy; becauſe it would be a ſimple Negative, which could not be admitted of, nor would not apply, unleſs the particular Places of the Street, in which the Wounds are ſaid to have been received, had been deſcribed to him; a Situation which the Pannel cannot be ſuppoſed to know; whereas the Proſecutor muſt be ſuppoſed to have known it, ſeeing the ſame Information that led him to know of the Wounds received, muſt neceſſarily upon Inquiry have certiorated him at what Places of the Street ſuch Wounds were received, ſeeing the Matters and Things laid in the Indictment, are charged to have been committed at High-day-light, in Preſence of Multitudes. And tho' the Pannel is fully ſatisfied of the good Diſpoſition of the Honourable Proſecutor, to lay a fair and certain Indictment againſt every Pannel, yet it muſt be admitted, that all Indictments ought to be laid with all that Accuracy and full Deſcription that the Nature of the Thing can admit of: And, as to ſuch Part of the Anſwer for his Majeſty's Advocat, as ſaith, that ſuch particular Deſcription of Place, if perhaps erroneouſly deſcribed, might miniſter an unjuſt Occaſion to the Pannel to eſcape Juſtice; it's anſwered, That ſuch erroneous Deſcription of Place could in no ſenſe affect the Trial, becauſe tho' ſuch Deſcription ſhould not be proved, it would not vary the Caſe, providing the act of Killing were proved againſt the Pannel, becauſe ſuch Deſcription of Place is but a Circumſtance immaterial to be proven by the Proſecutor; but for the Reaſons above aſſigned, highly material for the Pannel to know, in order to lay his Defence before the Court.

It was in the next Place offered as a Defence for the Pannel, That the Reſiſtance of the Mob was ſo great, and the Attack of the City Guard ſo violent againſt them, in beating, bruiſing, and wounding the Men, as has been above noticed, while they were in the lawful Execution of that Office, committed to them by lawful Authority, that ſuch Reſiſtance and Attack muſt have juſtified the Guard, in repelling the Violence of the Mob; ſince ſuch Proceedings in the Guard were acted in ſupport of the due Execution of the Laws, which the Mob were highly Criminal in diſturbing. That this Argument as pled for the Pannel, was not only conſonant to the Rules of Reaſon, but agreeable to ſundry Judgements and Precedents of the Court, particularly that in the Year One thouſand ſix hundred and ninety-two; it appears from the Books of Adjournal, That *James Gordon* Meſſenger at the Execution of a Caption, did, with many others his Aſſiſtants, armed with Guns, Swords, and other hoſtile Weapons, ſhoot ſeveral Shots, whereby one *Alexander Jack* was killed dead upon the Spot, amidſt a numerous Crowd, which the Alarm of Noiſe and Tumult had drawn together, and whereof only part can be ſuppoſed to have come there with Intention to reſiſt the Meſſenger; and the ſaid *James Gordon* and the others his Aſſiſtants, being indicted for Murder, the Lords ſuſtained this Defence to him, relevant to elide the Libel ſimply, *viz.* That he, in the Execution of a Caption, haven his Blazen diſplayed, was by force of Arms hindered to enter the Houſe of *Loanmy*, by the Perſons within that Houſe, and that they did threaten and menace the Meſſenger and his Aſſiſtants, and that they threatened to raiſe the Country, and that the Country did accordingly riſe, and beſet and ſurround the Meſſenger, either in the Houſe, or without the Houſe; the ſaid Country People being armed with Guns, Swords, and other invaſive Weapons.

Here your Lordſhips perceive, that the Court juſtified the Meſſenger in ſhooting amongſt the Mob, and killing; becauſe the Perſons in the Houſe forcibly hindered him from entering, and threatened and menaced him, being armed with invaſive Weapons; and the preſent Caſe is more favourable in behalf of the Pannel, who acted by lawful Authority, as well as *Gordon* in the other Caſe did, and who was ſupporting the Execution of the Laws, as well as *Gordon* was; with this Difference upon the ſide of the Pannel, That he was not only hindered and menaced in the Execution of his Duty, but he and his Guard invaded and aſſaulted, beat, bruiſed, and wounded, as has been above-noticed, and whereof a ſtrong Proof ſhall be brought; and that the Mob in the preſent Caſe were not only armed with, but in their Attack upon the Guard, made uſe of, big Stones, of Two or Three Pound weight, which muſt be allowed to be very invaſive Weapons; and therefore the Pannel ſubſumes, that the Defence offered for him in the preſent Caſe, is ſtronger, and ought rather to be allowed him, than that which was ſuſtained to *Gordon*. Only the Pannel muſt do the Juſtice to His Majeſty's Advocat, as to acknowledge, that this Precedent was not hitherto offered in the Debate; but when the Record is inſpected, will be found to ſtand in the preciſe Terms as above-mentioned.

There was in the former Debate, a Precedent of the Court offered, as againſt the Pannel, which the Pannel, with Submiſſion, apprehends makes for him, namely Captain *Wallace*'s Caſe, ſome time after the Revolution. Captain *Wallace* was indicted in the One thouſand ſix hundred and ninety-two, for having refuſed in the One thouſand ſix hundred and eighty-eight, to deliver up himſelf, in Obedience to an Order of the Preſident of the Council, and ſeveral Privy Councellors, whereof Two were Officers of State; and the Bailiffs of *Edinburgh*, having gone down to the *Cannon-gate*, with a Herauld and Purſevant, with their Coats of Arms diſplayed, to put the Order of Privie Council in Execution; notwithſtanding which, Captain *Wallace* would not deliver himſelf up, but retired with the Men under his Command to the *Abbay*, and defended himſelf, and fired upon the Bailiffs, Heraulds, and Purſevants; ſhot ſeveral Perſons dead upon the Spot, and wounded a great many others.

The Defence pled for Captain *Wallace*, was, That the keeping of the *Abbay* was committed to him by order of the Privy Council, which he was obliged to maintain ſo long as the Truſt of it was committed to him; That as to the Order of Privy Council, to deliver up his Perſon, it was contrair to an Act of Parliament *James* the Sixth, whereby any General Warrant, for putting the Perſon of any Man in Ward, except where ſuch Warrant was ſigned by four Officers of State, whereof the Chancellor, Treaſurer, or Secretary of State to be one, which had not been practiſed in *Wallace*'s Caſe, was prohibited and diſcharged.

The Lords, after a very learned Debate, did ſuſtain theſe Defences to Captain *Wallace*, *viz.* That on the Sabbath Night, or ſhortly before, a Rabble did meet in ſeveral Places, in great Numbers, and that ſeverals of them did declare to *John Paterſon* their Reſolution to trouble the Pannel on his Guard, and to pillage the *Abbay*, relevant to reſtrict to an arbitrary Puniſhment.

Here your Lordſhips perceive, that the Court ſuſtained a previous Intention only declared, that they would trouble the Pannel on his Guard, and pillage the *Abbay*, ſufficient to moderate the Puniſhment; ſo tender are the Laws towards any Perſon committing Hoſtility in Defence of his Guard: And then the Lords ſuſtained the following Defence relevant to elide the Libel altogether, to wit, That the Rabble did, in a tumultuous Manner, come down the *Cannon-gate* with Swords and Fire Arms, and did beat ſome of the Pannel's Centinels; and being deſired to ſtand, they notwithſtanding advanced ſo near, that the Pannel could ſpeak with them; and after he had deſired them to remove, or be at their hazard, they, notwithſtanding thereof, ſtill perſiſted to advance.

The Application in the preſent caſe is eaſy: The Pannel many Times exhorted the Mob to ſtand off; notwithſtanding of which, they ſtill preſſed upon him; he many times advertiſed them of their Hazard; threatned to fire upon them if they would not keep off; his Centinels were not only beat, but bruiſed and wounded; all which is offered to be proved.

Another caſe was mentioned in the Debate to your Lordſhips, which ſtrongly ſupported the Plea of the Pannel, becauſe it was a Judgement of your Lordſhips pronounced but very lately, after the moſt ſolemn Declaration of the Court; and wherein, the Pannel is informed, the Court was unanimous; and which Judgement ſeemed to be of that Importance, as to induce the Court to reverſe the Proceedings of the High Court of Admirality, after a ſolemn Trial by Jury in that Court: a Verdict returned, finding the Lybel proven, and the Defence not proven; and a Sentence of Death pronounced by the Judge of the High Court of Admirality.

The caſe before the Admirality was this; A Corporal and a private Centinel in Colonel *Hamilton*'s Regiment were indicted before the Admiral for Murder; for that they had, upon the High Seas, killed *Hugh Fraſer* younger, of *Belnain*, by ſtabbing him with a Bayonet in the Breaſt, and afterwards throwing him into the Sea, whereof he inſtantly died.

The Defence pled for the Pannels, was this, That the Pannels were by Military Order, appointed to attend the Officers of the Customs in seizing of Goods by Law made seizable; and that the Pannels being in a Boat, upon the Seas, along with the Custom-house Officers, in quest of such Goods, the Person killed did come up with them in another Boat, with others in Company with him; and that *Fraser* the deceas'd jumped into the Boat, where the Pannels and the Custom-house Officers were, and endeavoured to take hold of their Arms; which was both a Resistance and an Attack of the Custom-house Officers while in the Execution of their Duty.

Upon the other hand, it was pled against the Pannels, That *Fraser*'s jumping into the Boat, was with no Intention to make Resistance, but rather to save his own Life from the Thrusts of the Pannels, their Pieces having been aimed at him; that those in the Custom-house Boat could have no just Apprehension of being mastered by Mr. *Fraser*, he having no invasive Weapon about him whatever, and being the only Person who offered to get into the Custom-house Boat, in which there were several Persons well armed.

The Judge of the High Court of Admirality admitted of the Pannels Plea, in this Manner only, sustains the Defence of Self-Defence proponed by the Pannels, that the killing of the said *Hugh Fraser*, by them, or either of them, was in the necessary Defence of their Lives, and repelled the whole other Defences proponed for the Pannels.

The Jury returned their Verdict, finding the Pannels both guilty, art and part, of killing the said Mr. *Fraser*; and finding it not proven, that the killing of Mr. *Fraser* was in the necessary Defence of the Pannels Lives: Upon which Verdict returned, the Judge sentenced both the Pannels to be hanged.

The Proceedings of the Court of Admirality were laid before your Lordships for a Review, which, 'tis believed, is the single Instance wherein it was ever contended, that the Proceedings of the High Court of Admirality in Matters Criminal could be reviewed by any other Court.

Notwithstanding of which, your Lordships were pleased to reverse the Sentence of the Judge Admiral; no doubt, upon supposed Error in his Proceedings; because the Verdict of a Jury, pronounced upon Evidence, cannot be reversed; and in consequence of which Judgment of your Lordships, the Pannels were set at Liberty.

Now the Pannel is advised, that such Judgment in your Lordships could stand upon no Foundation other than this, *viz.* That your Lordships had reversed the Judgment of the Admiral as erroneous, in not sustaining this Defence to the Pannels: That they were resisted by Mr. *Fraser* deceased, while they the Pannels were in the Execution of their Duty.

And as the degree of Resistance offered by Mr. *Fraser* to the Pannels, was by the Pannels themselves maintained to have been no higher than what has been set forth to your Lordships; the forsaid unanimous Judgment of your Lordships pronounced after many solemn Deliberations, does by consequence shew, that it was your Lordships unanimous Opinion, that a very small degree of Resistance of Persons in the Execution of their Duty, will justify the Persons resisted in the Act of killing the Resister.

And if that was the solemn and unanimous Opinion of the Court in a Case so recent; must not such Judgment afford a strong Argument to the Pannel, that he and his Guard were resisted, while in the undoubted Execution of their Duty, in being beat, wounded, and bruised by an unruly Mob; who, there was good Reason to apprehend, intended to defeat the Execution of the Criminal.

To this last Case, the Pannel met with no other Answer from his Majesty's Advocat, but this, That the Pannel cannot plead the Benefit of this Case; because he neither does, nor can aver that the firing proceeding from him or his Order, was necessary for securing of the Execution of that Trust that was committed to him: His Majesty's Advocat does admit, that where a Person has by lawful Authority Weapons put into his Hands, to be employed either in defence of his Life, when attacked, or in support of the Execution of the Laws, or of the Property of the Crown, or Property of the Subject; such Person may use those Weapons, not only when his own Life is so far in danger that he cannot probably escape without making use of them, but also where there is imminent Danger that he may by Violence be disabled to execute his Trust: But withall seems to contend, that the Pannel was under none of those Circumstances at the time he committed the Guilt charged upon him in the Indictment; forth at the Execution of the Criminal was over before the Scuffle began, or any Resistance was made to the Pannel, and the Guard under his Command; and that being the Case, the Pannel can plead no other Defence, than such as might arise from his being put under the imminent Danger of his Life.

But, with great Submission, These Positions of his Majesty's Advocat are assumed without any Authority, and, as would appear, not only in plain Opposition to the Laws, but to the many Precedents already offered in behalf of the Pannel; for it's hoped it must be admitted, even by my Lord Advocat himself, and is indeed so admitted by him, that the Pannel was once in the lawful Execution of his Duty, and was obliged at all Hazards to support the Execution of that Criminal who was committed to his Guard; surely then, the Execution of the Pannel's Duty can never be said to have been at an end, until once the Criminal was fully executed to Death, and as such ordered to be cut down by lawful Authority; unless it shall be said that it was the Pannel's Duty, the Moment the Convict was hung up, to let him instantaneously be cut down, rescued by the Mob, and brought to Life again; which seems to have been their plain Intention: For it seems to be confessed upon all Hands that there was danger of a Rescue, which seems to have been the occasion of all this extraordinary *Apparatus*: and for preventing of which 'tis admitted, that the whole Guard was sent out with their Pieces loaded, and even with Orders to fire at all Ventures in Case of such Rescue. Was it not then a necessary part of the Pannel's Duty to protect and support the Execution of the Convict, when hanging by the Neck in the Air, until such time as he was cut down by lawful Authority, as supposed fully dead?

And 'tis certain that in answer to the Pannel's Message, Orders were brought from the Bailiffs that he should yet hang a quarter of an Hour, which surely it was the Pannel's Duty to see obeyed, and which Orders of the Bailiffs the Mob nevertheless did resist, and cut down the Criminal long before that time was elapsed, and which the Pannel was in duty bound to oppose; and from this Contrast, it is offered to be proved, all the Violence in the Mob proceeded: But can it be with any Justice affirmed, but that the Pannel was in the Execution of his Duty, while he and his Guard were standing upon the Spot under Arms? Is not every Person in the Execution of his Duty while he is either going to, or coming from any lawful Expedition? And therefore it seems impossible to maintain, but that the Pannel, and the Detachment under his Command, were in the lawful Execution of their Duty, until they had once returned, and were dispersed and dismissed from Duty, at which time only they were reduced under a private Capacity.

And even the Protection of the Hangman, who had actually received several Wounds and Contusions, and was in danger of being tore to Pieces by the Mob, was a Part of the Pannel's Duty: For tho' he is a Minister of the Law somewhat odious; yet he is a necessary One for the Society, and lies under a greater Necessity of being protected, from his being so obnoxious to the Resentment of the Mob; and at least in Humanity, must have such Protection afforded him, as to defend him from having his Brains knockt out.

How then can it be said, in any Sense, that the Pannel was in such Situation, that he could only plead the Benefite of Self-defence? It is a known Rule in Self-defence, that a Person invaded must retire as far as he can with Safety: But if that is the Case of a City Guard (maintained at great Expence) that so soon as they are invaded, they must immediately betake themselves to their Heels, it will be apparent, that they are but kept up for very useless Purposes.

At the same time the Pannel can with great Candor aver, That he is far from being of that Disposition of Mind, as to be ready to take the Advantage, which the Law might afford, against an unruly giddy Mob; whereof he has given Proof upon many former Occasions, as must be allowed him; and whereof even the present Case will be an Instance in his Favours, if he meets with Justice from the Evidence: But with all, he must be allowed to observe, that it would be a dangerous Position, That a Guard keept up for the Maintenance of the Peace of the capital City of this part of the Nation, when they are assembled together upon Duty, should be allowed to plead no higher Privilege, than that of Self-defence in the strickest Sense.

And whereas my Lord Advocate seems only to admit, That a Person who has Weapons put in his Hands by lawful Authority, for the Defence of the Property of the Crown, or Liberty of the Subject, may only use these Weapons when he is in imminent Danger of having the Execution of his Trust defeated by Violence: If such is the Case, the Execution of Duty will become a very tickliish Point; and 'tis apprehended, that few Folk will be fond of it, if they can possiby live without it; and of Consequence, such Doctrine must very much discourage any Persons from offering their Service, either to the Crown or Commonwealth.

And as the Supreme Executive Power is by the Constitution vested in His Sacred Majesty, our Sovereign; therefore my Lord Advocate, who, by his Office, is of Council for His Majesty in all Causes, will, no doubt, have due Consideration, how far an Argument is to be pressed against the Pannel; which, by plaim Consequence, must tend to weaken, if not defeat, the Execution of the Laws.

One would rather be inclined to think, That where a Person has the Trust of the Execution of the Laws committed to him, the smallest Resistance to this Trustee, as such, is a guilty Aggression, and that every Opposition of such Aggression is lawful Defence, because no Man must be above the Laws; and the Life of the Laws, in which the common Good is employed, is of greater Value than the Lives of any One or Number of the Individuals, and so ought to be defended at all Perils.

His Majesty's Advocate upon this Head, in his Information against the Pannel, does assume this Fact, That the Mob or Multitude assembled at the Execution, were behaving themselves peaceably; and from this seems to draw his Inferences against the Pannel, which indeed will run high enough. The Pannel very well knows, that no Order whatever will justifie the Person executing that Order, if such Order appears evidently to be unlawful; and yet in Cases which appear doubtful, an Order from a Superiour will have it's own Weight; more especially in Military Matters, or such other Things as resemble them.

But, with Submission, This Reasoning upon the Mobs being supposed quiet and peaceable and innocent, is entirely out of the Case; for, as we are now upon Relevancy, the Facts must be supposed, and then the Argument considered in that View: And as the Pannel does aver, That he and his Guard, while in the Execution of their Duty, did meet with strong Resistance from the Mob, in so much that many of the Men were greatly hurt and bruised: And if that was the Case, it was an unlawful Invasion of Persons, to whom the Execution of the Laws were committed; and so might be by them, in support of those Laws, resented to a pretty great Length; except it shall be maintained, that in the Situation of the Pannel and his Men were posted, they could plead no higher Privilege than that of Self-defence; which, with great Respect, cannot be maintained, but rather seems to be a Contradiction; because they had not only their own Defence to take care of, but also the Defence of the Peace and Quiet of this City, and of the Execution of the Laws, and that due Obedience was given to them.

In a Word, upon this Head, the Pannel's Argument is not only supported from the Nature of the Thing, because a Man who fights with the Laws upon his side, fights with great Advantage against those who are fighting against the Laws; and for that reason, if a Man were to fight a Duel, the Laws would be the best Second; but also, 'tis believed, that no Instance can be given in this Country, or in any other of civilized Policy and Government, where a Person, proceeding to what Extremities whatever against Persons who had assailed him,

him, while in the due Execution of the Law, ever ſuffered the Pains lybelled.

My Lord Advocat ſeems to inſinuate, as if the Reading of the Riot-Act had been a Duty incumbent upon the Pannel, whereby the Innocent Part of the Multitude would have had time to have taken care of their own Safety: But then his Lordſhip will be pleaſed to conſider, that no Perſon is by Law authorized to proclaim that Act, other than a Juſtice of Peace, Sheriff, Mayor, Bailiff, or other Head Officer; and no Perſon, under any of theſe Characters, was left with the Unfortunate Pannel; but he was abandoned and left to grapple with Occurrences in the beſt Manner his own Diſcretion could ſuggeſt to him.

But then the Reading of that Act could not anſwer the preſent Exigency: For tho' the Reading of that Law may perhaps ſometimes anſwer the End for which it was intended, namely, The preventing the Demolition of any Houſe or Meeting-houſe; but if the Pannel, in the preſent Caſe, ſhould be ſuppoſed bound to have keep his Hands acroſs for the Space of one Hour, after the Reading of this Act; then it is certain that the Mob might have prevented the Execution of the Law in far leſs Space. And it is certain, that by the Act, the Mob is not put in Contempt, or expoſed to the Penalties of it, until once they continue together one Hour after the Reading thereof.

His Majeſty's Advocat is alſo pleaſed to hint, as if the offering of this Plea in Behalf of the Pannel, founded upon the Reſiſtance of the Mob, was in ſome ſort inconſiſtent with another to be hereafter mentioned for him, *viz.* his Innocence of the Facts: But, no doubt, my Lord very well knows, that by the Laws of *Scotland*, there is no Inconſiſtency in ſuch different Pleas. And this leads to the Conſideration of the Exculpation offered for the Pannel, aryſing from his Innocence of the Guilt, either of the Action, Command, or Order charged againſt him in the Indictment.

And in the firſt Place, as to ſuch Part of the Indictment as charges him with either having fired himſelf, or having given Orders to fire, whereby *Charles Huſband* was killed: though it is indeed true, that it is impoſſible, from the Nature of the Thing, for the Pannel to prove an abſolute Negative; becauſe, as His Majeſty's Advocat very juſtly argues, if the Charge in the Lybel is proven, to witt, That the Pannel either did fire, or gave Orders to fire, at this Time himſelf, no negative Evidence can prevail againſt it; yet as to this Point, the Pannel offers to prove, what the Lawiers call a circumſtantiate Negative; which in a good Meaſure reſolves into an Affirmative, *viz.* That at this Time, when *Charles Huſband* fell, and gote the Wounds charged in the Indictment, whereof it's ſuppoſed he died, the Pannel, as has been above recited, was in the following Situation; that is to ſay, he was pointing his Piece with his Face towards the Weſt Port, threatning the Mob, that if they would not keep off, he would fire; and that immediately, upon this Expreſſion, a private Centinel of the Guard came up from behind him, and diſcharged his Piece, by which it will be proven, *Charles Huſband* received his Death Wounds; becauſe it ſhall be proven, by Perſons of undoubted Veracity, that were hard by the Pannel all the Time, that they not only obſerved, that he did not fire his own Piece, and gave no Order for firing; joined with this other Circumſtance, that no Proof will appear, during the whole Scuffle, that ever the Pannel made uſe of any Firelock, but his own; and that his Piece, when returned to the Guard, was found loaded, and in ſuch Condition, that it was even confeſſed by the Magiſtrates themſelves, and many others, not to have been fired; with this further Addition to exclude that further Part of the Charge in the Indictment, of the Pannel's having made uſe at any Time of any other Piece than his own, *viz.* that he carried his own Piece in his Hand the whole Time, except during the Space of Prayer above-mentioned, when he gave it to his Serjeant: And it ſhall alſo be proved, that there was but one Shot fired at this Time, at which *Charles Huſband* is ſuppoſed to have received his Death Wounds. And as to the other dropping Shots that are charged in the Indictment to have followed upon this firſt Shot, if from the Evidence adduced, the Pannel's Proof ſhall appear to be moſt pregnant, that he gave no Orders to fire at this Time, then he is not chargeable with the Conſequence of ſuch Firings.

And this further Circumſtance muſt ſtrongly operate in favour of the Pannel; to witt, that, at the Time of this ſuppoſed Order to fire, the Men were not drawn up in a regular Line or Band; but were either ſtraggling, mixt with the Mob, or in a circular Form, ſurrounding the Scaffold in the *Graſs-Market*, which excludes all Poſſibility of any ſuppoſed general Order to fire; unleſs it be ſuppoſed that the Pannel was a Madman, ſeeing any Compliance with ſuch Order muſt have led the Men to fire each in his oppoſite Neighbour's Breaſt, and a great many into that of the Pannel.

It is not altogether impoſſible that the Pannel's Expreſſion of the Word *Fire*, might have erroneouſly induced this Fellow that came from behind his Back (who of himſelf perhaps was too forward to embrace ſuch Order, had it been given) to diſcharge his Piece: And if the Perſon firing was guilty of an Error, or of a Miſconſtruction of Duty, the Pannel is not chargeable therewith; ſeeing that every Perſon that has the leaſt Knowledge of the Exerciſe of Arms, muſt know, that he is not to receive an Order to fire from Implication, but from ſome known certain Rule of Diſcipline.

And for this Reaſon it is, that the Pannel takes it to be a very wiſe Part of the military Inſtitution, to avoid Miſconſtructions, That no Man receives Orders to fire (eſpecially when he is reſting or ſhouldering his Arms) but upon a precedent Series of Exerciſe attended with ſome Solemnity, to avoid Mittakes; greater or leſs indeed according to the Nature of the Occaſion.

Sometimes indeed, as was obſerved in the Debate on the Side of his Majeſty's Advocat, Perſons will, very juſtly, fire upon ſo ſhort Advertiſement as the Tuck of a Drum; but 'tis believed, that is never practiſed, but during the Noiſe or Tumult of Battle; when it is ſuppoſed that the Voice of verbal Order cannot reach the Men; and then this Tuck of the Drum, or any other Signal of firing, muſt be previouſly advertiſed to be the Signal of ſuch Action.

Another thing falls alſo to be noticed here, touching this firſt Charge in the Indictment, and which may be even taken through the whole; That when two or more Perſons are nigh together, levelling their Pieces at the ſame time, it is not eaſy for the ſharpeſt Eye, eſpecially if at any Diſtance, to determine from what Piece the Fire proceeded; and of this Point military Men, beſt acquainted with the Exerciſe of Fire Arms, can give the beſt Account.

And laſtly, upon this Head, the beſt Conjecture the Pannel can make, is this, That upon this firſt Fellow's firing, without either Order or Example from the Pannel his Commander, the other dropping Shots that enſued, proceeded from other raſh Fellows of the Guard; who encouraged by this firſt Example, directed and diſcharged their Pieces againſt ſuch Part of the Mob, as they reſpectively ſuppoſed any Injury or Invaſion upon them had proceeded.

The next material Circumſtance, charged in the Indictment, is that, touching the Pannel's Behaviour at the *Weſt-bow*; where it is charged, That he commanded the Men to face about, and fire upon the People; and that at or about the ſame time, he fired a Muſket or Firelock that was in his own Hand; having either reloaded, or cauſed to be reloaded, his own Piece, or taken another out of the Hand of one of the Guard; and that upon this ſecond Example and Command of the Pannel's, ſeveral others of the Guard, under his Command, did fire; whereby the Perſons mentioned in the Indictment were killed and wounded.

As to which Part of the Charge, the Pannel offers the following Proof: And Firſt, As to Order, he ſhall prove by Multitudes of Perſons nigh him at the time, and who were narrowly obſerving him (and Orders are generally given with an audible Voice) they heard no ſuch Order given, nor heard no Expreſſion of the Pannel, that, by the moſt remote Conſequence, could have been interpreted an Order to fire: And here the Pannel's Memory, upon the moſt ſerious Reflection, cannot divine what could have given Occaſion to any Body's conjecturing that he gave an Order to fire at this time. And here alſo the former Obſervation falls to be noticed, touching the Solemnity of an Order for firing.

2*do*. As to the Action of firing charged againſt the Pannel himſelf, for firing at this time; the Pannel offers to prove the very Centinel, at leaſt, that it was a Centinel of the Guard, who gave the firſt Fire at this time, which was the Shot at *Robertſon's Cloſſhead*. And the Pannel is informed, as has been above noticed, That at the time of taking the Precognition, an Offer was made to the Magiſtrates to ſingle out the Fellow, if they would ſuffer the Guard to be drawn out, who fired that Shot towards *Robertſon's Cloſſhead*, by which the two or three People fell. And further, The Pannel offers to prove, upon this Head, not only that this Fellow was the firſt Perſon that fired, without any Order from the Pannel circumſtantiated, as is above noticed, but alſo by many Perſons of undoubted Credite, that they could not obſerve the Pannel fire, or diſcharge any Piece himſelf, during the whole Time that this Firing is ſuppoſed to have continued. And here the Pannel could evidently caſt up many Inconſiſtencies to your Lordſhips, that muſt neceſſarily be implied, and many Preſumptions that ſtrongly exclude any ſuppoſed Order or Example of the Pannel at this Time; but does not think it altogether ſo prudent to mention them at preſent.

As to the taking a Piece out of another Man's Hand, and firing of it, ſuch Action was a remarkable Occurrence, and muſt have fallen out under Obſervation; and ſo the Pannel can ſay nothing about it, but leave it to Evidence, with this only Obſervation, That, as it was a notable Event, it will operate almoſt as ſtrong in the Negative as in the Poſitive. And it muſt be left to the Jury to balance the Evidence, if a Contrariety ſhall appear; and to lean to that Side attended with the greateſt Credibility, taking the known Rule of the Law into the Compaſs, namely, Favour to the Pannel in caſe of Dubiety. Only this Obſervation falls to be made to your Lordſhips, That the Circumſtances of the Caſe call aloud for the Pannel's being allowed a Proof upon this Part of the Indictment.

The Pannel does agree with His Majeſty's Advocate, That no negative Evidence can take away a poſitive Proof; but the Pannel humbly thinks he has offered a pretty circumſtantiate one: And as my Lord Advocate ſeems to admit the Neceſſity of a Proof on both Sides, ſo the Pannel will not labour that Point with your Lordſhips; not doubting but you will allow him in general, to prove what he can, to exculpate him from the Guilt laid in the Indictment; and that your Lordſhips by your *Interloquitur* will allow him as much Scope in that Particular, as any Precedent of your Lordſhips Court can authorize. And there are ſeveral Inſtances, and one very particular one, wherein great Latitude was allowed, both as to the Circumſtances precedent, concomitant, and even ſubſequent to the Acts charged in the Indictment.

Some general uſeful Reflections might be made, but this Paper is already drawn out into too great Length, and as the Pannel has learned Judges, and a diſcerning and candid Jury, the leſs needs be ſaid; becauſe 'tis ſuppoſed they will naturally occur to theſe intereſted in the Trial; and no doubt ſuch will lay aſide all Prejudices and Prepoſſeſſions; and will never once think of, but utterly deſpiſe the Conſequences of popular Rage or vulgar Clamour.

If the Pannel is guilty of the Charge in the preciſe Way and Manner it is laid againſt him in the Indictment, he is of Opinion himſelf he deſerves to ſuffer: But if upon the other hand, it ſhall come out that he is entirely innocent of the Blood of thoſe Men wherewith he is charged; he thinks his Caſe deſerves ſingular Commiſeration: Becauſe, if Bonds and Impriſonment, Loſs of Employment and Bread, Obloquy, and Reproach of Blood-guilt, and Maſſacre, and, of Conſequence, Loſs of Character, be Calamities in human Life; then has he had as great a Share of them as ever attended Innocence. *Sic ſubſcribitur*,

Ja. Grahame, jun.

Curia Juſticiariæ, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, *Decimo ſexto Die Menſis* Julii, *Milleſimo ſeptingenteſimo trigeſimo ſexto, per Honorabiles Viros,* Andream Fletcher *de* Milton, *Juſticiarium Clericum, Dominum* Jacobum Mackenzie *de* Royſtoun, *Magiſtrum* Davidem Erſkine *de* Dun, *Dominos* Gualterum Pringle *de* Newhall, *et* Gilbertum Eliot *de* Minto, *Commiſſionarios Juſticiarii, dictos S. D. N. Regis.*

Curia legittimè affirmata.

Intran.

JOHN PORTEOUS, lately one of the Captain Lieutenants of the City Guard of *Edinburgh*, Pannel,

INDICTED and ACCUSED as in the former *Sederunt.*

The Lords, Juſtice Clerk, and Lords Commiſſioners of Juſticiary, having conſidered the Indictment purſued at the Inſtance of *Duncan Forbes*, Eſquire, his Majeſty's Advocate, againſt *John Porteous*, Pannel, with the foregoing Debate thereupon, FAND, That the Pannel having at any of the Times and Places libelled, fired a Gun among the People aſſembled at the Execution libelled, or having given Orders to the Soldiers under his Command to fire; and thereupon they the Soldiers, or any of them, having accordingly fired; and upon the firing, either by himſelf or them, the Perſons mentioned in the Indictment, or any of them, were killed or wounded, or the Pannel's being Art and Part of any of the forſaid Crimes; all *ſeparatim* relevant to infer the Pains of the Law: But allowed the Pannel to adduce what Evidence he could with reſpect to his Behaviour at the Time the forſaid Crimes are libelled to have been committed; for taking of the Circumſtances which ſhould be brought for inferring his being guilty, or Art and Part of the Crimes libelled; and remitted the Pannel and the Indictment as found relevant to the Knowledge of an Aſſize. *Sic ſubſcribitur,*

Andr. Fletcher, I. P. D.

The Lords, Juſtice Clerk, and Lords Commiſſioners of Juſticiary, continued the above Diet at the Inſtance of his Majeſty's Advocate, againſt Captain *John Porteous*, till *Monday* next at Seven of the Clock in the Morning; and ordains Aſſyſers and Witneſſes then to attend, under the Pain of Law, and the Pannel to be carried back to Priſon.

Curia Juſticiariæ, S. D. N. Regis, tenta in Novo Seſſionis Domo Burgi de Edinburgo, *Decimo nono Die Menſis* Julii, *Milleſimo ſeptingenteſimo trigeſimo ſexto, per Honorabiles Viros,* Andream Fletcher *de* Milton, *Juſticiarium Clericum, Dominum* Jacobum Mackenzie *de* Royſtoun, *Magiſtrum* Davidem Erſkine *de* Dun, *et Dominum* Gilbertum Eliot *de* Minto, *Commiſſionarios Juſticiarii, dict. S. D. N. Regis.*

Curia legittimè affirmata.

Intran.

JOHN PORTEOUS, lately one of the Captain Lieutenants of the City Guard of *Edinburgh*, Pannel,

INDICTED and ACCUSED as in the former *Sederunts.* Thereafter the Lords proceeded to make Choice of the following Perſons to paſs upon the Aſſize of the ſaid *John Porteous:*

ASSIZE,

Sir *John Inglis* of *Cramond.*
Alexander Gibſon of *Pentland.*
George Halyburton of *Fordell.*
James Baird of *Cheſter-hall.*
John Hogg of *Cambo.*
Thomas Dundas of *Lethem.*
Alex. Brand of *Brandsfield.*
John Follie, Vintner in *Edinburgh.*
James Hunter, Wright in *Edinburgh.*
William Wight, Baxter there.
John Bell, Brewer there.
James Davidſon, Bookſeller there.
David Inglis, Merchant there.
Alexander Sharp, Merchant there.
Patrick Manderſtoun, Merchant there.

The above Aſſize being all lawfully ſworn, and no Objection of the Law in the contrary,

THE Pannel, *John Porteous*, judicially confeſſed, That Time and Place libelled, the ſeveral Perſons mentioned in the Indictment to have been killed and wounded, *viz. Archibald Ballantyne*, Son to *John Ballantyne*, the younger, Dyſter in *Dalkeith*; *Margaret Arthur*, alias *Airth*, Reſidenter in the *Cannongate*, near the *Water-gate* thereof; *John Anderſon*, Son to *George Anderſon* in *Craighead*, Drover; *Jean Peat*, Servant to *James M'Dowal*, Merchant in *Edinburgh*; *David Wallace*, Journey-man Wright in *Edinburgh*; *James Philp*, late Servant to *Lauder*, Eſq. Reſidenter in the *Cannongate*; *David Kidd*, Taylor in *Edinburgh*; *Patrick Spaldan*, Apprentice to *David Mitchell*, Jeweller in *Edinburgh*; *James Lylk*, and *Alexander Wallace*, both Servants to *James Wight*, Stay-maker in *Edinburgh*; *John Miller*, Taylor in *Edinburgh*; *David Ogilvie*, Writer in *Edinburgh*; and *James Nevin*, late Servant to *William Sellers*, Writer in *Edinburgh*, now Reſidenter in the *Potteraw*; *Alexander M'Niel*, Son to *Edward M'Niel*, Indweller in *Mertounhall*; *Margaret Gordon*, Servant to *William Ogilvie*, Taylor in Saint *Mary Wynd*, in *Edinburgh*; and *Henry Grahame*, Taylor in *Cannon-gate*; and *Charles Huſband*, Servant to *Paul Huſband*, Confectioner in the Abbay of *Holy-rood-houſe*; were ſo killed or wounded by Firing, proceeding from the Party of the City Guard then under his Command, as mentioned in the Indictment. *Sic ſubſcribitur,*

John Porteous.
Andr. Fletcher, I. P. D.

His Majeſty's Advocate for proving his Lybel, adduced the Witneſſes after deponing, viz.

JAMES DRUMMOND, Merchant and Reſidenter in *Edinburgh*, aged Thirty Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after *Andrew Wilſon* had hung ſome Time upon the Gallows, about a Quarter of an Hour, as the Deponent thinks, he ſaw the Executioner going up the Ladder, as the Deponent apprehended, to cut him down; upon which he ſaw ſome ſmall Stones thrown by the Mob at the Executioner; ſome whereof the Deponent believes might have fallen upon the Guard: upon which he ſaw the Pannel advance from the Guard Weſt-ward, reſting his Firelock upon his Thigh, as if he had been bending it, and thereafter ſaw him raiſe it to his Breaſt, moving it from one Point to another: And ſoon thereafter the Deponent heard a Shot from the Place where the Pannel was ſtanding, but did not obſerve whether the Shot came from Captain *Porteous*'s Firelock; and, much about the ſame Time, obſerved one of the Soldiers go out of his Rank Weſtward, and upon the North-ſide, and ſaw him go further Weſt than the Place where Captain *Porteous* was; the Side of the Window where the Deponent was ſtanding in *Robertſon*'s Houſe, covered the ſaid Soldier from the View of the Deponent, by the Time the firſt Shot was fired; and which Soldier had a Gun and a ſcrewed Bayonet in his Hand, levelled with the Butt End of it at his Breaſt; and the Deponent did apprehend at the Time that Captain *Porteous* had fired, becauſe he ſaw him in a firing Poſture, and immediately heard a Shot, and ſaw a Man in a few Minutes thereafter, as ſoon as the Mob diſperſed, lying upon the Street, upon a Line whither the Deponent ſaw Captain *Porteous*'s Piece directed; and that the abovementioned Soldier came from the Body of the Guard which was behind Captain *Porteous. Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubſcribitur,*

J. Drummond.
Andrew Fletcher.

Sir *William Forbes*, Advocate, aged Thirty Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the deceaſed *Andrew Wilſon* had hung about Twenty or Twenty-five Minutes upon the Gallows, the Deponent, from a Window in *Orr* the Stabler's Houſe, oppoſite but a little to the Weſtward of the Gallows, ſaw the Executioner go up ſome Steps of the Ladder, as the Deponent believes, to cut down the ſaid deceaſed, and ſaw thereupon Stones thrown at the Executioner; upon which the Executioner immediately retired to the Guard, and the Mob continued throwing of Stones; ſo that the Deponent does believe ſome of the Stones might have touched the Guard; and about this Time the Guard were drawing together to the North and Weſt of the Gallows, where the Captain was ſtanding, and did ſoon thereafter ſee the Pannel advancing Weſtward, fire his Gun among the People aſſembled at the Execution; and obſerved the Fire and Smoak iſſuing out at the Muzzle of his Piece, to the beſt of the Deponent's Obſervation; which he thought at the Time very diſtinct, and that the ſaid Shot was the firſt which the Deponent heard; and the Deponent at the Time did imagine, that the Pannel had fired his Shot high; but whether that proceeded from the Situation that his Firelock was in, or from the Appearance that the Fire and Smoak made that iſſued out of his Piece, the Deponent cannot now particularly charge his Memory. That thereafter the Deponent heard ſeveral dropping Shots, about Twenty, but cannot be poſitive as to the Number; that when the aforeſaid Facts happened, the Deponent was upon the South-ſide of the Street, and the Pannel to the North of the Middle of the Street, almoſt oppoſite to the Window where the Deponent was; and when the Pannel ſo fired, the Deponent did not obſerve any Soldier ſo far advanced Weſtward from the Body of the Guard as the Pannel was. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

William Forbes.
Andrew Fletcher.

Mr. *William Fraſer*, Son to the Lord *Saltoun*, aged Twenty-four Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was in a Window in one *Orr*'s Houſe, in the *Graſs-Market*, the South-ſide of the Street, that Day that *Andrew Wilſon* was execute; that after *Wilſon* had hung ſome time on the Gallows, he ſaw the Executioner go up ſome Steps of the Ladder, as he apprehended, to cut him down; and then ſaw the Mob throw Stones and Dirt at him; upon which the Hangman came down, and went in amongſt the Soldiers that were ſtanding at the Foot of the Scaffold: That ſoon after the Hangman had come down, he ſaw the Pannel preſent and level his Gun, moving the Muzzle to and fro, and then ſaw him fire; and to the beſt of his Knowledge or Apprehenſion, ſaw the Smoak iſſue out of the Mouth of the Piece; that immediately thereafter, within a Second or two, he heard ſeveral dropping Shots fired by the Soldiers, who were there on their Arms; that he thinks the dropping Shots he then heard came from near the Place where the Pannel was ſtanding.

And deponed, That at the Time forſaid the Pannel fired his Gun, he did not obſerve any of the Soldiers advance before him and preſent their Guns. *Cauſa Scientiæ patet.* And this is Truth as he ſhall anſwer to God. *Sic ſubr.*

William Fraſer.
Ja. Mackenzie.

Mr. *William Urquhart* of *Meldrum*, aged Thirty-eight Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was preſent at *Andrew Wilſon*'s Execution the Time libelled, in the Houſe of one *Orr*, on the South-ſide of the Street, in Company with Sir *William Forbes* and Mr. *Fraſer*, the preceding Witneſſes; that after *Wilſon* had hung ſome Time, he ſaw the Executioner go up ſome Steps of the Ladder, in order to cut him down, as he apprehended, and ſaw the Mob throw ſeveral Stones at him; upon which he came down, therefore the Mob continued to throw Stones, ſome of which fell among the Guard; whereupon he heard ſeveral dropping Shots fired by the Soldiers; that he ſaw the Pannel preſent his Piece, immediately heard a Shot, which he apprehended was ſhot by the Pannel, but did not obſerve it ſo narrowly as to ſee the Smoak or Fire iſſue out of his Piece. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

William Urquhart.
Ja. Mackenzie.

James Dewar of *Vogrie*, aged Sixty-four Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, at *Andrew Wilſon*'s Execution, he was in a Window in his own Houſe at the Foot of the *Weſt-bow*,

in the East-side of the Way; that he saw the Hangman go up some Steps of the Ladder, after *Wilson* had hung some time; and saw the Mob throw some Stones, one of which hurt the Executioner on the Face; upon which he came down the Ladder; whereupon he saw the Pannel present his Piece and Fire, which was the first Shot he heard or saw; that when he saw the Pannel fire, his Side was to the Deponent, and that the Pannel was then standing on the East-side of the Gibbet; and that he fired his Piece to the West: And Deponed, he saw the Fire of the Powder from the Pan, and heard the Report of the Shot. Depones, That when the Pannel fired, as aforesaid, he was standing on the South-east side of the Scaffold. Deponed, That *Wilson* was cut down not by the Hangman, but by some that were standing at the Foot of the Gallows, and that *Wilson* was cut down before he heard any Shots: Deponed, That he stood at his own Window before *Wilson* was thrown over, and continued looking at the Place of Execution till he was cut down, and heard the Shots as before mentioned. And being interrogated what kind of Cloaths Captain *Porteous* had then on, declares he cannot be positive, but believes they were Red Cloaths: but is positive that he knew Captain *Porteous* Face when he saw him fire. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

James Dewar.
Ja. Mackenzie.

George Drummond, Esq; One of the Commissioners of the Customes, aged Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was in the House of Baillie *Halyburton* on the right Hand, on the North-side of the Corner of the *Strait-bow*, the Third-story, at the time of the Execution of *Andrew Wilson*, and from a Window of the said House, after the Criminal was thrown over, and had hung for fifteen or sixteen Minutes, the Executioner was about going up the Ladder; and after he went up two or three Steps, he observed several Stones thrown at him; which made him return; and while he was on the Ground, he observed his Nose blooding; and at this time he observed one or two Persons or more standing at the Foot of the Gallows; one of whom stretching up his Arm with a Knife, he observed cut the Rope; the Executioner having mixed with the Soldiers, he did observe the throwing of Stones to continue, and some of them fell among the Soldiers. Deponed, That immediately thereafter he observed one of the Soldiers advance a little before Mr. *Porteous* to the West-ward, with a Gun in his Hand, which he presented; and immediately thereupon the Deponent heard a Shot, which he imagined to be from that Soldier, but did not observe Fire or Smoak; tho' at the Time he concluded it was from that Soldier's Gun, and is positive that that was the first Shot that was fired; and the Deponent did not think that the Stones that were thrown, did give any just Cause for the Firing. Deponed, that about the Time when he observed the Soldier present his Gun, as said is, he also observed the Pannel holding his Gun in his Hand in a Level, but is not sure of his putting the Butt of it to his Shoulder. Deponed, That after the said first Shot, within a Minute he heard another, and so it continued till about the Number of Eighteen or Twenty; and this was at the Time of the Firing observed by the Deponent; but within some Minutes thereafter, there was a second Firing, which he did hear, and upon hearing came to the Window, and observed some Lime fallen from an opposite House, which he judged to have been occasioned by the Bullets: And as to the eighteen or twenty dropping Shots, in the first Firing, were from the Soldiers immediately behind the Pannel, betwixt whom and them, he observed no Person interposed; and he observed the Time of the first Shot the Pannel's Face was looking West-ward, as was all the Soldiers behind him. Deponed, That the Soldiers at that time, who fired, were to the Deponent's best Remembrance to the North-ward of the Scaffold; and the Pannel was then, to the best of his Remembrance, either upon a Line to the Gibbet, or a little West-ward of it. Further deponed, That the Soldier who first fired, as said is, advanced from behind the Pannel, and past upon his right Hand to the North-ward of him. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.* 1736.

Ge. Drummond.
Da. Erskine.

William Johnstoun, Druggest in *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, he the Deponent being present at the Execution of *Andrew Wilson*, he did observe the Pannel take a Gun out of a Soldier's Hand, at which Time he was standing 'twixt the *Corn-mercate* and one *Tod*'s Shop, which is under Baillie *Halyburton*'s House; thereupon he observed the Pannel advance some Steps Westward, and did see him present and level his Gun, that is to say, hold it out and fire amongst the Multitude; and did observe the Smoak come out of the Gun: And deponed, That this was the first Shot he heard, which Shot immediately followed after the Criminal was cut down by a Hand standing at the Foot of the Gibbet; and the Deponent at the Time was standing in a Window in the House of one *Gairdner*, Horse-Ferrier by the *Muse Well*; and when the Pannel was taking the Gun out of the Soldier's Hand, he appeared to be in Passion, and it was some short time before he was Master of the Gun. Deponed, That to the best of his Remembrance the Pannel was cloathed in red, but he being well acquainted with the Pannel's Face, he is positive, that he was the Person that took the Gun and fired as aforsaid. And Deponed, That he believes there was about thirty Yards Distance betwixt the Window where the Deponent was, and the Pannel, at the first firing. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

Wm. Johnstoun.
Da. Erskine.

Mark Sprott, Skinner, and one of the Constables of *Edinburgh*, aged Twenty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, as he stood on *William Orr* Stabler's Window, South-side of the *Grass-mercate*, he saw *Wilson* the Criminal cut down from the Gibbet; upon which Occasion he did not observe that there was any greater Disturbance than usual at Executions: That a very little while after the Criminal was so cut down, he observed the Pannel advance before the Soldier, and upon the North-side of the Scaffold over-against the Gibbet, he saw him fire his Piece towards the West, and the Smoak issue out of the Mouth of his Gun; this he says was the first Shot that was fired; but immediately, upon the back of that, a tall Man with his own Hair, about the third behind the Pannel, as he thinks, fired off his Piece likewise towards the West, but up in the Air over the Heads of the Multitude: That very soon after several other dropping Shots followed after, which when the People fell back and opened, he observed a young Man lying upon the Ground as dead, directly opposite to the Place where the Pannel fired. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God: *Sic subr.*

Mark Sprott.
Gilb. Eliot.

George Campbel, Wright in *Edinburgh*, aged Twenty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent stood in the Window of Mr. *Carmichael*'s House, in the South-side of the *Grass-mercate*, directly opposite to the Gibbet; That a very little after *Wilson* was cut down, he observed the Pannel with four or five of his Men about him, and that as he pointed his Piece to and fro towards the Multitude, he observed him receive a Stroak by a Stone thrown from behind the Scaffold, off which it rebounded and struck him; upon which he immediately fired his Piece; but whether this was the first Shot or not, the Deponent cannot tell, for there was three or four fired much about the same time; but that the Pannel fired, he is sure, for he saw Fire and Smoak issue from his Piece. That upon these Shots already mentioned, he saw a Man fall down upon his Back on the Street: That after this he saw the Pannel raise his Musket, and put his Hand to his Cartrage Box, as if he intended to load again; but does not know what followed upon this, because he immediately lost Sight of him. Deponed, That when the Pannel fired his Piece as above, he was standing towards the South-east Corner of the Scaffold, and pointed his Piece towards the South-west: That the Pannel's Fire with the Shots that went off at the same Time, were the first that were made on that Occasion. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

George Campbell.
Gilb. Eliot.

James Bald, Merchant in *Edinburgh*, aged Thirty-two Years, or thereby, Widower, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent stood in the same Window with the immediate preceding Witness, or at least in a Window in the same Room: That a little after *Wilson* was cut down from the Gibbet, he saw the Pannel advance a little Westward from the *Corn-mercate*, towards the South-side of the Gibbet, and fire off his Piece West-ward, toward the *Muse Well*: That at this Time he saw none of the Soldiers near him, nor observed any other fire but his; and before there was any more firing, when the Multitude fell back, he saw a Man lying dead, towards the Place that the Pannel pointed his Piece; that he is sure the Captain fired, since he saw the Fire and Smoak issue from his Piece. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

James Bald.
Gilb. Eliot.

Andrew Daw, Servant to *James Montgomery*, Brewar in *Potterow*, aged Twenty-two Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, the Deponent was standing at the foot of *Robertson* the Stabler's Closs, when *Wilson* was cut down from the Gibbet: immediately after which the Pannel, who was standing in the middle of the Street, between the Deponent and the *Corn-mercate*, fired his Piece toward the Place where the Deponent was standing; upon which a Baxter in the *Abbay*, called *Charles Husband*, dropt just by the Deponent; and his the Deponent's Coat was torne in the Shoulder with the same Shot; that he heard the Report of the Captain's Piece, tho' he neither saw the Fire nor the Smoak, yet he is sure the Pannel fired, because he saw no other Piece presented at the same time: That the Pannel when he fired as above, was as near to the Deponent, as the End of the Table where he now stands, is to the West-end of this Room. Deponed, That the Shot mentioned to be made by the Pannel, was the first he heard that Day. Deponed, That during the whole time of the Execution he never came nearer the Scaffold than *Robertson*'s Closs-foot (by *Robertson*'s Closs-foot is meaned the end neareſt the *Grass-mercate.*) *Causa Scientiæ patet.* And this is the Truth as he should answer to God, and declaired he cannot write. *Sic subr.*

Gilb. Eliot.

Walter Sheargold, Indweller in *Edinburgh*, aged Twenty-eight Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present the Time and Place libelled; and after the Criminal *Wilson* was cut down, he saw Captain *Porteous* fire his Gun, holding the same straight out at the Multitude; and that the Deponent was then within three Yeards of the Captain, when he saw him fire, and that after he had fired, he heard him call, Fire; then heard some Shots, but does not know from what Hands they came, for he immediately retired to the *Lawn-mercate*. Deponed, That when the Pannel fired, his left Hand was towards the Scaffold, and he fired towards the West-port. Deponed, That the Scaffold was nearer to the West-port than the Pannel was when he fired, that is, the Pannel was nearer to the *Corn-mercate*: Deponed, That this Shot by the Pannel, was the first that he heard at that time, and that he was present all the time of the Execution; that he was so near as to see the Fire and the Colfine fly out of the Pannel's Gun. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subscribitur*

Walter Sheargold.
Wa. Pringle.

John

John Ritchie, Servant to Mr. *Archibald Murray*, Advocate, aged Seventeen Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, the Deponent was preſent at the Execution of *Andrew Wilſon*; and after the Criminal was cut down, he ſaw and heard about Three Shots fired, and then he heard a Fourth Shot, which was by Captain *Porteous*; and that he ſaw a Man fall down, but the Deponent imagined it was from the Preſſure of the Croud; that there was very ſhort time betwixt the Shots, but that which was by Captain *Porteous* was the laſt in order. That after the Criminal was cut down, the Guard drew towards the North-ſide of the Scaffold; that the Deponent was ſtanding within Two or Three Yeards of the Foot of *Robertſon*'s Cloſs, when he ſaw and heard the firing: Deponed, he heard the Pannel mention the Word, Fire, before the firing: Deponed, That the Pannel was, to the beſt of the Deponent's Remembrance, ſtanding as far Weſt as the Gallows; but he cannot be very poſitive; the Mob and Crowd was ſuch, that he could not very diſtinctly diſcern: Deponed, That the Shots mentioned by the Deponent, firſt Three, and then a Fourth, was the firſt he heard that time. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic jubr.*

John Ritchie.
Wa. Pringle.

Thomas Crookſhank, Servant to *Thomas Frotter*, Brewar in *Edinburgh*, aged Twenty-two Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, the Deponent being upon the Cauſey on the South-ſide of the Scaffold, ſaw the Pannel, who was then ſtanding upon the North-ſide of the Scaffold, fire the Gun that was in his Hand upon the Multitude, the Point of the Piece being directed Weſtward; and ſaw the Fire and Smoak iſſue out of the Muzzle of the Gun, that was in the Pannel's Hand. And further deponed, That the Pannel was ſtanding at the North-ſide of the Scaffold, and at that end of it, which is next the *Bow*. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubſcribitur Thomas Crookſhank.* And being further interrogate, If the ſaid Shot that the Pannel fired, was the firſt Shot, Deponed, That it was the firſt Shot; but that ſeveral other Shots followed immediately thereafter. And this is likewiſe the Truth as he ſhall anſwer to God. *Sic ſubſcribitur,*

Thomas Crookſhank.
Andr. Fletcher.

James Neilſon, Gardener in the *Bull Cloſs* of *Edinburgh*, aged Thirty-one Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, the Deponent being ſtanding within the Foot of a Turnpike near the *Muſe Well*, ſaw the Pannel who was then ſtanding upon the North-ſide of the Scaffold, a little to the Eaſt-ward, where the Gallows was; and ſaw the Pannel advance Weſt-ward, towards the Multitude, with his Firelock in his Hand, moving it to and again, as if he had been beating back the People; and at the Third or Fourth Motion, ſaw the Pannel fire the Piece that was in his Hand upon the Multitude, pointing it Weſtward, and ſaw the Smoak iſſue out at the Muzzle of the ſaid Piece. That this was the firſt Shot which the Deponent heard, which was ſoon followed by others; for the Deponent obſerved the Pannel after he had fired his Piece retire ſome Yards to the Soldiers, and ſaw Five or Six of theſe Soldiers advance and fire upon the Multitude; and ſoon thereafter when the Multitude were beat off, the Deponent ſaw a Boy with black Hair lying within ten Yards of the Turnpike where the Deponent was ſtanding, and ſaw Four other Perſons lying at different Places upon the Street; and ſaw the firſt mentioned Boy blooding at the Ear. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubſcribitur,*

James Neilſon.
Andr. Fletcher.

William Gordon, Baxter, and Servant in the common Bakehouſe in *Hoſſies Cloſs* in *Edinburgh*, aged Twenty-one Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place lybelled, The Deponent being at the Head of the Turnpike at the back of the *Muſe Well*, did from thence ſee Captain *Porteous*, Pannel, who was then upon the North-weſt Corner of the Gibbet, wave his Firelock to and again; and thereafter ſaw the ſaid Firelock while in his Hand, go off, and ſaw the Fire and Smoak go out at the Muzzle of it; and this was the firſt Shot which the Deponent heard that Day, but heard ſeveral Shots thereafter; and that the Shot which the Pannel fired, was ſoon after the deceaſed *Andrew Wilſon* was cut down. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubſcribitur,*

William Gordon.
Andr. Fletcher.

James Naſmith, Servant to *Colin Aliſon*, Wright in *Edinburgh*, aged Twenty-ſix Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogate, Deponed, That Time and Place libelled, and ſoon after the deceaſed *Andrew Wilſon* was cut down from the Gibbet; the Deponent being upon the Cauſey of the North-eaſt end of the Scaffold, beginning to take down the Scaffold; and did then hear the Pannel, who was towards the North-end of the Scaffold, ſay ſeveral Times to the Soldiers under his Command, Fire and be damn'd! and at the ſame Time ſaw the Pannel advancing Weſt-ward, with his Piece preſented in his Hand; and immediately after hearing the forſaid Words, he heard ſeveral Shots go off; and when the forſaid Words were ſpoken by the Pannel, he was paſſing by the Deponent Weſt-ward, about a Yard or two diſtant from him. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubſcribitur,*

James Naſmith.
Andr. Fletcher.

David Broun, Servant to *Colin Aliſon*, Wright in *Edinburgh*, aged Twenty-eight Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the deceaſed *Andrew Wilſon* was cut down from the Gibbet, the Deponent being ſtanding at the Eaſt End of the Scaffold, aſſiſting to pull it down; and then ſaw the Pannel going along the North-ſide of the Scaffold Weſtward, and heard him give Orders to the Soldiers under his Command to fire, but does not remember the particular Expreſſion; and immediately upon the Orders being given as aforeſaid, he heard ſeveral Shots; and when the Deponent heard the Pannel give the forſaid Orders, he was about the Diſtance of the Breadth of the Scaffold from him. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubr.*

David Broun.
Andr. Fletcher.

Matthew Kid, Servant to *Thomas Milln*, Deacon of the Meaſons in *Edinburgh*, aged Thirty-three Years, or thereby, married, ſolemnly ſworn, purged of Malice, and partial Council, examined and interrogated, Deponed, Time and Place libelled, and ſoon after the deceaſed *Andrew Wilſon* was cut down from the Gibbet, the Deponent being ſtanding upon the plain Stones near Capt. *Todd*'s Shope, he ſaw the Pannel going from the Well at the *Bow-foot* Weſtward, and ſaw him fire the Gun that was in his Hand, and thereafter give Orders to the Soldiers under his Command to fire; thereafter heard him call to the ſaid Soldiers to level their Pieces; and ſaw the ſaid Soldiers fire; and that the Shot fired by the Pannel as aforſaid, was either the firſt or ſecond Shot; which Shot he fired ſtanding to the North-eaſt of the Scaffold, half-way 'twixt that and the *Bow-foot* Well; and that when the Pannel ordered the Soldiers to level their Pieces, he was ſome Yeards nearer the Foot of the *Bow*. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubſcribitur,*

Matthew Kid.
Andr. Fletcher.

James Maxwell, Servant to *Colin Aliſon*, Wright in *Edinburgh*, aged Thirty-two Years, or thereby, married, ſolemnly ſworn, purged of Malice, purged of partial Council, examined and interrogated, Deponed, That the Time and Place libelled, after *Wilſon* was cut down and put in his Coffine, there was ſome Stones thrown by the Mob amongſt the Guard; upon which he heard the Pannel to order the Soldiers to turn in; and immediately heard him give the Soldiers Orders to fire, and be damn'd; and then ſaw him advance two or three Paces, and ſaw his Gun cocked, and his Thumb upon the Doghead, and ſaw him fire the Gun; and immediately before he heard any other Shot, he ſaw a Boy fall near a Copperſmith's Shop, to the North-weſt of the Place, from which the Pannel fired his Gun. There were ſix or ſeven more Shot after the Orders were given; and then he ſaw three Men and a Woman fall, one of which had a Wound in his Forehead, and another in the ſide of his Head: That after the Soldiers fired as aforſaid, he heard the Pannel ſay to one of the Soldiers, That if he did not fire, he would take his Piece from him. Deponed, That he the Deponent was then ſtanding on the South-ſide of the Scaffold, helping to pull it down, when he heard and ſaw what is above deponed upon; and that the Pannel was upon the North-ſide of the Scaffold, about ten Yards from it, over-againſt the Middle of the Scaffold: And deponed, That the Pannel's Shot at that Time was the firſt he heard then ſhot. Deponed, That he was preſent at the Time from *Wilſon*'s coming down to his Execution, till after he was cut down and carried away; during which Time he heard no Shot fired, until That fired by the Pannel. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubcribr.*

James Maxwell.
Ja. Mackenzie.

William Douglas, one of the Soldiers in the City Guard, *Edinburgh*, aged Forty-ſeven Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, as the Executioner was going up the Ladder to cut down *Wilſon*, there were ſeveral Stones thrown at him, which obliged him to come down the Ladder; at the ſame Time there was ſeveral Stones thrown amongſt the Guard, before *Wilſon* was cutt down, at which time he heard the Pannel ſay to the Soldiers, Be damn'd to you, Bougars, Fire; after which he heard ſeveral Shots fired by the Men, but knows nothing of the Pannel's having fired; and that theſe were the firſt Shots he heard fired that Day, to the beſt of his Knowledge. Deponed, That the Pannel when he uttered the Words beforementioned, was ſtanding at the South-ſide of the Gallows. Deponed, That the firſt Shots were fired before *Wilſon* was cut down, and likewiſe ſome of them thereafter. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God; and declares he cannot write. *Sic ſubſcribitur,*

Ja. Mackenzie.

Archibald Yetts, Litſter in the *Abbay* of *Holyrood-houſe*, aged Forty-eight Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time and Place libelled, a little after *Wilſon* was cutt down from the Gallows, he ſaw the Pannel fire his Piece among the Multitude; and immediately heard him ſay to his Men, Levell your Pieces, and fire and be damn'd! Whereupon there were a great many Shots fired by them, and ſaw the Pannel take a Gun from one of the Men, which he the Pannel fired. Deponed, That he the Deponent was within ſix Yeards of the Pannel when he fired, and ſpoke the Words before-mentioned. Deponed, That at the Time when the Pannel took the Gun from the Soldier, he laid his own upon the Scaffold, and that there were ſome Perſons, but very few, then ſtanding upon the Scaffold. Deponed, That betwixt the Time that the Pannel fired his own Piece, and his taking the Gun from the Soldier, as aforſaid, it might be about eight or nine Minutes: And deponed, That at the Time he fired the ſecond Gun, there were ſeveral other Guns fired at the ſame time. Depones, That there was no Shot fired before the firſt fired by the Pannel; and that the ſecond Shot fired by the Pannel was near the ſame Place where he fired the firſt; and that he had not moved above ſix or ſeven Yeards betwixt the firſt firing and the ſecond; and that ſome of the Soldiers followed the Pannel in that Space, and returned with him

again to the Place where he fired firſt. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

Archbald Yetts.
Ja. Mackenzie.

William Murray, Barrowman and Indweller in *Edinburgh*, aged Twenty-ſeven Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, the Deponent being preſent at the Execution of *Andrew Wilſon*, he did obſerve two of the Soldiers under the Pannel's Command, fire their Guns; but the Guns were fired up in the Air; thereafter he obſerved the Pannel fire his Gun amongſt the Multitude; whereupon he obſerved a Boy drop down, and did hear the Pannel call out to the Soldiers, Damn them for Bougars, why did they not fire, even forward, and clean the Street? At which time the Deponent was ſtanding about the South Pillar of the *Corn-mercate*, about twenty Yards Diſtance from the Pannel, as he apprehends: Further deponed, That after the ſaid firſt firing, he obſerved the Pannel take a Gun out of a Soldier's Hand, and fire again; directing it towards a Man he was purſuing; which he did thirty or forty Yeards; and upon firing, he obſerved the Perſon ſo purſued, fall down: And being interrogated how long his preſent Dulneſs of Hearing remained with him; Deponed, he has been as dull of Hearing theſe ſeven Years paſt. Deponed, That the two Shots from the two Soldiers were the firſt firing he heard upon that Occaſion. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

William Murray.
Da. Erſkine.

James Nicoll, Watch-maker in *Cannon-gate*, aged Thirty-ſix Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was preſent, Time and Place libelled, at the Execution of *Andrew Wilſon*; and then he did obſerve the Pannel fire his Gun, holding it out ſtraight before him, amongſt the Multitude there aſſembled; and as he heard the Report of the Gun, ſo he obſerved the Smoak of the Powder coming from the Gun; and this Shot was the firſt he heard upon that Occaſion; and the Pannel when he thus fired, was ſtanding betwixt the Gibbet and one Mr. *Cunynhame*'s Shope on the North-ſide of the Street near the North-eaſt-end of the Scaffold. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

James Nicoll.
Da. Erſkine.

William Jameſon, Merchant in *Edinburgh*, aged Twenty-four Years, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was preſent, Time and Place libelled, at the Execution of *Andrew Wilſon*; and about the Time when they were cutting down the Criminal, the Deponent then ſtanding within three or four Yeards of the Pannel, did hear him give Orders to the Soldiers that were behind him to fire, and immediately thereafter he did hear the Pannel fire the Gun that was in his own Hand; and upon his firing, obſerved the Smoak of the Powder come from it; thereafter he obſerved the Pannel take a Gun from one of the Soldiers, but what Uſe he made thereof, he knowes not; and it was very ſhort Time 'twixt the Pannel's Firing, and his taking the Gun from the Soldier, as alſo, a very ſhort Diſtance betwixt the Place where he fired, and where he took the ſaid Gun; the Place of his firing to the Deponent's Memory, being near to *Robertſon's Cloſshead*; and where he took the Gun, was a very little way up the Street from it: And the Shot he heard from the Pannel's Gun, was the firſt he heard that Day. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

William Jameſon.
Da. Erſkine.

John Moffat, Baxter, and Servant in the Common Bake-houſe in *Haſties Cloſs* in *Edinburgh*, aged Twenty-ſix Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent was ſtanding in Mr. *Orr*'s Door, on the South-ſide of the *Graſs-Mercate*; and ſome ſhort time after *Wilſon* was cut down, he ſaw the Pannel take a Gun out of one of the Soldiers Hand, before Mr. *Todd*'s Shope Door, which he immediately fired off towards the North-weſt; a little before which, the Deponent ſaw him fire his own Gun from the ſame Place; that upon the Captain's Firing, the Deponent ſaw ſome of the Soldiers, who ſtood behind the *Corn-mercate*, fire their Guns up in the Air. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

John Moffat.
Gilb. Eliot.

John Stewart, Merchant in *Edinburgh*, aged Thirty Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place lybelled, the Deponent was ſtanding in a Window of *Wine Garden*'s Houſe, on the South-Side of the Scaffold: That ſome ſhort Time before *Wilſon* was cut down, upon ſome Stones being thrown at the Hangman, he obſerved the Pannel jump down from the South Side of the Scaffold, and walk up briſkly towards the Place where the Diſturbance was, but nothing in his Hand but a Cane; immediately after this *Wilſon* was cut down; upon which the Guard that attended the Execution, began to march up the *Bow*; and that at the North-Weſt Corner of the Gallows, he obſerved the Pannel take a Gun out of a Soldier's Hand, with which he puſhed back the Multitude; and that when the Pannel came the Length of the *Bow-Foot*, being upon the Rear of his Men, he ſaw him receive a Stroke with a Stone; upon which he ſuddenly turned about, and waved his Piece to and again, towards the Multitude, but without firing; but a very little after that, he turned about all at once, and ſtepped ſome Steps forward, and fired off his Piece towards the Crowd Weſtward: That this was the firſt Shot which the Deponent either heard or ſaw made that Day. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubr.*

Jno. Stewart.
Gilb. Eliot.

John Gibb, Cow-feeder in *Cannon-gate*, aged Forty-four Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, he was ſtanding at Mr. *Robertſon*'s *Cloſs-head*, in the *Graſs-Market*; that a very little after the Hangman had been on the Ladder, as he thought, to cut down *Wilſon*, he obſerved the Pannel with his Gun in his Hand, advance towards the Crowd, where the Diſturbance was, and preſent his Piece three Times; the laſt of which Times, the Deponent thought he fired her off; for he ſaw the Primine burn in the Pan, but could not ſee the fiery Smoak at the Muzzel, becauſe of the Crowd; neither could he with Certainty diſtinguiſh the Report, becauſe ſeveral other Pieces were fired off at the ſame Time: That upon theſe Pieces being ſo fired, he ſaw one Mr. *Niel* drop down at the *Muſe Well*: That before the Firing above-mentioned, he neither heard nor ſaw a Shot made that Day. *Cauſa Scientiæ patet.* And this is the Truth as he ſhall anſwer to God. *Sic ſubr.*

John Gibb.
Gilb. Eliot.

Followes the Witneſſes adduced for the Pannel.

George Smeiton, Writer in *Edinburgh*, aged Thirty Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, he was preſent at the Execution of *Wilſon*: That when the Executioner was doing his Duty, he ſaw Captain *Porteous* come off the Scaffold, becauſe the Mob was crowding upon the Guard; and while the Pannel was endeavouring to keep off the Mob, he ſaw a Man with a Silk Napkine about his Neck, preſs upon the Pannel, and ſeem to endeavour to greſp at; but that a young Gentleman there, in green Cloaths, keept him off; and then the Pannel returned to the Scaffold; but about the Time the Criminal was cutting down, or to be cut down, the Pannel went off the Scaffold again; and about that Time there was Stones thrown by the Mob at the Hangman, and the Guard; and ſome of them fell amongſt the Guard: That ſo far as the Deponent could obſerve, being upon a Bartizine, upon the South-ſide of the Scaffold, five Story high, the Stones ſeemed to be pretty large, but the Deponent cannot tell the Dementions; and then he ſoon obſerved a Shot, which was the firſt that he obſerved, and came from one of the Soldiers; and this Shot was after the Criminal was cut down; and after this Shot, in a very little followed three or four other Shots; and at this Time the Pannel had his Piece preſented towards the Multitude; and that he ſaw the Flaſh of the Pan of the Soldier's Gun that fired the firſt Shot. Deponed, That the Pannel was pretty near the Soldier that fired the firſt Gun. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubr.*

Geo. Smeiton.
Wa. Pringle.

Thomas Harton, Doctor in the Regiment of *Welſh* Fuzieleers, in the *Cannon-gate*, aged Thirty-nine Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, Time and Place libelled, he was preſent at the Execution of *Wilſon*, when he ſaw ſeveral Stones thrown by the Mob at the Guard, of ſuch Bigneſs, that was ſufficient to have killed them, in caſe they had hitt them in a proper Place; which continued ſome little Time. Deponed, That while the Criminal was hanging upon the Gallows, the Deponent ſaw a Man preſs towards the Pannel; and being come near him, he held up his Hand to him, in a threatning Manner; but the Deponent did not hear what Words he uttered. Deponed, That when the Pannel was upon the Scaffold, he had no Gun in his Hand; but when he came off again, he took a Gun from a Soldier. Deponed, That when the Pannel came off the Scaffold, he went about to the Weſt-ſide, and turned about towards the North, endeavouring to get his Men together, which he could not weel do, they being ſo much interſperſed with the Mob; and they continuing ſtill to throw the Stones, the Pannel turned about with his Face towards the Weſt; and having his Fuzie in ſuch a Manner in his Hand, as if he had not deſigned to fire, but waving it from Side to Side, rather ſeeming to intimidate them: And at this Time there was a Soldier came upon his Right Hand, and fired cloſe by the Pannel; and this was the firſt Shot the Deponent obſerved: And deponed, That he had his Eyes ſtrictly upon the Pannel all this Time. Deponed, He did not ſee the Pannel fire; and he is very well aſſured, that he did not fire at that Time. Deponed, That this Shot was immediately after the Criminal was cut down. Deponed, That after this, the Pannel endeavoured to carry off his Men. Deponed, That the Soldier that came up by the Pannel's Right-ſide, came up from behind him. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubr.*

Tho. Harton.
Wa. Pringle.

David Rannie, Merchant in *Edinburgh*, aged Forty Years, or thereby, married, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That after the firſt Firings were over, the Deponent from his own Window in the Land above Baillie *Dewar*'s, at the Foot of the *Bow*, ſaw the Pannel draw off his Men, and marching up the *Bow*, halt at Baillie *Crocket*'s Shop, at which time the Deponent heard ſome Soldiers fire, which the Deponent apprehended was in the Rear; the Deponent looking upwards, and they that fired not being under his Eye. *Cauſa Scientiæ patet.* And this is the Truth as he ſhould anſwer to God. *Sic ſubr.*

David Rannie.
Andr. Fletcher.

John Clark, Serjeant in the Regiment of *Welſh* Fuzieleers, aged Thirty-three Years, or thereby, unmarried, ſolemnly ſworn, purged of Malice, partial Council, examined and interrogated, Deponed, That the Time libelled, the Deponent was ſent by the Captain who commanded the Detachment of the King's Forces in the *Lawn mercate* to the Place of Execution, to get Orders from the Magiſtrates or the Pannel; and having gone up to the Scaffold, and while the Deponent was converſing with the Pannel, he ſaw a Stone thrown at the Executioner, which cut

cut him in the Nose so that he bled; and about the same time there was a Stone, about the Bigness of the Deponent's two Fists, hit the Calf of the Deponent's Leg; upon which the Deponent with the Pannel came down from the Scaffold, and thereafter saw the Pannel moving his Fuzie in order to keep off the Crowd, who had by that time pressed upon the Guard, and drove them about four or five Yeards from the Place where they were posted at first; and thereafter the Deponent saw Captain *Porteous* endeavouring to keep off the Mob with his Fuzie, waving it to and again, telling them to keep off, or he would fire, but that there was no Fire at that time: And the Deponent then walking towards the *West-bow*, saw four or five of the Soldiers presenting their Pieces, and saw one of them advance to the Right where the Deponent was standing, and fire upon the Crowd; which was the first Shot the Deponent heard; at which time the Deponent saw the Pannel upon his Left-hand, about seven Yeards from him; and then the Deponent saw two other of the Soldiers come up betwixt the Pannel and the Deponent, and fire in the Air; and thereafter heard four or five more Shots, which the Deponent thinks was fired betwixt the place where the Deponent was standing and the Pannel; and the Deponent during that time had his Eye fixt upon those who fired, and did not observe Captain *Porteous* fire, or give Orders to fire; and upon the first Shot as aforsaid, the Deponent observed a Man drop at the Entry of *Robinson*'s Closs. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

Jno. Clark.
Andr. Fletcher.

Colin Campbell of *Ardonnick*, aged Forty-four Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, the Deponent in a Window from Mrs. *Carmichaell*'s, opposite to the Scaffold, observed no Disturbance till once the Executioner was going up the Ladder to cut down the deceased *Wilson*; and then saw some Stones thrown at the Executioner, upon which he retired; and as he was passing the *Corn-mercate*, the Deponent observed one of the Stones hit him, and saw some Stones thrown at the Guard, who were upon the North-side of the Scaffold; and saw the Pannel making Motion with his Fuzie to keep off the Mob; and afterwards turned towards the Foot of the *Bow* very civilly; and then saw a Stone hit one of the Soldiers; and which Soldier the Deponent saw present his Firelock; and saw another Stone hit the same Soldier; and thereupon the said Soldier pointed his Firelock Westward, and fired immediately; and another Soldier fired immediately after him; which Firings took the Deponent's Eyes from off the Pannel; and which two Firings, the Deponent thinks, were the first that were fired by the said two Soldiers who had advanced among the Crowd from their Party. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

C. Campbell.
Andr. Fletcher.

William Meanie, Serjeant in the City Guard of *Edinburgh*, aged Forty-eighty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, the Time and Place libelled, and about the Time the deceased *Andrew Wilson* was cut down, there was Showers of Stones thrown at the Guard, particularly one big Stone lighted betwixt the Deponent and Serjeant *Finlay*, above three Pound Weight; and that the Drummer was cut in the Head with a Stone, and the Drum struck with a Stone; and that *Alexander Muschbeat*, Centinell, one of the Guard, had his Shoulder Blade broke with a Stone; and that before these Strokes were given, the Deponent, by Order of the Pannel, was drawing off, and forming his Men in the Foot of the *Bow*; that the Pannel gave the Deponent his Fuzie, which was the Fuzie the Pannel ordinarily carried, to keep, while he attended the Execution, and the Prayers; which the Deponent returned to the Pannel again, upon the Sign's being given to cut down *Wilson*, and before the Pannel came down from the Scaffold. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

William Meane.
Ja. Mackenzie.

Alexander Campbell, Apprentice to *George Young*, Surgeon in *Edinburgh*, aged eighteen Years, or thereby, unmarried, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time and Place libelled, he saw several Stones thrown among the Guard after *Wilson* was cut down; and saw two of the Soldiers of the Guard step aside from among the rest and fire; and these were the two first Shots that he heard. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

Alexr. Campbell.
Ja. Mackenzie.

Matthew Howert, Soldier in the City Guard of *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was present at *Wilson*'s Execution, at the Time libelled; and that before, and after *Wilson* was cut down, there was a great many Stones, both great and small, thrown among the Guard by the Mob; that after the Pannel came down from the Scaffold, he saw him wave his Piece he had in his Hand, but did not offer to present it; then he saw a Soldier step out from the rest, and fire his Piece in the Air; as likewise Two or Three Soldiers that fired thereafter, did likewise fire their Pieces in the Air; and that these, who fired first, were standing closs by the Pannel, and the Deponent; and these were the first Shots he heard that Day; and he heard the Soldiers say, one to another, Fire, or we shall all be knocked down; and upon more Stones being thrown among them, several of them did fire; but before that Time he heard the Pannel say to the Soldiers twice, Do not fire. After these Shots were fired, the Captain marched up towards the *Bow*, and the Men followed him; that at the Time that the Shots were fired, as aforsaid, the Pannel was standing at the Foot of the Steps of the Scaffold, with his Face towards the Castle: And deponed, he was one of those that followed the Captain, nor did he see the Captain fire, as he was going up the *Bow*: That when the Captain was marching on the Head of the Men up the *Bow*, he heard a dropping Shot or Two fired from the Rear; nor did he see the Captain return again towards the Scaffold, but marched straight on up to the Town. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. And declared he cannot write: *Sic subr.*

Ja. Mackenzie.

David Martine, Soldier in the City Guard of *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he the Deponent was one of the Party of the City Guard, who attended the Execution of *Andrew Wilson*; and before there was any firing he did hear the Pannel call to them, Not to fire; and before that, the Deponent had his Shoulder blade disjointed with a Stroke he received upon it with a Stone. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. And declared he cannot write. *Sic subr.*

Da. Erskine.

William Byres, Soldier in the City Guard of *Edinburgh*, aged Fifty-one Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was one of the City Guard, who attended the Execution of *Andrew Wilson*; and that he did not hear Captain *Porteous* give any Orders to fire; but when the firing nappened, he was at some Distance from the Pannel; after the firing of several Shots, the Pannel called unto the Soldiers, To fall into their Ranks, and follow him; which accordingly the Deponent and the rest did; falling in gradually as they were able; and followed him to the Guard-house till they were dismissed; and in their March up the *Bow*, did hear one Shot that came from the Rear, but by whom he knows not. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

William Byres.
Da. Erskine.

James Armour, Writer to the Signet, aged Fifty Years and upwards, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That he was looking over a Window, to see the Execution of *Andrew Wilson*; after the Criminal was thrown over, and cut down, he observed the Croud of People throwing Stones of considerable Bigness, but against whom they were directed, he knew not, but they fell among the Soldiers; upon which he heard Two or Three Shots, but from whose Hands he did not observe: Thereupon there was an Intermission for Two or Three Minutes; but thereafter, when the Pannel with his Party were retiring, which they did in great Confusion and Disorder, the Croud pursued after them, renewed the throwing of great Stones, and in great Number; upon which, some of the Soldiers turned about, and marched back, some Eight or Ten Paces, still in Disorder; and then heard a good Number of more Shots fired; which to his Grief he saw did great Execution. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

James Armour.
Da. Erskine.

John Robertson, Stabler in the *Grass-mercate* of *Edinburgh*, aged Thirty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, as he stood in his own Window, in the *Grass-mercate*, he saw the Pannel with his Piece in his Hand, moving it to and again, keeping off the Mob; and heard him say, Fire, or I will fire, does not know which of the Two: That immediately after this, he saw a single Man step out three or four Paces before Captain *Porteous*, and fire his Piece; and the Deponent verily believed, that the People who fell near his *Closs*, gote their Wounds by that Shot; because they were lying in that Place towards which the Man seem to point. Deponed, that he heard some firing towards the Foot of the *Bow*, before the last-mentioned Shot. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

John Robertson.
Gilb. Eliot.

George Vint, Coal Grieve to Sir *William Baird* of *Newbyth*, aged Forty-six Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That at the Time libelled, he was in *John Robertson*'s Window in the *Grass-mercate*; when he observed, the Pannel moving his Piece to and again, as if keeping off the Mob; and at the same Time he saw one of the Soldiers, a black-haired Man, step forward before the Pannel and fire his Piece; upon which the Pannel turned about to him and pushed him into his Rank: Deponed, That he did not see the Pannel fire at that Time, or any other; and that the mentioned Shot was the first he heard or saw that Day. *Causa Scientiæ patet.* And this is the Truth as he shall answer to God. *Sic subr.*

George Vint.
Gilb. Eliot.

Alexander Thomson, Town Officer in *Edinburgh*, aged Forty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That being upon the Scaffold on the Fourteenth of *April* last, when *Wilson* was executed; the Pannel sent him to the Magistrates, who were in *William Orr*'s House, to know of them how long the Criminal should yet hang upon the Gallows; that he returned to the Pannel with the Magistrates Direction; which was, that he should still hang a Quarter of an Hour; but before the half of that Time was expired, *Wilson* was cut down. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

Alex. Thomson.
Gilb. Eliot.

Peter Coulstoun, Merchant in *Edinburgh*, aged Twenty-five Years, or thereby, married, solemnly sworn, purged of Malice, partial Council, examined and interrogated, Deponed, That Time and Place libelled, and after the first firing, the Deponent being standing under the North-west Corner of the *Corn-mercate*, saw the Pannel march the Guard under his Command up the *West-Bow*; and saw several of the Rear of that Guard fire upon the People assembled at the Execution; and at the same time observed, That the Pannel was within the first Turn of the

West

West-Bow, and so out of the Deponent's view. *Causa Scientiæ patet.* And this is the Truth as he should answer to God. *Sic subr.*

Pet. Coulstoun.
Andr. Fletcher.

John Kennedy, Surgeon in *Edinburgh*, aged Fifty Years, or thereby, married, solemnly sworn, purged of Malice, partial Council; examined and interrogated, Deponed, That some short Time after the Execution of *Andrew Wilson*, in *April* last, The Deponent attended the Persons of the Town Guard after-mentioned, *viz. Alexander Musbet* Soldier, the Spine of whose Shoulder-bone was crushed, and *Alexander Braid* Soldier, who had a Contusion in his right Foot; both which Persons informed the Deponent, that they received these Hurts at the Execution of the said *Andrew Wilson*; and that the last-mentioned Person is lame to this Day. *Causa Scientiæ patet.* The Deponent was employed to wait upon the saids Persons. And this is the Truth as he should answer to God. *Sic. subr.*

John Kennedy.
Andr. Fletcher.

The Lord Justice Clerk and Commissioners of Justiciary ordained the Assize to inclose instantly in a Room prepared for them in the *Exchequer*, and return their Verdict in the *Old Court House* To-morrow at Four a-Clock at Night; and the haill Fifteen to be then present; each Person under the Pain of Law; and the Pannel to be carried back to Prison.

Curia Justiciariæ, S. D. N. Regis, tenta in Prætorio Burgi de Edinburgo, *Vigesimo Die Mensis* Julii, *Millesimo septingentesimo trigesimo sexto, per Honorabiles Viros* Andream Fletcher *de* Milton, *Justiciarium Clericum, Dominum* Jacobum Mackenzie *de* Royston, *Magistrum* Davidem Erskine *de* Dun, *Dominos* Gualterum Pringle *de* Newhall, *et* Gilbertum Eliot *de* Minto, *Commissionarios Justiciarii, dict. S. D. N. Regis.*

Curia legittimè affirmata.

Intran.

JOHN PORTEOUS, lately one of the Captain Lieutenants of the City Guard, Pannel, INDICTED and ACCUSED as in the former *Sederunts.*

The Persons who past upon the Assize of the said *John Porteous*, returned their Verdict in Presence of the saids Lords: Whereof the Tenor followes.

Edinburgh, July 20th, 1736.

The above Assize having inclosed; did choice Sir *John Inglis* of *Cramond*, to be their Chancellor; and *James Davidson*, Bookseller in *Edinburgh*, to be their Clerk: And having considered the Indictment at the Instance of *Duncan Forbes* of *Colloden*, Esq. his Majesty's Advocat for his Highness Interest, against *John Porteous*, late one of the Captain Lieutenants of the City Guard of *Edinburgh*, Pannel; with the Lord Justice Clerk, and Lords Commissioners of Justiciary, their *Interloquitur* thereupon; and Depositions of the Witnesses adduced for proving thereof; the Pannel's own judicial Confession, and Depositions of the Witnesses adduced for the said *John Porteous*, Pannel, his Exculpation: They all in one voice fand it proven, That the said *John Porteous*, Pannel, fired a Gun among the People, assembled, at the Place of Execution, and time libelled. As also, That he gave Orders to the Soldiers under his Command to fire; and upon his and their so firing, the Persons mentioned in the Indictment were killed and wounded. And fand it proven, That the Pannel and his Guard were attacked and beat by several Stones of a considerable bigness, thrown amongst them by the Multitude; whereby several of the Soldiers were bruised and wounded. In Witness whereof our said Chancellor and Clerk, in our Name, have subscribed their Presents, Day and Place forsaid. *Sic subr.*

Jo. Inglis Chanr.
James Davidson Clerk.

THE Lord Justice Clerk and Lords Commissioners of Justiciary, having considered the Verdict of Assize returned against *John Porteous* Pannel of this Date, They in respect thereof, by the Mouth of *John Dalgleish*, Dempster of Court, DECERNED and ADJUDGED the said *John Porteous*, To be taken from the *Tolbooth* of *Edinburgh*, upon *Wednesday* the Eighth Day of *September* next to come, to the *Grass-mercate* of *Edinburgh*, the common Place of Execution of the said Burgh, betwixt the Hours of Two and Four of the Clock of the Afternoon of the said Day, and there to be hanged by the Neck upon a Gibbet, by the Hands of the Executioner, until he be dead; and ordained all his Moveable Goods and Gear to be Escheat and Inbrought to His Majesty's Use, which was pronounced for Doom. *Sic subr.*

And. Fletcher.
Ja. Mackenzie.
Da. Erskine.
Wa. Pringle.
Gilb. Eliot.

The Prisoner being thus ordered for Execution, presented the following Petition to her Majesty.

To Her Most Excellent MAJESTY,

QUEEN *CAROLINE*,

GUARDIAN *of these* REALMS;

The most humble PETITION of JOHN PORTEOUS, late Captain-Lieutenant of the City-Guard of *Edinburgh*; now under Sentence of Death:

SHEWETH,

THAT a certain Person named *Andrew Wilson*, being convicted in the High Court of Justiciary of *Scotland*, for a Robbery of the Public Money, committed on the High-Way, was sentenced to Death for that Offence; and it being apprehended, the Populace would rescue the said Offender, or commit some Outrage at his Execution, your Petitioner was appointed by the Magistrates of the said City, to attend such Execution with a Detachment of the City-Guard, with Orders to see the same duly executed, and to suppress any Tumults that might happen upon that Occasion: And, for that End, the said Detachment had Powder and Ball delivered to them out of the City Magazine.

That, while the said Offender was hanging upon the Gibbet, the Populace began to insist to have his Body cut down, before the Magistrates had given Orders for that Purpose; and your Petitioner having no Authority to consent thereto, without such Orders, they threatned to cut him down by Force; and, in order so to do, crouded in great Numbers upon your Petitioner and his Men, and did actually assault them with large Stones, by which several of the Detachment were hurt and wounded.

That, during this Tumult, divers of the said Detachment, without Order from your Petitioner, unfortunately fired upon the Multitude, whereby several Persons were killed, and others wounded.

That your Petitioner, after having used his utmost Endeavours to restrain such Firing by his Men, perceiving them to run into Confusion, and to act without Orders, drew them off as fast as possible to the Guard; and committed such as he suspected to have fired, to the Custody of the Guard, together with their Pieces, which he ordered to be kept for Inspection, in the same Condition as they were then in.

That your Petitioner being accused of having himself fired upon the Multitude on this Occasion, and also of having ordered the Detachment to fire, without any just or reasonable Cause, your Petitioner was put upon his Trial in the High Court of Justiciary aforesaid, for the said supposed Offence, and the Jury empannell'd to try your Petitioner, by their Verdict, found, *That it was proved, that your Petitioner had fired a Gun, and also had given Orders to the Detachment and Guard under his Command, to fire upon the Multitude so assembled; from which firing, either of your Petitioner, or of the Detachment of Guard under his Command, by his Order, the several Persons specified in the Indictment against him, were respectively killed and wounded. And also found it proved, That the Mob assembled at the Execution aforesaid, did invade and attack your Petitioner, and the Detachment of Guard under his Command, with Stones, of a considerable Bigness, whereby several of the Men of the Guard were bruised and wounded.*

Upon which Verdict returned by the Jury, the Court decerned and adjudged your Petitioner to be hanged upon a Gibbet, upon the Eighth Day of *September* next.

That tho' your Petitioner is sensible of that Deference and Respect that's due to the Verdict of a *British* Jury, yet he humbly begs leave to represent to your most excellent Majesty, the following Circumstances as they appeared upon his Trial; *to wit*, That the Evidence against your Petitioner, as to his having fired, or given Orders to fire, was very contradictory and inconsistent; for tho' some of the Witnesses deposed, that your Petitioner fired the first Shot, yet they differed extremely as to your Petitioner's Situation, at the time he is alledged to have so fired, as well as in other Circumstances; some placing him at one Corner, and others at a quite opposite Corner of the Scaffold: Some alledging, that none of the Soldiers were then near your Petitioner, and that no other Shots were fired at that time; while others describe your Petitioner as encompassed with Soldiers, and say, that several Shots were fired instantly upon your Petitioner's firing such first Shot; and some agree, that the first Shot was not fired by your Petitioner, but by a Centinel of the Guard, who was close by your Petitioner.

Whereas, a great many Persons, of undoubted Credit and Veracity, produced on the Part of your Petitioner, expresly swore, That during the whole time of the Firing, (which continued about four or five Minutes) they took exact Notice of your Petitioner's Behaviour and Conduct, and could not observe that he fired at all; but that, upon the Mob's pressing severely upon your Petitioner and his Men, and pelting them with large Stones, your Petitioner called aloud to keep off, otherwise he would fire; and that upon your Petitioner's pointing his Piece, in order to intimidate the Mob, a Centinel of the Guard, (unknown to the Witnesses) advanced from behind your Petitioner, and fired the first Shot, upon which one of the Multitude fell to the Ground: From which Example, they supposed, several others fired; by means whereof, the several Persons in the Indictment mentioned, were either killed or wounded.

And as a farther Circumstance, to shew that your Petitioner did not fire, it was proved, that upon his Return from the Execution, your Petitioner went directly of his own Accord to the Magistrates, who examined his Piece, and found the same loaded, and in such Condition, that they agreed and were satisfied, it had not been fired; and the Serjeant of the Detachment attested, that your Petitioner having delivered his Piece to the Deponent to keep, while your Petitioner attended the Devotions at the Execution, the Deponent restored the same again to your Petitioner, just before your Petitioner descended from the Scaffold, which is a strong Circumstance to shew that your Petitioner must have fired his own Piece, if he had fired at all.

Your Petitioner also begs leave humbly to observe, that when a Band of armed Men are together, and some of them fire, it is very difficult, especially for those at a Distance, to discriminate the Persons that actually fired; and your Petitioner is in Charity led to believe, that the Circumstance of your Petitioner's levelling his Piece, and threatning to fire, attended with that of the Centinel's having fired just behind your Petitioner, may have induced some unwary Persons, in the heat of popular Fury and Resentment, to be too positive in the Assertion of Facts, in their nature dubious and uncertain.

And as to your Petitioner's having given Orders to the Men to fire, though two or three Persons gave Evidence against your Petitioner as to that Fact, yet neither did they agree touching the Place where your Petitioner was standing, nor in the Form of Words pretended to be used by your Petitioner in the giving thereof. Whereas it was deposed by a great Number, particularly of the Soldiers, who were close by your Petitioner during the whole Time of the Fray, that they could not observe that your Petitioner gave any such Orders; but on the contrary, that he called aloud to the Men, *Don't fire*, and that he push'd back the Man that fired the first Shot into his Rank, (which shews that your Petitioner did

not

not approve thereof;) that he drew off the Men as faſt as he could; and that being purſued and pelted by the Populace, divers in the Rear turned about and fired, when your Petitioner was at ſuch Diſtance, that he could not poſſibly be privy or conſenting thereto.

It was likewiſe obſerved at the Trial, and not contradicted, That upon many former Occaſions of Tumults, when your Petitioner with the Guard hath been ordered to quell the ſame, your Petitioner had bore great Inſults from the Populace, even to the Danger of his Life, without firing, or ordering his Men to fire, and that in Caſes where he would have been well juſtified by the Law in doing either.

So that upon the whole, as your Petitioner hath the inward Satisfaction of being conſcious to himſelf of his Innocence of the Facts charged againſt him, ſo he humbly apprehends, that the Evidence adduced to prove the ſame, when compared with your Petitioner's Defence, will not appear to be certain or concluſive.

But in caſe your Petitioner had been guilty either of firing, or ordering his Men to fire, upon the Occaſion aforeſaid, your Petitioner moſt humbly intreats your Majeſty to conſider, that your Petitioner was in the Exerciſe of a Truſt delegated to him by the lawful Civil Authority; that he and his Detachment were firſt unlawfully aſſaulted and invaded by the Populace, and divers of his Men bruiſed and hurt; and if, in the Caſe of ſuch an Inſult upon the Laws, your Petitioner had proceeded to repel Force by Force, your Petitioner humbly begs leave to obſerve, That tho' he ſhould look back with the utmoſt Sorrow upon ſo fatal an Event, yet he humbly hopes, that the Provocation and Aggreſſion aforeſaid, would be conſidered by your moſt excellent Majeſty, in your profound Wiſdom, as a great Extenuation of an Offence, which could not be ſuppoſed to be attended with any prepenſe Malice of your Petitioner, againſt Perſons of whom he had no Knowledge; and that your Petitioner would be deemed a proper Object of the Royal Clemency.

Your Petitioner therefore moſt humbly prays your moſt excellent Majeſty, to take your Petitioner's unfortunate Caſe into your Royal Conſideration; and to extend that Mercy and Compaſſion to your Petitioner, by which your Majeſty, adorned with all Excellent and Princely Qualities, is ſo remarkably diſtinguiſhed; and that your Majeſty will be graciouſly pleaſed to iſſue your Royal Warrant for your Petitioner's Pardon. And your Petitioner, whoſe Duty hath hitherto rendered him, on all Occaſions, moſt zealouſly attached to his Majeſty, and our happy Conſtitution, will, from the additional Bond of the moſt powerful Gratitude, devote that Life to the Service of his moſt Excellent Majeſty, and his Illuſtrious Houſe, which he ſhall enjoy as the Fruit of Your Majeſty's Clemency and Grace.

Her Majeſty was pleaſed ſo far to comply with this Petition, as to grant a Reprieve, which was ſignified as follows:

Curia Juſticiariæ S. D. N. Regis tenta in Novo Seſſionis Domo Burgi de Edinburgo, *Tertio Die Menſis* Septembris *Milleſimo ſeptingenteſimo trigeſimo ſexto, per Honorabiles Viros,* Andream Fletcher *de* Milton, *Juſticiarium Clericum, Dominos* Jacobum Mackenzie *de* Royſtoun, Gualterum Pringle *de* Newall, *Commiſſionarios Juſticiarii, dictos S. D. N. Regis.*

Curia legittimè affirmata.

THE ſaid Day the Lord Juſtice Clerk delivered a Letter from his Grace the Duke of *Newcaſtle*, one of His Majeſty's Principal Secretaries of State, whereof the Tenor follows:

Whitehall, Auguſt 26, 1736.

My Lords, Application having been made to Her Majeſty in the Behalfe of *John Porteous*, late Captain Lieutenant of the City Guard of *Edinburgh*, a Priſoner under Sentence of Death in the Gaol of that City; I am commanded to ſignify to your Lordſhips Her Majeſty's Pleaſure, That the Execution of the Sentence pronounced againſt the ſaid *John Porteous*, be reſpited for ſix Weeks from the Time appointed for his Execution. I am, my Lords, Your Lordſhips moſt Obedient Humble Servant. *Sic ſubſcribitur,* *Holles Newcaſtle.*

Directed on the Back thus:

To the Right Hon. the Lord Juſtice General, Juſtice Clerk, and other Lords of the Juſticiary at Edinburgh.

THereafter, the ſaid Lords gave their Warrand to the Magiſtrats of *Edinburgh*, for ſtopping the ſaid Execution, whereof the Tenor follows: By the Right Honourable the Lord Juſtice Clerk, the Lords Commiſſioners of Juſticiary: WHEREAS Her Majeſty, Guardian of the Kingdome, has been graciouſly pleaſed by a Letter ſigned by his Grace the Duke of *Newcaſtle*, one of His Majeſties principal Secretaries of State, to ſignifie Her Pleaſure to us, That the Sentence of Death pronounced againſt *John Porteous*, late Captain Lieutenant of the City Guard of *Edinburgh*, preſent Priſoner in the *Tolbooth* of *Edinburgh*, which was to have been execute upon him, upon the eighth Day of *September* Inſtant, be reſpited for ſix Weeks from the Time appointed for his Execution: THESE THEREFORE, In Obedience to Her Majeſties Commands, diſcharge and prohibite the Magiſtrats of *Edinburgh*, and all other Officers of the Law, from putting the forſaid Sentence of Death in Execution, upon the ſaid *John Porteous*, till the Twentieth of *October* next to come; on which Day, the ſaid Magiſtrats of *Edinburgh* are hereby required and ordained to put the former Sentence of Death in Execution, upon the ſaid *John Porteous* in all Points, as they will be anſwerable. GIVEN at *Edinburgh*, the third Day of *September*, 1736 Years. *Sic ſubſcribitur,*

And. Fletcher.
Ja. Mackenzie.
Wa. Pringle.

EXTRACTED furth of the Books of Adjournal, upon this and the preceeding One hundred and twenty-four Pages. By me *John Davidſon*, Clerk to the Court of Juſticiary.

John Davidſon, Clerk.

But the Populace being greatly diſpleaſed with this Favour ſhewn to Captain *Porteous*, againſt whom they were mightily incenſed, audaciouſly took upon them to execute the Sentence themſelves. Accordingly on *Tueſday*, *September* the 7th, about Ten o'Clock at Night, (being the Night preceeding the Day, which had been appointed by the Court for his Execution,) ſome Men by Surprize entered the City, ſeized all the Fire-arms, Battle-axes, and the Drums belonging to the City Guards. The Mob in a few Minutes lock'd and ſecur'd all the City Gates, and with Drums beat an Alarm, then attempted to force open with Hammers and other Inſtruments the Priſon Door; but theſe failing, they ſet fire to it, and burnt it. When they entered the Priſon, they called upon the Under-Keeper who was within, and made him open the double Locks of the Apartment where Captain *Porteous* was; it had alſo a Bolt within, but was not bolted, ſo they had ready Acceſs. He begg'd they would ſpare him till next Afternoon; but they refus'd his Requeſt, and immediately hurried him away, which was about Eleven o'Clock. When brought out of Priſon, he was heard to cry. They then marched out with lighted Torches before them: In their Way to the *Graſs-market*, paſſing by a Barber's Sign-poſt, ſome called out to hang him up there; but it was reſolved to hang him where the Murder was committed; ſo they proceeded to the Place that the Gallows uſed to be fixed for Execution, where he was about a Quarter of an Hour, 'till they opened a Shop and brought out a Rope, one End of which they threw over a Sign-poſt, about 20 Foot high, belonging to a Dyer in the *High-ſtreet*, near the ordinary Place of Execution. He deſired ſome Time to prepare for Death; but they anſwered, They would allow him no more than thoſe who were ſhot. They then pulled him up in the Dreſs in which they found him, *viz.* a Night-Gown and Cap. He having his Hands looſed, fixed them 'twixt his Neck and the Rope, whereupon one with a Battle-ax ſtruck towards his Hands. They then let him down, and having on two Shirts, they wrapp'd one of them about his Face, and tied his Arms with his Night-Gown; then pulled him up again, where he hung next Morning till Day-light. When he was cut down, and carried to the *Grey-Friers* Church, upon inſpecting his Body, it appeared his Left Shoulder was wounded, his Back diſcoloured, and his Neck broke.

It was obſerv'd, that this Mob was under a ſtricter Concert and better conducted than uſual; for as marching along to the Execution, *Porteous* obſerving a Gentleman of his Acquaintance, he gave him a Purſe of 23 Guineas, which he deſir'd might be deliver'd to his Brother. They left the Priſon Doors open, and Liberty to the Priſoners to make their Eſcape; and after the Execution was over, they left the Arms and Drums on the Place of Execution, where they were found the next Morning. During the Tumult, Parties of armed Men, with Drums, patroled in the different Streets, to prevent any Surprize from the King's Forces, quarter'd in the Suburbs. After the Execution was over, they went to the Lord Provoſt's Houſe, and told him they were ſatisfied, and ſo diſmiſs'd, without offering any other Violence.

There is one further Circumſtance, That in order to ſupply the Want of Clergymen, they order'd two of the graveſt of their Number to exhort him, as he went to the Place of Execution.

CXCVII. *The Trials of* Samuel Goodere, *Esq.* Matthew Mahony, *and* Charles White, *for the Murder of Sir* John Dineley Goodere, *Bt. (Brother to the said* Samuel Goodere) *on Board his Majesty's Ship the* Ruby: *At the Sessions of Peace,* Oyer *and* Terminer, *and* General Gaol-Delivery, *held in and for the City of* BRISTOL, *and County of the same City, in the* Guild-hall *of the said City; before the Right Worshipful* Henry Combe, *Esq. Mayor of the said City,* Michael Foster, *Esq. Serjeant at Law, Recorder; and others his Majesty's Justices of Gaol-Delivery. Begun on* Tuesday *the* 17th *of* March 1740. *and continued by Adjournment to* Thursday, *the* 26th *of the same Month,* 1741. *Published with the Approbation of Mr.* RECORDER.

ON *Wednesday*, the 18th of *March*, 1740, a Bill of Indictment was found by the Grand Inquest for the City of *Bristol*, and County of the same City, against *Matthew Mahony* and *Samuel Goodere*, for the Murder of Sir *John Dineley Goodere*; when Dr. *Middleton* (Mr. *Goodere*'s Physician) acquainted the Court, That, in his Opinion, Mr. *Goodere* was, through bodily Indisposition, unable to undergo the Fatigue of his Trial. But being ask'd by Mr. *Vernon* (of Counsel for the King) whether the Prisoner's Health would not permit him to be brought into Court and plead to his Indictment; and the Doctor declaring his Opinion, that he might be brought up, Mr. Recorder was pleased to order, that he should be brought up the next Day, in order to plead to his Indictment. Accordingly, on *Thursday* the 19th, Mr. *Goodere* and *Matthew Mahony* were brought to the Bar; when the Court proceeded thus:

Clerk of the Arraigns. *Matthew Mahony*, hold up thy Hand; *Samuel Goodere*, hold up thy Hand (which they severally did). You stand indicted by the Names of *Matthew Mahony*, late of the Parish of St. *Stephen* in the City of *Bristol*, and County of the same City, Labourer; and *Samuel Goodere*, late of the same Parish, City and County, Esq. for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 19th Day of *January*, in the 14th Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth; with Force and Arms, at the Parish aforesaid, in the City aforesaid, and County of the same City, in and upon one Sir *John Dineley Goodere*, in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that you, the aforesaid *Matthew Mahony*, a certain Cord, of the Value of one Penny, about the Neck of the said Sir *John Dineley Goodere* then and there feloniously, voluntarily, and of thy Malice afore-thought, did put and fasten; and that you the aforesaid *Matthew Mahony*, with the Cord aforesaid, (by you the aforesaid *Matthew Mahony*, so about the Neck of the aforesaid Sir *John Dineley Goodere* put and fastened) then and there him the aforesaid Sir *John Dineley Goodere* feloniously, voluntarily, and of your Malice afore-thought, did choak and strangle; of which said Choaking and Strangling of him the aforesaid Sir *John Dineley Goodere*, by you the aforesaid *Matthew Mahony* in manner and form aforesaid done and perpetrated, he the aforesaid Sir *John Dineley Goodere* then and there instantly died: And that you, the aforesaid *Samuel Goodere*, then and there feloniously, voluntarily, and of thy Malice afore-thought, was present, aiding, abetting, comforting, and maintaining the aforesaid *Matthew Mahony* in manner and form aforesaid, feloniously, voluntarily, and of his Malice aforethought the aforesaid Sir *John Dineley Goodere* to kill and murder; and so you the said *Matthew Mahony*, and *Samuel Goodere*, in manner and form aforesaid, the aforesaid Sir *John Dineley Goodere* then and there feloniously, voluntarily, and of your Malice afore-thought did kill and murder, against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Clerk of the Arraigns. How sayest thou, *Matthew Mahony*, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Mahony. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Mahony. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. How sayest thou, *Samuel Goodere*, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Samuel Goodere. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Samuel Goodere. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Mr. *Vernon.* Mr. Recorder, I attend as Counsel for the King on this melancholy Occasion, and it is with no small Regret and Concern I at any time act in this Station against my Fellow-Creatures, when under Circumstances like those of the Prisoners at the Bar; and the rather, as knowing it almost impossible so to act, in a Business of this nature, as not to be thought on the one side to have done too much, and on the other too little: However, Sir, I shall, in the Course of this Prosecution, endeavour to observe that Mediocrity which is ever inseparable from humane Minds; and if I can be so fortunate as to conduct myself to the Satisfaction of you, Mr. Recorder, and the Court, I shall readily give up the rest, and content myself with the Thoughts of having aimed at a just Discharge of my Duty.

Sir, the Prisoners, Mr. *Goodere* and *Mahony* have thought proper to plead in chief to their Indictment, and put themselves upon their Trial in the ordinary Course of Law; and as far as may be judged from outward Appearance, Mr. *Goodere* seems able enough at present to take his Trial on the Merits or Demerits of his Case: And if so, we for the King are ready, on our Parts, to enter upon our Duty. On the other hand, if, in the Opinion of that learned Gentleman [Dr. *Middleton*], Mr. *Goodere* is not in a fit Condition (through bodily Weakness or Indisposition) to be brought upon his Trial, God forbid we should be for pressing it on with such Celerity, as to prejudice him in making of his Defence. But then, as we would not be for accelerating his Trial, so neither would we be for giving into any affected Delay. I therefore hope, Sir, such a Day will be fix'd for the coming-on of this Business, as that the Sea-faring part of our Witnesses, whom at present publick Justice calls for abroad as well as at home, may be dispatched at due time for the other necessary Service of their King and Country.

Mr. Recorder. I think we ought to proceed to the Trial immediately, unless Cause be shewn to the contrary.

Mr. *Frederick*, Counsel for Mr. *Goodere*. I appeal, Sir, to the Doctor, whether Mr. *Goodere*'s Case and Circumstances will at present admit of it?

Mr. Recorder. Let Dr. *Middleton* be sworn.

(*Dr.* Middleton *sworn.*)

Mr. *Vernon.* Dr. *Middleton*, I think, Sir, you have attended Mr. *Goodere* (the Prisoner at the Bar) during the Course of his Illness; will you please therefore to give the Court an Account of his present State of Health?

Dr. *Middleton.* Mr. *Goodere* has been my Patient for some time in a malignant Fever, which left him last *Sunday* Evening, and since that time he has been growing better, and on the mending hand; in his Fever his Head was very much disordered (as at present happens to be the Case of many that are seized with this Epidemical Fever, the Head being generally much affected in most of them); I think he will not be able to bear the Fatigue of his Trial at present. If he is put upon his Trial, it will be an hardship.

Mr. Recorder. If the Case be so, that his Head is disordered, whereby he is render'd less capable of making his Defence, I think it would be a Piece of Inhumanity not to put off his Trial. What if we adjourn it to this Day seven-night?

Mr. *Ver.* I am heartily glad to find Mr. *Goodere* is on the mending hand, and hope he will continue to mend; his Counsel seems to think he may now come upon his Trial; yet, for the honour of Dr. *Middleton*, I would not press it on at this Juncture.

Mr. Recorder. What doth Mr. *Goodere* himself say to it?

Samuel Goodere. I hope in eight or nine Days to be better, or dead.

Mr. Recorder. I have proposed this Day seven-night.

Samuel Goodere. Whatever you please I submit to.

Mr. *Ver.* Dr. *Middleton*, Sir, as you are known to be a Gentleman of great Honour and Abilities, we may safely depend upon your Account; therefore I should be glad to know how soon (humanly speaking) Mr. *Goodere*'s bodily Health may admit of his taking his Trial. I know, Sir, you are a Gentleman that has a great Regard and Care for your Patients.

Dr. *Mid.* I should rather choose to exceed in Care than fall short of it.

Mr. *Ver.* But 'tis possible to have an over-care: Therefore, Sir, I would ask you, whether, upon your Oath, you do not think he will be able, in point of Health, to take his Trial in three or four Days?

Dr. *Mid.* The Captain may put himself on his Trial now, if he pleases; but I don't think he's fit for it, upon my Oath. If it was left to me, I should desire the whole Time the Recorder has mentioned.

Mr. *Fred.* That is, to this Day seven-night; we shall not be able to attend the Court sooner. We hope the Trial will be put off till this Day seven-night?

Mr. Recorder. Let it be so.

Cl. of Arr. *Matthew Mahony*, you stand charged likewise upon the Coroner's Inquest for the same Felony and Murder; art thou guilty, or not guilty?

Matthew Mahony. Not guilty.

Cl. of Arr. *Samuel Goodere*, you likewise stand charged upon the Coroner's Inquest for the same Felony and Murder; art thou guilty, or not guilty?

Samuel Goodere. Not guilty.

Mr. Recorder. The Prisoners may withdraw.

On *Thursday*, the 26th of *March*, 1741, the Court met according to Adjournment; and, being open'd, the Prisoners *Matthew Mahony* and *Samuel Goodere* were brought again to the Bar; and the Court proceeded as follows:

Mr. *Shephard*, Counsel for the Prisoner *Goodere*. Mr. Recorder, the Prisoner *Goodere* has in a great degree lost his hearing, therefore desires that he may be brought nearer the Witnesses, that he may be able to hear what they say.

Mr. Recorder. Let him come nearer. *Mahony*, are you willing to come forward to the Bar?

Mahony. Yes, my Lord, I am hard of hearing.

Mr. *Shephard.* He desires the same Indulgence.

Mr. Recorder. If he desires it, let him come forward too.

Mr. *Vernon.* Mr. Recorder, by this Indulgence being moved for on the behalf of *Mahony* as well as Mr. *Goodere*, I presume these Gentlemen attend as Counsel for them both, if Matter of Law should arise.

Mr. *Frederick.* No, Sir, I do not.

Mr. *Shephard.* No, Sir, I do not.

Cl. of Arr. Cryer, make a Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez; the King's Majesty's Justices strictly charge and command all Manner of Persons to keep silence, upon Pain of Imprisonment.

Cl. of Arr. You *Matthew Mahony* and *Samuel Goodere*, now Prisoners at the Bar, these Men which you shall hear called, and will personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; if you, or either of you, will challenge them, or any of them, you must speak unto them as they come to the Book to be sworn, before they be sworn. Cryer, make an Oyez, and call the petty Jury.

Cryer. Oyez; You good Men that are impannelled to try between our Sovereign Lord the King and the Prisoners at the Bar, answer to your Names, and save your Fines.

Mr. Recorder. Prisoners, you have each of you the Liberty of challenging twenty of the Jurors, without shewing Cause: But you must now declare, whether you will challenge severally or not; for if you do not join in your Challenges, we must try you severally.

Mahony. I leave it to the Captain to challenge.

Cl. of Arr. Christopher Bromadge.

Cryer. He appears.

Cl. of Arr. Mr. *Bromadge*, to the Book.

Cryer. Christopher Bromadge, look upon the Prisoners; you Prisoners, look upon the Juror: You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoners at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence: *So help you GOD.*

And the same Oath was administred to the rest, (which were sworn) and their Names are as follow:

Christopher Bromadge,	- - - -	sworn.
Isaac Brodribb,	- - - -	sworn.
John Merewether,	- - -	sworn.
Christopher Lilly,	- - - -	sworn.
James Wimble,	- - -	sworn.
Joseph Gregory,	- - - -	sworn.
John Scott,	- - - -	sworn.
Isaac Bannister,	- - -	sworn.
William England,	Capt. *Goodere*,	I challenge him.
Francis Billow,	Capt. *Goodere*,	I challenge him.
William Jones,	- - -	sworn.
Samuel Page,	- - -	sworn.
John Perks,	- - - -	sworn.
William Dyer,	- -	sworn.

Clerk of Arr. Cryer, count these.

Christopher Bromadge,	*John Scott*,
Isaac Brodribb,	*Isaac Bannister*,
John Merewether,	*William Jones*,
Christopher Lilly,	*Samuel Page*,
James Wimble,	*John Perks*,
Joseph Gregory,	*William Dyer.*

Cryer. Twelve good Men, and true. Gentlemen, are ye all sworn.

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform the King's Majesty's Justices, the King's Serjeants, the King's Attorney or Advocate, before this Inquest be taken between our Sovereign Lord the King and the Prisoners at the Bar, of any Treason, Murder, Felony, or other Misdemeanour, committed or done by the Prisoners at the Bar, or either of them, come forth, and you shall be heard, for the Prisoners stand at the Bar upon their Deliverance; and all Persons bound by Recognizance to prosecute them, or either of them, come forth, and prosecute, or you will forfeit your Recognizances.

Cl. of Arr. Matthew Mahony, hold up thy Hand; *Samuel Goodere*, hold up thy Hand. Gentlemen of the Jury, look upon the Prisoners, and hearken to their Charge; they stand indicted by the Names of *Matthew Mahony*, late of the Parish of *St. Stephen* in the City of *Bristol*, and County of the same City, Labourer; and *Samuel Goodere*, late of the same Parish, City and County, Esq. for that they not having (as in the Indictment before set forth). Upon this Indictment they have been lately arraigned, and thereupon have severally pleaded Not Guilty; and for their Trials have put themselves upon God and the Country, which Country you are: Your Charge is, to inquire whether they, or either of them, be guilty of the Felony and Murder in manner and form as they stand indicted, or not guilty. If you find them, or either of them, guilty, you shall inquire what Goods or Chattels, Lands or Tenements they, or either of them had, at the time of the Felony committed, or at any time since: If you find them, or either of them, not guilty, you shall inquire whether they, or either of them fled for the same: If you find that they, or either of them did fly for the same, you shall inquire of their, or either of their Goods, and Chattels, as if you had found them or either of them guilty: If you find them, or either of them not guilty, and that they or either of them did not fly for the same, say so, and no more; and hear your Evidence.

Mr. *Vernon.* May it please you, Mr. Recorder, and you Gentlemen that are sworn on this Jury, I am Counsel for the King against the Prisoners at the Bar, who stand indicted for the Murder of Sir *John Dineley Goodere*; they stand also charged on the Coroner's Inquest with the same Murder: And tho' it is impossible for human Nature not to feel some Emotions of Tenderness at so affecting a Sight as now presents itself at the Bar; yet, Gentlemen, should the Guilt of this black and frightful Murder be fixed upon the Prisoners (as from my Instructions I fear it will) Pity must then give way to Horror and Astonishment at the Baseness and Barbarity of the Fact and Circumstances; and our Sorrow ought to be, that through the Lenity of the Laws, the *Unnatural Author* and *Contriver* of so shocking a piece of Cruelty, and this his *Brutal Accomplice* in the Ruffianly Execution of it, should be to share the common Fate of *Ordinary Malefactors.* Gentlemen, you perceive it is laid in the Indictment that the Prisoner *Mahony* strangled the deceased, and that the Prisoner *Goodere* was present, aiding and abetting him in that barbarous Action, and so involved in the same Guilt, and equally a Principal in the Murder: But, Gentlemen, Mr. Recorder, I believe, will tell you, that the only Matter for your Inquiry will be, Whether the Prisoners were concurring in the Murder of the Deceased, and present at the Strangling of him; for if so, whether *Mahony*, Mr. *Goodere*, or another in fact strangled him, it will in consideration of Law be the same thing, and the Act of Strangling will be as much imputable to each of them, as if they had both assisted in putting the Cord about the Neck of the Deceased, and been his actual Executioners; nor will it be material, whether they strangled him with a Rope, a Handkerchief, or their Hands, so the kind of Death be proved. And, Gentlemen, as to the Crime set forth in the Indictment, I have Matter, in my Brief, for a very heavy Charge against both the Prisoners, but distinguished against the Prisoner Mr. *Goodere* with this black Characteristic, that he was Brother of the Deceased, and, as such, bound by the Ties of Blood and Nature to have preserved his Person from Violence; and yet, Gentlemen, I am afraid it will appear, that his Brother died by his Procurement, and in his Presence, which is the same, in effect, as if he had perished by his Hand. But as it would ill become me to aggravate in a Case of this nature, I shall only state to you the most material Passages relating to the Murder of that unfortunate Gentleman, and leave the rest to come from the Mouths of the Witnesses themselves. And, Gentlemen, (as I am instructed) there had been a long and very unhappy Difference between the deceased Sir *John* and his Brother the Prisoner, owing to various Occasions; and amongst others, to Sir *John*'s having cut off the Entail of a large Estate in *Worcestershire*, to which Mr. *Goodere* (as the next Remainder-man) would have otherwise stood intituled, in default of Issue of Sir *John.* Gentlemen, this Misunderstanding by degrees grew to an inveterate Grudge and Hatred on the part of Mr. *Goodere*; which was so rooted in his Heart, that it at length worked him into a formed Design of destroying his Brother, and making away with him at all hazards and events. The great Difficulty was, how to get Sir *John* into his Power, for he generally travelled armed; nor was it easy to get together a Sett of Fellows so base and desperate, as to join with him in the carrying off his Brother. But, unfortunately for the Deceased, the Prisoner, Mr. *Goodere*, having been lately honoured by his Majesty with the Command of the *Ruby* Man of War, happened, in *January* last, to lie stationed in *Kingroad* (as much within the County of *Bristol*, as the *Guild-hall* where this Court is sitting). Sir *John* (who was advanced in years, and very ailing) had, it seems, been advised to come to *Bath* for the Recovery of his Health: And having occasion to transact Affairs of Consequence at *Bristol* with Mr. *Jarrit Smith*, Mr. *Goodere* took this Opportunity of laying a Snare for his Brother's Life, as you will find by the Event. He applies to Mr. *Smith*, and taking notice to him of the Misunderstanding between himself and his Brother, pretends a sincere Desire of Reconciliation, and desires Mr. *Smith*, if possible, to make up the Breach between them; and Mr. *Smith* promised to do his utmost towards effecting a Reconciliation, and was as good as his Word; for, by his Interest and Persuasions, he at length prevailed upon Sir *John* to see and be reconciled to his Brother. And Sir *John* having appointed *Tuesday* the 13th of *January* last in the Morning for calling on Mr. *Smith* at his House in *Colledge-Green*, Mr. *Smith* soon made his Brother, Mr. *Goodere*, acquainted therewith; and no sooner was he informed of it, but he begun to take his Measures for the executing his wicked Scheme against his Brother's Life. For on *Monday* (the Day before Sir *John* was to be at Mr. *Smith*'s) Mr. *Goodere*, with the other Prisoner *Mahony*, (his inseparable Agent and Companion in every Stage of this fatal Business) went together to the *White Hart*, an Alehouse near the foot of the *Colledge-green*, in the View of, and almost opposite to Mr. *Smith*'s, in order to see if it was a fit Place for their desperate Purpose: and finding it to be so, Mr. *Goodere* commended the Pleasantness of the Closet over the Porch, and said he would come and breakfast there the next Day. And accordingly the next Morning (which was *Tuesday* the 13th) Mr. *Goodere*, with his Friend *Mahony*, and a Gang of Fellows belonging to the Privateer called the *Vernon*, whom they had hired to assist them in the way-laying and seizing of Sir *John*, (but whom, one would have thought, the Name of that gallant Admiral should have inspired with nobler Sentiments) came to the *White Hart*, where having ordered they should have what they would call for, he went himself to breakfast in the Closet over the Porch, from whence he had a full View of Mr. *Smith*'s House, whilst the others posted themselves below on the Look-out for Sir *John*; and it was not long before he came on horseback to Mr. *Smith*'s: But his Stay was very short, being obliged to go to *Bath*; however, he promised Mr. *Smith* to be in *Bristol* again by the *Sunday* following. He was seen from the *White Hart* by Mr. *Goodere* and his Spies upon the Watch; but having a Servant, and riding with Pistols, they did not think proper to attempt the seizing of him then; but, as he rode down the Hill by St. *Augustine*'s *Back*, Mr. *Goodere* called out to *Mahony* in these Words, *Look at him well*, Mahony, *and watch him, but don't touch him now.* And in fact, Gentlemen, the Prisoners and their Companions followed and watched Sir *John* a considerable way. Afterwards Mr. *Smith* acquainted the Prisoner Mr. *Goodere*, that his Brother was to be with him on the *Sunday* following; and little thinking that an Interview between Brothers could be of a fatal Tendency, advised him to be in the way, that he might bring them together: Which Advice the Prisoner observed with but too great Punctuality, taking care, in the Interim, to lay such a Train, as that it should be hardly possible for his Brother to escape falling into his Hands. He ordered the Man of War's Barge to be sent up for him on the *Sunday*; accordingly it came up about 2 or 3 that Afternoon; of which Mr. *Goodere* being informed by one *Williams*, a Midshipman, whom he had ordered up in it, he enquired of *Williams*, if he knew the River, and the *Brick-kilns* going down it? And *Williams* telling him he did, Mr. *Goodere* ordered him to get all the Boat's Crew together, and be sure to place the Barge at the *Brick-kilns*, and leave but two or three Hands to look after the Barge, and bring all the rest of the Men to the *White Hart* Ale-house, and wait for him there, for he had *a Certain Person* coming on board. Accordingly, Gentlemen, *Williams* and

most

moſt of the Barge-men came to the Place of Rendezvous at the *White Hart*, where *Mahony*, with ſeveral of the Privateer's Men (I believe all, or moſt of the ſame Gang that had been there on the Watch the *Tueſday* before) were alſo met by Mr. *Goodere*'s Orders to way-lay and ſeize Sir *John*, and ſtood at the Window on the Look-out, in order to watch his coming out of Mr. *Smith*'s. Thus the Ambuſcade being laid, the Priſoner Mr. *Goodere* goes to Mr. *Smith*'s about three in the Afternoon (the Hour at which Sir *John* had appointed to be there); he went directly towards his Brother Sir *John*, and kiſſed him (what Kind of Kiſs it was, will beſt appear by the Sequel), and obſerved to him with an outward Shew of Satisfaction, that he looked in better Health than he had formerly done. Mr. *Smith* was ſo good to drink Friendſhip and Reconciliation between the two Brothers: Mr. *Goodere* pledged it in a Glaſs of Wine, which he drank to his Brother Sir *John*; and Sir *John* (being under a Regimen) offered to pledge him in Water, little thinking his Brother deſigned to end their Differences, by putting an End to his Life. But that, Gentlemen, you'll ſoon ſee was the ſole End he had in View; for Sir *John* in about Half an Hour taking his Leave, Mr. *Goodere* was following him: Mr. *Smith* ſtopt Mr. *Goodere*, ſaying, *I think I have done great Things for you.* Says Mr. *Goodere*, *By God, this won't do*; and immediately followed his Brother: And meeting ſome of the Sailors whom he had poſted at the *White Hart*, ſays to them, *Is he ready?* and being anſwered, *Yes*, he bid them make Haſte. *Mahony*, and the other Fellows who were on the Look-out at the *White Hart*, ſeeing Sir *John* go down *St. Auguſtine's Bank*, immediately ruſhed out, and (as they had been ordered by Mr. *Goodere*) ſeized Sir *John* as their Priſoner. Juſt then Mr. *Goodere* himſelf was come up, and had joined his Companions, and ſhewed himſelf their Ring-leader: For (according to my Inſtructions) he gave them poſitive Orders to carry Sir *John* on board the Barge, and they but too exactly obſerved the Word of Command. They hurried on Sir *John* with the utmoſt Violence and Precipitation, forcing him along, and even ſtriking him in the Preſence of his Brother, and (as the *Romans* uſed to do their Malefactors) dragged him through the publick Way. The poor unfortunate Creature made repeated Outcries of Murder, that he was ruined and undone, for his Brother was going to take away his Life. He made what Reſiſtance he could, and called aloud for Help, but all was to no Purpoſe. Several Perſons indeed followed them, and aſked what was the Matter? But they were anſwered by Mr. *Goodere* and his Aſſociates, that the Perſon they were hauling along was a Murderer, had killed a Man, and was going to be tried for his Life. The moſt of this ruffianly Crew being armed (it ſeems) with Bludgeons and Truncheons, obliged the People who came about to keep off, holding up their Sticks at them, and threatning to knock them down. Gentlemen, when they had thus forced Sir *John* towards the End of the Rope-walk, Mr. *Goodere* (who all along bore them Company, and animated them as they paſſed along) bid them make more Diſpatch, and mend their Pace. Accordingly they took up Sir *John*, and carried him by main Force a conſiderable Way, then ſet him down again, and puſhed and hauled him along, till they had got him to the *Slip* (oppoſite to the *King's Head*). Sir *John* cried out, *Save me, ſave me, for they are going to murder me.* There the Barge came up, and the Priſoner Mr. *Goodere* had his Brother forced on board, and with *Mahony* and the reſt went alſo into the Barge. Sir *John* then called out, *For God's Sake run to Mr.* Smith, *and tell him I am going to be murdered, or I am an undone Man.* And crying out that his Name was *Dineley*, Mr. *Goodere* ſtopt his Mouth with his Hand, to prevent his telling his other Name: And though Sir *John* was in an ill State of Health, yet his hard-hearted Brother forcibly took his Cloak from off his Back, and put it upon himſelf: And having thus got him into his Power, he ordered the Men to row off, telling his Brother, that now he had got him into his Cuſtody, he would take Care of him, and prevent his making away with his Eſtate. But, Gentlemen, in Fact, ſo little did he think himſelf concerned in what Sir *John* did with the Eſtate, that he was of Opinion, no Act of Sir *John*'s could affect it longer than his Life; and that it muſt neceſſarily devolve to him (as the next in Remainder) on his Brother's dying without Iſſue. And this, Gentlemen, he declared to Mr. *Smith* but a few Days before. And indeed his Brother at once ſaw what Kind of Prevention it was he meant; *I know*, ſays he to Mr. *Goodere*, (ſoon after his being forced into the Barge) *you intend to murder me this Night, and therefore you may as well do it now, as carry me down.* Poor Gentleman, his Heart miſgave him, that the Deſign of this baſe and daring Outrage was to make the Ship his Priſon, one of his Cabbins his Slaughter-houſe, and the Sea his Grave, and therefore he made it his Choice to be thrown overboard in the River (where his Body might be found) rather than buried in the Ocean. The Priſoner *Goodere* denied, indeed, he had any ſuch Deſign, but yet could not refrain from the uſual Exhortation to dying Perſons, that HE WOULD HAVE HIM MAKE HIS PEACE WITH GOD. At the *Redcliff* the Privateer's Men were ſet on Shore; and I think about ſeven in the Evening the Barge reached the *Ruby* Man of War, then in *King-road*. Mr. *Goodere* had in their Paſſage talked of bleeding and purging his Brother to bring him to his Senſes, pretending he was a Madman; for he knew very well that very few of his own Men would have aſſiſted him in ſuch an Enterprize, had they not been under a Belief that his Brother was really mad. And to keep up ſuch a Notion, as ſoon as he had got him on board the *Ruby*, he hurried him down what, I think, they call the *Gangway*, into the Purſer's Cabbin, making an Apology, that he had brought a mad Fellow there; then ordered two Bolts to be clapt on the Cabbin-door, for the making his Priſon more ſecure, which was accordingly done. And now having made his Brother a Priſoner, his next Step was to deſtroy him. He took *Mahony* with him into his own Cabbin, and there the cruel Means of murdering his Brother was concerted between them. They agreed to ſtrangle him; and engaged one *White* (who is hereafter to ſtand to the Juſtice of his Country) to aſſiſt them in the Butchery. I ſhould have told you, Gentlemen, that it is uſual in Ships of War to place a Centinel over Perſons under Arreſt; and accordingly one was placed by Mr. *Goodere*'s Orders, with a drawn Cutlas in his Hand at the Door of the Cabbin where Sir *John* was confined. This Centinel, about twelve at Night, was relieved by one *Buchannan*. It was impoſſible for the Priſoners to put their wicked Deſign in Execution, whilſt this *Buchannan* remained at the Cabbin Door; ſo, to remove that Obſtacle, Mr. *Goodere* (after having been in cloſe Conference with *Mahony* and *White*) comes down to the Purſer's Cabbin, takes the Cutlas from *Buchannan*, and orders him on Deck, poſting himſelf at the Door of the Purſer's Cabbin, with the drawn Cutlas in his Hand. I ſhall open none of the Circumſtances diſcloſed by *Mahony* in his Confeſſion, as being no Evidence againſt Mr. *Goodere*, but it will be made appear to you in Proof, that *Mahony* and *White* came to the Purſer's Cabbin whilſt Mr. *Goodere* ſtood poſted at the Door of it; that they were let into the Purſer's Cabbin by Mr. *Goodere* himſelf. *Mahony* in particular was ſeen by one *Macguineſs* (who kept Watch in the Gun-room) to go into the Purſer's Cabbin, Mr. *Goodere* at the ſame time ſtanding Centinel at the Door of it, and waving his Cutlas at *Macguineſs*, to make him keep back. He did ſo; but Mr. *Goodere* waved the Cutlas at him a ſecond Time, and bid him keep back. Then, Gentlemen, it was that Mr. *Goodere* and his two Accomplices effected the cruel Murder of his unfortunate Brother. *Mahony* was heard to bid him not ſtir for his Life; and then in Conjunction with *White*, whilſt Mr. *Goodere* ſtood Watch for them at the Cabbin Door (which Mr. Recorder will tell you was the ſame as being actually within it) fell on this unhappy Gentleman as he lay in the Cabbin: And one of them having half throttled him with his Hands, they put a Rope about his Neck, and at length ſtrangled him. Great were his Agonies, and long and painful the Conflict between Life and Death. He ſtruggled violently, and kicked againſt the Cabbin, crying out ſeveral Times very loud, *Murder! muſt I die! Help, for God's Sake; ſave my Life, here are twenty Guineas, take it:* For he well knew they were ſtrangling him by his Brother's Orders, and therefore offered them a Bribe to ſpare his Life; but the Ruſſians were relentleſs and inexorable. The Ship's Cooper (one *Jones*) and his Wife, lying in the adjoining Cabbin, heard his dying Out-cries, and the Noiſe occaſioned by his kicking; his Cries too were heard by others far beyond the Cabbin Door. Nature at length gave way, and he expired under theſe Cruelties. Then *Mahony* called for a Light, that they might have all the Evidence of their Eye-ſight that Sir *John* was actually dead; and (which is a ſhocking Circumſtance in the Caſe) Mr. *Goodere* himſelf handed them in the Candle on that Occaſion. *Buchannan* perceiving the Light diſappear, was coming to him with another; but Mr. *Goodere* waved his Cutlas at him to ſtand off. Such, Gentlemen, was the fatal Concluſion of this tragical Buſineſs. What was ſeen by the Cooper and his Wife after the Candle's being handed in, with regard to rifling the deceaſed, I chooſe ſhall come from their own Mouths. The Murder being thus effected, Mr. *Goodere* locked the Door, and withdrew to his own Cabbin; *Mahony* and *White* were, by his Order, put aboard the Yawl, and ſent to *Briſtol*. They did not fly the City, Gentlemen, depending that their Fellow-murderer would ſome-how ſmother this Deed of Darkneſs, and take Care of their Security for the Sake of his own: But Divine Providence ordered otherwiſe. The honeſt Cooper, though he durſt not give the Alarm whilſt the Murder was committing, for Fear of ſharing the ſame Fate with Sir *John*, yet as ſoon as he could with Safety, made a Diſcovery of the whole that he had heard and ſeen. 'Twas concluded Mr. *Goodere* had made away with his Brother, which too evidently appeared on the Cooper's forcing open the Purſer's Cabbin Door where Sir *John* lay murdered, and thereupon the Cooper had the Reſolution to ſeize the Murderer, who remained on board (though his Captain). He pretended Innocence; and when brought by Warrant before Mr. Mayor, and other of the City Magiſtrates, publickly declared, he did not then know that his Brother was murdered, and went ſo far as to deny his having had any Hand in either the ſeizing, detaining, or murdering him. But, Gentlemen, if my Inſtructions don't miſlead me, we ſhall fix the Thing at leaſt as ſtrongly upon Mr. *Goodere* as *Mahony*, and more ſtrongly upon them both than I am willing to open it. We ſhall therefore call our Witneſſes, and, upon the whole of the Evidence on both Sides, appeal to your Judgments, and to your Conſciences, whether both the Priſoners, by the Parts they bore in this horrid Action, have not forfeited their Lives to the Juſtice of their Country as Accomplices in Guilt, and Principals in the Murder of the unfortunate Sir *John Dineley Goodere*.

Mr. *Shephard*. Mr. Recorder, I beg Leave, before the Witneſſes are examined, to ſay, that there are a great many Circumſtances in the Caſe laid before this Court, and I don't know how material it may be for the Witneſſes to withdraw, and not be in the hearing of each other during the Time of Examination; I ſubmit it to you, as it is uſually done in Caſes of this Nature, whether it ought not to be done in this Caſe, where it appears from the Gentleman's own Opening, there are Variety of Circumſtances. I doubt not, Sir, but that you will ſee equal Juſtice done between the King and the Priſoner.

Mr. Recorder. It cannot be inſiſted on as a Matter of Right, that the Witneſſes be examined apart; but it is generally ſo ordered, if it is deſired. I hope, Sir, you will obſerve too, that the Priſoner hath no Right to be heard by Counſel, unleſs in Matters of Law. If any ſuch Matter ariſe, I ſhall be ready to hear you.

Mr. *Vernon*. If Mr. *Shephard* moves this as a Matter of Right, I would juſt remind him of what Lord Chief Juſtice *Treby* ſays in *Peter Cook*'s Trial, that it is not of Neceſſity that the Witneſſes ſhould be examined apart at the Inſtance of the Priſoner, though an Indulgence generally granted. Sir, the Crown, perhaps, has a Right to ſuch Examination, but not the Priſoner. We have a great Number of Witneſſes, all of whom attend here on the publick Service (and ſome of them Perſons of Figure); and it would, I doubt, be caſting a Sort of Blemiſh on their Credit to examine them apart. Could that Gentleman ſhew the leaſt Glimmering of Suſpicion as to the Fairneſs of our Witneſſes, they ought in Juſtice to withdraw; but as they are free from the leaſt Imputation in that reſpect, I ſee not why they ſhould be incommoded, and hope he will not contend for it.

Mr. *Shephard*. I own it is not of Neceſſity that the Witneſſes be examined apart in Favour of the Priſoners, nor do I intend to throw any Imputation on the Witneſſes; but by Mr. *Vernon*'s Opening, ſome of them

them appear to be Witneſſes who were concerned in taking a way the deceaſed Gentleman to the Ship, and all theſe, I ſuppoſe, are intended to be called as Witneſſes. I own it is a Matter of Indulgence, and I dare ſay, Sir, that you will indulge a Priſoner, in theſe unfortunate Circumſtances, the Benefit of making the beſt Defence he can.

Mr. Recorder. Let the Witneſſes withdraw. Officers, clear the Way.

Mr. *Vernon.* We hope, Sir, it is not intended that all our Witneſſes in general ſhould withdraw without Diſtinction.

Mr. *Jarrit Smith* (Solicitor for the Proſecution). We deſire there may be a Room for our Witneſſes, where they ſhall be together, or I may loſe half my Witneſſes. I am myſelf a Witneſs, Mr. Recorder, muſt I withdraw?

Mr. Recorder. No, you ſhall not go out.——Who do you call firſt, Mr. *Vernon?*

Mr. *Ver.* Cryer, call *Thomas Chamberlayn*, Eſq. [Mr. *Chamberlayn* ſworn.] I think, Sir, you have been for ſome time acquainted with Mr. *Goodere*, the unhappy Gentleman at the Bar.

Mr. *Chamberlayn.* A late Acquaintance.

Mr. *Ver.* Pray, Sir, will you give an Account to Mr. Recorder and the Jury, whether Mr. *Goodere*, at any time, and when, deſired your Interpoſition with Mr. *Jarrit Smith* to bring about a Reconciliation between him and his Brother Sir *John Dineley Goodere?*

Mr. *Chamb.* Yes, Sir, he did. The Captain applied to me to go to Mr. *Smith* to interpoſe for him with Sir *John*; and I did apply.

Mr. *Ver.* Pray, Sir, how long was it before this unhappy Affair happened?

Mr. *Chamb.* About three Weeks, I believe.

Mr. *Ver.* And did Mr. *Smith* undertake that good-natur'd Office?

Mr. *Chamb.* Mr. *Smith* ſaid, he ſhould be ready to do it, and promiſed me to do all he could in the Affair.

Mr. *Ver.* When you applied to Mr. *Smith*, was you alone, or was Mr. *Goodere* with you?

Mr. *Chamb.* I went firſt alone; afterwards Capt. *Goodere* went with me to Mr. *Smith*'s Houſe.

Mr. *Ver.* What was the Occaſion of your going to Mr. *Smith*'s?

Mr. *Chamb.* To intreat him to uſe his good Offices to get a Reconciliation between Sir *John* and the Captain.

Mr. *Ver.* Be pleaſed, Sir, to tell us what paſſed on that Occaſion, and whether Mr. *Goodere* acquainted Mr. *Smith* with the Nature of the Miſunderſtanding between him and his Brother?

Mr. *Chamb.* Yes, Sir; that they had been both at Law a great while, and ſpent a great deal of Money, and therefore Mr. *Goodere* was willing to have Mr. *Jarrit Smith* to reconcile the Matter between them, to prevent the Ruin of the Family, and many more ſuch Expreſſions as theſe.

(Mr. *Jarrit Smith* ſworn.)

Mr. *Ver.* Mr. *Smith*, will you give an Account of what you know of this fatal Buſineſs?

Mr. *Jarrit Smith.* Some few Weeks before this Murder happened, Mr. *Chamberlayn* applied to me, and told me, that Mr. *Goodere* (the Priſoner at the Bar) deſired that I would uſe my utmoſt Endeavour with Sir *John Dineley Goodere* to be Friends and reconciled with Mr. *Goodere*, and that I would ſuffer him to bring Mr. *Goodere* to my Houſe. I told him, I often heard Sir *John* ſay, that there had been warm Diſputes between them, but would make uſe of all my Endeavours to reconcile them, and that it was pity they ſhould live in hatred, as they were the only two Brothers. Some time after Mr. *Chamberlayn* brought Mr. *Goodere* to my Houſe, where they ſtaid about a Quarter of an Hour, when Mr. *Goodere* gave me Thanks for the Promiſe I had made to Mr. *Chamberlayn*, and he then deſired I would do all I could to promote a Reconciliation. I told him, I ſhould be glad to be a happy Inſtrument of that ſort; and that the firſt time I ſaw Sir *John* I would ſpeak to him on the Affair, and endeavour to prevail on him to meet Mr. *Goodere*. The Captain ſaid, if any Man in *England* could do it, I could. I told him, I hoped to ſucceed. Mr. *Chamberlayn* and Mr. *Goodere* went away. Some little time after they were gone, I ſaw Sir *John*, and told him, that Mr. *Goodere* had applied to me to do all I could to reconcile them. Sir *John* ſeemed to ſpeak much againſt it at firſt, and thought it would be to no Purpoſe; for that he had been a real Friend to the Captain, who had uſed him very ill; but at laſt he was pleaſed to paſs a Compliment on me, and ſaid, I can't refuſe you any thing you aſk of me. He then mentioned ſeveral Things the Captain had ſaid; and in particular told me, that at the Death of Sir *Edward Goodere* his Father, Mr. *Goodere* the Priſoner had placed ſeveral Perſons in the Houſe where Sir *Edward* lay dead, in order to do him ſome Miſchief, and he apprehended to take away his Life.

Mr. *Shephard.* I muſt ſubmit it to the Court, that what Sir *John* ſaid at that Time is not matter of Evidence.

Mr. Recorder. It is not Evidence, but perhaps it is introductory to ſomething Mr. *Smith* has further to ſay; if it be not, it ſhould not have been mentioned.

Mr. *Jarrit Smith.* And that he had endeavoured to ſet aſide a common Recovery, and made ſtrong Application to the Court of Common-Pleas for that Purpoſe.

Mr. *Shephard.* Whether this be Evidence, I inſiſt upon it in point of Law that it is not, and it may have an Effect on the Jury.

Mr. Recorder. I will take Notice to the Jury what is not Evidence. Go on, Mr. *Smith.*

Mr. *Jarrit Smith.* After Sir *John* had repeated ſeveral Stories of this ſort, he concluded at laſt (as I told you before) and why, Mr. *Smith*, if you aſk it of me, I can't refuſe. I ſaw Mr. *Goodere* ſoon after, and told him, I had ſeen Sir *John*, and talked with him, and he was pleaſed to tell me, that he would ſee him, and bid me contrive a convenient Place to bring them together. I told Mr. *Goodere* about the Attempt to ſet aſide the Recovery. I wonder, ſaid Mr. *Goodere*, he ſhould mention any Thing of that, for I can ſet it aſide when I pleaſe. I told him, I thought he could not; for, ſaid I, I have had a good Opinion on it, and am to lend a large Sum of Money upon the *Worceſterſhire* Eſtate. He ſaid, I wonder that any body will lend him Money upon that Eſtate; I am next in Remainder, and they will run a Riſque of loſing their Money, I do aſſure you; and he cannot borrow a Shilling on it without my Conſent: but if my Brother was reconciled, then, if we wanted Money, we might do it together, for he cannot ſecure it alone. He told me, that he ſhould take it as a great Favour, if I could fix a Time as ſoon as I could to bring them together. Soon after I ſaw Sir *John*, and he told me he was very deaf, and was adviſed to go to *Bath*, and then appointed to be with me on *Tueſday* the 13th of *January* laſt in the Morning, when he would talk with me about the Buſineſs of advancing the Money on his Eſtate. After this I ſaw Mr. *Goodere*, and told him that I had ſeen his Brother; that he was to be with me on *Tueſday* the 13th of *January* laſt, and deſired him to be in the Way, for Sir *John* was always very punctual to his Appointment; and if Buſineſs or any Thing happened to prevent him, he always ſent me a Letter. Mr. *Goodere* thanked me, and told me he would be in the way: and on the *Tueſday* Morning Sir *John* came to me on Horſeback, juſt alighted, and came into my Office. I aſked him to ſit down, which he refuſed, ſaying his Head was bad; that he muſt go for *Bath*, having been adviſed to go there for ſome time, and then he did not doubt but he ſhould be better. I told Sir *John*, that his Brother knew he was to be in Town, therefore hoped he would ſit down a little, for that I had promiſed him to bring them together. He ſaid, I can't now; but you ſhall ſee me again ſoon, and then I may do it. I aſked him, When ſhall I ſee you again, to finiſh the Buſineſs you and I are upon, the Writings are ready, name your own Time, the Money will be paid? He appointed to be with me on *Monday* Morning to ſettle that Buſineſs; and ſaid, I ſhall come to Town the *Saturday* or *Sunday* before, and when I come I will let you know it: He then mounted his Horſe and rid off. Shortly after (as I was going to the *Tolzey*) at, or under *Blind-gate*, I met Mr. *Goodere*, and told him I was glad to ſee him, and that his Brother had been in Town. He ſaid, he had ſeen him, and thought he looked better than he uſed to do. I told Mr. *Goodere*, that his Brother had appointed to be with me *Monday* Morning next on Buſineſs, and I expected him to be in Town either the *Saturday* or *Sunday* before. I then had many Compliments from Mr. *Goodere*, and he ſaid, how good it would be to make up the matter between him and his Brother. I heard nothing of Sir *John* being in Town till *Sunday* the 18th of *January* laſt in the Morning, when he ſent me a Letter to let me know that he came to Town the Night before, and would be glad to call upon me at any time I would appoint. I ſent him for Anſwer, that I was to dine from Home, but would return, and be at Home at Three o'Clock that Afternoon. And as I was paſſing by, I ſtopt the Coach at Capt. *Goodere*'s Lodgings in *Princes-Street*. I aſked if he was at Home? Found him alone, and then ſhewed him Sir *John*'s Letter. He read it, and aſked the Time I appointed. I told him Three o'Clock that Afternoon. Said he, I think my Brother writes better than he uſed to do. I ſaid, Mr. *Goodere*, I think it would be beſt for you to be accidentally on Purpoſe at that Time at my Houſe. No, ſays he, I don't think that will be ſo well, I think it would be better for you to ſend for me. I returned to my Houſe, and my Servant told me that Sir *John* had called, and that he would be here again preſently. Whilſt my Servant was telling this, Sir *John* came in; I took him by the Hand, and aſked him how he did? I thank God, ſays he, I am ſomething better; and after I have ſettled this Affair with you, I will go to *Bath* for ſome Time, and then, I hope, I ſhall be better. I ſaid, Capt. *Goodere* is waiting, I beg you will give me leave to ſend for him; you know you ſaid you would ſee him. With all my Heart, ſays Sir *John*, I know I gave you leave. I then ſent down a Servant to Captain *Goodere*'s Lodgings, to let him know that Sir *John* was with me, and deſired him to come up. The Servant returned, and ſaid, Here is Captain *Goodere*; on which I ſaid, Sir *John*, pleaſe to give me leave to introduce your Brother. He gave me leave: Captain *Goodere* came in, went directly and kiſſed him as heartily as ever I had ſeen any two Perſons who had real Affection one for the other. I deſired them to ſit down. Sir *John* ſate on one ſide of the Fire, and Captain *Goodere* on the other, and I ſate between them. I called for a Table and a Bottle of Wine, and filling a full Glaſs, I ſaid, Sir *John*, give me leave to drink Love and Friendſhip. Ay, with all my Heart, ſays Sir *John*; I don't drink Wine, nothing but Water; notwithſtanding, I wiſh Love and Friendſhip. Captain *Goodere* filled a Bumper, and pledged it, ſpoke to his Brother, and drank Love and Friendſhip, with his Brother's Health. We ſate ſome time, all ſeemed well, and I thought I could have reconciled them. The Cork lying out of the Bottle, Captain *Goodere* takes up the Cork in his Hand, put it into the Mouth of the Bottle, and ſtruck it in very hard. I then ſaid, Though Sir *John* will not drink Wine, you and I will. No, ſays Captain *Goodere*, I will drink Water too, if I drink any more: and there was no more drank. After they had talked ſeveral things (particularly Captain *Goodere* of the Pleaſantneſs of the Situation of the Eſtate in *Herefordſhire*, and Goodneſs of the Land) in a very pleaſant and friendly way, Sir *John* roſe up, and ſaid, Mr. *Smith*, what time would you have me be with you To-morrow morning? I appointed nine o'Clock. He ſaid, Brother, I wiſh you well; then ſaid to me, I will be with you half an Hour before. Sir *John* went down the Steps; the Captain was following; I ſtopt him, and ſaid, Pray don't go, Captain, let you and I drink a Glaſs of Wine. No more now, I thank you, Sir, ſaid he. I think, ſaid I, I have done great Things for you. He pauſed a little, and ſaid, *By God, it will not do*; and in a very ſhort time the Captain went very nimbly down the Steps. I followed him to the Door, and obſerved him to go after Sir *John* down the Hill; and before he turned the Church-yard Wall, to be out of my Sight, I obſerved ſome Sailors come out of the *White-Hart* Ale-houſe within view of my Door, and they ran up to Captain *Goodere*. I heard him ſay, *Is he ready?* (I thought he meant the Boat) They ſaid, *Yes*. He bid them make haſte. Then they ran very faſt towards the Lower Green, one of them having a Bottle in his hand; Captain *Goodere* went very faſt down the Hill, and had it not been by mere accident I ſhould have followed him, (but ſome People think 'twas well I did not) for I promiſed my Wife to return to the Houſe where we dined in *Queen's Square*, where I went ſoon after.

Mr. Recorder. Mr. *Smith*, did they all go toward the Lower Green?

Mr. *Jarrit Smith.* No, Sir; but ſome towards the Butts on St. *Auguſtin's Back.* Sir *John* went that way, and Captain *Goodere* followed him; but the Men who came out of the Alehouſe went towards the Lower Green ſome of them. About 5 o'clock in the Evening, as I was riding up the Hill towards the *College-green*, I obſerved a Soldier look'd hard at me into the Coach, as if he had ſomething to ſay, and ſeemed to be in a Confuſion. I walked into the Court, the Soldier with me, and then he ſaid, I am inform'd, Sir, your Name is Mr. *Jarrit Smith.* Yes, ſays I, it is. (What I am now going to ſay, Mr. Recorder, is what the Soldier told me.) He told me, that as he was drinking with a Friend at the *King's Head* Ale-houſe at the *Lime-kilns*, he heard a Noiſe, and ran out to ſee what was the matter, when he ſaw a Perſon dreſſed (as he deſcribed) like Sir *John*'s Dreſs.

Mr. *Vernon.* Pray, Sir, how was Sir *John* dreſſed?

Mr. *Jarrit Smith.* Sir *John* was dreſſed in Black Clothes, he had a ruffled Shirt on, a Scarlet Cloak, a Black Velvet Cap (for the Sake of keeping his Ears warm) and a broad-brimm'd Hat flapping. He deſcribed this exactly, and told me likewiſe; that the Captain of the Man of War and his Crew had got the Perſon into Cuſtody, and by force had put him on board the Man of War's Barge or Boat lying near the *Slip*, by the *King's Head*; that the Gentleman cry'd out, For God's ſake, if you have any Pity or Compaſſion upon an unfortunate Man, go to Mr. *Jarrit Smith*, and tell him how I am uſed: and that the Captain hearing him cry out, ſtopt his Mouth with his Hand.

Mr. Recorder. What did the Soldier deſire of you?

Mr. *Jarrit Smith.* The Soldier deſired me to inquire into it, for that he did not know the Intention of taking off a Gentleman in that way.

Mr. Recorder. Did you do any thing on that Requeſt of the Soldier?

Mr. *Jarrit Smith.* Yes, Sir; it immediately occurred to me, that Sir *John*, when he left my Houſe, told me that he was going to his Lodgings. I went to his Lodgings, (which was at one Mr. *Berrow*'s near the Mint) I there aſked for him, and related the Story I had heard; they told me they had not ſeen him ſince he went to my Houſe.

Mr. *Vernon.* Mr. *Smith*, Sir, will you inform us by what Name the unfortunate Gentleman (you are ſpeaking of) was commonly called?

Mr. *Jarrit Smith.* Sir *John Dineley Goodere*; his Mother was a *Dineley*, and there came a great Eſtate from her ſide to him, which occaſion'd his being called by the Name of *Dineley*.

Mr. *Vernon.* When Sir *John* went from your Houſe on *Tueſday*, was he alone, or had he any Attendants with him?

Mr. *Smith.* Sir *John* was well guarded; he had Piſtols, and I think his Servant had Piſtols alſo.

Mr. *Vernon.* I think you told us but now, that Sir *John* was to be with you on the *Sunday*; pray, when did you let Mr. *Goodere* know it, Sir?

Mr. *Smith.* I met Captain *Goodere* that very Day at *Blind-gate*, and told him of it; and he ſaid, he had met his Brother himſelf.

Mr. *Vernon.* Pray, Sir, did Mr. *Goodere* tell you, to whom the Eſtate would go on Sir *John*'s Death?

Mr. *Smith.* Yes, he has often ſaid he was the next Remainder Man, and that the Eſtate would come to himſelf on his Brother's Death.

Mr. Recorder. Well, Mr. *Goodere*, you have heard what Mr. *Smith* hath ſaid, have you any Queſtions to aſk him?

Mr. *Shephard.* Mr. Recorder, what I have to aſk of you, with Submiſſion, in Behalf of Mr. *Goodere*, is, that you will indulge Counſel to put his Queſtions for him to the Court, and that the Court will then be pleaſed to put them for him to the Witneſſes. It is every Day's Practice at the Courts of *Weſtminſter*, *Old Bailey*, and in the Circuit.

Mr. *Vernon.* This, I apprehend, is a Matter purely in the Diſcretion of the Court, and what can neither in this or any other Court of criminal Juſtice be demanded as a Right. The Judges, I apprehend, act as they ſee fit on theſe Occaſions, and few of them (as far as I have obſerved) walk by one and the ſame Rule in this particular: ſome have gone ſo far, as to give leave for Counſel to examine and croſs-examine Witneſſes; others have bid the Counſel propoſe their Queſtions to the Court; and others again have directed that the Priſoner ſhould put his own Queſtions: The Method of Practice in this point, is very variable and uncertain; but this we certainly know, that by the ſettled Rule of Law the Priſoner is allowed no other Counſel but the Court in Matters of Fact, and ought either to aſk his own Queſtions of the Witneſſes, or elſe propoſe them himſelf to the Court. I have one more Queſtion to aſk of Mr. *Smith* before we part with him.

Sir, I think you was preſent when Mr. *Goodere* was brought to *Briſtol*, after his Brother's being killed; I'd be glad to know whether you then heard him ſay any thing, and what, concerning this foul Buſineſs?

Mr. *Smith.* I was preſent when Mr. *Goodere* was brought to *Briſtol* after this Murder happened, when he was aſked (before the Juſtices) about the ſeizing, detaining and murdering Sir *John Dineley*; and he then directly anſwered, that he did not know that his Brother was murdered or dead. He was then aſked in relation to the manner of ſeizing him, and carrying him away; he ſaid he knew nothing of it till he came to the Boat, and when he came there he ſaw his Brother in the Boat; but he did not know that his Brother had been uſed at that rate.

Mr. *Shephard.* Mr. *Smith*, Sir, you are ſpeaking about Sir *John*; by what Name did you commonly call him?

Mr. *Smith.* Sir *John Dineley Goodere.*

Mr. Recorder. Mr. *Goodere*, have you any Queſtions to aſk Mr. *Smith?*

Samuel Goodere. Yes, Sir. Mr. *Smith*, I aſk you what Sir *John Dineley*'s Buſineſs was with you, and how much Money was you to advance?

Mr. *Smith.* Five Thouſand Pounds, Sir; and I told him that I was ſatisfied that it was a good Title.

Samuel Goodere. I aſk you, if you knew him to be a Knight and Baronet?

Mr. *Smith.* I can't tell; I never ſaw the Letters Patent.

Samuel Goodere. Can't you tell how you ſtyled him in the Writings?

Mr. *Vernon.* I am very loth to interrupt Mr. *Goodere*, but muſt ſubmit it, Sir, that this Queſtion is extremely improper, becauſe perſonal Knowledge is by no means legal Evidence of his Brother's having been a Baronet; for Baronettage muſt be derived from Letters Patent: Neither can I ſee, Sir, (with great Submiſſion) how it wou'd be at all material in this Caſe, whether the Deceaſed was a Baronet, or not. By the Indictment the Priſoners ſtand charg'd with the Murder of one Sir *John Dineley Goodere*, and the Witneſs Mr. *Smith* proves that the Party whom we ſhall ſhew to have been murdered, commonly went by that Name.

Mr. *Shephard.* With great Submiſſion, Mr. Recorder, I think it a very material Queſtion in point of Law: Upon the face of the Indictment it appears, that he is deſcribed by the Name of Sir *John Dineley Goodere*; in a Declaration for the King, the Party ought to be ſet forth with his Additions and Titles, the Perſons committing the Fact, as well as the Perſon on whom it was committed: The Deceaſed is deſcribed by the Name of Sir *John Dineley Goodere*, and if he was a Baronet by Patent, it's not his Title, and it amounts to the ſame as if they had miſtaken the Chriſtian Name; if the Deceaſed was a Baronet, then he is improperly deſcribed, and then the Priſoners can't be found guilty on this Indictment. The Queſtion before you, Sir, is, Whether this Queſtion was proper to be aſked the Witneſs?

Mr. Recorder. Can I preſume him to have been a Baronet, or can I admit of Parole Evidence to prove him ſo?

Mr. *Vernon.* Mr. Recorder, I beg leave to be heard in anſwer to this Obſervation of Mr. *Shephard*'s, which I apprehend to be one of the moſt extraordinary I ever heard from a Gentleman of the Long Robe, and am bold to ſay the learned Gentleman who made it (if in earneſt), is much miſtaken in it, and in the Doctrine he hath advanced concerning it. With great Deference to your Judgment, Sir, I ſpeak it, his Objection (if I apprehend it rightly) is, that the Perſon mentioned in the Indictment to have been murdered, is there deſcribed by the Name of Sir *John Dineley Goodere* only, and that by the Evidence it appears the Perſon murdered was Sir *John Dineley Goodere* Baronet; and he would from thence infer, that there is a Miſtake in the Deſcription of the Perſon murdered, and a Variance between the Indictment and the Evidence. Our Baronets, 'tis well known, are but of modern Inſtitution, and their Creation by Patent from the King, as the Fountain of Honour; and whoever reads Lord *Coke*'s 12th Report, will find it to have been reſolved, at a learned Conference in the Time of *James* the Firſt, That the King could erect ſuch a Dignity by Patent deſcendable to the Heirs Male of the Body, as a Fee conditional and forfeitable for Felony.—But that where a Baronet is murdered, it is neceſſary to ſet forth his Name (or more properly Title of Dignity) in the Indictment, I muſt take the liberty to deny: The Difference, which I apprehend has been always taken and allowed, is between the Indictee, or Perſon charged by the Indictment with committing the Offence, and the Perſon on whom the Offence is laid therein to have been committed. 'Tis indiſputably true, that the Indictee's Addition (whether of Title or otherwiſe) muſt be ſet forth in the Indictment; but what is the Reaſon? Why, becauſe it is expreſly ſo required by the Statute of the 1ſt of *Henry* the 5th, which directs, that Indictments and Writs where Proceſs of Outlawry is awardable, the Eſtate, Degree or Myſtery of the Defendant ſhall be ſuperadded to his Name, to prevent troubling one Perſon for another. But, Sir, with great Submiſſion, that Statute was never taken to extend to any other but the Defendant. All the Law requires, as to the Perſon on whom the Offence is laid to have been committed, is a convenient Certainty in the Deſcription of him; and ſurely a Deſcription by the right Chriſtian and Surname is ſuch, and ſufficient to aſcertain the Perſon murdered, eſpecially where it does not appear there was any other of the ſame Name. In the Indictment againſt *Coke* and *Woodburne* on the *Coventry* Act, for diſfiguring Mr. *Coke*'s Brother-in-law Mr. *Criſpe*, and which was ſettled with great Advice, the Perſon diſfigured is deſcribed as here, one *Edward Criſpe* only; and all the modern Precedents of Indictments at the *Old Bailey* are ſilent, as to the Addition of the Perſon on whom the Offence is ſaid to be committed; and it is certainly beſt and ſafeſt to omit it. Lord *Coke* in his firſt Inſtitute lays it down, that a Perſon may have divers Surnames, and that a Purchaſe by either of them is ſufficient, and yet but one of them is his true Name; which ſhews the Law is not ſo over-curious in the manner of deſcribing Perſons: and, if I miſtake not, it has been held that even the Indictee himſelf can take no Advantage of a Miſtake of his Surname, if his Chriſtian Name be right, and he be otherwiſe deſcribed with convenient Certainty. Beſides, Sir, this is begging the Queſtion; for it does not appear in Proof that the Deceaſed was a Baronet, he might for aught appears judicially to the Court have been baptized by the Name of Sir *John*. Baronettage as a Patent-Dignity we know is Matter of Record, which is a thing proveable only by itſelf; therefore if they would have taken any Advantage of it, they ſhould have had the Letters Patent of Creation, or an Exemplification of them, at leaſt *En Poigne*, (as the Law terms it) ready to produce in Court: and for an Authority in Point, Sir; I beg leave juſt to mention the Caſe of Sir *Richard Grahme* (Titular Lord *Preſton*); he was indicted as a Commoner, and objected that he was a Lord, and as ſuch triable by his Peers. But Lord Chief Juſtice *Holt*, and others then preſent, acquainted him they could take no judicial Notice of his being a Lord (though they themſelves called him ſo out of Courteſy when they ſpoke to him) unleſs he produced the Patent of Creation, or a Copy of its Inrollment, becauſe Matter of Record; ſo his Objection vaniſhed, and ſo I hope will this Gentleman's. Had we called the Deceaſed in the Indictment Sir *John Dineley Goodere* Baronet, then, Sir, we ſhould probably have been told, that we had failed in Proof of the Identity of the Perſon, for that the Baronettage was in its Creation annexed to, and made a Concomitant on the Patentee's Surname of *Goodere*, and waited only on that Name; and that the Deceaſed, conſidered as a Baronet, was not of the maternal Name of *Dineley*, and ſo upon the matter no ſuch Perſon as Sir *John Dineley Goodere* Baronet ever in *Rerum Natura.*

Mr. *Shephard.* Mr. Recorder, Mr. *Vernon* ſays it does not appear that Sir *John Dineley* was a Baronet, and that we ought to produce the Letters Patent to ſhew him ſuch; I think it a pretty hard Objection, conſidering that by Law a Priſoner cannot look into his Indictment, nor have a Copy of it, in order to be adviſed thereon. Here it comes out only on hearing the Indictment read, and the Perſon killed is therein deſcribed by the Name of Sir *John Dineley Goodere* only, without adding the Title Baronet; ſo that it was impoſſible for us to be prepared with the Letters Patent, or with any Evidence of his being a Baronet; therefore humbly hope we are proper in aſking this Queſtion of the Witneſs Mr. *Smith*, who was ſo converſant with

the deceaſed Gentleman; had the Peruſal of his Writings, all his Title-Deeds lay before him, ſo that he cannot but know the Certainty of his Title and Degree.

Mr. Recorder. It is a great Miſtake to ſay, that it is neceſſary to ſet forth in the Indictment the Addition of the Perſon on whom the Offence is ſuppoſed to be committed; the Law requires no ſuch thing, and the Priſoners ſuffer no manner of Inconvenience by leaving out the Addition; becauſe on this Indictment if they ſhould happen to be acquitted, or ſhould be convicted of Homicide under the Degree of Murder, they may plead that Acquittal or Conviction in bar of a ſecond Proſecution for the ſame Fact, with an Averment that the Party mentioned in both Indictments, though under different Deſcriptions, was one and the ſame Perſon: It is ſufficient that the Deceaſed is deſcribed by his Chriſtian Name, and the Surname by which he was commonly called. The Queſtion propoſed to the Witneſs is improper; for it is not at all material in the preſent Caſe, Whether Sir *John* was a Baronet, or no. I would not deny the Priſoners any Advantage they are by Law intitled to, but I cannot admit of Evidence which can ſerve only to amuſe.---Mr. *Goodere*, Have you any more Queſtions to aſk this Witneſs? *Mahony*, have you any Queſtions to aſk? [*Both ſilent.*]

(*Morris Hobbs* ſworn.)

Mr. *Vernon.* Mr. *Hobbs*, I think you are the Landlord of the *White-Hart* Alehouſe.—*Hobbs.* Yes, Sir.

Mr. *Vernon.* Pray, where about is the Houſe?

Hobbs. Over-againſt St. *Auguſtine*'s Church.

Mr. *Vernon.* Can you ſee Mr. *Jarrit Smith*'s Houſe from the Window of yours?

Hobbs. Yes, Sir, very plain.

Mr. *Vernon.* I preſume you are not unacquainted with the Priſoners Faces?

Hobbs. I have ſeen the Priſoners ſeveral times.

Mr. *Vernon.* I would not lead you in your Evidence, but would be glad you'd give an Account to Mr. Recorder, and the Jury, whether Mr. *Goodere* (the Gentleman at the Bar) applied to you about coming to your Houſe; if ſo, pray tell us when it was, and upon what Occaſion?

Hobbs. The 12th of *January* (which was on *Monday*) Captain *Goodere* and *Mahony* came to my Houſe; Captain *Goodere* aſked my Wife, Have you good Ale here? She ſaid, yes; he alſo aſked, What Place have you over-head? I anſwered, a Cloſet, a Place where Gentlemen uſually ſit to look out. Will you pleaſe to let me ſee it, ſays he? Yes, Sir, ſaid I. I went up to ſhew it, he and *Mahony* went up; the Captain ſaid it was a very fine Proſpect of the Town; he aſked for a Pint of Ale, I drawed it, and he gave it to *Mahony*, he drank it: and then the Captain aſked my Wife, whether he might have a Diſh of Coffee made to-morrow Morning? Sir, ſaid ſhe, 'tis a thing I don't make uſe of in my way; but, if you pleaſe, I will get it for you. Then he told her, he would be there to-morrow Morning by about Nine o'clock. *Mahony* was by then.

Mr. *Vernon.* Did you hear this Diſcourſe paſs between your Wife and Mr. *Goodere?*

Hobbs. Yes, I did, and then the Captain paid for his Pint of Ale, and went away; and the next Morning (being *Tueſday* the 13th of *January*) he came again to my Houſe before my Wife was up, and I was making the Fire (for I keep no Servant). I did not know him again, I thought he was another Man; ſays he, Landlord, can't you open them Windows in the Parlour? I told him, I would, and ſo I did; he looked out, and I thought that he had been looking for ſomebody coming from College Prayers. He aſked where my Wife was? Says I, She is a-bed: Becauſe, ſaid he, I talked with her about having ſome Coffee for Breakfaſt. I told him, ſhe ſhould come down preſently, but I had much rather he would go down to the Coffee-houſe, where he would have it in order. No, ſays he, I will have it here. My Wife came down, he aſked if he might go up ſtairs where he was before; he went up, and by-and-by *Mahony* and three Men more came in; I did not know *Mahony*'s Name: When they came in, the Captain was above ſtairs; he directed me to make his Men eat and drink whatever they would, and he would pay for it; I brought them Bread and Cheeſe, they eat what they pleaſed; *Mahony* went backwards and forwards, up ſtairs and down ſeveral times; he went out, but where, or what for, I did not know.

Mr. *Vernon.* Did *Mahony*, when he went up ſtairs, go in to Mr. *Goodere?*

Hobbs. Yes, ſeveral times; *Mahony* put the Coffee, and ſome Bread and Butter, and made the Toaſt, and did every thing for the Captain, I thought he had been his Footman. When the Captain had breakfaſted, and had made the Men welcome, he ſhifted himſelf (ſome Porter brought freſh Clothes to him). By-and-by a Man rid along, who, I believe, was Sir *John Goodere*'s Man, with Piſtols before him; I heard ſomebody ſay that it was his Man: and ſoon after the Captain had ſhifted himſelf, *Mahony* went out about a Quarter of an Hour, and came back ſweating, and went up to the Captain; and I looking out of the Window ſaw the Man on horſeback, and leading another Horſe (which I took to be his Maſter's); and by-and-by Sir *John* mounted, and rid down between my Houſe and the Church; and I had ſome glimpſe of him, and heard the Captain ſay, Look well at him, but don't touch him.

Mr. Recorder. This you heard the Gentleman above ſtairs ſay to the four Men below?

Hobbs. Yes, Sir, he ſpoke thoſe Words to the four who came in.

Mr. *Vernon.* Did Sir *John* and his Man appear to have any Arms?

Hobbs. Yes, Sir, they had both Piſtols before them.

Mr. *Vernon.* Thoſe Men that were along with *Mahony*, do you know what Ship they belong'd to?

Hobbs. There was a young Man, I believe ſomething of an Officer, came to my Wife, and aſked her, Is the Captain of the Man of War here? She anſwered, that ſhe did not know; but there was a Gentleman above, and there were ſix other Men beſides in the other Room in another Company, which I did not know belonged to the Captain, until he order'd ſix Pints of Ale for them. The Captain ordered Entertainment for ten Men.

Mr. *Vernon.* Where were thoſe ſix Men?

Hobbs. In the Kitchen; they did not belong to the Man of War, nor were not in Company with the other four.

Mr. *Vernon.* Now, will you proceed to give an Account what followed upon Mr. *Goodere*'s ſaying, Look well at him, but don't touch him.

Hobbs. As ſoon as Sir *John* went down the Hill, this *Mahony* ſtept up to the Captain and came down again, and he and the other three in his Company went down the Hill, and the Captain followed them; the Clothes which the Captain pulled off were left in the Room: when the Captain was going out at the Door with his Sword and Cloak, I thought I was pretty ſafe of my Reckoning, becauſe of his Clothes being left. The Captain ſaid at the Door, Landlady, I will come back and pay you preſently.

Mr. *Vernon.* How long was it before Mr. *Goodere* returned to your Houſe?

Hobbs. He came again in about a Quarter of an Hour: When he came again, he went up ſtairs, changed a Guinea, he aſked what was to pay? I told him four Shillings and one Penny half-penny, and then went away. About an Hour and a half after *Mahony* and the other came again, ſweating, and ſaid they had been a Mile or two out in the Country. *Mahony* aſked Credit for a Tankard of Ale, and ſaid his Maſter would come up on *Saturday* following, and then he would pay for it: Well, ſaid I, if he is to come up on *Saturday*, I will not ſtand for a Tankard of Ale; but if he don't come, how ſhall I have my Reckoning? Says *Mahony*, I live at the *Scotch* Arms in *Marſh-ſtreet*. Well, ſaid I, I will not deny drawing you a Tankard of Ale, if you never pay me. Said he, you had beſt get the Room ready againſt *Saturday*, and make a Fire, and juſt duſt it.

Mr. *Vernon.* Pray, when Mr. *Goodere* went away from your Houſe, was he in the ſame Dreſs as when he came firſt there that Day?

Hobbs. No, Sir. When he came there he had a light-coloured Coat, and he looked like a Country Farmer at his firſt coming-in; but when he was out, he had a Scarlet Cloak on, wore a Sword, and had a Cane in his Hand; a Porter brought him the Things.

Mr. *Vernon.* Do you know any thing of what happened on the *Sunday* following?

Hobbs. Yes, Sir; the *Sunday* Morning *Mahony* came to my Houſe, having Trouſers and a ſhort Jacket and Leather-Cap on, aſked for a Quart of Ale, this was *Sunday:* My Wife ſaid, Don't draw any more upon tick. *Mahony* gave a Six-pence and paid for it, and ſaid, See that the Room be clear, the Captain will be up in the Afternoon, and then he'll be here: And as he was going out of the Houſe, he ſaid to me, If you fortune to ſee that Gentleman go up with the black Cap before that time, do you ſend a Porter to me to the *Scotch* Arms. I told him I had no Porter, and could not ſend. About 3 o'clock in the Afternoon, when he came again with a Perſon who had a ſcalled Face, and one or two more, a Man who lodged in the Houſe came and told me, that they wanted to go up Stairs; but I would not let them, becauſe it was in Service-time: They all went into the Parlour, and had a Quart of Ale, and when that was drank, *Mahony* called for another; and then eight or nine Men more came and called for Ale, and went into the Parlour, but ſtill kept looking out; and one of them being a little Fellow, I don't know his Name, kept ſlamming the Door together, ready to break the Houſe down. Says I, Don't break my Houſe down about my Ears, don't think you are in *Marſh-ſtreet*; then the little Fellow came up as if he was going to ſtrike me, as I was coming up out of the Cellar with a Dobbin of Ale in my Hand, for a Gentleman going to the College: I ſaw this Gentleman (pointing to the Priſoner *Samuel Goodere*) and the Deceaſed walk down the Hill, I looked after them, and ſo did *Mahony*; and then all thoſe Men ruſhed out, and followed them. *Mahony* paid the Reckoning, and went away; I ran in to ſee after my Tankard, for I was more afraid of loſing that than the Reckoning. And that is all I do know from the Beginning to the End.

Mr. *Vernon.* How long did he continue at your Houſe on the *Sunday?*

Hobbs. I believe, Sir, an Hour and an half; and there was ſome or other of them ſtill looking out, and waiting at the Door.

Mr. Recorder. You ſay that *Mahony* deſired you that if you ſaw the Gentleman in the black Cap go by, to ſend a Porter; who did you apprehend that Gentleman to be?

Hobbs. The Gentleman that rode down the *Tueſday.*

One of the Jury. To what Place was you to ſend the Porter?

Hobbs. To the *Scotch* Arms in *Marſh-ſtreet*, where *Mahony* lodged, if the Gentleman in the black Cap did go up to Mr. *Smith*'s.

Mr. *Vernon.* I think, you ſay, you ſaw Mr. *Goodere* on the *Sunday* go down the Hill, after the Gentleman in the black Cap?

Hobbs. I did, Sir; but nobody at all was with him.

Samuel Goodere. Did you ſee me at all that Day?

Hobbs. Yes, Sir, I ſaw you go into Mr. *Jarrit Smith*'s; and when you came down the Hill, after the Gentleman in the black Cap, you called out to *Mahony* and his Company, and bid them to look ſharp.

Samuel Goodere. Did you ſee any body with me that Day? I was not at your Houſe that Day.

Hobbs. I did not ſay you were; but as you was going to Mr. *Jarrit Smith*'s, I heard one of your Men ſay, There goes our Captain, or elſe I had not looked out.

Mahony. I beg leave, my Lord, to aſk him, who it was that the Captain bid *Mahony* to look ſharp to?

Hobbs. The Gentleman with the black Cap.

Mr. Recorder. Was the Gentleman in the black Cap, at whoſe going by they all ruſhed out, the ſame Gentleman whom you had ſeen before go to Mr. *Jarrit Smith*'s?

Hobbs. Yes, Sir; but *Mahony* gave Half-a-Crown for my Reckoning, and as they ruſhed out ſo haſtily, I was afraid they had taken away my Tankard; for which Reaſon I went to look after it, and ſaw no more.

(*Thomas Williams* ſworn.)

Mr. *Vernon.* Mr. *Williams*, I think you belonged to the *Ruby* at the time when this melancholy Affair happened?

Thomas Williams. Yes, Sir.

Mr. *Vernon.* What Station was you in?

Thomas Williams. I was ordered to walk the Quarter-deck.

Mr. *Vernon.* Will you give an Account of what you know in relation to the ill Treatment of Sir *John Dineley Goodere?* Tell all you know about it.

Thomas Williams. I came up on *Sunday* the eighteenth Day of *January* laſt for my Commander, went to his Lodgings, he was not at home; I was told there, that he dined that day at Dr. *Middleton*'s, and he was juſt gone there. I went to Dr. *Middleton*'s, after him, and he was juſt gone from thence; I then returned to his Lodgings, and found him there; I told him the Barge was waiting for

his Honour. He aſk'd me if I knew the River, and if I knew the Brick-yard at the *Lime-kilns?* I told him that I knew the *Lime-kilns*, and at laſt I recollected that I did remember the Brick-yard he meant. That is well enough, ſays he. While I was there, *Mahony* came up to him, and the Captain deſired of me to go down ſtairs, for he wanted to ſpeak to *Mahony* in private. I went down ſtairs, by-and-by *Mahony* came down and went away; then I went up to Captain *Goodere* again, when he directed me to get all the Hands together, and go down into the Barge, and, ſays he, let it be landed at the Brick-yard. He aſked me, if I knew the *White Hart* in the *College Green?* I told him, I did, and he directed me to take eight Men up with me to the *White Hart*, and let two remain in the Boat, for I have a Gentleman coming on board with me. I did as I was ordered; and when I came to the *White Hart*, I ſaw *Mahony* and ſome of the Privateer's Men with him there in a Room: I did not like their Company; I went into the Kitchen; I aſked the Landlord to make me a Pint of Toddy; he aſked me, whether I would have it hot or cold; I told him a little warm; he was going about it, but before it was made, *Mahony* and the Privateer's Men ruſhed out of the Houſe: I ſeeing that, followed them; they had the Gentleman in Poſſeſſion before I came to them, and were dragging him along. I aſked them what they were at? One of the Privateer's Men told me, if I did not hold my Tongue, he would throw me over the Key into the River, and immediately Captain *Goodere* came there himſelf: The Privateer's Men aſked what they ſhould do with him, and he directed them to take him on board the Barge. I followed them down the Butts, the Gentleman cried out Murder, Murder! Mr. *Stephen Perry* the Anchor-ſmith came out of his Houſe, and aſked me what was the matter; I told him I did not know: *Mahony* ſaid he was a Murderer, he had killed a Man on board the Man of War, and that he had run away; they had carried him before a Magiſtrate, and he was ordered back to the Man of War to be tried by a Court Martial.

Mr. Recorder. Was the Captain within hearing at the Time *Mahony* ſaid that?---*Thomas Williams.* He was juſt behind.

Mr. Recorder. Was he within hearing?

Thomas Williams. He was; and when they had brought him into the Barge, Captain *Goodere* deſired to have the Cloak put over Sir *John* to keep him from the Cold, but Sir *John* ſaid he did not want a Cloak, neither would he have it. The Privateer's Men wanted me to put them on the other ſide the Water, but I ſaid I would not without the Captain's Orders. They aſked the Captain, and he directed me to do it, and I put them aſhore at the Glaſs-houſe, and juſt as we came over againſt the *Hot-Wells*, there was a Gentleman ſtanding whom Sir *John* knew, to whom Sir *John* cried out, Sir, do you know Mr. *Jarrit Smith?* But before he could ſpeak any more, the Cloak was thrown over him to prevent his crying out, and the Captain told me to ſteer the Barge on the other Side, until we got clear of the Noiſe of the People; and when we were got clear, he directed me to ſteer the Boat in the middle, as I ought to do. I obeyed his Orders.

Mr. Recorder. Who threw the Cloak over him?

Thomas Williams. The Captain. And the Captain being as near to Sir *John* as I am to your Lordſhip, Sir *John* aſked the Captain what he was going to do with him? Says the Captain, I am going to carry you on board, to ſave you from Ruin, and from lying rotting in a Gaol.

Mr. *Vernon.* And what Reply did Sir *John* make to that?

Thomas Williams. He ſaid, I know better Things, I believe you are going to murder me; you may as well throw me over-board, and murder me here right, as carry me on board Ship and murder me. No, ſays the Captain, I am not going to do any ſuch Thing, but I would have you make your Peace with God. As I ſteered the Boat, I heard all that paſſed. We brought Sir *John* on board between ſeven and eight o'clock, he could hardly go up into the Ship, he being ſo benumbed with Cold; he did go up of his own accord, with the Mens Aſſiſtance.

Mr. *Vernon.* How was he treated on board the Man of War?

Thomas Williams. Sir, I don't know how they treated him after he went on board the Ship. I was excuſed from watching that Night, ſo I went to my Hammock; but after I was got out of my firſt Sleep, I heard ſome People talking and walking about backwards and forwards: I was ſurprized; at laſt I peeped out of my Hammock, and aſked the Centinel what was o'clock? He ſaid, Between two and three. And then I ſaw Captain *Goodere* going down the Ladder from the Deck towards the Purſer's Cabbin, but for what Intention I know not. I believe he came from his own Cabbin.

Mr. Recorder. Whereabout is the Purſer's Cabbin?

Thomas Williams. The Purſer's Cabbin is in a Place called the *Cock-pit*, the lower Steps of the Ladder is juſt by the Door of the Purſer's Cabbin.

Mr. Recorder. And it was that Ladder you ſaw the Captain go down, was it?---*Thomas Williams.* Yes, Sir, it was.

Mr. *Vernon.* Mr. *Williams*, you have not told us all the Particulars of Sir *John*'s Treatment between the ſeizing and carrying him to the Barge.

Thomas Williams. One of the Men had hold of one Arm, and another the other, and a third Perſon was behind ſhoving him along.

Mr. *Vernon.* Where was Captain *Goodere* then?

Thomas Williams. He was juſt behind him.

Mr. *Vernon.* How near was he to him?

Thomas Williams. Sometimes he was as near to him as I am to you.

Mr. Recorder. How many were there in the Company, do you think, in the Rope-walk, when they were carrying Sir *John* along?

Thomas Williams. There were five of the Privateer's Men, and *Mahony* made ſix, and there were nine belonging to the Barge; about ſixteen in all.

Mr. Recorder. At what Diſtance was you?

Thomas Williams. At a pretty great Diſtance; I walked juſt before them: I ſaw them take him along in the Manner I have ſaid; I heard Sir *John* cry out Murder ſeveral Times as he went, as they took him along the Rope-walk.

Mr. Recorder. Mr. *Goodere*, will you aſk *Williams* any Queſtions?

Samuel Goodere. What Side of the Gun-room did you lie in?

Thomas Williams. The Star-board Side of the Gun-room.

Samuel Goodere. Why then it was impoſſible for you, as you lay in your Hammock, to ſee any body go down to the Cock-pit.

Thomas Williams. Not at all, Sir; the Gunner's Cabbin comes out further than ever was known of that Sort.

Samuel Goodere. Are there any other Cabbins beſides the Purſer's in the Cock-pit? Did you ever examine them how ſtrong they are, and what Partitions are there between them?

Thomas Williams. I don't know any other Cabbin but the Purſer's in the Cock-pit; the Cooper lies in the Slop-room.

Samuel Goodere. Was you never in the Doctor's Cabbin?

Thomas Williams. No, never in my Life.

Samuel Goodere. Do you know where-about the *Ruby* lay, when you brought that Gentleman on board; where did you apprehend the Ship was?

Thomas Williams. I did not know the Situation of the Ship, I had no Buſineſs to know that; I was but a Foremaſt-man.

[Samuel Trivett *ſworn.*]

Mr. *Vernon.* Will you give an Account to Mr. Recorder and the Jury of what you know relating to this Buſineſs.

Samuel Trivett. On *Sunday* the eighteenth of *January* laſt I was at a Publick Houſe in the Rope-walk; I heard a Noiſe of People cryed, Damn ye, ſtand off, or elſe we will knock your Brains out; I ſtepped up, and aſked what Right they had to carry a Man along after that Manner? I followed them; their Anſwer was, it was a Midſhipman who had committed Murder, and they were taking him down to the Ship to do him Juſtice: other People likewiſe followed, enquiring what was the Matter: the Gentleman was behind, and ordered them to make more Haſte.

Mr. *Vernon.* Look upon the Priſoner at the Bar, Mr. *Goodere*; is that the Gentleman that ordered them to make more haſte?

Samuel Trivett. I believe that is the Man, my Lord. On the Gentleman's ordering them to make more haſte, five or ſix of them caught him up in their Arms, and carried him along; and as they were got down about the Corner of Mr. *Brown*'s Wall, he inſiſted upon their making more Diſpatch, and then they hurried him as far as Captain *Oſborn*'s Dock. By that Time his Clothes were ruffled, and ſhoved up to his Arm-pits; they put him down, and ſettled his Clothes, and then I ſaw his Face, and knew him to be Sir *John Dineley:* He cried out Murder ſeveral Times, and ſaid, they were taking him on board to kill him, he believed. As they were going with him along, he cried out to Mrs. *Darby*, For God's Sake aſſiſt me, they are going to murder me. I told Mrs. *Darby*, it was Sir *John Dineley:* She ſaid, ſhe knew him; the Cloak was then over his Face. As they got him further, he called out to a little Girl, to get ſomebody to aſſiſt him, for they were going to murder him. They puſhed him along to Mrs. *New*'s Houſe, and made a little Stop there, and then they brought him to the Water-ſide, where was a Boat; they put out a Plank with Ledges nailed acroſs: he was ordered to go on board the Boat; they got him on board, and put him to ſit down in the Stern-ſheet: then he cried out, For God's Sake, Gentlemen, if any of you know Mr. *Jarrit Smith* in the *College Green*, tell him my Name is Sir *John Dineley*. One of the Men put his Cloak and covered him, and before he could ſay any more, that Gentleman (pointing to the Priſoner *Goodere*) took his Hand and put it on his Mouth, and would not let him ſpeak any further, and ordered the Boat to be puſhed off, which was done; and the Tide making up ſtrong, the Boat got almoſt to the other Side. I heard that Gentleman (pointing as before) ſay, Have you not given the Rogues of Lawyers Money enough already? Do you want to give them more? I will take care that they ſhall never have any more of you; now I'll take care of you.

Mr. Recorder. Priſoners, will either of you aſk this Witneſs any Queſtions?

Samuel Goodere. No; I never ſaw the Man before in my Life.

[Thomas Charmbury *ſworn.*]

Thomas Charmbury. On *Sunday* the eighteenth of *January* laſt, between the Hours of four and five in the afternoon, I was on board the Ship called the *Levant*, lying in Mr. *Thompſon*'s Dock; I heard a Noiſe coming over the Bridge of the Dock, and I ſaw a Man in a ſcarlet Cloak, and a Parcel of People, ſome before and ſome behind, guarding of him, and he made a Noiſe. I went towards them, to ſee what was the Matter, and at Mr. *Stephen Perry*'s Counting-houſe (they reſted) I aſked, what was the Matter? They ſaid, he had killed a Man on board a Man of War; that he had run away; and they had had him before a Magiſtrate, and he was ordered on board the King's Ship to be carried round to *London* to take his Trial. Mr. *Perry* (on hearing the Noiſe) came out and ſaw him; ſays Mr. *Perry*, Gentlemen, do you know what you are about? I would not be in your Coats for a thouſand Pounds, for it is Eſq; *Goodere*. They threatened to knock down any that ſhould come near; a Fellow, I take him to be *Mahony*, came up to me, and threatened to knock me down ſeveral Times. They took and carried him as far as Captain *James Day*'s Lofts and Warehouſe, where he keeps his Hemp; and there they reſted him again, and threatened to knock down any that ſhould come near them. Then ſaid *Mahony*, Damn ye, here comes the Captain. Immediately I turned about, and ſaw a Gentleman with his Cane poiſed in one Hand, and his Sword in the other; he had a dark ſhag Coat and yellow Buttons, whom I take to be that Gentleman the Priſoner at the Bar. They took up the Man in the ſcarlet Cloak again, and carried him ſo far as coming out from the lower *College-green* into the Rope-walk: the Priſoner *Goodere* came up to them, and ordered them to mend their Pace; they took him up again, and carried him as far as *Brown*'s Garden, at the lower End of the Rope-walk, as faſt as they could well carry him, where they ſettled his Clothes, and in the mean while the Priſoner *Goodere* came up to them again, and ordered them to mend their Pace. With much Difficulty they got him between the Gate and Stile, and carried him as far as the Warehouſe at the Corner of the Glaſs-houſe, there they reſted and ſettled his Clothes again; Then they took him up, and carried him down to the *Lime-kilns*, as far as the lower Part of the Wall below Madam *New*'s; and then brought him down to a Place oppoſite to the *King's Head*, and then they put him on board a Boat (I take it the Man of War's Barge) having ten Oars, and they handed him in. After, the Priſoner *Goodere* went into the Boat after him, and ſet Sir *John* on the Starboard-ſide, and the Priſoner *Goodere* on the Larboard Side; then Sir *John* cried out, Murder! You Gentlemen that are on Shore, pray

tell

tell Mr. *Jarrit Smith* that my Name is *Dineley*, and before he could say *Goodere*, the Gentleman took up the Flap of the Cloak, threw it over the Face of Sir *John*, and stopp'd his Mouth; and says he, I will take care of you, that you shall not spend your Estate; and ordered the Barge to be put off: And then he took the Gentleman's Cloak from his Shoulders, and put it on his own.

Mr. Recorder. Who was it that stopp'd his Mouth with his Cloak?

Mr. *Charmbury.* That Gentleman the Prisoner at the Bar. The Boat was so full, had so many People in it, that they were obliged to row but with eight Oars: And when they proceeded down the River, it being about three-quarters Flood, and the Gentleman continually crying out, they went out of sight, and I saw no more of them.

(Mrs. *Darby* sworn.)

Mr. *Vernon.* Mrs. *Darby*, I think you live at the *Lime-kilns*.

Mrs. *Darby.* Yes, Sir, I do.

Mr. *Ver.* What do you know of this tragical Affair?

Mrs. *Darby.* I saw Sir *John Dineley* forced along between two Men, he crying out Murder, Murder, for the Lord's sake save me, save me, for they are going to kill me!

Mr. *Ver.* Pray what were they doing to him at that time?

Mrs. *Darby.* Forcing him along, Sir; one had him under one Arm, and another under the other.

Mr. *Ver.* Did you then know him to be Sir *John Dineley Goodere*?

Mrs. *Darby.* Yes, Sir; last Summer we mended his Chair for him. I knew him very well.

Mr. *Ver.* You say you knew Sir *John*; pray did you know this Gentleman? (pointing to Mr. *Goodere.*)

Mrs. *Darby.* There was a great many other Persons there; they told me that the Captain of the Man of War was behind them, which I believe to be the Gentleman at the Bar: He was dressed in a dark Drabb-coloured Coat, and his Waistcoat trimmed with Gold.

Mr. *Ver.* What further did you see pass?

Mrs. *Darby.* I saw them hurrying him on board the Boat, but I did not go any further than over-against my own Door; but when they were turning the Boat, I heard him cry out, but what he said I know not.

(*William Dupree* sworn.)

Mr. *Ver.* Give an Account of what you know of this Matter.

William Dupree. On *Sunday* the eighteenth of *January* last I was at the Sign of the *King's Head*, upon the right-hand side of the *Red Lion* as you go down to the *Hot Well*, with a Friend of mine, a Man that works with me, drinking a Pint of Ale; there was a young Woman, she was reading at the Window. She said, she heard a great Outcry, we heard the same, we went out, saw a Company of Men forcing a Gentleman along; I saw Captain *Goodere* the Prisoner at the Bar coming behind them: when they came down to *Scriggin's Slip*, they gave out a Report, that the Gentleman had murdered a Man on board a Man of War, and they were taking him on board for Justice. They put him on board the Yawl, and Captain *Goodere* stood by whilst they did it. The Gentleman cried out, For God's sake go and acquaint Mr. *Jarrit Smith*, for I am undone, they will murder me. I went into the House again; the People advised me to go to Mr. *Jarrit Smith*, and inform him of it: as I came home I called at Mr. *Smith*'s, and told him what I had seen and heard, and he told me he would see about it.

Mr. *Ver.* I'd be glad to know whether upon the Gentleman's crying out you saw any thing, and what, done to him?

William Dupree. I saw the Captain, the Prisoner at the Bar, put his Hand and stop his Mouth.

Mr. *Ver.* Are you positive you saw that?

William Dupree. Yes, I am.

(*Theodore Court*, Master of the Ship, sworn.)

Mr. *Ver.* Will you tell Mr. Recorder and the Jury what you know concerning the Death of Sir *John Dineley Goodere*?

Theo. Court. On the eighteenth of *January* last, being *Sunday*, the Barge went up to fetch Captain *Goodere* from *Bristol*, and about seven of the Clock in the Evening he came on board, and when he came into the Gangway, says he, How do you all do, Gentlemen? Excuse me, Gentlemen, from going the right way to-night, for I have brought an old mad Fellow on board, and I must take care of him. I saw a Gentleman with a black Cap coming up the Ship's side, and his Groans shocked me, so that I could not help him; he looked much surprized, as a Person used ill: As soon as he was on board, he was taken into Custody, and carried by the Captain's Orders down to the Cock-pit, and put into the Purser's Cabbin, and a Centinel ordered upon him; and I saw him no more at that Time. Next Morning I was told that the Captain's Brother was murdered, and that the Captain had given *Charles White* and *Mahony* leave to go on shore.

Mr. Recorder. By whose Direction was he put into the Purser's Cabbin?

Theo. Court. The Captain himself went down, and see them put him in.

Mr. *Ver.* Whereabout in the Ship is the Purser's Cabbin?

Theo. Court. In the Cock-pit.

Mr. *Ver.* Was it a Place where Gentlemen who came on board commonly lay?

Theo. Court. No, Nobody had laid in it for a considerable Time. The next Morning the Cooper met me, and said, Here is fine doings to-night, Mr. *Court!* Why, what is the Matter, said I? Why, said he, about three o'Clock this Morning they went down and murdered Sir *John*. The Ship was in an Uproar; the Cooper said, if Mr. *Perry* (the Lieutenant) did not secure the Captain, he would write to the Board: We had several Consultations in the Ship about it. The Captain sent for me to breakfast with him: I accepted of his Invitation: I can't say but he behaved with a very good Name to all the People on board. About Ten o'Clock Mr. *Perry*, myself, and the other Officers, with the Cooper, consulted about securing the Captain. Mr. *Perry* caution'd us not to be too hot; for, said he, if we secure the Captain before we know Sir *John* is dead, I shall be broke, and you too. We sent for the Carpenter, and desired him to go down and open the Cabbin-door, the Centinel who stood there having said it was lock'd; the Carpenter went down, opened the Cabbin-door, and came up, and said Sir *John* was murdered; and that he lay on his Left-side, with his Leg up crooked. I told them, Gentlemen, there is nothing to be done before the Coroner comes; and therefore we must not touch him: Whereupon the Door was ordered to be fastened up: We then consulted how to take the Captain, and a Method was agreed on for that purpose. And as soon as the Captain was taken, he declared he was innocent of it, that he knew not that his Brother was murdered. When the Coroner came, I saw the Deceased, and my Heart ached for him.

Mr. Recorder. Who was it put the Centinel upon Sir *John*?

Theo. Court. The Captain ordered it to be done.

Mr. *Ver.* Is it usual to place a Centinel at the Purser's Cabbin-Door?

Theo. Court. No, it is not; unless there be somebody there under Confinement.

Mr. *Ver.* Is there any other Cabbin near the Purser's?

Theo. Court. Yes, there is the Slop-Room just by; there the Cooper and his Wife lay that Night: there is just a little Partition of about half-inch Deal, parting the Slop-Room from the Place where Sir *John* lay confined.

Mr. *Ver.* Pray, will you tell us whether any, and what Discourse passed between Mr. *Goodere* and you, about sailing; and when it was?

Theo. Court. Sir, in the Morning he asked me, Will the Wind serve to sail? He said, he had another pressing Letter from the Lords of the Admiralty to sail as soon as possible. I told him that the Wind was West-South-West, and that we could not go out to Sea; for no Pilot would take charge of the Ship, I believed. And as this is a Harbour where a Pilot is allowed, I don't pass for this Place; otherwise I must have observed his Orders.

Mr. *Ver.* Did he acquaint you how far, or to what Part, he would have you sail?

Theo. Court. Yes, he said, if he got no further than the *Holmes*, he did not care; and asked me, if it was safe riding there. I told him, it was not; for it was foul Ground for such a Ship as ours.

Mr. Recorder. Mr. *Goodere*, will you ask this Witness any Questions?

Samuel Goodere. What Cabbins are there in the Cock-pit?

Theo. Court. I know no Cabbins there but the Purser's Cabbin and the Slop-Room, *&c.*

Mr. *Ver.* Call Mr. *Williams.*

(*William Williams* sworn.)

Mr. *Ver.* Mr. *Williams*, have you a Watch in your possession belonging to Mr. *Goodere*?

Will. Williams. I have a Watch in my Possession.

Mr. *Ver.* Please to produce it, and let us know how you came by it?

Will. Williams. I had it from a Vault in *Back-street.*

Mr. *Ver.* How came it to be searched for there?

Will. Williams. The Night this thing was under Examination, I was at the Council-House, and *Culliford* who keeps the Brockware Boat on the *Back*, was there under Examination: he then reported that there was a Watch and some Money left in his House: Upon which a Person was sent down, and *Culliford*'s Wife at first denied the Watch, but not the Money; but at last, after close Examination, she confessed that she had thrown the Watch into the Vault. Upon which, by the Order of Mr. Alderman *Day*, I, with a Mason, opened the Vault; where, on Search, I found the Watch, and took it out. Here is the Watch; but whose it is, I know not.

Mr. *Ver.* Now I desire that Watch may be shewn to Mr. *Court.* [The Watch is delivered to Mr. *Court.*]

Mr. *Ver.* Now you have looked upon the Watch, tell us if you can, whose it was.

Theo. Court. I can't swear positively to it; but I believe it was the Captain's Watch, he had such a one.

Mr. *Ver.* Did Mr. *Goodere* use to carry a Gold Watch about him?

Theo. Court. The Captain did not usually wear a Gold Watch: but I have seen such a Watch as this is, hanging up in the Captain's Cabbin. I believe it to be the same.

Mr. Recorder. Mr. *Court*, you was asked by Mr. *Goodere*, how many Cabbins there are in the Cock-pit?

Theo. Court. There is the Steward's Room, the Purser's Cabbin, and the Slop-Room.

Samuel Goodere. Where is the Steward's Room?

Theo. Court. That is the Place where the Centinel stands; and there is a Place on the other Side where the Surgeon lies.

Samuel Goodere. What Persons were in that Place that Night, do you know?------*Theo. Court.* The Surgeon, I suppose.

Samuel Goodere. What other Persons were in any other of the Cabbins that Night?------*Theo. Court.* The Cooper and his Wife.

Samuel Goodere. Has the Cooper a Wife?----*Theo. Court.* I believe so.

Samuel Goodere. How long before the nineteenth of *January* did you new-moor the Ship?

Theo. Court. *Thursday* the fifteenth of *January.*

Samuel Goodere. How were the Bearings then?

Theo. Court (Looking on his Journal). *Posset*-Point West by South, *Denny*-Island North-west and by West, distant by Computation about four Miles: and the Point to the Westward of the *Hole*'s Mouth South-South-East.

Mr. Recorder. Were those the Bearings on the Eighteenth too?

Theo. Court. I know no Difference; it is said here, *ditto* 18th: if there had been any Variation, I should have taken notice of it.

Mr. *Ver.* In what Part of the River did the Ship lie when Sir *John* was murdered?

Theo Court. She lay in *King-Road.*

Samuel Goodere. Do you know the *Denny*?-----*Theo. Court.* Yes, I do.

Samuel Goodere. Suppose there was a strait Line drawn from the South Corner of that Island to the North part of the Water of *Avon*, would the Ship *Ruby* have been on the East or West part of that Line?

Theo. Court. As to that I am not a Judge, unless I saw a strait Line drawn.

Mr. Recorder. Mr. *Court*, how long did the Ship continue in this Mooring?

Theo. Court. I new-moor'd the Ship the *Sunday* following.

Samuel Goodere. Did the Wind then blow Easterly or Westerly?

Theo. Court. The Wind blew hard Westerly the *Sunday.*

Sam. Goodere. As to the Distance from the *Denny*, I believe, you are right enough; but I have a Gentleman here who hath taken a Survey of the River:

River: and the Situation of the Ship, as it lay *Sunday* the eighteenth of *January*, was in the River *Severn*, very far Eaſtward of the Water of *Avon*.

Mr. *Vernon*. Mr. Recorder, by Mr. *Goodere*'s preſent Enquiries, he ſeems to be putting his and his Fellow-Priſoner's Defence on the Points of the Compaſs; I hope he has ſome better Point to go on: for if not, theſe I doubt will ſtand him in very little ſtead. It appears in Proof, that the Ship was ſtationed in *King-road*, when this Murder was committed: Now *King-road*, we all know, has been all along reputed and allowed to be within the local Limits of the City and County of *Briſtol*; and the City Proceſs runs thither, which ſhews it to be within the Franchiſe of the City; and the Sheriffs of *Briſtol* do there conſtantly execute Writs and other Proceſs from above, which ſhews it to be within their Bailiwick as a County, whoſe Bounds and Circuit are beſt aſcertained and pointed out by Reputation and conſentaneous Uſage, which ſtand as perpetual Monuments of their Limits, after other Marks are effaced or obſcured by Time.

Mr. *Shephard*. I don't at all queſtion but this City has great Powers, and its Limits are undoubtedly ſet forth by Charter.

Mr. *Vernon*. I ſhould be very ſorry to find the Juriſdiction of a City (whoſe Rights are dear to me as my own) ſhaken by a Side-wind, and hope an Attempt of this Nature will not be ſuffered.

(*Duncan Buchanan* ſworn.)

Mr. *Vernon*. I think you was one of the Company that was at the *White-Hart* upon *Tueſday* the twelfth of *January* laſt?

Duncan Buchanan. Yes, Sir.

Mr. *Vernon*. Will you give Account by whoſe Directions you came up there?

Duncan Buchanan. On *Tueſday* the thirteenth Day of *January* laſt the Boat and Barge were ordered up to *Briſtol*; but upon what account, I knew not. I was ordered to go to the *White-Hart* to attend the Captain, and there was *Mahony* and the Privateer's Men drinking hot Flip. I knew nothing of what they were upon. I ſaw a Gentleman come out of Mr. *Smith*'s, I ſuppoſe it was Sir *John Dineley Goodere*; he mounted his Horſe, and had Piſtols before him, and his Servant followed him with Piſtols alſo. Then ſome of the Men ran out; and Captain *Goodere* went out after them, and ordered them to follow the Gentleman. I ſtaid there till the Captain came back again; and I know nothing more of what was ſaid or done then.

Mr. *Vernon*. Will you give an Account what happened on the *Sunday* following?

Duncan Buchanan. On *Sunday* the eighteenth Day of *January* about ſeven o'Clock in the Evening the Barge came along-ſide the Ship with the Gentleman in it, I ſtood in the Gang-way to receive him; when he came up, I heard him to make a Moan, and the Captain ſaid, I have brought a Madman on board, bring him along, I will bring him to his Senſes by-and-by. I ſaw them take him along the Gang-way. You muſt not mind what he ſays, ſaid the Captain; and he was ordered down to the Purſer's Cabbin; I was ordered Centinel there. About twelve o'clock the Captain ſent for me to come up to him, and I laid down my Sword and went up, and *Mahony* was there with him; and there was a Bottle of Rum and a Glaſs before them: the Captain aſked me to drink a Dram, I thanked him and drank. He aſked me how his Brother was? I told him he groaned a little; ſays the Captain, I know the Reaſon of that, he is wet, and I am coming down by-and-by to ſhift him with dry Stockings: ſo I left the Captain and *Mahony* together. Some time after the Captain came down to me, as I was at my Poſt at the Purſer's Cabbin; he aſked if his Brother made a Noiſe? I told him no: upon which the Captain liſtened a little time at the Door, and then ſaid, Give me the Sword, and do you walk upon deck; for I want to ſpeak to my Brother in private. Soon after this, *Mahony* went down, and very ſoon after *Mahony* was down, I heard a great ſtruggling in the Cabbin, and the Gentleman cry out Murder! I then thought the Gentleman had been in one of his mad Fits; but now I ſuppoſe, they were then ſtrangling him. As I was walking to-and-fro in the Gun-Room, I looked down, and ſaw the Captain take the Candle out of the Lanthorn, which was hanging up there, and he gave the Candle into the Cabbin.

Mr. Recorder. Where was Mr. *Goodere* when you heard the Cry of Murder?

Duncan Buchanan. In the Cock-pit by the Purſer's Cabbin-Door, with the Sword in his Hand.

Mr. Recorder. What time of the Night was this?

Duncan Buchanan. Between two and three o'clock; I lighted a Candle at the Lanthorn in the Gun-Room, and was going down to the Captain with it, as ſuppoſing him to be without Light; and as I was going down with it, the Captain held up his Sword, waved it, and ſaid, Go back, and ſtay where you are.

Mr. Recorder. You ſaid, that Sir *John Dineley* cried out Murder! Was that before you offered the Candle to the Captain?

Duncan Buchanan. Yes, Sir; it was before.

Mr. Recorder. How long?

Duncan Buchanan. About a Quarter of an Hour.

Mr. Recorder. How long did the Cry of Murder continue?

Duncan Buchanan. About three or four Minutes: Soon after the Captain had ordered me to keep back, he called for a Candle, and I carried one down, and he gave me the Sword, and bid me ſtand upon my Poſt; and ſaid he, If my Brother makes any more noiſe, let him alone and ſend for me; and he locked the Purſer's Cabbin-Door, and took the Key away with him: And in the Morning the Doctor's Mate, the Cooper and I conſulted together about it; and I was willing to know, if Sir *John* was dead, or not: And when we peeped into the Cabbin, we ſaw him lying in a very odd ſort of a Poſture, with his Hat over his Face, and one of his Legs lay crooked: upon which we concluded he was dead.

Mr. Recorder. How long was you off your Poſt from firſt to laſt?

Duncan Buchanan. I can't tell exactly.

Mr. Recorder. Recollect as well as you can.

Duncan Buchanan. About three Quarters of an Hour.

Mr. Recorder. And could you ſee who was at the Purſer's Cabbin-Door all that time?

Duncan Buchanan. Yes, Sir; I ſaw the Captain ſtand at the foot of the Ladder at the Door, with a drawn Sword, from the time I went up to the time I came down again; he locked the Door, and carried the Key away with him.

Mr. *Vernon*. Pray, were there any Bolts on the Purſer's Cabbin-Door?

Duncan Buchanan. Yes, there were Bolts on the Door; they were put on ſoon after Sir *John* came on board: Sir *John* was in that Cabbin when they were put on.

Mr. *Vernon*. You ſay you heard a Noiſe and Outcry of Murder, how far was you from the Cabbin-Door when you heard that Cry of Murder?

Duncan Buchanan. I was walking to-and-fro the Gun-room.

Mr. *Vernon*. How far is that from the Purſer's Cabbin-Door?

Duncan Buchanan. As far as I am from you.

Mr. *Vernon*. Whom did you ſee go into the Purſer's Cabbin to Sir *John*?

Duncan Buchanan. I ſaw *Mahony* go in there.

Mr. *Vernon*. Did you ſee any other Perſon go in beſides *Mahony*?

Duncan Buchanan. No, I did not; I ſaw *Mahony* go in juſt before the Cry of Murder, but no other Perſon.

Mr. *Vernon*. Do you know any thing about ſecuring the Captain?

Duncan Buchanan. Yes, I will tell you what happened then. We went and ſecured him. As ſoon as he was laid hold of, he cried out, Hey! hey! what have I done? We told him his Brother was murdered, and that he had ſome Concern in it. He ſaid, what if the Villains have murdered my Brother, can I help it? I know nothing of it.

Samuel Goodere. Did you ſee me in the Cabbin at all?

Duncan Buchanan. No, Sir, I don't ſay you was in the Cabbin.

Mr. Recorder. Mr. *Goodere*, the Witneſs does not ſay he ſaw you in the Cabbin, but at the Door, and with a Sword in your Hand, and that you handed in a Light after the Cry of Murder was over.

Samuel Goodere. I could not have been in the Cabbin without *Buchanan*'s ſeeing me go in, becauſe he ſtood at the Bulk-head of the Gun-room.

Mr. Recorder. *Mahony*, will you aſk this Witneſs any Queſtions?

Matthew Mahony. Are you certain that I was in the Cabbin when you heard the Groans?

Duncan Buchanan. I am poſitive you was there in the Purſer's Cabbin, when I heard the Murder cried out.

(*Daniel Weller* ſworn.)

Mr. *Vernon*. I think you are the Carpenter belonging to the *Ruby* Man of War?

Daniel Weller. Yes, Sir, I am.

Mr. *Vernon*. Give an Account to Mr. Recorder and the Jury of what you know relating to this Buſineſs.

Daniel Weller. The eighteenth of *January* laſt, about ſeven o'clock in the Evening, the Captain came on board in the Barge; as I attended him, I obſerved he ſeemed in a pleaſant Humour, he came upon the Deck at once, and ſaid he had brought a poor crazy Man on board, who had been the Ruin of himſelf and Family, and that he had now brought him on board to take care of him: He took him down to the Cock-pit, and having been there a little while, one of my People came and aſked for ſome Bolts; I aſked, What for? He told me, it was to put on the outſide of the Purſer's Cabbin-Door, to bolt the crazy Gentleman in. I gave him a Bolt; after he had nailed it on, he came and wanted another: I had another, gave it to him, and went down to ſee the Bolts put on. Sir *John* cried out, What are you doing, nailing the Door up? I anſwered, No. I ordered the Door to be opened, to turn the Points of the Nails. The Door being opened, Sir *John* aſked whether the Carpenter was there? I told him I was the Man. The Centinel told me no-body muſt go in there; however, I went in, while they turned the Points of the Nails. Sir *John* bid me ſit down, and aſked me, What does my Brother mean by bringing me on board in this manner, to murder me? No, Sir, ſays I, I hope not, but to take care of you. He aſked me, if his Brother told me that he was mad? I ſaw no more of him till next Morning.

Mr. *Vernon*. And what did you ſee then?

Daniel Weller. Next Morning the Lieutenant ſent me down to ſee if Sir *John* was dead. I went down, and aſked the Centinel for the Key; he told me the Captain had been there in the Night, and had taken away the Key in his Pocket. I broke open the Cabbin-Door, and Sir *John* was lying on one ſide dead, with his Right Leg half up bent, his Hat was over his Face, with Blood beſpattered about his Mouth and Noſe. I went directly up, and told the Lieutenant of it.

Mr. Recorder. By whoſe Orders did you put the Bolts on the Door?

Daniel Weller. One of my People came to me for Bolts, and told me he was ordered by the Captain to put the Bolts on; and none of them ever came for any thing to be done, without an Order of an Officer.

(*Edward Jones* ſworn.)

Mr. *Vernon*. Mr. *Jones*, I think you are the Cooper of the Ship *Ruby*?

Edward Jones. Yes, Sir.

Mr. *Vernon*. Was you on board upon *Sunday* the eighteenth of *January* laſt?

Edward Jones. Yes, Sir, I was.

Mr. *Vernon*. In what Cabbin did you lie that Night?

Edward Jones. I had no Cabbin, but I made bold to lie in the Slop-Room that Night, having my Wife on board.

Mr. *Vernon*. Pray what is that you call the Slop-Room?

Edward Jones. It is like a Cabbin.

Mr. *Vernon*. How near is the Slop-Room to the Purſer's Cabbin?

Edward Jones. Nothing but a thin Deal-Partition parts it from the Purſer's Cabbin.

Mr. *Vernon*. Will you relate to Mr. Recorder and the Jury, what you know about the Murder of Mr. *Goodere*'s Brother: Tell the whole you know concerning it.

Edward Jones. About *Wedneſday* or *Thurſday* before this happened, the Captain ſaid to me, Cooper, get this Purſer's Cabbin cleaned out, for he ſaid he expected a Gentleman ſhortly to come on board. I clean'd it out; and on *Sunday* Evening the Gentleman came on board, when the People on Deck cried, Cooper, ſhew a Light. I brought a Light, ſaw the Captain going down the Cock-pit Ladder, the Gentleman was hauled down: he complained of a Pain in his Thigh by their hauling him on board. The Captain aſked him, if he would have a Dram? He ſaid no;

no; for he had drank nothing but Water for two Years. The Captain ordered *Mahony* a Dram; he drank it: He alſo ordered one *Jack Lee* to put two Bolts on the Purſer's Cabbin-door. The Gentleman walked to and-fro the Purſer's Cabbin while they were nailing the Bolts on. He wanted to ſpeak with one of the Officers. The Carpenter told him he was the Carpenter. Says the Gentleman, Do you underſtand what my Brother *Sam.* is going to do with me? And ſaid, His Brother had brought him on board to murder him that Night. The Carpenter ſaid, He hoped not, but what was done was for his good. The Captain ſaid, They muſt not mind what his Brother ſaid, for he had been mad for a Twelve-month paſt. And the Captain went up again, and went into the Doctor's Room. I went to Bed about eight o'clock. Some time about eleven of the Clock at Night I heard the Gentleman knock, and ſaid, He wanted to eaſe himſelf; to which the Centinel gave no manner of heed. Is it not a ſhame, ſaid he, to keep a Gentleman in, after this Manner? At laſt, ſome other Perſon ſpoke to the Centinel, and ſays, Why don't you go up and acquaint the Captain of it, that the Gentleman may eaſe himſelf? Soon after *Mahony* comes down with a Bucket, for the Gentleman to caſe himſelf. *Mahony* ſat down in the Cabbin, and he and the Gentleman had a great deal of Diſcourſe together: the Gentleman ſaid he had been at the *Eaſt-Indies*, and told what he had got for his Merit; and *Mahony* ſaid, ſome by good Friends. I heard the Gentleman, after *Mahony* was gone, pray to God to be his Comforter under his Afflictions. He ſaid to himſelf, he knew that he was going to be murdered, and prayed that it might come to light by one means or another. I took no notice of it, becauſe I thought him a crazy man. I ſlept a little, and about two or three o'Clock my Wife waked me. She ſaid, Don't you hear the Noiſe that is made by the Gentleman? I believe they are killing him. I then heard him kick, and cry out, Here are twenty Guineas, take it; don't murder me; Muſt I die! muſt I die! O my Life! and gave ſeveral Kecks with his Throat, and then he was ſtill. I got up in my Bed upon my Knees; I ſaw a Light glimmering in at the Crack, and ſaw that ſame Man, *Mahony*, with a Candle in his Hand. The Gentleman was lying on one Side. *Charles White* was there, and he put out his Hand to pull the Gentleman upright. I heard *Mahony* cry out, Damn ye, let us get his Watch out; but *White* ſaid he could not get at it. I could not ſee his Pockets. *White* laid hold of him, went to tumbling him up to get out his Money, unbutton'd his Breeches to get out his Watch; I ſaw him lay hold of the Chain; *White* gave *Mahony* the Watch, who put it in his Pocket; and *White* put his Hand into one of the Gentleman's Pockets, and curſed that there was nothing but Silver: but he put his Hand in the other Pocket, and there he found Gold. *White* was going to give *Mahony* the Gold: Damn ye, ſays *Mahony*, keep it till by-and-by.

Mr. Recorder. In what Poſture did Sir *John* lie at that Time?

Edward Jones. He lay in a very uneaſy manner, with one Leg up; and when they moved him, he ſtill remained ſo; which gave me a Suſpicion that he was dead. *White* put his Hand in another Pocket, took out nothing but a Piece of Paper, was going to read it. Damn ye, ſaid *Mahony*, don't ſtand to read it. I ſaw a Perſon's Hand on the Throat of this Gentleman, and heard the Perſon ſay, 'Tis done, and well done.

Mr. Recorder. Was that a third Perſon's Hand, or the Hand of *Mahony* or *White*?

Edward Jones. I cannot ſay whether it was a third Perſon's Hand or not. I ſaw but two Perſons in the Cabbin. I did not ſee the Perſon, for it was done in a Moment. I can't ſwear I ſaw any more than two Perſons in the Cabbin.

Mr. Recorder. Did you take notice of the Hand that was laid on Sir *John*'s Throat?---*Edward Jones.* I did.

Mr. Recorder. Did it appear to you like the Hand of a common Sailor?---*Edward Jones.* No; it ſeemed whiter.

Mr. *Vernon.* You have ſeen two Hands held up at the Bar. I would aſk you to which of them it was moſt like in Colour?

Edward Jones. I have often ſeen *Mahony*'s and *White*'s Hands, and I thought the Hand was whiter than either of theirs; and I think it was neither of their Hands by the Colour of it.

Mr. Recorder. Was Sir *John* on the Floor, or on the Bed?

Edward Jones. On the Bed; but there was no Sheets: it was a Flock-bed, and nobody had lain there a great while.

Mr. *Vernon.* How long did the Cries and Noiſe which you heard continue?

Edward Jones. Not a great while; he cried like a Perſon going out of the World, very low. At my hearing it, I would have got out in the mean time, but my Wife deſired me not to go, for ſhe was afraid there was ſomebody at the Door that would kill me.

Mr. *Vernon.* What more do you know concerning this Matter, or of *Mahony* and *White*'s being afterwards put on ſhore?

Edward Jones. I heard ſome talking that the Yaul was to go to ſhore about Four of the Clock in the Morning, and ſome of us were called up, and I importuned my Wife to let me go out. I called, and aſked who is Centinel? *Duncan Buchanan* anſwered, It is I. Oh, ſays I, is it you? I then thought myſelf ſafe. I jumpt out in my Shirt, went to him; ſays I, there have been a deviliſh Noiſe to-night in the Cabbin, *Duncan*, do you know any thing of the Matter? They have certainly killed the Gentleman, what ſhall us do? I went to the Cabbin Door where the Doctor's Mate lodged, aſked him if he had heard any thing to-night? I heard a great Noiſe, ſaid he. I believe, ſaid I, they have killed that Gentleman. He ſaid, he believed ſo too. I drawed aſide the Scuttle that looked into the Purſer's Cabbin from the Steward's Room, and cried, Sir, if you are alive, ſpeak. He did not ſpeak. I took a long Stick, and endeavoured to move him, but found he was dead. I told the Doctor's Mate, that I thought he was the proper Perſon to relate the Matter to the Officer, but he did not care to do it then. If you will not, I will, ſaid I. I went up to the Lieutenant, and deſired him to come out of his Cabbin to me. What is the Matter, ſaid he? I told him I believed there had been Murder committed in the Cock-pit upon the Gentleman who was brought on board laſt Night. Oh! don't ſay ſo, ſays the Lieutenant. In that Interim, whilſt we were talking about it, Mr. *Marſh* the Midſhipman came, and ſaid, that there was an Order to carry *White* and *Mahony* on ſhore. I then ſwore they ſhould not go on ſhore, for there was Murder committed. The Lieutenant ſaid, Pray be eaſy, it can't be ſo; I don't believe the Captain would do any ſuch Thing. That Gentleman there, Mr. *Marſh*, went to aſk the Captain, if *Mahony* and *White* muſt be put on ſhore? And Mr. *Marſh* returned again, and ſaid, that the Captain ſaid they ſhould. I then ſaid, it is certainly true that the Gentleman is murdered between them. I did not ſee *Mahony* and *White* that Morning, becauſe they were put on ſhore. I told the Lieutenant, that if he would not take care of the Matter, I would write up to the Admiralty, and to the Mayor of *Briſtol*. The Lieutenant wanted the Captain to drink a Glaſs of Wine; the Captain would not come out of his Cabbin: then the Lieutenant went in firſt; I followed him. I told the Captain, that my Cheſt had been broke open, and I deſired Juſtice might be done. Then I ſeized him, and ſeveral others came to my Aſſiſtance.

Mr. Recorder. Mr. *Goodere*, do you aſk Mr. *Jones* any Queſtions?

Samuel Goodere. Do you know whether the Midſhipman was ſent away on the King's Buſineſs, or elſe only to put thoſe two Men on ſhore?

Edward Jones. I know not; you was the Captain of the Ship.

Mr. Recorder. Mahony, will you aſk this Witneſs any Queſtions?

Mahony. Did you ſee me lay Hands on the Gentleman?

Edward Jones. Yes, I did, as I have already related.

[Margaret Jones *ſworn.*]

Mr. *Vernon.* Mrs. *Jones*, pray acquaint Mr. Recorder and the Jury; what you know about the Murder of Sir *John Dineley Goodere* (the Gentleman ordered by Mr. *Goodere* into the Purſer's Cabbin).

Margaret Jones. About ſeven o'clock in the Evening, the eighteenth of laſt *January*, the Captain (having been on ſhore) came on board, and came down into the Cock-pit, and aſked if the Cabbin was clean? My Huſband anſwered, Yes. On which the Captain gave Orders to bring down the Gentleman; and the Captain ſaid to the Doctor, Doctor, I have got an old mad Fellow here, you muſt doctor him up as well as you can. They brought the Gentleman into the Cabbin; the Captain aſked him how he did now? The Gentleman complained that he had a great Pain in his Thigh; he was hurted by the Mens hauling him as they had done. The Captain aſked him if he would drink a Dram of Rum? He anſwered, No; for he ſaid he had drank nothing but Water for two Years paſt. The Captain gave a Dram to ſeveral Perſons there; and he gave Orders for ſome Sheets to be brought; and he ſaid to *Mahony*, As his Clothes are wet, do you pull them off. And the Gentleman ſaid to *Mahony*, Don't ſtrip me, Fellow, until I am dead. The Gentleman ſaid, Brother *Sam.* what do you intend to do with me? The Captain told him, that he brought him there to ſave him from rotting in a Gaol. About ten o'clock *Mahony* was left there; the Gentleman deſired him to go; but *Mahony* ſaid, I have Orders to abide here, to take care of you. The Gentleman ſaid to *Mahony*, I can abide by myſelf. Before the Captain went away, he bid *Mahony* to ſee if his Brother had any Knife about him. The Gentleman gave up his Knife to *Mahony*, deſired him to take care of it, for it was his Son's Knife. The Gentleman aſked about the Knife ſeveral Times in the Night. About twelve o'clock I went to ſleep; about two o'clock I awaked again: I heard the Gentleman talk to *Mahony*, but *Mahony* adviſed the Gentleman to go to ſleep. He ſaid, I cannot ſleep. They talked together a great while. *Mahony* ſaid, I am to go on ſhore in the Morning, and if you have any Letters to ſend to *Briſtol*, I will carry them for you. I heard ſomebody ſay to the Gentleman, You muſt lie ſtill, and not ſpeak a Word for your Life. Some Minutes after I heard a great Struggling; who it was, I don't know. The Gentleman cried out, Murder! Help for God's Sake! and made ſeveral Kecks in his Throat, as though ſomebody was ſtifling him. I ſhook my Huſband, told him that ſomebody was ſtifling the Gentleman. I heard two People in the Cabbin whiſpering; I don't know who they were. The Gentleman cried out Murder again, Help for God's Sake! He ſaid, I have twenty Guineas in my Pocket, here take it; muſt I die! Oh my Life! And juſt about that Time, before he was dead, ſomebody from the outſide offered to come into the Cabbin: But I heard one of the Perſons on the inſide ſay, Keep out, you Negro; and then a great Noiſe was made; I thought the Cabbin would have been beat down. Some few Minutes after the Gentleman had done ſtruggling, a Candle was brought; I ſoon got up, and looked through the Crevice: I ſaw a Man, who I believe to be *White*, take the Gentleman by the Coat, and pulled him upright. I ſaw *Mahony* with a Candle in his Hand; I obſerved the other to put his Hand in the Gentleman's Pocket. One of them ſaid, Damn ye, pull out his Watch. Then I ſaw the Perſon take hold of the Watch-ſtring and pull it out, and he ſaid to the other, Here 'tis, take it, and put it into thy Pocket. Then one of them put his Hand in another Pocket, and took it out, ſaid, Here's nothing but Silver; and then he ſearched another Pocket, and ſaid, Here it is; and pulled out a green Purſe: Soon after that, the Door was unbolted, I heard a Perſon ſay, Where ſhall I run? who I believe was *Mahony*; and the other, *Charles White*, ſaid, Follow me, Boy. And they went to go upon Deck through the Hatch-hole, which is an uncommon Way; and that is all I know.

Mr. Recorder. Mr. *Goodere* and *Mahony*, do either of you aſk this Witneſs any Queſtions?---*Samuel Goodere.* No.

Matthew Mahony. No.

[James Dudgeon *ſwern.*]

Mr. *Vernon.* Mr. *Dudgeon*, I think you are the Surgeon's Mate belonging to the *Ruby*?---*James Dudgeon.* Yes, Sir.

Mr. *Vernon.* Give Mr. Recorder and the Jury an Account what you know relating to this Matter.

James Dudgeon. I am very ſorry that I ſhould come on this Occaſion againſt Captain *Goodere*, becauſe he ever behaved towards me in a genteel manner. The Week before this happened, I was told by one of the Officers, that the Captain was going to bring his Brother on board; and on *Sunday* the eighteenth of *January*, about the Duſk of the Evening the Barge came down to the Ship. I was at that Time walking the Quarter-deck; ſome

ſome of our People ſeeing the Barge a-coming, they ſaid, Our Captain is coming on Board with his Brother ſure enough; but inſtead of coming up the Quarter-deck, the Captain went down upon the Main-deck, and I ſtill kept walking on the Quarter-deck, expecting to ſee the Gentleman when he went into the Great Cabbin; but I afterwards found that he was ordered down to the Cock-pit. Soon after, I went down there myſelf; and the Captain being there, ſaid, Doctor, I have brought a Madman to you, I don't know what we ſhall do with him, but we muſt make the beſt of him that we can; and *Mahony* came down likewiſe: The Captain ſent his Steward for a Bottle of Rum, *Mahony* had a dram of it. The Captain aſked Sir *John*, if he would have one? Sir *John* replied, No; for, ſaid he, I have not drank any Thing of that Nature for two Years paſt: he groaned ſeveral times. There was then one *Cole* at the Foot of the Ladder, to whom alſo the Captain gave a Dram; then there was a Centinel put upon the Cabbin-door; but *Cole* aſked the Captain if he might go in, and the Captain ſaid he might. The old Gentleman made a Noiſe as the Captain went up the Ladder; the Captain told him, We have now brought you on Board, and will take Care you ſhall want for nothing. After the Captain was gone, *Cole* wanted to go in, but the Centinel would not let him; telling him that his Orders were to let none in but *Mahony*: however *Cole* went up, and got Leave of the Captain to go in, and he did go in. Soon after this the Captain came down again to the Cock-pit, and came into my Place, and ſat down; and after talking of things promiſcuouſly, he ſaid, he believed it would be proper for me to go and feel his Brother's Pulſe; or elſe, Doctor, he ſaid; do you chuſe to leave it alone till To-morrow Morning? I made Anſwer, that To-morrow Morning might be the beſt Time; becauſe the Gentleman may be much confuſed, by being brought down on the Water. Come, ſaid he, let us go in now; for I believe, it will be as well. If you pleaſe, Sir, ſaid I, I will; ſo the Centinel opened the Door, and we both went in. Immediately after, the Captain went out again, and forthwith the Door was ſhut upon me; which very much ſurpriſed me, to think that the Captain ſhould leave me with a Madman, and I obſerved the Captain to peep through: I then aſked the Gentleman what he moſtly complain'd of? and felt his Pulſe. He then made ſome Groans, and told me, that he had got a great Cold laſt Week at *Bath*, and that he felt a ſevere Pain in his Head. I was going to aſk him ſome more Queſtions, but the Captain called me, and ſaid, Don't aſk him any more Queſtions, but only feel his Pulſe. Then the Centinel opened the Door, and I came out, and the Captain and I went into my Place again. Well, Doctor, ſaid he, how do you find his Pulſe? Why, Sir, ſaid I, his Pulſe are very regular. Why, ſaid he, I believe he was pretty much hurried upon the Water. Then the Captain went up the Ladder, and a little while after he came down again; there were two Midſhipmen with me in my Place, and when the Captain came in, they went to go out, but he deſired one of them to ſtay, for he had ſomething to ſay to him, becauſe he was to go up for Letters in the Morning; ſo we ſat down, and taked of various Things; but I informed the Captain, that the old Gentleman have had hard Lodging To-night. Why, ſaid he, I would put another Bed in there, and have given him clean Sheets, but he would not hear any thing of this kind. Then ſaid he to me, Doctor, I believe it will not be amiſs to to take an Inventory of every thing he has about him, for fear it ſhould be reported that he is robbed. I replied, Sir, it may not be amiſs. By-and-by *Cole* came tumbling down the Ladder, the Midſhip-man opened the Curtain to ſee who it was; Captain, ſaid he, that is *Cole*; and I then told that *Cole* had been drunk a great Part of that Day. Soon after that the Captain opens the Curtain, and ſees *Mahony* ſtand by the Centry. *Mahony*, ſaid he, I thought you had been about the thing which I ſent you to do; which I take to be getting the Money out of the Gentleman's Pocket. No, Sir, ſaid he, I chuſe to do it after he is aſleep. Very well, ſaid the Captain. Then the Captain ſpoke to the Midſhip-man, and ſaid, Mr. *Marſh*, you are to go up for Letters to-morrow, and if any one takes Notice of what was done to-day, you may tell the People that it is my Brother, and he is very much diſordered in his Brains, and I have got him on Board in Hopes of getting Relief for him. Sometimes, Doctor, ſays he, he can talk as well as you or I; but at other Times, he is very much out of Order. About eight o' Clock I was for going to Bed, but did not till an Hour and a half after; and about that Time Sir *John* was making a great Noiſe, and aſking who is without the Door, what muſt I do my Affairs in the Cabbin? What a Shame is it? Will not you let me have any Thing to do it in? But nobody made any Reply. Upon which I ſaid to the Centinel, Why don't you anſwer the Gentleman? Are not you aſhamed of it? Upon which, I ſuppoſe, one went up to the Captain, and he came down, and ſaid, he was ſorry that the Gentleman ſhould make ſuch a Diſturbance; but he hoped, that the firſt Night would be the worſt: Upon which the Captain went up, and *Mahony* went in; and I heard the Gentleman and him talking together, and he aſked *Mahony*, what his Brother was going to do with him? What, ſays he, does he ſay, I am mad? Formerly I uſed to be ſo, but now I have not taſted any Thing ſtronger than Water theſe two Years. But, ſaid he, to be ſure theſe Fellows are not Sailors, who attacked me this Day; they are not Sailors, for, if ſo, they are ſadly degenerated from what Sailors were formerly; for I myſelf have been at Sea, and might have been a Commander. About half an Hour after Ten, I fell aſleep, but was very uneaſy. About Twelve the Centinel was ſent for to go up to the Captain, but ſoon came down again; and about half an Hour after Two I awaked, hearing ſome ſtir in the Cock-pit; and I heard *Mahony*'s Voice in the Cabbin, ſaying, Lie ſtill, and ſleep, Sir. In a ſhort time after that I heard a Struggle, and Sir *John* cried out, Here is Twenty Guineas for you, take it; muſt I die? And it ſeemed to me by his ſpeaking, that they were ſtifling his Mouth. Upon which the Perſon who ſtood Centry on the Cabbin turned the Key, whereupon *Mahony* cried out in a terrible Pucker, Damn ye, keep the Door faſt. Upon which I ſpake, and ſaid, What is the matter? What a Noiſe is that? And the Perſon who ſtood Centinel made Anſwer, Nothing at all, nothing at all; ſo I lay ſtill a while, and all was pretty quiet. A little Time after that, *Mahony* called for a Light, and the Cabbin-door was opened, and a Light handed in; the Cock-pit was then in Darkneſs, ſo all was quiet again for ſome Time. Soon after that the Cabbin-door was opened again, and I heard as if two or three People were coming out of the Cabbin, and heard *Mahony* ſay, Which Way ſhall I go? And ſomebody made Anſwer, You may go through the Hatch-hole. He repeated the Queſtion, Which Way ſhall I go? And the other anſwered, By the Ship-ſide. I then thought ſomebody had been murdering Sir *John* ſure enough, and they are carrying off his Body that Way; at the ſame Time a Perſon ſtept up the Cock-pit Ladder, and I heard the Captain's Voice, and he ſaid, Centry, if he makes any more Noiſe, let me know it; but I thought within myſelf, that he was paſt that. After this was paſt, all was pretty quiet, and the Centinel kept walking without my Room: I was cautious of ſpeaking to him, not knowing who he was; But ſoon after, one of the Captain's Servants came down to the Store-room for Liquor, and he aſked the Centry, whether he had made any Noiſe lately? To which he replied, You may tell the Captain that the Gentleman hath been at the Lock. About half an Hour after, the Perſon who was upon the Watch came to me, and aſked, if I had any Commands on Shore, for the Boat was going up? I told him, No; but perceiving by his Voice who it was, I called him to come to me in the Dark, and I whiſper'd, and ſaid to him, Mr. *Heathorne*, here hath been a helliſh Cabal to-night, I believe they have murdered the Gentleman; doth *Mahony* go on Shore? He anſwered, that he did; then, ſaid I, the Thing is done. I then aſked who was the Centry without my Door? and he told me; whereupon I called the Centry to me, and aſked him, what Noiſe and Cabal is this that hath been here to-night? He ſaid, he did not know; but the Captain, ſaid he, hath been down ſeveral times to-night, and that he had taken the Sword from him. Juſt after this, in came *Edward Jones*, the Cooper, and his Wife, ſhaking and trembling; and ſaid, *White* and *Mahony* had murdered the Gentleman ſure enough. I told them, I did believe they were both going on Shore; and I would, ſaid I, have you tell the Lieutenant what you ſaw of the Matter, and let him know, that I am of the ſame Opinion with you: but do you firſt go into the Steward's Room, and draw the Scuttle, and then you'll ſee whether he is dead, or no. Upon which they went and drawed the Scuttle, and a Cat fled in their Face, and they found the Gentleman lay in the ſame Poſture as *White* and *Mahony* left him. I then bid them go and tell the Lieutenant the Matter, that thoſe Fellows might be prevented from going aſhore; but yet, ſaid I, we can't ſtop them neither, ſeeing they have the Captain's Orders. Then went *Jones* up forthwith, and, I believe, told the Lieutenant; and I alſo ſtept up to him juſt after, and told him, that I believed Sir *John* was actually murdered; for, ſaid I, there have been a terrible Noiſe in the Cock-pit to-night, and the Captain himſelf was there this Morning when 'twas almoſt three o' Clock, and the Men that were with him are going on Shore. The Lieutenant anſwered, that he could not ſtop theſe Men from going aſhore, becauſe the Captain hath given them Leave; ſo, ſaid he, we muſt let it alone till Morning, to ſee whether the Gentleman is dead, or no. About eight o' Clock in the Morning I went to him again; but he told me it was beſt to defer it till we did ſee whether the Captain ſends down to him, or not. It is, ſaid he, no Way proper for us to think of ſeizing the Captain, till we ſee that the Gentleman is actually dead, and have Reaſon to think he is murdered. When the Captain's Breakfaſt was ready, he ſent for the Lieutenant and me to come and breakfaſt with him: accordingly we did; and ſoon after there was a Shore-boat came towards us, and then Mr. *Chamberlayne* came on Board, and went to the Lieutenant's Cabbin; and the Lieutenant told that Gentleman, that they were then going to ſeize the Captain, for it was believed that he had been acceſſary to the Murder of his Brother. Immediately a Meſſage was brought by one of the Men, that Sir *John* was dead: upon which the Captain was forthwith ſeized by eight or ten Men.

Mr. *Vernon.* How far was your Cabbin from the Purſer's?

James Dudgeon. I can't ſay certainly, but believe about three Yards.

Mr. *Vernon.* Did you view the Body of the Deceaſed whilſt he lay dead in the Purſer's Cabbin?

James Dudgeon. I did.

Mr. *Vernon.* And did you find any viſible Marks of Violence upon him?

James Dudgeon. Sir, I ſaw no Rope, but he had a Neck-cloth about his Neck, and there were ſome Marks in his Neck, which looked like the ſcratching of Nails; and I believe that he was ſtrangled, the Blood came out of his Noſe and Mouth.

(*William Macguinis* ſworn.)

Mr. *Vernon.* Was you on Board the *Ruby* Man of War, at the Time when this Matter happened?

William Macguinis. Yes, Sir, I was.

Mr. *Vernon.* Then give an Account of what you know concerning it.

William Macguinis. The Night in which the Gentleman came on Board, I was appointed to be the Centinel at twelve o'Clock; but when the Gentleman came on Board, I was in my Hammock. I was called up to ſtand Centry in the Gun-room; and (pleaſe you, my Lord) I had not been long on my Poſt before I ſaw the Captain come down; and ſoon after I ſaw *Mahony*, that Man there (pointing at the Priſoner *Mahony*) alſo come down. I ſtopt him, and aſked him where he was going? Damn your Blood, you Son of a Bitch, what is that to you? How buſy you make yourſelf. And when he came to the Bottom of the Cock-pit Ladder, I heard him ſay to another Man, Come here, this is the Way. But who it was he ſpake to, I know not. This was a little after two o'Clock. The Captain eſpied me, he made towards me, and waved his naked Cutlas, and ſaid, Stand back! ſtand back!

Mr. *Vernon.* Where was Mr. *Goodere*, when he advanced towards you, and bid you ſtand back?

William Macguinis. The Captain was down in the Cock-pit then.

Mr. *Vernon.* Had he any Thing in his Hand?

William Macguinis. Yes; he had a Cutlas. *Duncan Buchanan* had been ſtanding Centinel in the Cock-pit, but was releaſed by the Captain.

Mr. *Vernon.* What more did you ſee?

William Macguinis. I ſaw *Mahony* go into the Purſer's Cabbin, and afterwards, I ſaw the Captain and *Mahony* come up again from the Cock-pit.

Mr. *Vernon.* About what time?

William Macguinis. I believe it was then about three o'Clock.

Mr. Recorder. Mr. *Goodere* and *Mahony*, do either of you ask this Witness any Questions?

Mr. *Samuel Goodere.* No.

Matthew Mahony. No.

(Mr. *Walker* sworn.)

Mr. *Vernon.* I think you are the City Mason?—*Walker.* I am.

Mr. *Vernon.* Look upon that Watch, and give an Account how you came by it.

Walker. I found it in the Necessary-house, at the *Brockware-Boat*, a Publick-house on the Back.

Mr. *Vernon.* Who kept that Publick-house at the Time you found the Watch?——*Walker.* One *Culliford.*

Mr. *Vernon.* Was it accidentally, or upon Search that you found the Watch?

Walker. I searched for it in the Necessary-house, by the Justice's Orders; when I found it, the Case was in one Place, and the Watch in another, about a Yard apart.

(*Sarah Culliford* sworn.)

Mr. *Vernon.* Look upon that Watch, Mrs. *Culliford*; you live at the Sign of the *Brockware-Boat* on the Back, do you not?

Sarah Culliford. Yes, Sir.

Mr. *Vernon.* Do you take that to be the same Watch that was found by Mr. *Walker*, the City Mason, in your Necessary-house?

Sarah Culliford, Yes, Sir; I believe it is the same.

Mr. *Vernon.* From whom did you receive it, before it was thrown into the Necessary-house?

Sarah Culliford. I received it from *Mahony*'s Hands, that Man there; (pointing to the Prisoner *Mahony*).

Mr. *Vernon.* How long before he was apprehended?

Sarah Culliford. I had it in my Possession about two Hours before, and two Hours after he was taken up.

Mr. *Vernon.* And what became of it afterwards?

Sarah Culliford. This young Man (meaning the Prisoner *Mahony*) was drinking in my House, he pulled out the Watch, delivered it to me, and desired me to keep it for him until he did call for it: Some time after I had Business to go out, I went into Town, and had the Watch in my Pocket; when I came back, my Children told me that the Constable had been there to search the House for it, which much surprized me; I went and threw the Watch into the Necessary-house, for fear I should come in Trouble.

(*Josias Fussell* sworn.)

Mr. *Vernon.* Mr. *Fussell*, look on that Handkerchief, and give an Account from whom you had it, and when?

Josias Fussell. I had this Handkerchief from *Mahony* on the 19th of *January* last, the Night when we took him, I found it upon his Neck; when he was seized, he took it off; I took it out of his Hand, it was bloody then as it is now, I put it into my Pocket.

(Mr. *John Mitchel*, Chief Clerk to the Town Clerk, sworn.)

Mr. *Vernon.* Mr. *Mitchel*, what Paper is that in your Hand?

Mr. *Mitchel.* The Examination of *Matthew Mahony*, the Prisoner at the Bar, taken before *Henry Combe*, Esq. Mayor.

Mr. *Vernon.* Did you see the Prisoner *Mahony* sign it in his Presence?

Mr. *Mitchel.* Yes, Sir.

Mr. *Vernon.* Did he do it voluntarily?—Mr. *Mitchel.* He did.

Mr. *Vernon.* Did you see Mr. Mayor sign that Examination?

Mr. *Mitchel.* Yes, I did.

Mr. *Vernon.* Then I desire it may be read.

Mr. Recorder. Read the Examination.

Clerk reads the Examination in these Words:

City and County of Bristol. } to wit; THE voluntary Examination and Confession of *Matthew Mahony*, a Native of *Ireland*, aged about 21 Years. This Examinant confesseth and saith, That about sixteen or seventeen Days ago, and several Times since, he was desired by Mr. *Goodere*, Captain of the *Ruby* Man of War, now lying at *King-Road*, in the County of the City of *Bristol*, to seize his, the Captain's, Brother, Sir *John Dineley Goodere*, Bart. and bring him on board the said Man of War; and that on *Tuesday* last, this Examinant, and the Crew belonging to the Man of War's Barge, and *Edward MacDaniel*, *John MacGraree*, and *William Hammon*, Privateer's Men, were placed by the said Captain at the *White-Hart* Alehouse, opposite St. *Augustine*'s Church, in order to seize Sir *John Dineley Goodere* that Day; but it so happened the Captain forbid them to do it then. And that on *Sunday* last, this Examinant, the said Barge's Crew, or the greatest Part of them, and *George Best*, Cockstern of the Barge, the said *Edward MacDaniel*, *John Mac-Graree*, *William Hammon*, and one *Charles Bryer*, Privateer's Men as aforesaid, were again placed at the *White-Hart* aforesaid, to seize the said Sir *John Dineley Goodere*, and waited there for some Time; and he coming out of Mr. *Jarrit Smith*'s House, and coming under St. *Augustine*'s Church-Yard Wall, this Examinant and his Comrades pursued him, and near the Pump there they came up with him, and told him there was a Gentleman wanted to speak with him; and he asking where the Gentleman was, was answered a little Way off, and he went quietly a little Way; but no one appearing, he resisted and refused to go; whereupon this Examinant and Comrades sometimes forcibly hauled and pushed, and at other times carried him over St. *Augustine*'s Butts, Captain *Day*'s Ropewalk, and along the Road to the Hot-well, (Captain *Goodere* being sometimes a little behind, and sometimes amongst the Croud all the Way) till they came to the Slip where the Barge lay. But Sir *John* was very unwilling to go, made the utmost Resistance, and cryed out Murder a great many Times; and when he was put into the Barge, called out and desired Somebody would go to Mr. *Jarrit Smith*, and tell him of his ill Usage, and that his Name was Sir *John Dineley*; whereupon the Captain clapt his Hand on Sir *John*'s Mouth to stop his Speaking, and told him not to make such a Noise, he had got him out of the Lion's Mouth (meaning the Lawyers Hands) and would take Care he should not spend his Estate; and bid the Barge-Men row away, which they did; and in their Passage to the Man of War, the two Brothers bickered all the Way: But when they came to the Man of War, Sir *John* went on board as well as he could, and the Captain took him down into the Purser's Cabbin, and staid a little Time with him, and treated him with a Dram of Rum, and then left him for a considerable Time; and in the Interim sent for this Examinant into his, the Captain's, Cabbin, and there told this Examinant he must murder his Brother, for that he was mad, and should not live till four o'Clock in the Morning. And this Examinant reasoning with him, and telling him he would not be concerned, and that he thought he had brought him there with Intent only to bring him to Reason, and take care that he should not spend his Estate in Law, and to have a perfect Reconciliation; but the Captain still insisting, that as this Examinant had taken him, he should do it; and this Examinant then saying, he was not able to do it of himself, the Captain replied, if this Examinant could get nobody else, he and this Examinant must do it themselves. And then ordered him to call one *Elisha Cole*; and he being too drunk to undertake such an Affair, bid this Examinant call one *Charles White*, a very stout lusty Fellow, and the Captain gave him a Dram, and bid him sit down, and soon gave other Drams, and asked him if he could fight, and told him, Here's a Madman, he must be murdered, and thou shalt have a handsome Reward. And this Examinant, the said *Charles White*, and the Captain, being all agreed to murder the said Sir *John Dineley Goodere*, the Captain then proposed the Method, and produced a Piece of Half-inch Rope about nine Foot long, and *Charles White* having made a Noose in the Rope, the Captain said, applying himself to this Examinant and the said *Charles White*, You must strangle him with this Rope, and at the same time gave the Handkerchief now produced, that in case he made a Noise, to stop his Mouth; and said, I will stand Centinel over the Door whilst you do it; and accordingly instantly went out of his own Cabbin, and turned the Centinel from the Purser's Cabbin Door, and let this Examinant and *White* into the Purser's Cabbin, where Sir *John Dineley Goodere* was lying in his Clothes on a Bed: The Captain having pulled to the Door, and standing Centinel himself, the said *White* first strangled Sir *John* with his Hands, and then put the Rope about Sir *John*'s Neck, and hauled it tight, and Sir *John* struggled, and endeavoured to cry out, but could not. And this Examinant confesses, that whilst *White* was strangling Sir *John*, this Examinant took care to keep him on the Bed, and when one End of the Rope was loose, this Examinant drew and held it tight; and thus each bore a Part till Sir *John* was dead; and they having rifled the Deceased of his Watch and Money, knocked at the Door to be let out; and the Captain called out, Have you done? They replied, Yes. He opened the Door, and asked again, Is he dead? And being answered in the affirmative, and having a Light, swore by God he'd be sure he was dead; and then went in himself, and returning, locked the Door, and put the Key in his Pocket, and they all went together to the Captain's Cabbin again, and there this Examinant gave the Captain Sir *John*'s Watch, and the Captain gave this Examinant his own Watch in lieu of it; and then the Captain gave them both some Money, and *White* afterwards gave this Examinant eight Guineas, as Part of the Money he took out of the Deceased's Pocket, and then the Captain ordered them to be put on Shore in his own Boat. And further, this Examinant confesses and saith, That before and after the Murder was committed, the Captain, *Charles White*, and this Examinant, consulted what to do with the Corpse; and the Captain proposed to keep it two or three Days in the Ship, and, as he expected to go to Sea, would sew it up in a Hammock, or something else, and there throw it overboard: And that before this Examinant and his Comrades were sent to seize Sir *John*, as is before set forth, they were ordered by Captain *Goodere*, that, if they met with any Resistance, they should repel Force by Force, and were prepared with short heavy Sticks or Bludgeons for that Purpose.

Matthew Mahony.

Mr. Recorder [Speaking to the Jury]. Gentlemen, you are to take Notice, that this Confession is Evidence against the Prisoner *Mahony* alone, and so far only ought you to regard it. It is no Evidence, nor ought you to lay any Stress upon it, as against the Prisoner *Goodere.*

Mr. *Vernon.* Mr. Recorder, we have gone through with our Evidence of the Fact, and here we should have rested it, were it not that Mr. *Goodere*, by his strict Enquiry into the Spot where the Ship lay, seems to question whether it was within this County or not: A Question, which, I confess, I no more expected to hear of, than whether we ourselves are now within it. However, to obviate all Pretence of that Kind, and give the Gentlemen of this Jury as full Satisfaction in the Point, as undoubtedly the Grand Inquest for the Body of this County had before they found the Bill, we shall beg Leave to call a Witness or two, just to shew that *King-Road* has been constantly taken to lie within the City and County of *Bristol*, and that accordingly the Sheriffs Officers of *Bristol*, from Time to Time, have used to execute both the City and County Process in *King-Road*; which, I apprehend, will of itself be satisfactory Evidence, without entering into any other Disquisition of the County Limits. Call Mr. *Wint.*

(*John Wint* sworn.)

Mr. *Vernon.* Mr. *Wint*, what Officer are you in *Bristol?*

John Wint. I am an Officer to the Sheriffs of *Bristol*, and have been so for these thirty Years and upwards.

Mr. *Vernon.* Have you been used, as an Officer to the Sheriffs of *Bristol*, to serve Process in *King-Road?*

John Wint. I have served Process in *King-Road* forty or fifty Times.

Mr. *Vernon.* How far down the River?

John Wint. Very often down as far as *Posset-Point.*

Mr. Recorder. What Kind of Process have you served there?

John Wint. Town Actions out of the Mayor and Sheriffs Court, and out of the Piepowder Court.

Mr. Recorder. Have you ever executed Process there which was directed to the Sheriffs of *Bristol?*

John Wint. Yes, Sir, I have served Sheriffs Warrants, or Writs, issued from above, out of the Court of *King's-Bench* and *Common-Pleas* to the Sheriffs of *Bristol.*

Mr. Recorder. Mr. *Goodere*, will you aſk this Witneſs any Queſtions?

Mr. *Samuel Goodere.* Yes, Sir: Is all that is called *King-Road* within the Liberty of the City of *Briſtol?*

John Wint. Yes, it is.

Samuel Goodere. Are you ſure of it?

John Wint. I know where the Ship *Ruby* lay was within the City of *Briſtol.*

Samuel Goodere. How do you know that?

John Wint. Becauſe I have been down with the Mayor to the *Holmes.*

Mr. *Vernon.* Call Mr. *Lowden.*

[*Mr.* Lowden *ſworn.*]

Mr. *Vernon.* What Officer are you, Mr. *Lowden?*

Lowden. I have been an Officer in this City about nineteen Years: I have ſerved Town Actions, Town Warrants, and Warrants made out upon Writs from the Courts of *Weſtminſter-Hall*, and the *Admiralty*, in *King-Road:* And any Part of *King-Road* on the Southward of the *Denney*, we always take it to be in the Liberties of *Briſtol.*

Mr. *Vernon.* Mr. Recorder, we have done.

Mr. Recorder. Mr. *Goodere*, and *Matthew Mahony*, the Counſel for the King has gone thro' with his Evidence, and now is your Time to enter upon your Defence.

Samuel Goodere. May it pleaſe your Lordſhip, I ſhall endeavour to give you and the Jury as little Trouble as poſſible. I ſhall call Evidence to prove that the Gentleman was a Lunatick, and diſordered in his Senſes, and I was doing my beſt to take care of him.

[*Call Mrs.* Gethins.]

Mr. Recorder. What do you call her to prove?

Samuel Goodere. I call her to prove, that before my Brother was taken on board, I was to take an Upper-room of her to put him in, where he might be taken care of to cure his Madneſs.

Mr. Recorder. What, Mr. *Goodere*, do you admit then that you did take your Brother on board?

Samuel Goodere. I do admit that I carried my Brother on board. I went in the Boat along with him.

[*Mrs.* Gethins *ſworn.*]

Samuel Goodere. Mrs. *Gethins*, did I not ſpeak to you a Fortnight or three Weeks before my Brother was taken on board the Ship, to have a Garret of you to put him in, and that *Mahony* was to have five Pounds a Month to take care of him?

Mrs. *Gethins.* The Priſoner, Captain *Goodere*, did aſk me if I had not a Garret to let him keep his Brother in, for that he was a Madman: And Captain *Goodere* never made it a Secret that he intended to take and keep his Brother as a Madman.

Samuel Goodere. Whether I did not tell you that *Mahony* was to take care of my Brother a Fortnight or three Weeks before he was taken on board? Speak to the Time as near as you can recollect; and whether you knew that *Mahony* was to have five Pounds a Month, and that I made no manner of Secret of it, and that I endeavoured to take care of him as a Lunatick.

Mrs. *Gethins.* Sir, I have already ſaid that you ſpoke to me about a Room to put your Brother in, but what you mention about *Mahony*, I know nothing of that.

Mr. *Vernon.* Pray, is *King-Road* in the Road to your Houſe?

Mrs. *Gethins.* No, Sir.

Mr. *Vernon.* Was your Garret a proper Place of Accommodation for a Gentleman, and one who was eſteemed an *Engliſh* Baronet, think you? Pray, do you keep a Madhouſe, Madam?

Mrs. *Gethins.* No.

Mr. *Vernon.* Don't you think ſuch a Confinement would have been the way to have made him mad?

Mr. Recorder. Was any Perſon as you know to have taken care of him in your Garret?

Mrs. *Gethins.* I have heard the Captain talk with his own Doctor about it.

Samuel Goodere. I ſhall give you and the Jury as little Trouble as may be. I have an Evidence in relation to *Mahony* and *White*'s going away at Four o'Clock in the Morning, becauſe it is charg'd that I ſent them away. The Boat went away in the King's Service to bring Letters.

[*Mr.* Marſh *ſworn.*]

Samuel Goodere. Did you go aſhore in the Morning about the King's Buſineſs, or what Buſineſs did you go about?

Mr. *Marſh.* I had an Order about Eight o'Clock the Night Sir *John* was brought on board to go up in the Morning to *Briſtol* for the Letters from the Admiralty, and about Four of the Clock in the Morning I was called up to go; but the Lieutenant ſeemed much diſordered, and bid me come to him before I ſet out. I waited on the Lieutenant, and told him, that *White* and *Mahony* ſaid they had Liberty to go on ſhore, that the Captain had given them Liberty to go; the Lieutenant ſaid, he knew nothing of it. But as it is always my way, before I carry any body off, I ſaid, I would go to the Captain and aſk leave. I went to the Captain, and aſked him, if *White* and *Mahony* had Liberty from him to go on ſhore? And he ſaid, Yes, let them go.

Samuel Goodere. Mr. *Marſh*, did you go upon the King's Buſineſs, or on purpoſe to take up theſe Men?

Mr. *Marſh.* I went about the King's Buſineſs.

Mr. *Vernon.* But it was after Sir *John* was brought on board, that Mr. *Goodere* ordered you to go up?

Mr. *Marſh.* Yes, Sir, it was.

Mr. *Vernon.* Did any body elſe go up with you, beſides *Mahony* and *White?*

Mr. *Marſh.* No, there did not.

Mr. *Vernon.* Did Mr. *Goodere* give you Orders to put them on ſhore in any particular Place?

Mr. *Marſh.* I will do Juſtice between Man and Man; the Captain did not give me Orders to put them on ſhore in any particular Place.

Mr. *Vernon.* Were they landed publickly or privately?

Mr. *Marſh.* I put them on ſhore at the *Gibb*, about ſix of the Clock in the Morning.

Samuel Goodere. Now, may it pleaſe you, Sir, I ſhall ſhew that *Mahony* had Buſineſs at *Briſtol* that Day by Appointment, to receive ſome Wages that was due to him; for which purpoſe I ſhall call Mr. *Dagg.*

[Abel Dagg, *Keeper of* Newgate, *ſworn.*]

Samuel Goodere. Do you know any thing of Captain *Mervin*, and of *Mahony*'s coming to *Briſtol* on the *Monday* to ſettle an Affair with him?

Abel Dagg. There was one Captain *James Mervin* who ſailed into this Port, and on his coming was charged as a Debtor in my Houſe, at the Suit of ſome Gentleman in *London*, in an Action of three or four hundred Pounds. *Mahony* was one of his Sailors until he was preſt, and he charged the ſaid *Mervin* with an Action for his Wages. Captain *Mervin* had a deſire to make up the matter with *Mahony*. I went to the Captain of the Man of War the *Tueſday* or *Wedneſday* before this Affair happened, which was the firſt time I ever ſaw him, to the beſt of my Knowledge: The Captain ſaid he would meet me the *Monday* following, in order to accomodate the Difference.

Mr. *Vernon.* Was *Mahony* appointed to meet you that Day or not?

Mr. Recorder. Mind the Queſtion, Was *Mahony* to come that *Monday?*

Abel Dagg. The Captain made an Appointment, my Lord, to meet on the *Monday*; and I told Mr. *Taylor* the Attorney, that *Mahony* was to come on ſhore that Day, to make up the matter between him and *Mervin.*

Mr. *Vernon.* I would aſk you another Queſtion; Had *White* too any Affair to make up at *Briſtol?*

Abel Dagg. No, I know nothing of that.

Samuel Goodere. Now I call *Bridget King.*

Mr. Recorder. What do you call her for?

Samuel Goodere. Touching the Lunacy of Sir *John Dineley.*

[Bridget King *ſworn.*]

Samuel Goodere. Mrs. *King*, will you give the Court an account of what you know of the Lunacy of my Brother Sir *John Dineley?*

Bridget King. Pleaſe you, my Lord, I think he was mad; for he would get up at two or three of the Clock in the Morning, and call his Servants up, and fall a ſinging; and then he would go to bed again, and ſwear it was but twelve o'Clock at Night, and lie a-bed all Day. He would ſend his Boy out all over his Grounds to pick up Stones, and have the Wheelbarrow rattling about the Streets on a *Sunday:* he hath ringed the Bell to call his Servants up to his Bed-ſide, and when they were come up, he would aſk them what they did there, and ſwear they were come to ſhoot him? He himſelf hath gone over all his Gounds on a *Sunday* to pick Sticks, and hath ſent his Servants to Market when there was none; and he would be buſy in every thing, and hang on the Pot himſelf; and he hath been quite raving mad.

Mr. *Vernon.* Did you live as a Servant to Sir *John?*

Bridget King. I lived as a Servant with him in *London*, and he came down for the Air to *Tockington*; he brought me down to go to *Bath.*

Mr. *Vernon.* How long did you continue with him?

Bridget King. A Twelvemonth, Sir.

Mr. *Vernon.* And how durſt you venture to live ſo long with a Madman? He did not go mad for love of you, I hope? Have you lived any time in *Briſtol?*

Bridget King. No.

Mr. *Vernon.* Then I ſuppoſe you came but now from *London.*

Bridget King. Yes, I did.

Samuel Goodere. Do you believe he was a Madman?

Bridget King. In the Actions that I have ſeen by him, I have reaſon to think he was a Madman.

[*Mrs.* Mary Stafford *ſworn.*]

Samuel Goodere. Mrs. *Stafford*, will you tell his Lordſhip and the Jury what you know of Sir *John*'s being a Lunatick?

Mary Stafford. Sir *John* hired me for a Houſekeeper in *London*, and told me he had a great many Servants, and he wanted a Houſekeeper. When he brought me down, he ordered me to his Seat at *Tockington*; where, he ſaid, he had a great deal of Company frequently. When I came there, I found there was nothing in what he had told me; for, inſtead of a great many Servants, he had but one: a poor old ſhattered Houſe, ready to tumble down about one's Ears, and the Houſhold Goods all to pieces: he was a Mad-man: for if I had followed his Directions in any thing I ſhould have done miſchief. He hath ſent me and the reſt of his Servants to *Thornbury* Market, when there was none; he hath ringed the Bell to call his Servants to come to his Bed-ſide to him, and when we have come up to him, he hath aſked us, what we did there? Sir, ſaid I, you called me up: he hath ſaid he did not: and after we had been there a quarter of an Hour, he would take a Knife, Fork, Glaſs-Bottle, or any thing that came in his way, to throw at us, aſking of us, What, did we come to rob him? And I was afraid of my Life, to live with him. I do believe he was a Madman, or elſe he would never have acted as he did: he would go into the Kitchen, and take the Pot, and hang it on the Fire. I ſtyle him a Madman by his Actions.

Mr. *Vernon.* And muſt he therefore be hanged himſelf like a mad Dog, think you?

Mary Stafford. I know nothing of that, Sir.

Mr. *Vernon.* How long did you live with Sir *John?*

Mary Stafford. Three Months, Sir.

Samuel Goodere. Call Mr. *Robert Cock.*

Mr. Recorder. What do you call him to prove?

Samuel Goodere. My Lord, in order to prove Sir *John Dineley* a Lunatick. Mr. *Cock*, will you give an Account to my Lord and the Jury what you know of the Lunacy of Sir *John Dineley?*

[Robert Cock *ſworn.*]

Robert Cock. My Lord, I have known Mr. *Dineley* at *Charlton* for ſome Years; I have been ſeveral Times in his Company; I have ſeen him do ſeveral Acts of Lunacy, as a Madman.

Mr. *Vernon.* Where do you live?

Robert Cock. I live in *Cumberland*, when I am at home.

Mr. *Vernon.* Are you of any Buſineſs?

Robert Cock. I am an Officer belonging to his Majeſty.

Mr. *Vernon.* What kind of Officer?

Robert Cock. A Salt Officer.

Samuel Goodere. I will not give your Lordſhip and the Jury much more trouble. I am entirely innocent; they have not proved that I was preſent at the Death of Sir *John Dineley.*

Mr. Recorder. Don't deceive yourſelf; though they have not proved that you was actually in the Cabbin, when Sir *John* was murdered, yet they have given Evidence of that, which (if the Jury give Credit to) will amount to Preſence in the eye of the Law.

Samuel Goodere. I ſhall now call ſome Witneſſes to my Character, and likewiſe to ſhew how improbable it is, that I ſhould be guilty of the Murder of my Brother. Call Mr. *Pritchard.*

(Mr. *Pritchard* ſworn.)

Mr. *Pritchard.* I have known Mr. *Goodere*, the Priſoner at the Bar, many Years: He always bore the Character of a good Huſband, a good Neighbour, and a kind Friend.

Samuel Goodere. I ſhall call a Perſon who ſaw the Will of Sir *John Dineley*; and then any body would think that I ſhould be the maddeſt Man in the World to commit a Murder that I knew would be Forty Thouſand Pounds Damage to me. It was my buſineſs, conſidering the Circumſtance of the Will, and that I was Sir *John*'s Heir at Law, at all events to preſerve him. Call Mr. *Watkins.*

(Reverend Mr. *Watkins* ſworn.)

Samuel Goodere. Mr. *Watkins*, did not you ſee or hear the Contents of Sir *John Dineley*'s Will, and did not you tell me preſently after the Will was made the Contents of it, and how long was that before his Death?

Mr. *Watkins.* It was above three Months, or half a Year before his Death, to the beſt of my Knowledge. It was ſo long ago, as you dined with me at *Cropthorne.*

Samuel Goodere. Did you not inform me, that that Will did cut me off of every thing, and gave the Eſtate to the *Feets*; and that Sir *John* told you ſo?

Mr. *Watkins.* Sir *John* told me that he had made his Will, and had cut his Brother off from every thing; and that he had given the Eſtate to the *Foots:* of which I told Mr. *Goodere* ſoon after.

Samuel Goodere. How long ago?

Mr. *Watkins.* I can't tell exactly; about half a Year or three quarters of a Year, it might be.

Mr. *Ver.* They have been giving Sir *John* the Character of being a Lunatick; I think, Sir, you are Miniſter of *Cropthorne*, and muſt, I preſume, have been pretty converſant with Sir *John*, and a frequent Witneſs of his Behaviour in that Neighbourhood; be pleaſed therefore to ſpeak what you know, as to his Sanity or Inſanity of Mind.

Mr. *Watkins.* Sir *John*'s Character in my opinion hath been very much miſrepreſented to the World. During my Acquaintance with him, I have found him to be a good Neighbour, and a kind Friend: He was a Man of ſtrong Paſſions; if any one affronted him, he would let the Party know that he did reſent it. All his Tenants of our Country, and thoſe I have converſed with ſay, that he was one of the beſt of Landlords.

Mr. *Ver.* I don't aſk you, Sir, concerning his moral Character; but whether he was in his Senſes, or not?

Mr. *Watkins.* In his Senſes! I ſaw him laſt *Chriſtmas*, he was making up his Accounts with ſeveral of his Tenants; he was then in very good Underſtanding.

Mr. *Ver.* Pray, did you ever know him viſited with Lunacy?

Mr. *Watkins.* I never did; but on the contrary, I take him to have been a Man that always had his Senſes in a regular Exerciſe.

Mr. *Ver.* Do you know, Sir, whether there was any Miſunderſtanding between the two Brothers?

Mr. *Watkins.* There has been a long Miſunderſtanding between them.

Mr. *Ver.* What have you heard the Priſoner Mr. *Goodere* ſay, in relation to Sir *John*'s making his Will?

Mr. *Watkins.* I believe he told me, that Sir *John* had not power to make a Will: I told him it was my Opinion, if they would he reconciled together, Sir *John*'s Will would not ſtand.

(Mr. *Thomas* ſworn.)

Samuel Goodere. Mr. *Thomas*, how long have you known me, and what was my Character?

Mr. *Thomas.* I have known the Priſoner, Mr. *Samuel Goodere*, a great many Years, have very often been in his Company: I never found but that he ever behaved with all the Good-nature that poſſibly could be. I always took him to be a good-natured well-behaved Man, and he is a Man well-beloved in his Country.

(Mr. *Aſhfield* ſworn.)

Mr. *Aſhfield.* I have known Mr. *Goodere* a great many Years, I never heard any ill of him till this Affair; he is reputed in the Country of a general good Character. I have been concerned for him in ſeveral Suits, I never knew any ill of him.

Mr. *Ver.* Pray, Sir, what have you heard Mr. *Goodere* ſay, concerning his Brother's cutting off the Entail of his Eſtate?

Mr. *Aſhfield.* I have heard Mr. *Goodere* ſay, that his Brother had no power to cut off the Entail, and that he would ſet the Recovery aſide; I have heard him ſay that forty times.

Mr. *Ver.* What is your opinion as to the Sanity or Inſanity of Sir *John?*

Mr. *Aſhfield.* I never thought him a Mad-man; I always thought him one of the beſt Underſtanding in the whole Family.

(Reverend Mr. *Rogers* ſworn.)

Mr. *Rogers.* I have been acquainted with the Priſoner *Goodere* ſeveral Years; I know he hath behaved very well, done good Offices to all Mankind; and I never heard any other of him.

(Mr. *George Forcevil* ſworn.)

Mr. *Forcevil.* The Priſoner *Goodere* hath been my Neighbour for fourteen or fifteen Years: he hath always behaved well in his Neighbourhood, and has a very good Character; he conſtantly attended his Church twice a-Day *Sundays*, and would be there at Prayers almoſt every Day; he was always a ſober Man, and a good-humoured Gentleman. I thought him to be a good Man.

Samuel Goodere. Mr. Recorder, I would not give you and the Jury any more trouble in relation to my Character; all I have to ſay further is, my being deprived of Evidence in my Behalf, by reaſon of my Diſorder and the Sickneſs in the Gaol, which hath prevented my Friends from coming to me to adviſe me about making my Defence; and alſo of having ſeveral Witneſſes from on board the Ship, which might have been of great Service to me. I had an Order from the Lords of the Admiralty to require them to ſtay on ſhore, if I had occaſion for them; but, as the Ship was gone before the Letter came to my hands, I have no occaſion now to tell the Names of the Perſons.

[Mr. *Goodere* held up the Letter in his hand, but the Court did not receive it.]

Mr. *Frederick.* Mr. Recorder, there have been ſeveral Aſperſions publiſhed in the News-papers, to the prejudice of Mr. *Goodere*; there has been a Pamphlet alſo publiſhed, which I have here in my hand, intitled, *The* Briſtol *Fratricide*; but I hope the Gentlemen of the Jury will take no notice of, nor be influenced by them againſt the Priſoner.

Mr. *Ver.* I dare ſay they will have no Regard to any Book, but that on which they have been ſworn: thoſe who know them and their Characters, muſt certainly think ſo.

[The Jury declared they had never ſeen any ſuch Pamphlet, or Papers.]

Mr. *Ver.* Mr. Recorder, we muſt beg leave to aſk Mr. *Jarrit Smith*'s Opinion, as to Sir *John*'s being a Lunatick, or not?

Mr. *Jarrit Smith.* Mr. Recorder, I am ſurpriſed to hear it ſaid by ſome of Mr. *Goodere*'s Witneſſes, that Sir *John Dineley Goodere* was mad; I knew him fourteen or fifteen Years, and converſed with him both in Perſon and by Letter; but never diſcovered that he was in the leaſt diſordered in his Senſes, I always took him to be a Man of ſound Underſtanding. On the *Sunday*, the Day before his Death, he expreſſed himſelf with a great deal of Good-nature and Affection at the ſight of his Brother.

Mr. *Shephard.* Mr. Recorder, with humble Submiſſion, I am inſtructed to offer it in Evidence, that the Place where the Ship lay is not within this City and County of *Briſtol.*

Mr. *Ver.* We have already proved it to be within the County of *Briſtol*; nor is there the leaſt reaſon to apprehended, that Mr. Recorder will extend the Rule of *Boni Judicis eſt ampliare Juriſdictionem* to the extending of the County an Inch beyond its ancient and known Limits: He is too juſt to attempt it. On the other hand, we may depend he will not ſuffer the County-Limits to be abridged, but *ſervare Jus illæſum*; and (as he hath hitherto done) diſcountenance all Encroachments on the Rights and Franchiſes of *Briſtol.*

Mr. Recorder. It has been proved, and indeed it can't be denied, that at the Time the Fact in queſtion was committed, the Ship lay in *King-road*; and I think the Evidence which has been given of the Exerciſe of Juriſdiction by the Magiſtrates of the City and County of the City in *King-road*, and of the Sheriff's Officers executing Proceſs of all kinds there, amounts to a full Proof that *King-road* is within the Body of the County of the City of *Briſtol.* It is the ſame ſort of Proof by which the Bounds of every County in the Kingdom muſt be aſcertain'd, the doing Acts in the Place in queſtion by the Officers of the County, which muſt be done in that County, and no other.

Mr. *Goodere.* All *King-road* is not in *Briſtol.* Will your Lordſhip pleaſe to admit me to call Mr. *Hill?* He is a Gentleman that has ſurvey'd the Situation of the Place where the Ship lay, and will deſcribe it.

Mr. *Ver.* I am ſorry to find Mr. *Goodere* driven to this Subterfuge in his Defence, I could wiſh he had one to make on the Merits; if he ſtands upon his Innocence, what need of all this Stir about the Station of the Ship, or where on Earth can he hope to be tried before a fairer, or more impartial Judicature than the preſent?

Samuel Goodere. Call Mr. *Hill.*

Mr. Recorder. Mr. *Goodere*, if you can ſhew that any Part of *King-road* is, or ever was eſteemed to be in any other County than the County of the City of *Briſtol*, I will hear you; otherwiſe it will be to no purpoſe to deſcribe the Situation of the Ship, ſince it is admitted that ſhe lay in *King-road.*—*Mahony*, have you any thing to ſay?

Mahony. I hope your Lordſhip will conſider that I was a poor, preſs'd Servant, and I was drunk when I made the Confeſſion, and I was frightned out of my Wits.

Mr. Recorder. You ſay you were drunk when you made the Confeſſion; 'tis poſſible, that Night when you were firſt taken and brought before the Magiſtrates, you were in Liquor, but it ſeems your Confeſſion was not taken 'till the next Day.

Mahony. My Lord, I was in *Bridewell*; I did not ſleep a Wink the whole Night.

Mr. Recorder. Have you any Witneſſes to call?

Mahony. No, pleaſe your Lordſhips, I am a Stranger here, I have no Witneſſes to call.

Mr. *Ver.* Mr. Recorder, I apprehend we are in a Caſe exceeding clear againſt both the Priſoners at the Bar; and, conſidering that Death and Life are in the Power of the Tongue, I am unwilling to reply, where Life is at ſtake; but, as Mr. *Goodere* ſeems to lay ſome Streſs on the Circumſtance of his not being actually in the Cabbin, at the time his Brother was murder'd there, I beg, Sir, you will indulge me an Obſervation or two as to that ſingle Point. Not that I imagine the leaſt Doubt in Law can remain with Mr. Recorder, but being in the Caſe of a Capital Proſecution, I would leave no Objection unanſwered that has the leaſt Dependance on the Law; and I agree, Sir, that in order to bring Mr. *Goodere* within the Compaſs of the Indictment, he muſt appear to have been preſent, as an Abettor, at the Perpetration of the Murder. The Law is extremely clear in this Particular; but then it is as clear, that if ſeveral Perſons are engaged in a Deſign of murdering another, and one of the Party ſtands upon the watch, at the Room or Houſe-door, whilſt the reſt actually commit the Murder, he is, in the Judgment of the Law, preſent at the Murder, and as much a Principal in it as the reſt: and the Law is the ſame, though he ſtood at a conſiderable diſtance from the Place where the Murder was committed, as at the Gate or the Lane's End; for it is not neceſſary he ſhould be *in Conſpectu*, if near enough at hand to embolden his Accomplices in the Murder, through the Hopes of preſent Aſſiſtance, or Security from the Perſon upon the watch. And ſo it is expreſsly laid down, in Lord Chief-Juſtice *Hale*'s Hiſtory of the Pleas of the Crown, in the Chapter of *Petit-Treaſon*; where he ſays, that if a Wife or Servant conſpires with a Stranger to kill the Huſband or Maſter, and be in the ſame Houſe with the Stranger whilſt he commits the Murder, the Wife or Servant is guilty of Petit-Treaſon, though not in the ſame Room where the Murder was committed. The ſame Doctrine is laid down in ſecond *Hawkin*'s Pl. Cor. 312. (whom as a living Author I cite, only for the

ſake of the Authorities he has been at great Pains in collecting.) And the Caſe of Lord *Dacre* is full in point: My Lord *Dacre*, with *Manſel* and ſeveral others, went by Night into another's Park, unlawfully to kill Deer; my Lord waited about the Park-Gate upon the watch, whilſt the reſt went a quarter of a Mile into the Park, where they met and killed the Keeper; Lord *Dacre*, though at ſo great Diſtance when the Keeper was killed, was adjudg'd a Principal in the Murder, and accordingly died for it. And agreeable to this, was likewiſe the Caſe of *Berry*, (the Porter of *Somerſet-Houſe*) who was concerned with *Green*, *Hill* and others, in the Murder of Sir *Edmund-Bury Godfrey*; ſome of them way-laid that worthy Magiſtrate, and having inticed him into the Yard leading to *Somerſet-Houſe*, *Green*, *Hill* and others ſtrangled him. *Berry* was one of their Gang, and whilſt the others were committing the Murder, ſtood at a great diſtance from them on the watch, upon the Stairs leading to the upper Court of *Somerſet-Houſe:* he was indicted with *Green* and *Hill*, as being preſent and abetting the Murder, and upon this Evidence was convicted and executed. Gentlemen of the Jury, in the Caſe now before you, it is fully made out in Proof, that the Deceaſed was under one continuing armed Force, from the Inſtant of his being ſeized to that of his Death; and that his Brother (the Priſoner Mr. *Goodere*) put and kept him under that Force. Then, Gentlemen, Mr. *Goodere*'s diſplacing *Buchanan* from the Cabbin-door, and placing himſelf there in his ſtead, with the drawn Sword in his Hand; *Mahony*'s entering into, and being let out of the Cabbin, whilſt Mr. *Goodere* kept Guard at the Door of it; Mr. *Goodere* waving his Sword at *Macguinis*, and handing-in the Candle; the dying Outcries of his Brother (which could not but reach his Ears, though not his Heart), and other black Ingredients in this dreadful Caſe, are an undeniable Proof that Mr. *Goodere* was concerned with *Mahony* and *White* as their Accomplice in his Brother's Murder, and took his Stand at the Cabbin-door, with no other Intent than to embolden and aſſiſt them in the Perpetration of that cruel Act, and keep off others from coming to his Brother's Relief, or from diſturbing them in the fatal Buſineſs they were about. Under which Circumſtance he is guilty in the ſame degree as *Mahony*; and in the Eye of the Law looked upon to have been as much preſent at his Brother's Death (as an Abettor of the Murder), as if he had ſtood by the Bed-ſide and held the Sword over his Head, whilſt *Mahony* was ſtrangling him. So that, Gentlemen, I apprehend we have made good the Indictment againſt both the Priſoners, by clear and convincing Evidence; and therefore doubt not but their Guilt will ſtand recorded to future Ages by the Juſtice of your Verdict.

Mr. *Shephard.* Mr Recorder, will you pleaſe to indulge me a Word as to the Point of Law? Mr. *Vernon* mentions, in the Caſe of the Park that he hath taken notice of, the Lord *Dacre* and his Party came by Night unlawfully to kill Deer, and therefore the Law preſumed they all came with an intent to oppoſe all that ſhould hinder them in that Deſign; and ſo when one killed the Keeper, it muſt be preſumed the Act of all, becauſe purſuant to that Intent. But whether the preſent Caſe is circumſtanced as that Caſe, ought to be conſidered. I do admit that Mr. *Goodere* was down in the Cock-pit at the time this Fact was done, and he was certainly obliged (as hath been obſerved) by the Law of Nature to take care of his Brother. But if he had no other Intention of carrying him on board the Ship, than to ſecure and take care of him as a Perſon whom he looked upon as diſordered in his Senſes, and with a view of reducing him to Reaſon; then ſurely Mr. *Goodere*'s Caſe is very different from the Lord *Dacre*'s. And that Mr. *Goodere* did look upon his Brother to be ſo——

Mr. Recorder. Mr. *Shephard*, you are going off from the Point of Law to Matter of Fact; I ſhall charge the Jury, that if they believe Mr. *Goodere* ſtood at the Cabbin-door in order to prevent any Perſons coming, who might have prevented the Murder, or to encourage thoſe within the Cabbin in the Buſineſs they were about, they muſt find him guilty on this Indictment; otherwiſe they muſt acquit him.

Mr. *Shephard.* If he was not there with that Intention, he cannot be guilty; and in this Caſe no ſuch Intention appears.

Mr. Recorder. His Intention is Matter of Fact, which muſt be left to the Jury on the whole Evidence.

Gentlemen of the Jury,

THE Priſoners at the Bar, *Matthew Mahony* and *Samuel Goodere*, ſtand indicted for the Murder of Sir *John Dineley Goodere*. And the Indictment charges that *Mahony* ſtrangled him, and that the Priſoner *Goodere* was preſent, aiding and abetting him in the Fact. They are both charged as Principals in the Murder. For, Gentlemen, in the Eye of the Law, the Perſon who is preſent, aiding and abetting, is as much a Principal in the Murder, as the Perſon who actually commits the Fact. Whether the Priſoners, or either of them, be guilty in manner charged in the Indictment, you are to determine upon the Evidence you have heard.

The Evidence has been very long; but I will endeavour to lay the material Parts of it before you in ſuch a light, as may beſt aſſiſt you in your preſent Enquiry.

'Tis out of all doubt, that Sir *John Dineley Goodere* was ſtrangled on board the *Ruby* Man of War in *King-road*, in the Night between the eighteenth and nineteenth of *January* laſt. And therefore what paſt at that time, which may affect the Priſoners, or either of them, as they ſtand charged on this Indictment, will deſerve your principal Attention. But as the Proſecutors have (very properly I think) gone pretty far back in their Evidence, in order to ſhew by what means Sir *John* was got on board, it will be neceſſary for you to take that Part of the Evidence likewiſe into Conſideration.

The firſt Witneſs is Mr. *Chamberlayne*, who tells you, that about three Weeks before the Murder happened, Mr. *Goodere* deſired him to uſe his good Offices with Mr. *Jarrit Smith*, a Friend of Sir *John*'s, in order to bring about a Reconciliation between Sir *John* and him.

Mr. *Smith* tells you, that Mr. *Chamberlayne* did apply to him for that Purpoſe; and afterwards brought Mr. *Goodere* to his Houſe on the ſame Errand: And that Mr. *Goodere* then repeated the ſame Requeſt Mr. *Chamberlayne* had before made in his Behalf. He ſays, he propoſed the matter to Sir *John*, who with ſome Difficulty conſented to give Mr. *Goodere* a Meeting; which was fix'd for *Tueſday* the 13th of *January*, at Mr *Smith*'s Houſe in the *Colledge-Green*, of which Mr. *Goodere* had timely Notice. That on *Tueſday* the 13th, Sir *John* rode up to his Door, and having juſt alighted and acquainted him that he could not at that time ſtay; but that the next Time he came to Town, which would be the *Saturday* or *Sunday* following, he would meet his Brother; he mounted his Horſe, and went off, attended by his Servant, both armed with Piſtols. He ſays, that on the ſame Day he met with Mr. *Goodere*, and acquainted him, that Sir *John* would be again at his Houſe on *Saturday* or *Sunday*; and it was then agreed that Mr. *Goodere* ſhould have notice when Sir *John* came. He ſays, that on *Sunday* Morning the 18th of *January*, Sir *John* ſent him word, that he would be at his Houſe that Day, at any Hour he ſhould appoint; and accordingly Three in the Afternoon was appointed. He ſays, that the ſame Morning he gave Mr. *Goodere* Notice of the Appointment. That in the Afternoon Sir *John* and Mr. *Goodere* met at his Houſe, where mutual Civilities paſſed between them: That Sir *John* ſoon took his Leave, the Witneſs and Mr. *Goodere* waiting on him to the Door. He ſays, that he preſs'd Mr. *Goodere* to ſtay longer; and ſaid to him, I hope I have done great Things. To which Mr. *Goodere* reply'd with ſome Emotion, By God this will not do; and immediately followed Sir *John* down the Hill. He ſays, that ſtanding at his Door he obſerved a Company of Sailors gathering about Sir *John*, and heard Mr. *Goodere* ſay to them, Is *he* ready, or is *it* ready? (he is not, I believe, poſitive, what were the Words): To which ſome of the Sailors anſwered, Yes, Sir. Whereupon the whole Company went haſtily off, ſome towards the *Butts*, others towards the *Lower Green*; and Mr. *Goodere* follow'd them by the *Butts*. Mr. *Smith* had no Suſpicion at that time, that the Sailors were offering Violence to Sir *John*, and ſo made no farther Enquiry into the matter; 'till a Soldier, who is likewiſe produced as a Witneſs, told him what happen'd at the Barge.

The next Witneſs they produced is *Maurice Hobbs*, who, it ſeems, keeps the *White-Hart* Alehouſe at the Foot of the *Colledge-Green*: And, Gentlemen, you will obſerve, that from the Front Windows of that Houſe, one may have a View of Mr. *Smith*'s. And he tells you, that on *Monday* the 12th of *January* laſt, the Priſoners at the Bar came to his Houſe; that Mr. *Goodere* deſired to ſee an upper Room, over the Parlour, fronting the Street; and having ſeen it, ſaid, he would come the next Morning and drink Coffee in that Room. Accordingly, the next Morning he came (early for that time of the Year) before the Windows were opened, or Fires lighted; his Dreſs ſo different from what he wore the Day before, that the Witneſs did not at firſt recollect him. But, it ſeems, he changed his Clothes after he came thither. He ſeem'd willing to drink his Coffee in the Parlour; but being deſir'd to walk up ſtairs, he went into the Room he had pitch'd upon the Day before. Soon afterwards the Priſoner *Mahony*, with three other Perſons, came in; and after them, five or ſix more. Theſe People, Gentlemen, were not all together in one Room; but they were all entertain'd at Mr. *Goodere*'s Expence. The Witneſs tells you, that Mr. *Goodere* ordered they ſhould be entertain'd; and at going away paid the whole Reckoning. He ſays, that while the Company was at his Houſe, Mr. *Goodere* above ſtairs, and others below, Sir *John Dineley Goodere* rode by from Mr. *Smith*'s, attended by his Servant; and that as they paſſed by, Mr. *Goodere* called out to the People below, Look well at him, but don't touch him. He ſays further, that on *Sunday* the 18th of *January*, *Mahony* came to his Houſe in the Morning, and deſired him that if he ſaw the Gentleman in the black Cap (by which Deſcription it appears Sir *John* was meant) go towards the *Green*, he would ſend a Porter to him at a Publick Houſe in *Marſh-ſtreet:* That in the Afternoon *Mahony* came again, with a great many other People, all appearing by their Dreſs to be Sailors. And that as the Deceaſed walked by the Houſe, they all ruſh'd out and went off. He goes, I think, no farther in his Evidence; for he ſeems to be too much concern'd for his Reckoning and his Tankard, to mind any thing that paſſed afterwards.

The next Evidence is *Thomas Williams*, who belongs to the *Ruby*. He ſays, that on *Sunday* the 18th, he brought up the Barge from *King-road*; and was order'd by Mr. *Goodere* to leave two Hands aboard the Barge, and take eight of the Crew to the *White-Hart* Alehouſe on the *Colledge Green*, and there wait for him: for, ſaid he, I have a Gentleman to go on board me. He accordingly went to the *White Hart* with his Men, and there found *Mahony* and four or five People belonging to the *Vernon* Privateer. He ſays, he had not been long there, before the Company ruſhed out of doors: Upon which he followed, and found they had laid violent hands on the Deceaſed, and were carrying him on board the Barge; giving out, that he had murdered a Perſon on board the Ship, and that they were carrying him thither in order, as they pretended, to bring him to Juſtice. He tells you, that the Priſoner *Mahony* was very active in this Outrage; and that the Priſoner *Goodere* was preſent, ſeeing and hearing all that paſſed. He likewiſe gives you an Account of the Converſation that paſſed between Sir *John* and the Priſoner *Goodere*, after they were in the Barge; and, among other Things tells you, that upon the Deceaſed's ſaying, You are carrying me on board to murder me, the Priſoner *Goodere* anſwer'd, No, I don't intend to do ſo, but I would have you make your Peace with God. This Witneſs ſpeaks little to what paſs'd after they came on board the Ship; for, ſays he, I had been employ'd all Day, and went to bed early. But he tells you, that in the Night he heard a very unuſual Noiſe on board; and that about Two in the Morning, he ſaw the Priſoner *Goodere* go down the Ladder leading to the Purſer's Cabbin.——You have heard, Gentlemen, from the Witneſſes, whom I ſhall mention preſently, that the Murder was committed in this very Cabbin.

The Proſecutors then called ſeveral Witneſſes, *Samuel Trivet*, *Thomas Chambury*, Mrs. *Darby*, and *William Dupree*; who all ſpeak to the manner of carrying Sir *John* from the *Colledge-Green* to the Place where the Barge lay.

Theſe Witneſſes agree in general, that he was treated with great Rudeneſs by the Company in whoſe Hands he was. But, as the Priſoner *Goodere* admits, that he did take his Brother on board; and, as *Mahony* endeavours to excuſe the part he had in it, by alledging that he was under Command; I need not be very particular in repeating the Circumſtances attending this part of the Affair. Only, Gentlemen, it may be proper for you to obſerve, that the Pretence given out to blind the People

who

who enquired into the meaning of this Outrage, was, that the Gentleman had committed a Murder on board the *Ruby*. And that when Sir *John* was on board the Barge, and calling out for Help to the People on ſhore, telling them his Name, and begging them to let his Friend Mr. *Jarrit Smith* know what had happen'd to him; the Priſoner *Goodere* at that inſtant ſtopt his Mouth. This Circumſtance is prov'd by three of theſe Witneſſes.

The next Set of Witneſſes who have been called, are Perſons belonging to the *Ruby*. And from them you have an Account of what paſſed from the time Sir *John* was brought on board to the time of the Murder.

The firſt is *Theodore Court*, the Maſter of the *Ruby*; and he tells you, that about ſeven in the Evening Sir *John* was brought on board, and immediately by Mr. *Goodere*'s Order carried down into that part of the Ship which is called the Cockpit, and ſecured in the Purſer's Cabbin, and a Centinel ſet on him. He tells you further, that Mr. *Goodere*, as ſoon as he came on board, ſaid to him and the other Company preſent, I have brought a Madman on board. And, Gentlemen, you will obſerve, that the Ship's Crew were made to entertain an opinion, that Sir *John* was mad; ſays Mr. *Goodere*, Don't mind what he ſays, he is mad. This, all the Witneſſes agree in. And you may remember too, that when the poor Gentleman was dragged and hurried along towards the Barge, then he had murder'd a Man on board the *Ruby*. Now he is brought aboard, where that Pretence cannot ſerve, he is a Madman, and muſt be confin'd. This Witneſs was preſent the next Morning when the Purſer's Cabbin was broke open, and Sir *John* was found there murdered: upon which, he ſays, Mr. *Goodere* was made a Priſoner. But he tells you, that before this, Mr. *Goodere* expreſſed a great Inclination to ſail that very Morning; and upon his repreſenting to him the Danger of attempting the *Briſtol* Channel without a Pilot, he anſwer'd, If I can but get as low as the *Holmes* I don't care.

This Witneſs was aſk'd a Queſtion by Mr. *Goodere*, touching the Place where the *Ruby* was moor'd, at the time the Fact in queſtion was committed; and he ſays, that ſhe then lay in *King-Road*, and has deſcribed her ſeveral Bearings to *Port's-head* Point, the *Denny*, and the *Hole*'s Mouth. But, Gentlemen, it will not be material in the preſent Caſe, in what part of *King-Road* the Ship then lay, if you are ſatisfied from the Evidence you have heard, that *King-Road* is in the County of this City, becauſe it is admitted by the Priſoner, and indeed it is too plain to be denied, that the Ship was then in *King-Road*.

The next Witneſs is *Duncan Buchanan*, who was one of the Company at the *White-Hart* Alehouſe, on *Tueſday* the 13th; and he confirms what *Hobbs* told you, that when Sir *John* and his Servant rode by, the Priſoner *Goodere* call'd to *Mahony* and the Company at the *White-Hart*, and bid 'em mind him well, but not to touch him. He ſays too, that Mr. *Goodere* at the ſame time order'd ſome of the Company to follow Sir *John*. He ſpeaks much to the ſame purpoſe as the laſt Witneſs, touching the bringing Sir *John* aboard, and carrying him into the Purſer's Cabbin; and adds, that two Bolts were put on the Out-ſide of the Cabbin Door by Mr. *Goodere*'s Orders. He tells you, that he was the Centinel placed at the Cabbin-door by Mr. *Goodere*, who, you are to take notice, had then the Command of the Ship; and ſays, that about Twelve at Night he was ſent for into the Captain's Cabbin, where he found both the Priſoners at the Bar together. That Mr. *Goodere* enquir'd of him, whether his Brother made any noiſe? and ſaid, I believe he is wet in his Feet, I'll carry him a Pair of clean Stockings. That between One and Two the Priſoner *Goodere* came down to the Cock-pit, and liſten'd ſome time at the Cabbin-door, where Sir *John* was; and ſoon afterward took the Sword from him, and order'd him up to the Deck; and ſtood himſelf as Centinel at the Door. He ſays, that being on Deck, he ſaw the Priſoner *Mahony* go down the Ladder towards the Purſer's Cabbin, and is poſitive he went into the Cabbin; the Priſoner *Goodere* ſtanding at the ſame time Centinel at the Door. He tells you that a ſhort time after this he heard a great noiſe and ſtruggling in the Cabbin, a Perſon crying Murder, like one going into a Fit: that, I think, was his Expreſſion. This Noiſe, he judges, continued four or five Minutes; and is poſitive that the Priſoner *Goodere* ſtood at the Door all that time, with the Sword in his Hand. He ſays, that after the Noiſe in the Cabbin ceas'd, he ſaw the Priſoner *Goodere* hand a Candle into the Cabbin; and that he, ſeeing Mr. *Goodere* had no Light with him, lighted a Candle at the Lanthorn upon Deck, and was going to carry it down; upon which he ſays Mr. *Goodere* waved the Sword towards him, ſaying, Keep back, ſtay where you are. He ſays, that ſoon afterwards the Priſoner *Goodere* call'd for a Light, deliver'd back the Sword to him, lock'd the Cabbin-Door, and put the Key in his Pocket; and ſaid, If my Brother makes any more noiſe, let me know of it.

The next Witneſs is *Daniel Weller*, the Carpenter of the *Ruby*: He agrees in the main with the two former Witneſſes, touching the bringing Sir *John* aboard, the carrying him into the Purſer's Cabbin, and putting the Bolts on the Door; and gives an account of the Converſation he had with Sir *John* in the Cabbin while the Bolts were faſtening on: from which it ſeems natural to conjecture, that Sir *John* expected he ſhould have foul play for his Life. He did not ſtay long with him; for it ſeems nobody was to viſit the poor Gentleman but *Mahony*. He ſays, he broke open the Cabbin-Door next Morning, and found Sir *John* dead, and obſerv'd ſome Blood about his Mouth and Noſe; which, Gentlemen, is what may be expected in caſe a Perſon is ſtrangled.

The next Witneſs is *Edward Jones*, the Cooper of the *Ruby*; and he tells you, that on the *Thurſday* before the Fact in queſtion was committed, Mr. *Goodere* order'd the Purſer's Cabbin to be clear'd out; for, ſaid he, I ſhall bring a Gentleman aboard. He ſays, that ſoon after Sir *John* was brought aboard, Mr. *Goodere* came down to the Purſer's Cabbin, and offer'd him a Dram of Rum, and alſo perſuaded him to make uſe of ſome to chafe his Leg, which it ſeems had received ſome hurt that Day. He ſays, that Mr. *Goodere*, ſpeaking of Sir *John* to the People preſent, ſaid, Don't mind what he ſays, he'll be well enough again. He tells you, that about eight o'clock he went to bed in the Slop-Room, which, it ſeems, is parted from the Purſer's Cabbin by a thin Deal Partition. That before he went to ſleep, he heard what paſſed in the Cabbin, particularly the Diſcourſe between Sir *John* and the Priſoner *Mahony*, which I need not repeat to you. And ſays likewiſe, that he heard Sir *John* praying to God to deliver him out of his preſent Diſtreſs, and expreſs himſelf as a Man ſenſible of his preſent Danger. He tells you, that between Two and Three in the Morning, his Wife, who happened then to be aboard and in bed with him, waked him, and that he then heard a great Struggle in the Cabbin, Sir *John* crying out, as a Perſon in great Confuſion and Diſtreſs, Here's Twenty Guineas, take it, take it, muſt I die? He ſays, that in a little time all was quiet, from which he concluded the Gentleman was diſpatch'd; and then a Light was brought into the Cabbin; upon this he ſays, he got up upon his Knees, and peep'd through a Crevice in the Partition, and ſaw the Priſoner *Mahony* and one *Charles White* rifling the Pockets of Sir *John*, who was laid upon the Bed, in the Poſture he has deſcribed to you, and motionleſs. He ſays, at this time he ſaw a Hand at Sir *John*'s Throat, and heard a Perſon ſay, 'Tis done, and well done; he cannot ſay who the Perſon was whoſe Hand was at Sir *John*'s Throat, but believes 'twas not the Hand of *White*, or *Mahony*, for it was a white Hand, and not like either of theirs. He ſays that he lay in fear of his own life (as indeed I think he had great Reaſon) 'till about Four in the Morning, and then the Men belonging to the Yawl being called up, he got up too, and acquainted the Lieutenant with what paſſed, and conſulted with him and others of the Officers about apprehending Mr. *Goodere*, which was afterwards done in the Manner you have heard.

The next Witneſs is *Margaret Jones*, Wife of the laſt Witneſs. And ſhe gives much the ſame Account of the bringing Sir *John* aboard, and Mr. *Goodere*'s offering him Rum, as her Huſband does. And ſays farther, That Mr. *Goodere* talk'd of ordering Sheets for Sir *John*'s Bed. But, Gentlemen, it does not appear to me that any Sheets were ordered, or indeed any ſort of Refreſhment provided for him, except a ſingle Dram of Rum, which he refuſed, having forborn the Uſe of ſtrong Liquors of all ſorts for a conſiderable time. This Witneſs likewiſe gives an Account of the Converſation between *Mahony* and Sir *John*, and tells you, that when *Mahony* offer'd to pull off Sir *John*'s Stockings, he ſaid to him, Pray don't ſtrip me till I am dead. She ſays, That about Two in the Morning ſhe heard *Mahony* deſire Sir *John* to compoſe himſelf to ſleep; and ſoon afterwards the Light was put out, and ſhe heard *Mahony* ſay, You muſt lie ſtill, and not ſtir for your Life; and immediately ſhe ſays there was great ſtruggling in the Cabbin, two Perſons whiſpering, and Sir *John* crying Murder, and kecking in his Throat (as ſhe expreſſes it), ſo that ſhe concluded they were ſtrangling him. At this time, ſhe ſays, ſomebody on the outſide of the Door offer'd to come in; upon which, thoſe in the Cabbin ſaid, Damme, you Negro, keep out. She ſays, the Noiſe and Strugglings continued for a ſhort time afterwards, and then all was quiet, and a Light was brought into the Cabbin. She then ſaw the Priſoner *Mahony*, and *Charles White*, the Perſon her Huſband ſpoke of, rifling Sir *John*'s Pockets. The particular Circumſtances ſhe mentions in this part of her Evidence I need not repeat. She ſays, that after this was over, they went out of the Cabbin, and the Door was lock'd and bolted; and ſhe heard one of the Perſons ſay, Which way ſhall I go, where ſhall I run? To which the other anſwered, Follow me, my Boy.

The next Witneſs is *James Dudgeon*, who, it ſeems, is the Surgeon's Mate. And he tells you, That when Sir *John* was brought aboard, he was carried directly to the Purſer's Cabbin, and a Centinel placed over him. Says Mr. *Goodere* to this Witneſs, Doctor, I have brought a Madman on board, you muſt do the beſt you can with him; pray go and feel his Pulſe now; or you may let it alone till to-morrow, the firſt Night will be the worſt with him. The Doctor did go, but was told by the Centinel, that he had Orders to let nobody in but *Mahony*; however, he went in and felt Sir *John*'s Pulſe, and found no Diſorder there but what might be occaſioned by the fatigue he had undergone that Afternoon. This Witneſs, who, it ſeems, lodg'd in a part of the Cock-pit near the Purſer's Cabbin, ſays, that about Two in the Morning he heard an unuſual Stir in the Cock-pit, and over-heard *Mahony*, who was in the Purſer's Cabbin, ſay, You muſt lie ſtill, don't ſtir; and immediately there was a great Buſtle in the Cabbin, Sir *John* crying, Murder, and ſaying here's Twenty Guineas, take it, take it. He ſays, that by the Noiſe he heard, and from other Circumſtances he has mention'd, he then apprehended that ſomebody was ſtrangling the Gentleman. Before the Noiſe was quite over, he ſays he heard the Lock of the Cabbin go; upon which ſomebody within cry'd, Damn ye, keep the Door faſt. The Witneſs hearing this, call'd out and enquired what was the Cauſe of the Noiſe; and he ſays that the Perſon who then ſtood at the Door anſwered, 'Tis nothing at all. He does not ſay who the Perſon was, but ſays he is ſure that the Priſoner *Goodere* was in the Cock-pit while the Outcry was in the Cabbin. Soon after the Noiſe was over, he ſays, a Light was called for, and carried into the Cabbin; and in a little time he heard the Tread of People running out of the Cabbin, and is ſure he heard the Priſoner *Mahony* ſay, Which Way ſhall I go? To which Anſwer was made, You may go by the Ship-ſide. He ſays, about this time a Perſon ſtept up the Ladder from the Cock-pit, towards the Deck, and he then heard the Priſoner *Goodere* ſay, If my Brother makes any more Noiſe, let me hear of it. Theſe Words, Gentlemen, if you believe *Duncan Buchanan*, were ſpoken to him at the top of the Ladder. It ſeems indeed probable, that Mr. *Goodere* was ſolicitous to know whether Sir *John* made any Noiſe or no, after this time; for this Witneſs tells you, that Mr. *Goodere*'s Servant, ſome time afterwards, came to him to enquire whether he had lately heard any Noiſe in the Cabbin? Yes, ſays the Witneſs, I heard ſomething at the Lock. This Noiſe the Witneſs ſuppoſes was occaſioned by a Cat which had been lock'd in the Room. This Witneſs inſpected the Body the next Morning, and tells you, that he found great Impreſſions about the Neck, and the Marks of Nails and Fingers on it; and upon the whole, is of opinion that Sir *John* died by Strangling. And, Gentlemen, whether a Rope was made uſe of in the Buſineſs, or whether it was done by thruſting their Fingers between the Neck and Cravat, and ſo ſtraining the Cravat cloſe about the Neck, will not be material; for though the Indictment charges that it was done with a Rope, yet if it appears on the Evidence, that the Deceas'd was ſtrangled by any Means whatever, ſuch Evidence will be ſufficient to maintain the Indictment.

The next Witneſs, and the laſt that has been examined, touching what was done on Board the Ship, is *William Macguinis*, the Centinel at the Gun-room. And he tells you, that after Two in the Morning, the Priſoner *Goodere* went down into the Cock-pit; that ſoon afterwards the Priſoner *Mahony* puſh'd by him; he ſays he would have kept him back, but *Mahony* gave him ill Language, and paſs'd on, and call'd to another Perſon to follow him. He ſays, that *Duncan Buchanan* was ordered up to Deck, and that he ſaw Mr. *Goodere* ſtanding at the Purſer's Cabbin-door with a Sword drawn in his hand; and remembers, that when he offered to come near the Cabbin, Mr. *Goodere* ordered him to keep back: This was at the Time the Noiſe and Outcry was in the Cabbin. He ſays further, he ſaw *Mahony* go into the Cabbin before the Noiſe was heard there; and that, about Three in the Morning, he ſaw both the Priſoners at the Bar go up the Ladder from the Cock-pit to the Deck together.

The Proſecutors then examined two Witneſſes touching the Gold Watch which has been produced. One of them, *Sarah Culliford*, ſays, that the Priſoner *Mahony*, the Day he was apprehended, deliver'd the Watch to her, deſiring ſhe would put it by for him; that ſhe, upon hearing that *Mahony* was taken up for the Murder, in a Surprize, threw it into the Vault. The other Witneſs tells you, that he, by Order of the Magiſtrates, open'd the Vault, and found the Watch there. This Watch the Proſecutors would fix upon the Priſoner *Goodere*, and to that end, it was ſhewn to *Theodore Court*, who was examin'd before to other Points. And he ſays, he cannot be poſitive, but believes it to be Mr. *Goodere*'s Watch, having often ſeen it, or ſuch a one, hanging up in his Cabbin. The Proſecutors then produced a Handkerchief, which was taken out of *Mahony*'s Pocket the Night he was apprehended; it appears to be a little bloody, but I don't ſee what Uſe they make of that Circumſtance.

The next Piece of Evidence the Proſecutors went to, was *Mahony*'s Examination and Confeſſion, which has been read to you. This, Gentlemen, is very proper Evidence, and ought to have its Weight with you, as far as it concerns *Mahony* himſelf; but with regard to the other Priſoner *Goodere*, you are to lay no manner of Streſs upon it, it is no Evidence againſt him.

The Proſecutors then proceeded to ſhew, that *King-road*, where the *Ruby* lay at the Time the Fact was committed, is within the County of *Briſtol*. I think indeed that ſome Evidence of that Kind was proper to be given, for your Satisfaction, and to that End they have called Mr. *Wint* and Mr. *Lowden*, two ancient Officers well known to you all. And they ſay, in general, that *King-road* has always been eſteemed to be within the County of *Briſtol*. And they go farther and ſay, that they have conſtantly, as Occaſion required, executed Proceſs of all Kinds in *King-road*; Warrants from the Mayor and Aldermen, Proceſs from the Mayor's and Sheriff's Court, and Warrants grounded on Writs from above, directed to the Sheriffs of *Briſtol*. And, Gentlemen, I muſt ſay, that tho' another Sort of Evidence might have been given, touching the Bounds of this County by Water, I know no Evidence ſo proper to prove the Bounds of any County, as the conſtant Exerciſe of Juriſdiction in the Place in Queſtion, where that Sort of Evidence can be had.

I think, I have repeated to you the material Parts of the Evidence which has been given againſt the Priſoners at the Bar; and you will now conſider what they have offered by Way of Defence to this Charge.

As for *Mahony*, I do not hear him ſay any Thing by Way of proper Defence, nor has he called a ſingle Witneſs. He hopes, indeed, that it will be taken by Way of Excuſe, that he was a poor preſs'd Servant, and acted by Command. But, Gentlemen, if you believe the Evidence which has been given againſt him, no Command of any Superiour whatſoever (ſuppoſing that to have been an Ingredient in his Caſe) will excuſe him.

Mr. *Goodere* ſays, that his Brother was a Lunatick, and he being his only Brother, thought it his Duty to take Care of him in that Condition; that in order thereto he had endeavour'd to get a Lodging in this City, where he was to be confin'd under the Care of the Priſoner *Mahony*, who was to have 5*l.* a Month for his Attendance on him. That not being able to get a Lodging for the Purpoſe in the City, he took him on Board the *Ruby*, in order to have him taken proper Care of there. He denies that he ever conſented to the Murder, or had any Knowledge of it; and inſiſts on the great Improbability there is that he ſhould be concern'd in the Murder, ſince, he ſays, he knew that Sir *John* had cut off the Entail of the Family-Eſtate, and had actually made his Will, by which he had deviſed the Eſtate to another Branch of the Family. So that, ſays he, Sir *John* dying while this Will ſtands, I have no Chance for the Eſtate: whereas, as long as he lived, my Chance as Heir at Law continued; for he might have chang'd his Mind, and alter'd or deſtroy'd his Will.

The firſt Witneſs he call'd was Mrs. *Gethins*, who, I ſuppoſe, lets Lodgings in the City; and ſhe ſays, that Mr. *Goodere* never made a Secret of his Deſign, of confining his Brother as a Lunatick; and that about three Weeks before this Matter happen'd, he ſpoke to her for a Garret in her Houſe for that Purpoſe; but ſhe remembers no Diſcourſe the Priſoner had with her about *Mahony*.

Mr. *Goodere* then call'd two Witneſſes in Relation to ſomething which was opened againſt him, (but not directly prov'd by any of the Witneſſes call'd by the Proſecutors) touching his ſending *Mahony* and *White* away in the Yawl the Morning the Fact was committed.

They were Mr. *Marſh* and Mr. *Dagg*.

Mr. *Marſh* ſays, that on the *Sunday* in the Afternoon, after Sir *John* was brought aboard, he was order'd by Mr. *Goodere* to go up in the Yawl early the next Morning, to fetch Letters from the Poſt-Office; and he tells you that as he was ſetting out on *Monday* Morning, he was inform'd by ſome of the Ship's Company, that *Mahony* and *White* were to go with him. Upon which he went to the Captain to have his Orders; for, ſaid he, I never take any Body aſhore without Leave. And he tells you, that Mr. *Goodere* did order him to take *White* and *Mahony* up in the Yawl. He ſays, that he had no Orders to land them at any particular Place; and that they were put aſhore at the *Gibb*, the uſual Place of Landing, about Six in the Morning.

Mr. *Dagg* tells you, that *Mahony* had charg'd one *Mervin* in his Cuſtody in an Action for Wages; that the *Wedneſday* or *Thurſday* before this Matter happened, he waited on Mr. *Goodere* from *Mervin*, in order to accommodate Matters with *Mahony*: And that Mr. *Goodere* appointed to meet *Mervin* on that Affair the *Monday* following. He cannot ſay, that *Mahony* was to meet on that Day (tho' indeed he ſays he did tell a Gentleman ſo), and knows not of any Buſineſs *White* had that Day in *Briſtol*.

Mr. *Goodere* next called three Witneſſes to the Point of Sir *John*'s Lunacy. The two firſt have lived with him as Servants, and they give you divers Inſtances of an extravagant unaccountable Behaviour in him; from which they conclude that he muſt have been a Madman. The other Witneſs ſays, that he knew Sir *John* for ſome Years; and in general ſays, that from his Actions he took him to be mad.

He then called ſeveral Witneſſes, Gentlemen of Worth, who have known him many Years; and they all agree in giving him a very good Character, as to his former Life and Converſation: and particularly ſay, that they always took him to be a good-natur'd, well-behav'd Man, and one that merited the Love and Eſteem of his Neighbours. One of theſe Witneſſes, Mr. *Forcevil*, ſays, that he was conſtant at Church on *Sundays* twice a Day, generally attended the Church-Service, and ſeldom miſſed attending at the Sacrament.

Another of theſe Witneſſes, Mr. *Aſhfield*, having given the Priſoner a good Character, was aſk'd touching Sir *John*, particularly with Regard to his Sanity; and he ſeems ſurpriſed to hear Sir *John* repreſented as a Mad-man; and tells you, that he always took him to be a Man of good Underſtanding: and goes ſo far as to ſay, that he took him to be the Man of the beſt Senſe in the Family. He was aſk'd, touching the Priſoner's having been inform'd of the Contents of his Brother's Will; and he tells you, that the Priſoner was inform'd of the Purport of the Will; but adds, that the Priſoner declar'd that he did not value the Will: And ſays, that there had been a long Miſunderſtanding between the Brothers.

Mr. *Goodere* call'd a Witneſs (Mr. *Watkins*) to prove that he was inform'd of the Contents of Sir *John*'s Will. And he tells you, that about half a Year, or three Quarters of a Year ago, he did inform Mr. *Goodere*, that Sir *John* had made his Will, and had given his Eſtate to the *Foots*; who, it ſeems, are Nephews to Sir *John* and the Priſoner. But he tells you, that the Priſoner then ſaid, he thought Sir *John* had no Power to make a Will. He ſays, that in diſcourſe about the Will, he ſpoke it to the Priſoner as his Opinion, that if Matters could be reconciled between Sir *John* and him, that Will would not ſtand long: For, Gentlemen, he likewiſe ſays, that there has been a long Miſunderſtanding between the Brothers. This Witneſs was likewiſe aſk'd, touching Sir *John*'s Lunacy, and he ſeems ſurpriſed to hear that his Sanity is call'd in Queſtion; and gives him an advantageous Character in other Reſpects too.

This, Gentlemen, is the Subſtance of the Evidence that has been given on the one Side and the other. And though the Evidence has been very long, and, as you obſerve, chiefly pointed at the Priſoner *Goodere*; yet with Regard to your preſent Enquiry, the Matter after all will lie in a narrow Compaſs. You obſerve, Gentlemen, the Indictment charges that he was preſent, aiding and abetting the Murder; and therefore however inſtrumental you may ſuppoſe him to have been in procuring the Death of Sir *John*, by carrying him on Board, and treating him there in the manner you have heard; yet, if you have not Evidence to induce you to believe that he was preſent, aiding and abetting at the Murder, he will not be guilty on this Indictment. But, Gentlemen, you muſt not be deceiv'd by the meer Sound of Words. It is not neceſſary, in order to render a Perſon guilty as a Principal in Murder or other Felony, that he ſhould be in the ſame Room, or on the very Spot where the Fact is committed, or even in Sight or Hearing of it: If he be engag'd in the Deſign, and poſts himſelf at the Time of Execution in a proper Station to give Aſſiſtance, if Need be, or to prevent a Surpriſe whereby the Perſons actually committing the Fact are encouraged in the Perpetration of it, he is in the Eye of the Law preſent, aiding and abetting, and equally a Principal in the Fact with thoſe who actually commit it. An Inſtance or two may make this Rule better underſtood. If ſeveral Perſons agree to commit a Murder on the Highway, or in the open Fields, and one Party of them undertakes to ſee the Fact committed; the others diſperſe themſelves to their ſeveral Stations, and ſtand upon the Watch to prevent a Surpriſe: they are all equally guilty, and in the Eye of the Law preſent at the Fact. So, if a Number of People agree to commit a Murder, and to that End break into a Houſe, and then diſperſe themſelves into ſeveral Rooms; or, if any of the Company ſtand without, and keep the Door while the Murder is committed within, they are all equally guilty, and in the Eye of the Law preſent. Nay, tho' the original Intention might be barely to commit a Robbery, yet, if in Proſecution of that Deſign a Murder is committed, the whole Company, thoſe who ſtood upon the Watch, as well as thoſe who committed the Fact, are all equally guilty, and Principals in the Murder. And therefore, Gentlemen, if, upon the Evidence which has been given, you believe that the Priſoner *Goodere* did ſtand at the Door of the Purſer's Cabbin while the Murder was committed, in order to encourage thoſe within in the Perpetration of the Fact, or to prevent any Aſſiſtance which might have come, you muſt find him guilty. And, Gentlemen, I muſt obſerve to you, that it is proved by four Witneſſes, that he was in the Cock-pit while the Cry of Murder was heard in the Cabbin. Two of theſe Witneſſes are poſitive that he ſtood at the Cabbin-Door at that time with a drawn Sword in his Hand; and that while he was there poſted, he order'd them to keep back. And one of the ſame Witneſſes is likewiſe poſitive, that ſoon after the Cry of Murder ceas'd, Mr. *Goodere* handed a Candle into the Cabbin.

Mr. *Goodere* indeed has call'd ſeveral Witneſſes, who have given him an advantageous Character; but, Gentlemen, I think it my Duty to tell you, that tho' Character ought to have its Weight when Matters are in themſelves doubtful, or where the Charge is ſupported by Witneſſes of doubtful Credit; yet in clear Caſes, and when the Credit of the Witneſſes is not impeach'd, I think Character alone ought to weigh very little with you. And upon the whole, if you believe the Witneſſes for the King, you muſt find him guilty; if not, you muſt acquit him.

As to *Mahony*, I think you can have no Difficulty if you believe the Evidence of *Jones* and his Wife, and lay any Streſs on his own Confeſſion; and indeed he now rather endeavours to excuſe than denies the Fact.

[*Then the Jury withdrew, to conſider of their Verdict; and after a ſhort Space, return'd again.*]

Clerk of Arraigns. Gentlemen, anſwer to your Names. *Chriſtopher Bromadge.*

Chriſtopher Bromadge. Here. [And ſo of the reſt.]

Cl. of Arr. Gentlemen, are you all agreed of your Verdict? *Jury.* Yes.

Cl. of Arr. Who ſhall ſay for you?—*Jury.* The Fore-man.

Cl. of Arr. *Matthew Mahony*, hold up thy Hand. You of the Jury, look upon the Prisoner: How say you, is *Matthew Mahony* guilty of the Felony and Murder, whereof he stands indicted, or not guilty?—*Ju.* Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements had he at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge?—*Jury.* None.

Cl. of Arr. *Samuel Goodere*, hold up thy Hand. You of the Jury, look upon the Prisoner: How say you, is *Samuel Goodere* guilty of the Felony and Murder, whereof he stands indicted, or not guilty?—*Jury.* Guilty.

Cl. of Arr. What Goods or Chattels, &c. (as before.)—*Jury.* None.

Cl of Arr. Hearken to your Verdict, as the Court hath recorded it. You say that *Matthew Mahony* is guilty of the Felony and Murder, whereof he stands indicted: You say that *Samuel Goodere* is guilty of the Felony and Murder, whereof he stands indicted; and that they nor either of them, had any Goods or Chattels, Lands or Tenements, at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge; and so you say all.

Cl. of Arr. Keeper, take *Matthew Mahony* and *Samuel Goodere* the Prisoners from the Bar, and look to them; they stand convicted of wilful Murder.

[*Then the Court adjourn'd to the same Place the next Morning Eight o'Clock.*]

The Trial of Charles White, *for the Murder of Sir* John Dineley Goodere.

ON *Friday* the 27th of *March* 1741, *Charles White* was brought to the Bar of the Court, to be arraigned for the Murder of Sir *John Dineley Goodere*, upon a Indictment found by the Grand Jury for the City and County of *Bristol* on the Day preceding; and the Court proceeded thus:

Clerk of the Arraigns *Charles White*, hold up your Hand. [*Which he did.*]

You stand indicted by the Name of *Charles White*, late of the Parish of St. *Stephen*, in the City of *Bristol* and County of the same City, Labourer, for that you and one *Matthew Mahony*, late of the same Parish, City and County, Labourer, not having the Fear of God, &c. on the nineteenth Day of *January*, in the fourteenth Year, &c. in and upon one Sir *John Dineley Goodere*, in the Peace of God, &c. then and there being, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that the said *Matthew Mahony*, a certain Cord of the Value, &c. about the Neck of the said Sir *John* then and there feloniously, voluntarily, and of his Malice afore-thought, did put and fasten: And that the said *Matthew Mahony* with the Cord aforesaid, by him so about the Neck of the said Sir *John* put and fastened, then and there, him the said Sir *John* feloniously, &c. did choak and strangle; of which said choaking and strangling of him the said Sir *John* by the said *Matthew Mahony*, in Manner and Form aforesaid done and perpetrated, he the said Sir *John* then and there instantly died. And that you the said *Charles White*, then and there feloniously, &c. was present, aiding, abetting, comforting and maintaining the said *Matthew Mahony* in Manner and Form aforesaid, feloniously, &c. the said Sir *John* to kill and murder; and so that you the said *Charles White*, in Manner and Form aforesaid, the said Sir *John* then and there feloniously, &c. did kill and murder, against the Peace, &c.

How say'st thou *Charles White*, art thou guilty of the Felony and Murder, whereof thou standest indicted, or not guilty?

Charles White. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Charles White. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

The Court proceeded in like manner as upon the Indictment against Mr. *Goodere* and *Mahony*; and the Names of the Jury sworn, were as follow:

John Nash.	*William Jones.*	*John Willis.*
Joseph Wilson.	*Robert Moody.*	*Cornelius Sandford.*
Samuel Cave.	*William Williams.*	*John Taylor.*
William Abraham.	*William Arnold.*	*Thomas Seed.*

Then Proclamation for Information was made, and the Jury charged with the Prisoner.

Mr. *Vernon.* May it please you, Mr. Recorder, and you Gentlemen of the Jury, I am Counsel for the King against the Prisoner at the Bar, who stands indicted for the Murder of Sir *John Dineley Goodere*; and the Indictment charges that one *Matthew Mahony* (who has already undergone the Justice of his Country) strangled the Deceased, and that the Prisoner at the Bar was present, aiding and abetting him in the Perpetration of that horrid Fact; and which (if true) will be the same in consideration of Law, as if the Prisoner had with his own Hands strangled the Deceased, and actually drawn the fatal Cord which put a period to his Life. Gentlemen, it is with an aking Heart I discharge this melancholy Task against the Prisoner, but criminal Justice must be administer'd as well as civil, and the great Safety of the Innocent is in the Punishment of the Guilty: And of this the Prisoner may be assured, that as he now stands at the Bar for his Life and Death, and unassisted by Counsel in Matter of Fact, I shall carefully confine myself to the Letter of my Instructions, without any Aggravation of Facts or Circumstances, and endeavour so to discharge my Duty on this melancholy Occasion, as that he may have nothing to fear but from Guilt, or to hope but from Innocence. And, Gentlemen, as I am instructed, Captain *Samuel Goodere*, late Commander of the *Ruby* Man of War, and Brother of the late unfortunate Sir *John Dineley Goodere*, having on *Sunday* the eighteenth of *January* last, with the Assistance of *Mahony* and other Ruffians, forcibly seized upon Sir *John*, and hurried him on board the *Ruby* (which then lay stationed in *King-road*, within the Body of your County), with a design of murdering Sir *John*; the Prisoner (a private Mariner belonging to the *Ruby*) was pitch'd upon by the Captain as a Person fit to be concerned with *Mahony* in the Execution of that base and barbarous Design. And accordingly, on *Monday* the nineteenth about One in the Morning, the Prisoner was called up by *Mahony* to attend the Captain in his Cabbin, which he did; and the Captain after plying the Prisoner pretty plentifully with Rum, proposed to him the murdering of his Brother, in conjunction with *Mahony*; and no sooner said but done, Gentlemen: for this infatuated Wretch the Prisoner, influenc'd by the strong Delusion of Wickedness, and Temptation of mistaken Gain; and not content with his honest Wages, nor considering that the Wages of Sin are Death, gave at once into the monstrous Proposal for the sake of Plunder. In a word, Gentlemen, he readily followed *Mahony* into the Purser's Cabbin, where Sir *John* lay confined; and as that unhappy Gentleman had from the time of first seizing him been treated as a Malefactor, so they executed him as such; for *Mahony* seiz'd him by the Throat, and, then fastening about his Neck a Rope, which they had brought with them for the purpose, strangled him in the Presence and with the Assistance of the Prisoner; and indeed without his Assistance, Sir *John* being strong and of an undaunted Spirit, would probably have been able to have defended himself against the Attack of *Mahony*. Gentlemen, no sooner had they robbed Sir *John* of his Life, but they fell to rifling him of his Watch and Money; they divided the Spoil between them, and then betimes in the Morning the Prisoner with his Accomplice *Mahony* made off from the Ship, and took refuge in this City; a very unfit Sanctuary for Ruffians and Murderers, considering the good Order and Government of the Place, and the constant Care of its worthy Magistrates in the due Execution of the Laws. But Justice pursued, and will, I doubt not, overtake him. He was apprehended, and made an early Confession of his Guilt, and comes now to answer for his Delinquency. Gentlemen, we shall call the Ship's Cooper and his Wife, who heard the Groans and Outcries of the Deceased, and were Spectators of what passed in the Purser's Cabbin immediately after this Tragedy, and saw the Prisoner in the very Act of rifling the Deceased, almost at the instant of his Death. We shall also lay before you the Prisoner's own Confession, on his Examination before the Justices; and then, Gentlemen, we doubt not, but you will be of opinion, that by the Laws of his Country he ought to die for his Transgression, as some Atonement for his own Guilt, and an Example of Justice to others.

(*Edward Jones* sworn.)

Mr. *Vernon.* *Edward Jones*, tell Mr. Recorder and the Jury what you know concerning the Death of Sir *John Dineley Goodere*.

Edward Jones. On the 18th of *January* last, at night, I was in bed with my Wife in the Slop-room, next the Purser's Cabbin down in the Cockpit in the *Ruby* Man of War, then lying at *King-road*, and Sir *John Dineley* was then confined in the Purser's Cabbin. I heard him pray to God to be his Comforter under his Afflictions; he said, that he knew he was to be murdered there; and he prayed that it might come to light by one means or another. But I took no notice of him, because I thought him a crazy Man, as I heard the Captain say he was. After that, I fell asleep; and, I believe, about two or three of the clock my Wife waked me, and said to me, Don't you hear the Noise that is made by the Gentleman? I believe they are killing him. I then heard Sir *John* kick, and cry out, Here is twenty Guineas, take it, take it; don't murder me; must I die! must I die! Oh my Life! and gave several Kecks with his Throat like a dying Man, and then he was still. I would have got out of bed, but my Wife persuaded me not, for fear I should be killed too. It was dark; but a Light was handed in to the Purser's Cabbin, and then I got up upon my Knees, and I could see a Light glimmering through the Crack of the Boards; I saw *Mahony* with a Candle in his Hand, Sir *John* was lying on his Side. The Prisoner *Charles White* was there, and he pulled Sir *John* to turn him about, and *White* said he could not get the Watch out of his Pocket; and he tumbled him up to come at the Money, and unbuttoned his Breeches. I saw him get hold of the Watch-Chain; and *White* gave *Mahony* the Watch; and *White* put his Hand in one of the Gentleman's Pockets, and cursed that there was nothing but Silver; he put his Hand in another Pocket, and there he found the Gold; he offered it to *Mahony*, but *Mahony* damned him, and bid him keep it till by-and-by. *White* pulled out a Piece of Paper from one of Sir *John's* Pockets, and was going to read it; but *Mahony* said, Damn ye, don't stay to read it now.

Mr. *Vernon.* Was Sir *John* dead in appearance when you saw them rifling his Pockets?

Edward Jones. As they were turning him about, one of his Legs was crooked, which made me think he was dead, and that they had killed him in the Dark. The next Morning I saw Sir *John* dead, lying in the Purser's Cabbin, and I believe he was strangled.

Mr. Recorder. Prisoner, will you ask this Witness any Questions?

Charles White. Please you, my Lord, I desire you will ask Mr. *Jones*, whether Sir *John* was living or dead when he saw me in the Cabbin first?

Mr. Recorder. Mr. *Jones*, the Prisoner asks you whether Sir *John* was living or dead when you first saw him in the Cabbin?

Edward Jones. Sir *John* was dead when *White* turned him about, for they killed him in the dark. I heard two Voices.

Charles White. Whether *Edward Jones* saw any body strangling Sir *John* besides *Mahony*?

Mr. Recorder. The Witness does not say that he saw any body strangling Sir *John*, that he says was done in the Dark: but, he says, he heard two Voices in the Cabbin, and as soon as the Light was brought in, he saw you rifling Sir *John's* Pockets.

Mr. *Vernon.* Call *Margaret Jones*.

(*Margaret Jones* sworn.)

Mr. *Vernon.* Mrs. *Jones*, will you give Mr. Recorder and the Jury an Account of what you know in relation to the Death of Sir *John Dineley Goodere*?

Margaret Jones. Yes, Sir. On the 18th of *January* last, at Night, I lay on board the *Ruby* Man of War with my Hand, and in the Purser's Cabbin, next to where we were in bed, Sir *John* was under Confinement; the Captain said he was a Madman, and that he brought him there to save him from a Gaol. About ten o'Clock *Mahony* was left there with Sir *John*; Sir *John* desired him to go, but *Mahony* said he had Orders to stay there to take care of him. About 12 o'clock in the Night I went to sleep; about two o'clock I awaked, and heard the Gentleman talk to *Mahony*, and *Mahony* persuaded the Gentleman to go to sleep; the Gentleman said he could not: they talked together a good while. I heard somebody say to the Gentleman, You must lie still, and not speak a Word for your Life; and then I heard a great struggling; who it was, I don't know. The Gentleman cried out Murder! Help, for God's Sake; and made several Kecks in his Throat, as though somebody was stifling him. I shook my Husband, and waked him. I heard two People in the Cabbin whispering; the Gentleman cried out, Murder again, Help for God's Sake! He said, Here's twenty Guineas in my Pockets, take it, take it; Must I die! Oh my Life! And somebody in the out-side offered to go into the Cabbin; but one of them within said, Keep out, you Negro; and then a great Noise was made, as tho' the Cabbin would have been beat down; and then a Candle was brought in. I got up and looked through a Crevice: I saw a Man, I believe it was *White*, pulled the Gentleman upright. *Mahony* had the Candle in his Hand. I observed the other put his Hand in the Gentleman's Pockets; one of them said, Damn ye, pull out his Watch: I saw the Person take hold of the Watch string, and pulled it out, and said to the other, Here thee take it; and then searched another Pocket, and said, Here's nothing but Silver: But then he searched another Pocket, and said, Here it is, and pulled

pulled out a Purſe. And ſoon after that I heard the Door unbolted, and then I heard *Mahony* ſay, Where ſhall I run? And another ſaid, Follow me, Boy. And they went upon Deck through the Hatch-hold.

Mr. *Vernon.* Did you know the Voice of either of the two Perſons whom you heard ſpeaking to one another?

Margaret Jones. Yes, I knew *Charles White* to be one of the Men by his Voice. I knew his Voice when he ſaid to *Mahony*, Follow me, Boy. I am certain the Priſoner at the Bar was in the Cabbin; I obſerved his Bulk, but could not look earneſtly at him, being very much ſhocked and ſurprized; but my Huſband told me it was *Charles White.*

Mr. Recorder. White, will you aſk this Witneſs any Queſtions?

Charles White. Pleaſe you, my Lord, to aſk her, whether ſhe can ſay that ſhe ever heard my Voice in the Cabbin?

Mr. Recorder. Mrs. *Jones*, the Priſoner aſks you, if you heard his Voice in the Cabbin?

Margaret Jones. I could not know his Voice in the Cabbin, for he ſpoke low; and when a Perſon whiſpers, the Voice is not ſo diſtinguiſhable: But as ſoon as he ſpoke aloud, I knew it to be his Voice.

Mr. Recorder. Did you ſee him in the Cabbin, Mrs. *Jones?*

Margaret Jones. My Lord, I did not ſee his Face, but by his Voice when he went out, I knew him to be the ſame Man.

Charles White. Pleaſe you, my Lord, to aſk her, whether ſhe ever heard me ſay, Follow me, Boy, before?

Mr. Recorder. Mrs. *Jones*, you hear the Queſtion, give an Anſwer to it.

Margaret Jones. I never heard him ſay ſo before; but I knew his Voice perfectly well, having been acquainted with him for two Years.

Mr. *Vernon.* We muſt now deſire that the Priſoner's Examination may be read. Cryer, ſwear Mr. *James Britten*, (ſecond Clerk to the Town-clerk).

(Mr. *Britten* ſworn.)

Mr. *Vernon.* Mr. *Britten*, What Paper is that?

Mr. *Britten.* The Examination of the Priſoner at the Bar taken before Mr. Mayor.

Mr. *Vernon.* Did you ſee the Priſoner ſign it in Mr. Mayor's Preſence?

Mr. *Britten.* Yes, I did.

Mr. *Vernon.* Did you ſee Mr. Mayor ſign it?—Mr. *Britten.* Yes.

Mr. *Vernon.* Is that his Hand?—Mr. *Britten.* Yes.

Mr. *Frederick, Counſel for the Priſoner.* It is opened by Mr. *Vernon*, that this Examination contains the Priſoner's Confeſſion of the Fact. I would aſk Mr. *Britten*, Was the Confeſſion voluntarily made or not? for if it was not voluntarily, it ought not to be read.

Mr. Recorder. That is an improper Queſtion, unleſs the Priſoner had inſiſted, and made it Part of his Caſe, that his Confeſſion was extorted by Threats, or drawn from him by Promiſes; in that Caſe, indeed, it would have been proper for us to enquire by what Means the Confeſſion was procured: But as the Priſoner alledges nothing of that Kind, I will not ſuffer a Queſtion to be aſked the Clerk, which carries in it a Reflection on the Magiſtrate before whom the Examination was taken. Let it be read.——*Cl. of Arr.* Reads.

City and County of the City of Briſtol. } to wit, 20 *January*, 1740.

The Examination of Charles White, *a Sailor belonging to the* Ruby *Man of War, now lying in this Port, born in* Drogheda *in* Ireland, *aged about thirty-ſix Years.*

THE Examinant voluntarily confeſſeth, and ſaith, That he hath been a Sailor on board the ſaid Ship for about ſeventeen Months laſt paſt: That about one of the Clock in the Night of *Sunday* laſt, the eighteenth inſtant, he was aſleep in his Hammock on board the ſaid Ship, and was called out by one *Matthew Mahony*, another Sailor on board the ſaid Ship (and now in Cuſtody), who told him, that the Captain (meaning Captain *Samuel Goodere*, Commander of the ſaid Ship) wanted to ſpeak with him in his Cabbin; and accordingly he went to him; and when he came to him, the Captain aſked him to ſit down, and then gave him a Wine-glaſs of Rum, and after that four or five more, and then aſked him if he could kill a *Spaniard?* And this Examinant anſwered him, That he never did. Upon which the Captain told him, he had got a Job for him to do, if he would undertake it: And this Examinant aſked him what Job it was? And the Captain told him, it was to make away with his Brother, whoſe Name (as this Examinant is informed) was Sir *John Dineley Goodere*, Bart. who was in the Purſer's Cabbin on board the ſaid Ship: And the ſaid *Matthew Mahony* told this Examinant, that he muſt go with him to help do it. Whereupon the ſaid Captain went out of the Cabbin firſt, *Mahony* followed him, and this Examinant went next; and when he came to the Purſer's Cabbin Door, where Sir *John Dineley* was, the Captain was ſtanding Centinel himſelf at the Door with a Cutlas in his Hand, and *Mahony* had entered the Cabbin, and this Examinant entered likewiſe, where *Mahony* was talking with the ſaid Sir *John*, and had a Piece of Rope, called three-quarter of an Inch Rope, in his Hand, about ſix Foot in Length, and Sir *John* was lying on the Bed; and particularly *Mahony* aſked Sir *John* how his Head was, and what he had got about it? And at laſt told him, it did not ſignify talking about it any longer, and then fell on him on the Bed, took hold of his Throat with his Hand (his Stock being on) and ſo ſtrangled him with his Stock, and afterwards put the ſaid Rope about his Neck, (which was prepared for the Purpoſe, with a Nooſe in it, before it was brought out of the Captain's Cabbin), and then *Mahony* hauled the Rope tight about his Neck; and upon this Examinant's aſking him what he did that for? He ſaid, For fear he ſhould not be dead enough. And this Examinant took a Knife out of his Pocket, and cut it off his Neck, and threw it overboard. During all which Time the Captain ſtood Centinel at the Door as aforeſaid; and as ſoon as this Examinant had ſo cut the Rope off, the Captain handed a Candle to *Mahony*, who gave it to him, and *Mahony* took the Watch and Money out of Sir *John*'s Pocket; and then the Captain aſked them, Have ye done? Meaning (as this Examinant apprehended) murdered the ſaid Sir *John*. And then came in himſelf, and this Examinant went through the Hold, and came upon Deck, where he walked for about the Space of Half a Quarter of an Hour, and the Captain and *Mahony* went into the Captain's Cabbin together, and then this Examinant went into the Steeridge, and *Mahony* called this Examinant into the Cabbin, where the Captain had undreſſed himſelf in order to go to Bed; and there the Captain gave him five *Guineas*, and this Examinant had received of the ſaid Captain a Six-and-Thirty Shilling Piece of Gold before the ſaid Sir *John* was murdered. And further this Examinant ſaith, That *Mahony* ſhewed the Captain the Watch he had taken out of Sir *John*'s Pocket, and the Captain gave *Mahony* his own Watch, and kept Sir *John*'s himſelf; and *Mahony* likewiſe ſhewed the Captain the Money he had taken out of Sir *John*'s Pocket, who bid him keep it; and *Mahony* gave it to this Examinant, who put it in his Pocket, and he and *Mahony* ſhared the Money on the Fore-caſtle, and this Examinant had two Pieces to one, in conſideration that *Mahony* had the Watch; and this Examinant believes they ſhared about thirty Pounds between them. And further this Examinant ſaith, That the ſaid Captain told him and *Mahony*, that they might go any where for three Weeks, and he would ſend them their Tickets. And laſtly, this Examinant ſaith, That between four and five of the Clock the ſame Morning, the Man of War's Yawl was going to this City, and he and *Mahony* landed at the *Gibb* here. *Charles White.*

Mr. Recorder. Well, Priſoner, what have you to offer in your Defence?

Charles White. Pleaſe you, my Lord, I was in my Hammock between the Hours of Twelve and One, and this *Mahony* came to me and ſaid, *Charles White, Charles White!* I ſaid, What do you want? He ſaid, Turn out. I aſked him what he wanted of me now? He ſaid again, Turn out, turn out. And with that I turned out, and went upon Deck to make Water, and while I was doing it, he told me that he wanted me to go with him. I aſked him where he was going to bring me? But he led me into the Cabbin where the Captain was. When I came in, the Captain bid me ſit down. I begged him to excuſe me from taking ſo great a Freedom as that in his Company. But at laſt I ſat down, and I drank a Glaſs of Rum. Then the Captain asked me, whether I had ever killed a *Spaniard?* I told him, No, I never was engaged with one to kill him. Drink about, *Mahony*, ſaid the Captain. With that we drank about, and finiſhed a Bottle and a Half in raw Drams. With that he ſaid, Come along with me. I asked him where he was going? I went with him, the Captain firſt, and *Mahony* after him; and they went below, and to what Intent I knew not, being quite in Liquor with drinking ſo much Rum. Said the Captain to me, when we came down, Tarry here till I call you. Soon after *Mahony* came to me, and told me the Captain wants you. Then I went into the Cabbin, and ſat down in it, and *Mahony* and the Captain were talking together; but what they did I know not, for I never laid a Hand near the Gentleman.

Mr. Recorder. You ſay you were in the Purſer's Cabbin, and do you not know what happened there?—*Charles White.* I cannot tell, Sir, what paſt.

Mr. Recorder. If this Defence be true, how came you to be ſo unjuſt to yourſelf to make the Confeſſion which has been read?

Charles White. Pleaſe you, my Lord, I was in Liquor, and did not know what paſſed between them, for I had not my Senſes about me.

Mr. Recorder. Why, 'tis charged upon you by the Cooper, that you examined Sir *John*'s Pockets, and took out his Watch and Money, and a Piece of Paper which *Mahony* perſuaded you to throw away, as of no Conſequence, or elſe to put it into your Pocket, and read it at another Time.

Charles White. Pleaſe you, my Lord, I know nothing of it; I have ſeveral Witneſſes to my Character.

Mr. Recorder. Call your Witneſſes.

(*Michael Smith* ſworn.)

Mr. Recorder. How long have you known the Priſoner?

Smith. From a Child, Sir; we went to School together for eight Years.

Mr. Recorder. What do you know of him?

Smith. Sir, I never heard to the contrary but that he was an honeſt Man, and bore a good Character.

(*Theodore Court* ſworn.)

Court. I never knew any Harm of the Priſoner till this unhappy Affair; but I have been informed, that ſince he hath been under Confinement, he hath told ſeveral People who have gone to ſee him, that if he can get clear of this, he will kill my Mate.

(*Edward Jones* ſworn.)

Edward Jones. I have known the Priſoner for three Years, but never knew any Harm by him; I was with him in the *Weſt-Indies*, in the *Kingſale* Man of War, but till this Misfortune happened, I never knew any Harm by him.

Mr. Recorder. Are you ſure then, that you ſaw him in the Cabbin, rifling the Deceaſed's Pockets?

Edward Jones. Yes, my Lord, I am ſure of that.

(*William Macguinis* ſworn.)

Macguinis. Pleaſe you, my Lord, I knew the Priſoner at the Bar ever ſince he was an Infant; I went to School with him, and never knew any Harm that he did before; I have often both eat and drank with him, and when he is ſober, he is as good and civil a Man as need be.

(*Daniel Wellar*, Carpenter of the Ship, ſworn.)

Wellar. I have been about ſixteen or ſeventeen Months with him, and he always behaved himſelf well on board, and I never knew any Harm of him before; but his Voice is known from all the Men in the Ship.

Mr. Recorder. To what Purpoſe do you ſay, that his Voice is know from all the Men in the Ship?

Wellar. Becauſe they talk about his Voice oftentimes.

Mr. *Vernon.* If I apprehend him right, Sir, he ſpeaks this in Confirmation of Mrs. *Jones*'s Evidence, who ſwore ſhe knew the Priſoner's Voice. Gentlemen, I was in Hopes the Priſoner would have ſtood to his former Confeſſion, inſtead of endeavouring to retract it, and have given Glory to God by a public Penitence and Sorrow for the Heinouſneſs of his Crime, inſtead of putting on a Shew of Innocence againſt Proof ſo apparent of his Guilt.—Defence, I apprehend, he has made none; he has called indeed ſome Witneſſes to ſpeak to his Character; and Character, it muſt be admitted, is of Weight, by way of balancing the Proofs, where the Fact is doubtful and uncertain; but when the Evidence is ſtrong and pregnant, and Guilt ſtares the Priſoner in the Face, Character weighs not a ſingle Grain in the Scale of Juſtice. How far the Priſoner's Character and early Confeſſion of the Fact, with ſome Ingredients in his Caſe, may be of Service to him in another Place, is not the preſent Conſideration; he ſtands now at the Bar for your Juſtice, not your Pity; and it fully appears in Proof, that he was an Accomplice with *Mahony* in this barbarous Murder, as laid in the Indictment: ſo that Life ought to go for Life by the Laws of God and Man, and I doubt not in the leaſt, but that you will conſcientiouſly diſcharge the Duty you owe to God and your Country, by going according to your Evidence, and finding the Priſoner guilty.

Mr. Recorder.

GENTLEMEN of the Jury, the Priſoner at the Bar ſtands indicted for the Murder of Sir *John Dineley Goodere.* The Indictment charges, that

that the Deceaſed was ſtrangled by one *Matthew Mahony*, and that the Priſoner was preſent, aiding and abetting him in the Fact.

To ſupport this Charge, the Proſecutors have called two Witneſſes, *Edward Jones*, and *Margaret* his Wife. *Edward Jones* ſays, that he lodged in the Night between the eighteenth and nineteenth of *January* laſt, in the *Ruby* Man of War, in the Slop-room, which adjoins to the Purſer's Cabbin; where, he ſays, the Deceaſed was confined. He tells you, that about Two in the Morning he was waked by his Wife, and heard Sir *John* crying out, Here's twenty Guineas, take it, take it; don't murder me; muſt I die? He ſays Sir *John* gave ſeveral Kecks with his Throat like a Man expiring, and quickly after was ſtill. He tells you, that then a Light being brought into the Cabbin, he got up and look'd through a Crevice in the Partition, and ſaw the Priſoner at the Bar engaged in rifling Sir *John*'s Pockets, *Mahony* ſtanding by with a Candle in his hand. He ſays, that Sir *John* was dead, as he believes, when the Priſoner was rifling his Pockets; and from what he obſerv'd the next Morning, that he was ſtrangled.

Margaret Jones is ſomething fuller in her Evidence, as to ſome Circumſtances previous to the Murder; but in the main, agrees with her Huſband touching the rifling of Sir *John*'s Pockets after he was dead. She is ſure *Mahony* held the Candle, and that another Perſon, whom ſhe takes to be the Priſoner at the Bar, was rifling his Pockets. She ſays, ſhe had not a perfect view of him; but by his Bulk, and from what her Huſband then told her, ſhe concluded at the time, that it was the Priſoner at the Bar. She ſays further, that when *Mahony* and that other Perſon went out of the Cabbin, ſhe heard *Mahony* ſay, Whither ſhall I run? The other anſwered, Follow me, my Boy. And then ſhe ſays, ſhe knew it was the Priſoner made that Anſwer by his Voice. She ſays ſhe knows the Priſoner's Voice perfectly well, having been acquainted with him two Years.

The Proſecutors then read the Priſoner's Examination, which contains a full Confeſſion of the Fact, as laid in the Indictment.

You have heard, Gentlemen, what the Priſoner has ſaid to this Charge; He admits that he went into the Purſer's Cabbin, but ſays, that being much in Liquor, he knows nothing of what paſs'd there; and denies that he had any Concern in the Murder. He called ſome Witneſſes to his Character; and I muſt obſerve to you, that one of his Witneſſes, *Daniel Wellar*, ſays, that the Priſoner's Voice is diſtinguiſhable from the Voices of all the Men in the Ship. This will give ſome Weight to *Margaret Jones*'s Evidence, That ſhe knew him by his Voice.

And, Gentlemen, upon the whole, if you believe the Evidence for the King, and give Credit to the Priſoner's Confeſſion, you muſt find him guilty.

[*Then the Jury withdrew, to conſider of their Verdict; and after a ſhort Space returned again.*]

Cl. of Arr. Gentlemen, anſwer to your Names: *John Naſh.*

John Naſh. Here. [*And ſo of the reſt.*]

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?—*Jury.* Yes.

Cl. of Arr. Who ſhall ſay for you?—*Jury.* The Foreman.

Cl. of Arr, Charles White, hold up thy Hand. You of the Jury look upon the Priſoner; How ſay you? Is *Charles White* guilty of the Felony and Murder whereof he ſtands indicted, or not guilty?—*Jury.* Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the time of the ſaid Felony and Murder committed, or at any time ſince, to your Knowledge?—*Jury.* None.

Cl. of Arr. Hearken to your Verdict, as the Court hath recorded it: You ſay, that *Charles White* is guilty of the Felony and Murder whereof he ſtands indicted, and that he had no Goods or Chattels, Lands or Tenements at the time of the ſaid Felony and Murder committed, or at any time ſince, to your knowledge; and ſo you ſay all.

Cl. of Arr. Keeper, take *Charles White* the Priſoner from the Bar, and look to him; he ſtands convicted of wilful Murder.

On *Saturday* the 28th of *March* the Priſoners were brought again to the Bar, in order to receive their Sentence; and the Court proceeded thus:

Cl of Arr. Cryer, open the Court.

Cryer. Oyez, Oyez, Oyez; all manner of Perſons that have any more to do before the King's Majeſty's Juſtices of Oyer and Terminer, and general Gaol-Delivery for this City and County, and were adjourned over to this Time and Place, draw near, and give your Attendance.

Cl. of Arr. Mr. Recorder, will you pleaſe that the Priſoners ſhall be called up to Judgment?—*Mr. Recorder.* Yes.

Cl. of Arr. Keeper, ſet *Matthew Mahony*, *Samuel Goodere*, and *Charles White* to the Bar; which was done.

Mr. Recorder. Aſk them what they can ſay to hinder Judgment.

Cl. of Arr. Matthew Mahony, hold up thy Hand. Thou haſt been indicted of Felony and Murder, thou haſt been thereupon arraigned, thou haſt pleaded thereunto not guilty, and for thy Trial, thou haſt put thyſelf upon God and thy Country, which Country hath found thee guilty; what haſt thou to ſay for thyſelf, why the Court ſhould not proceed to give Judgment of Death upon thee, and award Execution according to the Law?

[*He offered nothing, but begg'd for Time to prepare himſelf.*]

Cl. of Arr. Samuel Goodere, hold up thy Hand. Thou haſt been indicted of Felony and Murder, &c. what haſt thou to ſay? &c.

[*He offered nothing, but begged alſo for Time to prepare himſelf.*]

Cl. of Arr. Charles White, hold up thy Hand. Thou haſt been indicted of Felony and Murder, &c. what haſt thou to ſay? &c.

[*He offered nothing, but declared he was drawn into it, and begged for Tranſportation for Life.*]

Cl. of Arr. Cryer, make Proclamation for Silence.

Cryer. Oyez; The King's Majeſty's Juſtices ſtraitly charge and command all manner of Perſons to keep Silence whilſt Judgment is giving, upon pain of Impriſonment.

[*Then Mr. Recorder ſpoke to the Priſoners thus:*]

Mr. Recorder. Samuel Goodere, Matthew Mahony, Charles White, and * *Jane Williams*, you have been all convicted, upon very full Evidence, of one of the greateſt Crimes human Nature is capable of; deliberate and wilful Murder. A Crime, which in all Ages, and through all Nations, hath been had in the higheſt Deteſtation. For however Mankind have differed in other Matters, they have been in one Sentiment concerning this Crime and the Demerits of it; as if they had been all Witneſſes to the Promulgation of the Precept, *Whoever ſheddeth Man's Blood, by Man ſhall his Blood be ſhed.*

But this Crime, great as it is, is capable of ſeveral Aggravations, ariſing from the Circumſtances which attend it.

To lay violent Hands upon a Perſon who never gave his Murderer the leaſt Offence, whom perhaps he never ſaw till the Moment he was mark'd out for Execution; and to do this for Hire, ſhews a Mind loſt, I fear, to all the Impreſſions of Humanity.

But what then is the Caſe of one, who can procure all this Miſchief, and involve others in this Guilt; eſpecially if the Perſon to whom the Violence is offered, is near to him by the Ties of Blood or Friendſhip?

'Tis true, Murders of this kind are not very frequent; and leſs ſo in this Nation than in any other. But in the Caſe in which three of you are concerned, they all concur.

A Gentleman of Diſtinction is murdered by Perſons, who, in a manner, were Strangers to his Face, and his only Brother aiding and abetting the Murder. I may ſay thus much, becauſe your Country hath upon full Evidence found it ſo.

I will carry theſe Reflections no farther: I chooſe to leave that Part to your own ſerious Conſideration.

I hope I need not perſuade you to employ the Time you have to live, in making your Peace with God; I hope, I ſay, that a Senſe of your own Condition hath already put you upon that Work. And pray don't ſuffer yourſelves to be diverted from it by the Hope or Expectation of Mercy from the Crown. His Majeſty's Diſpoſition to Mercy is great; but his Love of Juſtice, and his Love to his People is ſtill greater. And becauſe I would not miſlead you, nor have you deceive yourſelves in a Caſe of this Importance, I think it my Duty to deal freely with you.

I do not ſee what Room any of you have to expect Mercy.

You who have been the immediate Actors in this Affair, what have you pleaded in mitigation of your Crime? One ſays, he is a poor preſs'd Servant; and the other, that he was drunk when the Fact was committed. Neither of thoſe Excuſes can avail you. You both undertook the Murder for Hire, rifled the Gentleman's Pockets, and ſhared the Plunder between you.

You had, perhaps, no Deſign upon the Gentleman's Life, till near the Time of Execution. This is no Excuſe. It ſhews you were ready to ſhed innocent Blood at the firſt Call: That you yielded to the firſt Temptation. And if Drunkenneſs could be admitted as an Excuſe for Crimes of this Nature, this would be no World then of Virtue and Sobriety.

You, Sir, who have been the principal Actor in this Affair, what have you offer'd for yourſelf?

You admit, that you employ'd a Number of People to ſeize your Brother, here in the Heart of the City, and in the Face of the Sun, and to carry him on board the Ship of which you had then the Command. This is too evident to be denied, and for that Reaſon only, I fear, 'tis admitted.

To give ſome Colour to this unparallel'd Outrage, you ſay, that your Brother was diſtracted, and that you took him on Board in order to put him under Confinement. Admitting that your Brother was diſtracted, was the Place you carried him to, or the Hands into which you committed him, or the Treatment which he met with from them before he was got aboard the Barge, at all proper for his Caſe, or fit for a Brother to think of?

You called Mrs. *Gabins* to prove, that *Mahony* was to have had five Pounds a Month for looking after him at her Houſe. She remembers nothing of *Mahony*. But, had that been proved, could it at all avail you to ſay, that for three Weeks before the Murder was committed, you intended to have confined him under the Care of the very Man who now appears to have murdered him?

Indeed, you have denied all Concern in the Murder, or the leaſt Knowledge of it. But it hath been proved by three Witneſſes, that you were in the Cock-pit while the Murder was committing, and might have heard the Noiſe and Struggle in the Cabbin, the Cry of Murder, and your Brother's dying Groans, as well as they did.

Nay, two of them are poſitive, that you ſtood Centinel at the Door, with a drawn Cutlas in your Hand, while the Fact was committing. One of them ſays that you delivered a Candle into the Cabbin, after the Cry of Murder ceaſed; and that you, ſoon after, lock'd the Door, and took the Key with you. And it is agreed on all hands, that when the Door was open'd the next Morning, your Brother was found there murdered.

Thoſe Facts, with other Circumſtances, are ſtrong and pregnant Proofs of your Concern in the Murder; unleſs the Credit of the Witneſſes could be impeached, which you have not attempted to do.

It was charged as a Circumſtance againſt you, that after the Fact was committed, *Mahony* and *White* were ſent aſhore by you. This likewiſe you denied. But it came out of the Mouth of a Witneſs called by yourſelf, that they went up in the Yawl by Leave from you.

I have nothing more to do, before I proceed to that which the Duty of my Place obliges me to, than to exhort you all to make your Peace with God by a ſerious and hearty Repentance. His Mercy is infinite, and to that we muſt leave you. For the Judgment of this Court is, *That you*, Samuel Goodere, Matthew Mahony, Charles White, *and* Jane Williams, *go from hence to the Priſon from whence you came; and from thence you ſhall be led to the Place of Execution, where you ſhall ſeverally be hanged by the Neck till you ſhall be dead. And the Lord have Mercy on your Souls.*

Then the Keeper carried away the Priſoners to the Gaol, to be reſerved till their Execution.

On *Wedneſday* the 15th of *April* following, the Priſoners *Matthew Mahony*, *Samuel Goodere*, and *Charles White*, were executed at *Briſtol*, according to the Sentence pronounced againſt them. They all confeſſed the Fact. The Body of *Mahony* is hung in Chains near the Place where the horrid Fact was committed.

At the ſame Court *Charles Bryan*, *Edward M'Daniel*, and *William Hammon*, were indicted, tried and convicted, for a Miſdemeanour, in forcibly aſſiſting and ſeizing Sir *John* in the Pariſh of St. *Auguſtine*, in the ſaid City and County, and carrying him on board the Barge belonging to the *Ruby* Man of War; and were fined 40*s.* each, to be impriſoned for one Year, and then each to give Security for his good Behaviour for one Year more.

* Convicted at the ſame Seſſions, for the Murder of her Baſtard Child.

AN

APPENDIX,

CONTAINING SEVERAL

RECORDS

RELATING TO THE FOREGOING

TRIALS AND PROCEEDINGS.

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Rex verſus Coke *and* Woodburne, *for ſlitting the Noſe of* Edward Criſpe. - - ibid.

A N

A N

A P P E N D I X,

CONTAINING

Several RECORDS relating to the foregoing TRIALS and PROCEEDINGS.

THE Second and Third Trials in this Collection being for *Hereſy* (a Crime heretofore very frightful, and puniſhed with great Severity), it may not be amiſs to ſtate how the Law formerly ſtood relating thereto, and, ſince we have not the Precedents of the Proceſs iſſued in thoſe particular Inſtances, to give a Precedent or two in ſome others of the ſame Nature.

By the ancient Law (*a*), Burning was the Puniſhment for Hereſy; but the Party accuſed was firſt to be tried and convicted thereof by the Archbiſhop and the reſt of the Clergy of his Province aſſembled in Convocation. After Conviction the Offender was delivered over into Lay-Hands, and the Sheriff of the County, by virtue of the Writ *de Hæretico comburendo*, was to cauſe him to be burnt. *Brit. lib.* 1. *c.* 17. *Bro. Abr. tit.* Hereſy. *Fitz. Nat. Brev.* 595.

The firſt Statute in relation to Hereſy is the 5th of *Rich.* II. *cap.* 5. whereby it is enacted, That the Sheriffs and other Civil Officers ſhould apprehend and impriſon Perſons ſuſpected of Hereſy, in order to their being tried by the Laws of Holy Church; and it being found inconvenient to ſummon the Convocation for the Trial of every Offender, a Statute was made the 2*d* of *Hen.* IV. *cap.* 15. impowering every Dioceſan to impriſon Perſons ſuſpected of Hereſy in their reſpective Dioceſes, and try them (ſo that ſuch Dioceſan proceeded judicially and openly againſt ſuch Perſons), and where any Perſon was convicted, he might be impriſoned at the Diſcretion of the Ordinary; or, if the Party refus'd to abjure his Errors, or, having abjured them, relaps'd, he was to be left to the Secular Arm; and the Sheriff (whom the Ordinary might call to be preſent at the Trial) was to cauſe the Party to be burnt in ſome high (or open) Place.

The Lord Chief Juſtice *Brook* (in his Abridgment, Tit. *Hereſy*) ſays, that upon this Statute it was reſolved, That if a Perſon was convicted of Hereſy in the Preſence of the Sheriff, the Ordinary might commit him to the ſame Sheriff, and he was to cauſe him to be burnt without the Writ *de Hæretico comburendo*; but if the Sheriff was abſent, or if the Heretic was to be burnt in another County, in either of theſe Caſes the Writ *de Hæretico comburendo* muſt be firſt obtained, before the Sheriff could burn him.

Some Authors have wonder'd, why the Writ, *de Heretico comburendo* was iſſued for the burning of *Sawtre*, when by the laſt-mentioned Act the Sheriff was empowered to execute Perſons convicted of Hereſy without that Writ: But the Wonder ceaſes, if we conſider that the Sheriff could not proceed to execute the Offender by his own Authority, unleſs he was preſent at the Conviction; and though the Dioceſan might call the Sheriff to attend the Trial, yet he might too convict the Offender in his Abſence. And further, *Sawtre* was convicted by the Convocation; and it may be difficult to give one Inſtance where the Convocation called the Sheriff to aſſiſt at the Trial of an Heretic; and, if they had, ſuch a Conviction was not within the Letter of the Act: Therefore, upon this Conviction, the Sheriff was under a Neceſſity of waiting for the Writ *de Hæretico comburendo*, before he could execute him (*b*).

By the 2d of *Hen.* V. *cap.* 7. all Civil Officers were to be ſworn to aſſiſt the Ordinaries in extirpating Hereſies; and one convict of Hereſy was to forfeit his Goods and Chattels, and Fee-ſimple Lands.

By the 25th of *Hen.* VIII. *cap.* 14. the Act of the 2d of *Hen.* IV. is in part repealed; and it is thereby provided, That no Perſon ſhall be executed as an Heretic without the Writ *de Hæretico comburendo* firſt obtained.

By the 1ſt of *Eliz. cap.* 1. the aboveſaid Statutes, as well as that other Statute of the firſt and Second of *Phil.* and *Mar. cap.* 6. againſt Hereticks, are repealed.

And by the 29th of *Car.* II. *cap.* 9. the Writ *de Hæretico comburendo*, with all Proceedings thereon, and all Capital Puniſhments in purſuance of any Eccleſiaſtical Cenſures, are from thenceforth utterly aboliſhed.

So that at this day a Perſon convicted of Hereſy is liable only to Excommunication, and ſuch Pains and Diſabilities as Perſons ſtanding excommunicated for any other Offence.

The Writ de Hæretico comburendo, *for burning* William Sawtre (*c*), *convicted of* Hereſy *in Convocation* (*d*).

REX', &c. Majori & Vic' London ſalutem. Cum venerabilis Pater Thomas Archiepiſcopus Cantuar' totius Angliæ Primas & Apoſtolicæ ſedis Legatus, de conſenſu & aſſenſu, ac conſilio Epiſcoporum & confratrum ſuffragan' ſuorum, necnon totius Cleri provinciæ ſuæ in conſilio ſuo provinciali congregat', juris ordinibus in hac parte requiſit' in omnibus obſervat', Will' Sawtre, aliquando Capellanum in hæres, damnat', & per ipſum Willielmum præantea in forma juris abjurat', & ipſum Willielmum in hæreſin prædict' relaps', per ſuam ſententiam definitivam hæreticum manifeſtum pronunciav' & declarav' ac degradandum fore decreverit, & ab omni prærogativa & privilegio Clericali ea de cauſa realit' degradaverit, ipſumq; Will' foro ſeculari relinquendum eſſe decreverit, & realiter reliquit, juxta leges & canonicas ſanctiones editas in hac parte, & ſancta Mater Eccleſia non habet ulterius quod fac' in præmiſs': Nos igitur, zelator juſtitiæ, & fidei catholicæ cultor, volentes Eccleſiam ſanctam, ac jura & libertates ejuſdem manutenere & defendere, & hujuſmodi hæreſes & errores de regno noſtro Angliæ (quant' in nobis eſt) radicitus extirpar', ac hæreticos ſic convictos animadverſione condigna puniri; attendenteſq; hujuſmodi hæreticos, in forma prædict' convictos & damnatos juxta legem divinam & humanam canonica inſtitutione, & in hac parte conſuetudinar', ignis incendio comburi debere, Vobis diſtinctius quo poſſimus præcipimus, firmiter injungentes, quo præfat' Will' in cuſtodia veſtra exiſten', in aliquo loco publico & aperto infra libertat' civitatis prædict', cauſa præmiſſa, coram populo publice igni committ', ac ipſum in eodem igne realiter comburi fac' in hujus criminis deteſtationem, aliorumq; Chriſtianorum exemplum manifeſtum; & hoc ſub periculo incumbente ullatenus omittatis. Teſte, *&c.*

The Form of a Warrant to the Lord Chancellor for iſſuing the Writ de Hæretico comburendo *againſt* Bartholomew Legatt, *on a Conviction for* Hereſy *before the Ordinary.*

JAMES REX.

JAMES, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* To our right-truſty and right well-beloved Counſellor, *Thomas* Lord *Elleſmere*, our Chancellor of *England*, Greeting: Whereas the Reverend Father in God, *John* Biſhop of *London*, having judicially proceeded in a Cauſe of Hereſy againſt *Bartholomew Legatt*, of the City of *London*, in the Dioceſe of the ſaid Biſhop of *London*, concerning divers wicked Errors, Hereſies, and blaſphemous Opinions, holden, affirmed, and publiſhed by the ſaid *Bartholomew Legatt*, and chiefly in theſe Thirteen blaſphemous Poſitions following, *viz.* That the Creed called the *Nicene Creed*, and *Athanaſius*'s *Creed*, contain not a Profeſſion of the true Chriſtan Faith, or that he will not profeſs his Faith according to the ſame Creeds; That Chriſt is not God of God begotten, not made, but begotten and made; That there are no Perſons in the Godhead; That Chriſt was not God from everlaſting, but began to be God when he took Fleſh of the Virgin *Mary*; That the World was not made by Chriſt; That the Apoſtles teach Chriſt to be Man only; That there is no Generation in God, but of Creatures; That this Aſſertion, God to be made Man, is contrary to the Rule of Faith, and monſtrous Blaſphemy; That Chriſt was not before the Fulneſs of Time, except by Promiſe; That Chriſt was not God otherwiſe than anointed God; That Chriſt was not in the Form of God equal with God; That is in Subſtance of God, but in Righteouſneſs and giving Salvation: That Chriſt by his Godhead wrought no Miracle; That Chriſt is not to be pray'd unto: Wherein he the ſaid *Bartholomew Legatt* hath, before the ſaid Reverend Father, maintained his ſaid moſt dangerous and blaſphemous Opinions, as appeareth by many of his Confeſſions publickly made and acknowledged. For which his damnable and heretical Opinions, he is by definitive Sentence by the ſaid Reverend Father *John* Biſhop of *London*, with the Advice and Conſent of other Reverend Biſhops, Learned Divines, and others learned in the Laws, aſſiſting him in Judgment, juſtly adjudged, pronounced, and declared to be an obſtinate and incorrigible Heretick, and is left by them under the Sentence of the great Excommunication, and therefore as a corrupt Member to be cut off from the Church of Chriſt, and Society of the Faithful, and is to be, by our ſecular Power and Authority, as an Heretick puniſhed, as by the *Significavit* of the ſaid Reverend Father in God the ſaid Biſhop of *London*, bearing Date at *London* the third day of *March*, in the Year of our Lord 1611, in the Ninth Year of our Reign, and remaining in our Court of *Chancery*, more at large appeareth. And although the ſaid *Bartholomew Legatt* hath, ſince the ſaid Sentence pronounced againſt him, been often very charitably moved and exhorted, as well by the ſaid Biſhop, as by many grave and learned Divines, to diſſuade, revoke, and remove him from the ſaid blaſphemous and heretical Opinions, yet he arrogantly and wilfully perſiſteth and continueth in the ſame. We therefore, according to our Regal Function and Office, minding the Execution of Juſtice in this behalf, and to give Example to others, leſt they ſhould attempt the like hereafter, have determined, by the Aſſent of our Council, to will and require, and do hereby authorize and require you our ſaid Chancellor, immediately upon the Receipt hereof, to award and make out, under our Great Seal of *England*, our Writ of Execution accord-

(*a*) See *Whitlock*'s Speech in behalf of *James Naylor*, Vol. II. p. 273. No. 53. See alſo *Hale*'s H. P. C. Vol. I. p. 392. Note (*b*) and p. 394. and Note p. 709.

(*b*) The Writ for burning *Sawtre* ſeems to be a ſpecial Act of Parliament made for that *purpoſe*, for it is teſted *Per regem & concilium in parliamento*, which is to be intended of an Act of Parliament. See 8. *Co. Rep.* 19. *a. Prince*'s Caſe. See alſo *Hale*'s Hiſt. P. C. Vol. I. p. 396.

(*c*) This Perſon was executed according to the Writ in the Year 1401, and was the firſt who was burnt in *England* for *Hereſy*. See an Account of the Proceedings againſt him, and of his Execution, *Fox*'s *Acts and Mon.* Vol. I. p. 586.

(*d*) See *Fitz. Nat. Brev.* 594.

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ing to the Tenor in theſe Preſents enſuing; and theſe Preſents ſhall be your ſufficient Warrant and Diſcharge for the ſame.

The Writ de Hæretico comburendo.

REX Vicecomitibus London ſalutem. Cum Reverendus in Chriſto Pater Johannes, London Epiſcopus, nobis ſignificavit, quod cum ipſe in quodam hæreticæ pravitatis negotio contra quendam Bartholomeum Legatt, ſubditum noſtrum civitatis London, dicti London Epiſcopi dioces' & juriſdict', rite & legitime procedens per acta inactitata, deducta, propoſita, & per confeſſiones ipſius Bartholomei Legatt coram præfato Epiſcopo judicialiter factas & recognitas, comperit & invenit præfatum Bartholomeum Legatt quamplurimos nefandos errores, falſas opiniones, hæreſes & blaſphemias execrandas, & ſcelerata dogmata catholicæ & orthodoxæ fidei & religioni, & ſacroſancto Dei Verbo expreſſe contraria & repugnantia, ſcienter, malicioſe, animoq; pertinaci, obdurato, planeque incorrigibili credere, tenere, affirmare, & publicare; idem Reverendus Pater London Epiſcopus, cum conſilio & conſenſu tam Reverendorum Epiſcoporum & aliorum Theologorum, quam Juris etiam peritorum in judicio aſſiden' & aſſiſten', eundum Bartholomeum Legatt, per ſententiam ſuam definitivam, obduratum, contumacem, & incorrigibilem hæreticum pronunciavit, decrevit, & declaravit, eaque occaſione tanquam protervum hæreticum, & membrum putridum & contagioſum, ab eccleſia Chriſti & fidelium communione reciſum & amputatum fore. Cum igitur ſancta mater Eccleſia non habeat quod ulterius facere & exequi valeat in hac parte, idem Reverendus Pater præfatum Bartholomeum Legatt, ut blaſphemum hæreticum, brachio noſtro ſeculari reliquit condigna animadverſione plectend', prout per Literas Patentes præfati Reverendi in Chriſto Patris London Epiſcopi in hac parte ſuperinde confect' nobis in Cancellar' noſtram certificat' eſt. Nos igitur ut zelator juſtitiæ, & fidei catholicæ defenſor, volenteſq; Eccleſiam ſanctam, ac jura & libertates ejuſdem, & fidem catholicam manutenere & defendere, ac hujuſmodi hæreſes & errores ubiq; (quantum in nobis eſt) eradicare & extirpare, ac hæreticos ſic convictos animadverſione condigna puniri, attendenteſq; hujuſmodi hæreticum in forma prædict' convictum & damnatum juxta leges & conſuetudines regni noſtri Angliæ in hac parte conſuet', ignis incendio comburi debere: Vobis præcipimus, quod dictum Bartholomeum Legatt, in cuſtod' veſtra exiſten', apud Weſt-Smithfield in loco publico & aperto, ex cauſa præmiſſa, coram populo publice igni committi, ac ipſum Bartholomeum Legatt in eodem igne realiter comburi fac' in hujuſmodi criminis deteſtationem, aliorumq; Chriſtianorum exemplum manifeſtum, ne in ſimile crimen labantur; & hoc ſub periculo incumbente nullatenus omittatis. Teſte, &c.

Henry Hibirte.

The Writ for burning an Heretic in Engliſh.

THE King to the Sheriffs of *London*, Greeting. Whereas the Reverend Father in Chriſt, *John* Biſhop of *London*, hath ſignified unto us, that when he in a certain Buſineſs of heretical Pravity againſt one *Bartholomew Legatt*, our Subject of the City of *London*, of the ſaid Biſhop of *London*'s Dioceſe and Juriſdiction, rightly and lawfully proceeding by Acts enacted, drawn, propoſed and by the Confeſſions of the ſaid *Bartholomew Legatt*, before the ſaid Biſhop judicially made and acknowledged, hath found the ſaid *Bartholomew Legatt* very many wicked Errors, falſe Opinions, Hereſies, and curſed Blaſphemies, and impious Doctrines, expreſly contrary and repugnant to the Catholick Faith and Religion, and the holy Word of God, knowingly and maliciouſly, and with a pertinacious, obdurate, and plainly incorrigible Mind, to believe, hold, affirm, and publiſh; the ſame Reverend Father the Biſhop of *London*, with the Advice and Conſent as well of the Reverend Biſhops and other Divines, as alſo of Men learned in the Law, in Judgment ſitting and aſſiſting, the ſame *Bartholomew Legatt*, by his definitive Sentence, hath pronounced, decreed, and declared to be an obdurate, contumacious, and incorrigible Heretic, and, upon that Occaſion, as a ſtubborn Heretic, and rotten contagious Member, to be cut off from the Church of Chriſt, and the Communion of the Faithful; Whereas the holy Mother Church hath not further to do and proſecute in this Part, the ſame Reverend Father hath left the aforeſaid *Bartholomew Legatt*, as a blaſphemous Heretic, to our ſecular Power, to be puniſhed with condign Puniſhment, as by the Letters Patents of the ſaid Reverend Father in Chriſt the Biſhop of *London*, in this Behalf above made, hath been certified unto us in our Chancery. We, therefore as a Zealot of Juſtice, and a Defender of the Catholic Faith, and willing to maintain and defend the Holy Church, and Rights and Liberties of the ſame, and the Catholic Faith, and ſuch Hereſies and Errors every where, what in us lieth, to root out and extirpate, and to puniſh with condign Puniſhment ſuch Heretics ſo convicted, and deeming that ſuch an Heretic, in Form aforeſaid convicted, and condemned according to the Laws and Cuſtoms of this our Kingdom of *England* in this Part accuſtomed, ought to be burned with Fire; we do command you, that the ſaid *Bartholomew Legatt*, being in your Cuſtody, you do commit publickly to the Fire before the People, in a publick and open Place in *Weſt-Smithfield*, for the Cauſe aforeſaid; and that you cauſe the ſaid *Bartholomew Legatt* to be really burned in the ſame Fire, in Deteſtation of the ſaid Crime, for the manifeſt Example of other Chriſtians, leſt they ſlide into the ſame fault; and this that you in no wiſe omit, under the Peril that ſhall follow thereon. Witneſs, *&c.*

The [forged] *Indictment and Outlawry* [d] *of Sir* John Oldcaſtle, *Lord* Cobham, *for* High-Treaſon.

Hil. 1 *Hen.* V. *Rot.* 7. *B. R.*

ALIAS coram Gulielmo Roos de Hamlak, Henrico le Scrop, Gulielmo Crowmere Majore civitatis London, Hugone Huls & ſociis Juſtic' Domini Regis, ad inquirend' per ſacram' proborum & legal' hominum de civitate Domini Regis London, & ſuburbiis ejuſdem, ac de com' Midd' tam infra libertates, quam extra, de omnibus & ſingulis proditionibus & inſurrectionibus, per quamplures ſubditos Domini Regis Lollardos vulgarit' nuncupatos, & alios in civitate, ſuburbiis, & com' prædictis factis & perpetratis, necnon de omnibus proditionibus, inſurrectionibus, rebellionibus, & feloniis in civitate, ſuburbiis, & com' præd' per quoſcunque & qualitercunq; factis, perpetratis & ad eaſdem proditiones, inſurrectiones, rebelliones, & felonias audiend' & terminand' ſecundum legem & conſuetudinem regni Domini Regis Angliæ, per literas ipſius Domini Regis patentes, aſſign' apud Weſt' die Mercurii proximo poſt feſtum Epiphaniæ Domini, anno regni Regis Henrici quinti poſt conqueſtum primo, per ſacram' xii. jur' extitit præſentatum, quod Johannes Oldcaſtle de Coulyng in com' Kanc' chr' & alii Lollardi vulgar' nuncupat', qui contra fidem catholicam diverſas opiniones hæreticas, & alios errores manifeſtos legi catholicæ repugnantes diu temerarie tenuerunt, opiniones & errores prædictos manutenere, at in facto minime perimplere valentes, quandiu regia poteſtas, & tam ſtatus regal' Domini noſtri Regis, quam ſtatus & officium Prælaciæ dignitatis infra regnum Angl' in proſperitate perſeverarent, falſo & proditorie machinando, tam ſtatum regni, quam ſtatum & officium prælatorum, necnon ordines religioſorum infra dictum regnum Angl' penitus adnullare, ac Dominum noſtrum Regem, fratres ſuos, prælatos & alios magnates ejuſdem regni interficere, necnon viros religioſos, relict' cult' divinis & religioſis obſervanciis ad occupationes mundanas provocare, & tam eccleſias cathedrales, quam alias eccleſias & domos religioſas de reliquis & aliis bonis eccleſiaſticis totaliter ſpoliare, ad funditus ad terram proſternere, & dictum Johannem Oldcaſtle regentem ejuſdem regni conſtituere, quamplura regimina ſecundum eorum voluntatem, infra regnum prædictum, quaſi gens ſine capite, in finalem deſtructionem, tam fidei catholicæ & cleri, quam ſtatus & majeſtatis dignitatis regal' infra idem regnum ordinare, falſo & proditorie ordinaverunt & propoſuerunt, quod ipſo inſimul cum quampluribus rebellibus Domini Regis ignotis, ad numerum viginti millium hominum de diverſis partibus regni Angl' modo guerrino arrivat', privatim inſurgent', & die Mercurii proximo poſt feſtum Epiphaniæ Domini, anno regni Regis prædicti prædicto, apud villam & parochiam ſancti Ægidii extra Barram veteris Templi London, in quodam magno campo ibidem unanimit' convenirent, & inſimul obviarent pro nephando propoſito ſuo in præmiſſis perimplend'; quo quidem die Mercurii apud villam & parochiam prædicti J. Oldcaſtle & alii in' hujuſmodi propoſito proditorio perſeverantes, prædictum Dominum noſtrum Regem, fratres ſuos (videlicet, Thomam ducem Clarenciæ Johannem, de Lancaſtre, & Humfredum de Lancaſtre) necnon prælatos & magnates prædictos interficere, necnon ipſum Dominum noſtrum Regem, & hæredes ſuos, de regno ſuo prædicto exhæredare, & præmiſſa omnia & ſingula, necnon quamplura alia mala & intolerabilia, facere & perimplere falſo & proditorie propoſuerunt & imaginaverunt, & ibidem verſus campum prædictum modo guerrino arrivati' proditorie modo inſurrectionis contra ligeancias ſuas equitaverunt ad debellandum dictum Dominum noſtrum Regem, niſi per ipſum manu forti gratioſe impediti fuiſſent. Quod quidem inditament' Dominus Rex nunc, certis de cauſis, coram eo venire fecit terminandum. Per quod præceptum fuit Vic', quod non omitteret, *&c.* quin caperet præfatum Johannem Oldcaſtle, ſi, *&c.* & ſalvo, *&c.* ita quod haberet corpus ejus coram Domino Rege apud Weſtmonaſterium ad hunc diem, ſcilicet die Mercurii proximo poſt octavas ſancti Hilarii, iſto eodem termino ad reſpondendum Domino Regi de præmiſſis, *&c.* Ad quos diem & locum coram Domino Rege Vic', quod exigi faceret eum de com' in com' quouſque utlagetur, ſi non, *&c.* & ſi, *&c.* tunc cum caperet, & ſalvo, *&c.* ita quod haberent corpus ejus coram Domino Rege in octavas ſancti Johannis Baptiſtæ ex tunc proximum ſequentem, ubicunque, *&c.* ad reſpondendum Domino Regi de proditionibus & feloniis ſuperius ſibi impoſitis. Ad quas octavas ſancti Johannis Baptiſtæ, an' regni R. Henrici quinti poſt conqueſtum ſecundo, Johannes Sutton & Jo' Michell' Vic' Mid', coram Domino Rege returnaverunt, quod ad com' Midd' centum apud Braynford die Jovis proximo ante feſtum S. Barnabæ Apoſtoli, an' reg' R. Hen' quint' poſt conqueſtum ſecundo; & ad quatuor com' ex tunc ex proximo præcedentes, prædictus Johannes Oldcaſtle exactus fuit, & non comparuit; & quia ad nullum eorundem com' comparuit, ideo præſentibus Coronatoribus com' prædicti utlagat' fuit, per quod inquiratur de terra & catallis ſuis.

Rex verſus Dominum Audley [e], *for a* Rape.

7 *Car.* I.

Wilts, ſſ. JUratores pro Domino Rege ſuper ſacramentum ſuum præſent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts, & Ægidius Broadway de Fountell Gifford prædict' in comitatu prædicto generoſus, timorem Dei præ oculis ſuis non habentes, ſed inſtigatione diabolica moti & ſeducti, viceſimo die Junii, anno regni Domini noſtri Caroli, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſoris, ſexto, apud Fountell Gifford prædict' &

d The Record appears to have ſeveral Raſures in it. See Trials Vol. I. p. 36. N°. 3. and *Fox*'s Acts and Mon. Vol. I. p. 655.
e Vol. I. p. 388. N°. 31. and *Hut.* Rep. 115.

in & ſuper Annam dominam Audley, uxorem præfati domini Martini Audley, in pace Dei & dicti Domini Regis ibidem exiſtent' inſult' fecerunt. Et prædictus Ægidius Broadway prædictam Annam dominam Audley, vi & armis, contra voluntatem ipſius Annæ ad tunc & ibidem violenter & felonice rapuit, ac ipſam Annam ad tunc & ibidem contra voluntatem ſuam violenter & felonice carnaliter cognovit, contra pacem Domini Regis nunc, coron', & dignitat' ſuas, & contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Et ultra, juratores prædicti dicunt ſuper ſacramentum ſuum prædict', Quod prædictus Martinus dominus Audley prædicto viceſimo die Junii, ann' ſexto ſupradicto, apud Fountell Gifford prædictam, in comitatu prædicto, felonice fuit præſens; auxilians, & confortans, abettans, procurans, adjuvans, & manutenens prædictum Ægidium Br. ad feloniam prædictam, in forma prædicta felonice faciend' & perpetrand', contra pacem dicti Domini Regis nunc, coronam & dignitatem ſuas, ac contra formam ſtatuti prædicti.

Rex verſus Dominum Audley (*f*), *for* Sodomy.

7 Car' I.

Wilts, ſſ. JUratores pro Domino Rege ſuper ſacramentum ſuum præſent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts', Deum præ oculis non habens, nec naturæ ordinem reſpiciens, ſed inſtigatione diabolica motus & ſeductus, primo die Junii, an' regni Domini noſtri Caroli, &c. ſexto, apud Fountell Gifford prædict' in dicto comitatu Wilts, in domo manſionali ejuſdem Martini domini Audley, ibidem vi & armis in quendam Florence Fitzpatrick, yeoman, inſult' fecit, & cum eodem Florence F. ad tunc & ibidem nequit', diabolice, felonice, & contra naturam rem Veneream habuit; ipſumque F. ad tunc & ibidem carnaliter cognovit, peccatumque illud Sodomiticum deteſtabile & abominandum, Anglicè vocat' Buggery (inter Chriſtianos non nominandum) ad tunc & ibidem cum eodem Florence F. nequit' diabolice, felonice, & contra naturam commiſit & perpetravit in magnam Dei omnipotentis diſplicentiam, ac totius humani generis dedecus, ac contra pacem dicti Dom' Reg' nunc, coronam & dignitat' ſuas, & contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Rex verſus Johannem Hampden (*g*), *in the Caſe of* Ship-Money.

Trin' 13 Car' I. *in Scacc'.*

MEmorand', quod brev' Domini Regis nunc ſub ſigillo hujus Scaccar' per conceſs' Baron' hic emanavit in hæc verba:

ſſ. CAROLUS Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Vic' Bucks ſalutem. Cum diverſæ & ſaparal' denar' ſummæ in ſchedul' huic brevi annex' ſpec', virtute brevis noſtri ſub magno ſigillo noſtro Angliæ geren' dat' quarto die Auguſti, anno regni noſtri undecimo, aſſeſſat' & onerat' fuer' ſuper ſeparal' perſon' in ead' ſchedul' nominat', in & verſus proviſion' navis pro guerra, una cum apparat' & al' eid' pertin', in eod' brevi particular' mentionat'; quibus quid' ſeparal' denar' ſummis ſic aſſeſſat' & onerat', & non ſolut' & ſatisfact' exiſten', per breve noſtrum de certiorar' geren' dat' nono die Martii, anno regni noſtri duodecimo, ſub magno ſigillo noſtro' præd' emanat', nomina earund' ſeparal' perſon' una cum ſeparal' denar' ſummis ſuper ipſos onerat', in cur' Cancellar' noſtræ certificat' fuer'. Ac per breve noſtrum de Mittimus ſub eodem ſigillo, geren' dat' quinto die inſtant' menſis Maii in Scaccar' noſtr' miſs' fuer' pro ulterior' proceſs' ſuper inde habend', prout per tenorem prædicti brevis geren' dat' quarto die Auguſti, anno regni noſtri undecimo, ac per prædict' breve de Certiorar' et certificat' ſuper inde fact' in dictum Scaccar' noſtrum miſs', & ibid' de record' in cuſtodia Rememorat' noſtri remanen' plenius apparet, tibi præcipimus, quod non omitt' propter aliqu' libertat' quin ea ingr', & per probos & legales homines de bal' tua ſcir' fac' præfat' ſeparal' perſon' in dict' ſchedul' nominat' & ſpec', quod ſint coram Baron' de Scaccar' noſtro apud Weſtm' in octab' ſanctæ Trinit' proxim' futur', ad oſtend' & proponend', ſiquid pro ſe habeant, vel dicere ſciant, quare ipſi de præd' ſeparal' denar' ſummis ſuper ipſos modo & forma prædict' aſſeſſat', & non ſolut', in ſchedul' il' ſpec', onerari & inde ſatisfacere non deb' & ad ulterius faciend' & recipiend' in præmiſſis, quod cur' noſtra tunc ibidem duxerit ordinand' & habeas ibi tunc hoc breve, & nomina eor' per quos eis ſciri feceris. Teſte Humfr' Davenport' Mil, apud Weſtm', viceſimo ſecundo die Maii, anno regni noſtri decimo tertio. *Per rotulum.*

Memorandum de eodem anno Regis in recordor' rotulo termini Paſchæ, Tenor ſchedul' præd' in brevi prædict' mentionat', quoad Johannem Hampden, ſequitur in hæc verba: ſſ. Schedul' de nominibus certar' perſonar' in com' Bucks, & cert' denar' ſummar' ſuper ipſos aſſeſſat' & onerat' in & verſus proviſion' navis de guerra, una cum apparat' & al' eid' pertin', virtute cujuſd' brevis ſub magno ſigillo Angliæ, geren' dat' quarto die Auguſti, anno regni Domini Reg' nunc Caroli undecimo, & in cur' Cancellar' Dom' Regis, virtute brevis de Certiorar' ſub ſigillo præd' eman', geren' dat' nono die Martii, anno regni ſui duodecimo, certificat' eſſe inſolut', ac per breve de Mittimus ſub eodem ſigillo in Scaccar' dict' Dom' Regis nunc miſſis pro ulterior' proceſs' ſuper inde faciend', prout per tenor' prædict' brevis geren' dat' quarto die Auguſti, anno regni dicti Domini Regis nunc undecimo ſupradict', ac per breve de Certiorar', & certificat' ſuperinde fact' in dictum Scaccar' noſtr' miſs', & ibidem de record' in cuſtod' Rememorat' Dom' Regis reman' plenius apparet.

Stoake Mandivile, ſſ. Johann' Hampden Eſq; Ad quem diem Anthonius Cheſter Baronet', Vic' com' prædict', quoad præfat' Johannem Hampden retorn', quod per Nicolaum Aris, Robertum Alexander, Richardum Harriſon, & Will'um Heyborne, probos et legales homines de ball' ſua, ſciri fecit, præfat' Johann' Hampden, inter al', quod ſit coram Baron' infra ſcript' ad diem & locum infra content', ad oſtendend' & proponend' ſi quid pro ſe habeat, vel dicere ſciat, quare ipſe de prædict' ſumma ſuper ipſum aſſeſſat', & non ſolut', in ſchedul' prædict' ſpec', onerari & inde ſatisfacere non debeat, prout ulterius ſibi præcipitur: Et modo, ſcilicet a die ſanctæ Trinitatis in tres ſeptiman' venit hic præd' Johannes Hampden, in ſchedul' præd' nominat', in propria perſona ſua, & petit audit' brevis de Sciri facias præd', retorn' ejuſdem, ac præd' ſchedul' eid' annexat', & ei leguntur; petit etiam audit' præd' brevis, geren' dat' quarto die Auguſti, anno regni dicti Domini Regis nunc Caroli undecimo, in brevi de Sciri facias mentionat', & ei legitur in hæc verba:

ſſ. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Vic' com' noſtri Bucks, Ball' & Burgens' burgi & paroch' de Buckingham, Majori, Ball' & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eiſdem burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, ac in omnibus aliis burgis, villat', hamlet' & al' locis in dicto com' Bucks, ſalutem. Quia dat' eſt nobis intelligi, quod prædones quid', pirati, & mar' graſſatores, tam nominis Chriſtiani hoſtes Mahumetani, quam alii congregati, naves & bona ac mercim' non ſolum ſubditor' noſtr', verum etiam ſuditor' amicor' noſtr' in mari, quod per gent' Anglican' ab olim defend' conſuevit, nefarie diripientes & ſpoliantes, ad libitum ſuum deportavere, homines in eiſdem in captivitate miſerrima mancipantes: Cumque ipſos conſpicimus navigium indies præparantes ad mercatores noſtros ulterius moleſtand', & ad regnum gravand', niſi citius remedium apponatur, eorumque conatui virilius obvietur: Conſideratis etiam periculis, quæ undique his guerrinis temporibus imminent, ita quod nobis & ſubditis noſtris, defenſion' maris & regni omni feſtinatione, qua poterimus, accelerare convenit: Nos volentes defenſioni regni, tuitioni maris, ſecuritati ſubditor' noſtr', ſalva conductione navium & merchandizar' ad regnum noſtrum Angliæ venien', & de eod' regno ad partes exteras tranſeun', auxiliante Deo, providere; maxime cumque nos & progenitores noſtri Reges Angliæ domini maris præd' ſemper hactenus extiter', & plurimum nos tæderet, ſi honor iſte regius noſtris temporibus depereat, aut in aliquo minuatur; cumque onus iſtud defenſionis, quod omnes tangat, per omnes debeat ſupportari, prout per legem & conſuetudinem regni Angliæ fieri conſuevit, vobis præfat' Vicecomiti, Ball', Burgens', Majori, probis hominibus, & omnibus aliis quibuſcunq; ſupra mentionat' in burgis, villis, villat' hamlet' & locis ſupradict', eorumque membris, in fide & ligeantia, quibus nobis tenemini, & ſicut nos & honorem noſtrum diligitis, necnon ſub forisfactur' omnium quæ nobis forisfacere poteritis, firmiter injungend' mandamus, quod unam navem de guerra, portagii quadringint' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinar' valentioribus & expertis cent' & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus uſque ad primum diem Martii jam proxime ſequent', ad tot homines competen', & abinde in vigint' & ſex ſeptiman' ad cuſtag' veſtra, tam in victualibus, quam in hominum ſalariis, & al' ad guer' neceſſar' per tempus illud, ſuper defenſionem maris in obſequio noſtro in comitiva cuſtodis maris (cui cuſtod' maris ante præd' primum diem Martii committemus) & prout ipſe ex parte noſtra dictaverit moratur', parari, & ad portum de Portſmouth citra dictum primum diem Martii duci faciatis, ita quod ſint ibid' eod' die ad ultimum, ad proficiend' exinde cum navibus noſtris, & navibus alior' fidelium ſubditor' noſtr', pro tuitione maris, defenſione noſtrum & noſtrorum, repulſioneque & debellatione quorumcunq; mercatores noſtros, & alios ſubditos fideles prædict' in dominia noſtra ex cauſa mercaturæ ſe diverſantes, vel abinde ad propria declinantes ſuper mare gravare ſeu moleſtare ſatagentium. Aſſignavimus autem vos Vic' com' noſtr' Bucks, Ball' & Major' burgor' & paroch' prædict', aut aliquos duos vel plures veſtrum, quorum te præfat' Vic' com' noſtri Bucks unum eſſe volumus, infra trigint' dies poſt receptionem hujus brevis, ad aſſidend' quantum de cuſtag' prædict' ſuper præd' burgos de Buckingham & Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſeparatim poni aut aſſideri debeat. Et ſi hujuſmodi aſſeſſament' infra prædict' triginta dies per vos duos, vel plures veſtrum fieri non contigerint, tunc aſſignavimus te præfat' Vic' com' noſtri Bucks ad aſſeſſamen' hujuſmodi ſuper prædict' burgos & paroch', & membr' eorund', faciend' prout rationabiliter vides faciend'; & volumes, quod de toto facto tu præfat' Vic' Bucks, ſub ſigillo tuo prædict' Majorem & Ballivos reddas certiores. Aſſignavimus etiam te præfat' Ball' burgi & paroch' de Buckingham, ad aſſidend' omnes homines in eodem burgo & paroch', & membris ejuſd', & terr' tenentes, in eiſdem navem vel partem navis prædict' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſion' præmiſſor' neceſſar'; & ſuper prædict' burgum & paroch', cum membris ejuſd' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eor' juxta ſtatum ſuum & facultates ſuas & portiones ſuas ipſis aſſeſſat' per diſtrictiones, alioſve modos debitos levand' & collectores in hac parte nominand' & conſtituend', & omnes eos, quos rebelles & contrarios inveneris in præmiſſis carcere mancipand', in eodem moratur' quouſque pro eod' deliberatione ulterius duxerimus ordinand'. Aſſignavimus etiam te præfat' Major' burgi de Chipping-Wiccombe, alias Wiccombe, ad aſſidend' omnes homines in eod' burgo & membris ejuſdem, & ter' tenentes, in eiſd' navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſion' præmiſſor' neceſſar'; & ſuper prædict' burg', cum membris ejuſd' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eorum juxta ſtatum ſuum & facultates ſuas, & portiones ſuper ipſos aſſeſs' per diſtrictiones, alioſve modos debitos levand', & collectores in hac parte nominand' & conſtituend' & omnes eos, quos rebelles & contrarios inveneris in præmiſſis in carcere mancipand', in eod' moratur', quouſque

(*f*) Vol. I. p. 388 No. 31. and *Hut.* Rep. 115.

(*g*) Vol. I. p. 505. No. 37.

uſque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius aſſignavimus te præfat' Vicecomitem com' noſtr' Bucks ad aſſidend' omnes homines in præd' villis de Agmondeſham, Wendover, & Marlow magna, & in membris eorund', & in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in prædict' com' Bucks, & terr' tenentes in eiſdem, navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſionem præmiſſor' neceſſar', & ſuper prædict' villas, villat', burgos, hamlet' & locos, cum membris eorund' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eor' juxta ſtatum ſuum, & facultates ſuas, & portiones ſuper ipſos aſſeſſat' per diſtrictiones, aliosve modos debitos levand', & collectores in hac parte nominand' & conſtituend', & omnes quos rebelles & contrarios inveneris in præmiſſis carcere mancipand', in eod' moratur', quouſque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius vobis mandamus, quod circa præmiſſa diligenter intendatis, & ea faciatis, & exequamini cum effectu ſub periculo incumbente. Nolumus autem quod colore prædict' mandat' noſtr', plus de eiſd' hominibus levari faciatis, quam ad præmiſſor' ſufficiet expenſas neceſſar', aut quod quiſquam, qui pecuniam de contributionibus ad prædict' cuſtag' faciend' levaverit, eam, vel partem inde aliquam penes ſe detineat, vel ad al' uſus quovis quæſito colore appropriare præſumat, volentes, quod ſi plus quam ſufficiat collect' fuerit, hoc inter ſolventes pro rata portionis ipſis contingen' exſolvatur. Teſte me ipſo apud Weſtm' quarto die Auguſti, anno regni noſtri undecimo. Petit etiam audit' prædict' brevis geren' dat' nono die Martii, anno regni dicti Domini Regis xii°, in prædict' brevi de Sciri facias mentionat', & ei ſimiliter legitur.

Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, *&c.* Vic' com' noſtri Bucks, qui fuer' inter quartum diem Auguſti anno regni noſtri undecimo, & primum diem Martii tunc proxime ſequent', Ball' burg' & paroch' de Buckingham, & Major' & Ball' burg' de Chipping-Wiccombe, alias Wiccombe, in dicto com' Bucks, qui fuer' inter tempus prædict', ſalutem. Per breve noſtrum ſub magno ſigillo noſtro Angliæ confect', geren' dat' prædict' quarto die Auguſti, anno undecimo ſupradict', pro defenſione regni, tuitione maris, ſecuritate ſubditor' noſtr', ac ſalva conductione navium & merchandizarum ad regn' noſtr' Angliæ venien', & de eodem ad partes exteras tranſeun', Vic' com' noſtri Bucks, Ball' burgi & paroch' de Buckingham, necnon Burgens' ejuſd' burgi, Major' & Ball' de Chipping-Wiccombe, alias Wiccombe, necnon Burgens' ejuſd' burgi, & probis hominibus in eiſdem burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, ac in omnibus aliis villis, burgis, villat', hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinar' valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus ad certum diem (in eod' brevi content') ad tot homines competen', & ab inde in vigint' & ſex ſeptiman', ad cuſtag' hominum & terr' tenen' burg', paroch', vill', villat', & al' locor' ſupra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum ſalariis, & al' ad guerr' neceſſar' per tempus illud, ſuper defenſionem maris moratur' parari, & ad portum de Portſmouth citra tempus in eod' brevi limitat' duci faceretis. Cumque etiam per idem breve aſſignaverimus Vic' com' noſtri Bucks præd', Ball' burgi & paroch' de Buckingham præd', & Major' burgi de Chipping-Wiccombe præd', aut aliquos duos vel plures eorum, quor' Vic' dicti com' noſtri Bucks unum eſſe volumus, infra certum terminum proxim' poſt receptionem brevis illius, ad aſſidend' quantum de cuſtag' præd' ſuper præd' burg' & paroch' de Buckingham, & ſuper præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſeparatim poni ſeu aſſideri deberet. Cumque etiam per præd' breve noſtrum aſſignaverimus Ball' burgi & paroch' de Bucking', & Majorem de burgo de Chipping-Wiccombe, alias Wiccombe, ſeparatim & reſpective, ad aſſidend' omnes homines in eiſd' ſeparal' burg' & paroch', & membr' eorund', & terr' tenentes in eiſdem, navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' ad expens' circa proviſionem præmiſſor' neceſſar'; & ſuper præd' burg' & paroch' de Buckingham, & ſuper præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſicut præfertur, ad tunc ſeparatim & diſtinctive ponend', *viz.* quemlibet eorum juxta ſtatum ſuum & facultates ſuas, & portiones ſuper ipſos aſſeſſat', per diſtrictiones aliosve modos debitos levand', & collectores in ea parte nominand' & conſtituend' modo & forma prout in eodem brevi præcept' fuit. Cumque per idem breve noſtrum ulterius aſſignaverimus Vic' dicti com' noſtri Bucks ad aſſidend' omnes homines in præd' villis de Agmondeſham, Wendover, Marlow magna, & in membris eorund', ac in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in præd' com' Bucks, & terr' tenentes in eiſd', ad contribuend' expenſis circa proviſionem præmiſſor' neceſſar', & ad cætera faciend' & exequend' modo & forma, quibus per breve illud præceptum fuit. Et quia nonnulli homines & terr' tenentes in prædict' com', burg', paroch', vill', villat', hamlet', & aliis locis, per ſeparal' taxationes & denar' ſummas, per vos ſuper ipſos reſpective erga contribution' oneris præd', juxta exigen' brevis præd' poſit' & aſſeſſat', nondum ſolverint nec ſatisfecerint, ſed eas ſolvere recuſaver', & adhuc contradicunt, prout informamur: Cumq; nos nuper voluimus certiorari, tam de nominibus hominum & terr' tenent', qui ad contribuend' expenſis ſupradict' aſſeſs' fuiſſent, ac denar' ſic aſſeſs' non ſolviſſent, quam de ſeparal' portionibus vel denar' ſummis ſuper ipſos impoſit', vos tamen nihil in return' ejuſdem brevis noſtri miſiſtis, in noſtrum contemptum: Vobis igitur præfat' nuper Vic' com' noſtri Bucks mandamus, ſicut al' mandaverimus, quod tam de nominibus hominum & ter' tenen' in com' præd' per vos reſpective virtute dicti brevis noſtri aſſeſſat', quas denar' ſummis ſuper ipſos ſic aſſeſſat', quam nondum ſolver' nec ſatisfec', ſed eas ſolvere recuſant, quas de ſeparal' portionibus & denar' ſummis per vos præfat' nuper Vic' com' noſtri Bucks ſuper ipſos aſſeſſat', in ſcript' reduct', cum omnibus ill' tangen', nos in cancellar' noſtram ſub ſigillis veſtris diſtincte & aperte, ſine delatione, vel ad ultimum ante viceſimum ſextum diem April' proxime futuro, ubicunque tunc fuerit', reddat' certiores, una cum hoc brevi. Ac vobis præfat' nuper Ball' burgi & paroch' de Bucking', & Major' burg' de Chipping-Wiccombe, al' Wiccombe, mandamus, ſicut aliis mandaverimus, quod tam de nominibus præd' hominum & terr' tenen' in burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, per vos reſpective virtute dicti brevis noſtri ſuperius primo mentionat' aſſeſs', quam de ſeparal' denar' ſummis ſuper ipſos aſſeſs', quas nondum ſolver' nec ſatisfecer', ſed eas ſolvere recuſant, quam de ſeparal' portionibus & denar' ſummis per vos ſuper ipſos reſpective aſſeſs' in ſcriptis fideliter reduct', cum omnibus illis tangen', nos in cancellariam noſtr' præd' ſub ſigillo noſtro diſtincte & aperte, ſine delatione, vel ad ultim' ante prædict' viceſimum diem Aprilis proxime futur', ubicunque tunc fuerit', ſeparatim reddatis certiores, una cum hoc brevi. Teſte meipſo apud Weſtm' nono die Martii, anno regni noſtri duodecimo. EYRE.

Ad quem diem Petrus Temple & Heneagius Proby return' brev' præd' dors' ſic: *ſſ* Executio hujus brevis patet in quibuſd' ſchedul' huic brevi annexat', quarum quidem ſchedul' tenor, quoad præfat' Johan' Hampden per præfat' Petrum Temple retornat', ſequitur in hæc verba: *ſſ.* Ego Petrus Temple Mil' & Baronet', qui fui Vic' com' Bucks, *viz.* inter quartum diem Auguſti, anno regni Domini noſtri Caroli nunc Regis Angliæ, *&c.* undecimo, & viceſimum ſecundum diem Februarii tunc proxime ſequen', quo die exivi ab officio meo Vic' com' præd', dicto Domino Regi in Cancellar' ſuam, virtute brevis ejuſdem Domini Regis huic ſchedul' anex', certifico, quod virtute & ſecundum exigen' brevis ipſius Domini Regis e Cancellar' ſua emanat', & ibidem de record' irrotulat', & Vic' dicti com' Bucks inter al' direct', geren' dat' quarto die Auguſti, anno undecimo ſupradict', aſſeſſavi, Anglice *have aſſeſſed*, ſuper ſeparal' homines & ter' tenentes com' Bucks præd', quorum nomina ſubſcribuntur, ſeparal' portiones & denar' ſummas ad eor' particular' inferius poſit' ad contribuend' expenſis circa proviſionem navigii in eod' brevi mentionat'; quas quidem portiones & denar' ſummas, ſive aliquam inde parcell', ante exitum ab officio meo Vic' com' prædict', ad manus meas, vel ad manus collector' in ea parte, virtute brevis ult' mentionat' per me conſtitut', præd' homines & ter' tenentes, aut eor' aliquis, quor' nomina ſubſcribuntur, non ſolverunt, ſed eas ſolvere recuſaver', *viz.* Stoake Mandivile, *ſſ.* John Hampden Eſq; Et tenor al' ſchedul' per præfat' Heneag' Proby fidelit' return', & eid' brevi annex', ſequitur etiam in hæc verba: *viz. There is to be accounted upon by the Aſſeſſors, High Conſtables, Petty Conſtables within the ſaid County in general, which cannot be accounted for by Sir* Peter Temple, *being, as it is conceived, ſhort four Pounds.*

Ego Heneagius Proby Arm', qui fui Vic' com' Bucks inter viceſimum ſecundum diem Februar', anno Regni Dom' noſtri Caroli nunc Reg' Angliæ, *&c.* undecimo, & ab eodem die & anno uſque primum diem Martii tunc proxime ſequen', dicto Domini Regi in Cancellar' ſuam, virtute brevis ejuſdem Domino Reg' huic ſchedul' annex', certifico, quod homines & ter' tenentes com' Bucks præd', aut eor' aliquis, quor' nomina in quibuſd' ſchedul' huic brevi annex' exprimuntur, qui aſſeſs' fuer' per Petrum Temple Mil' & Baronet' nuper Vic' com' Bucks præd', dum in officio Vic' ejuſd' com' ſteterit, in ſeparal' denar' portionibus, & denar' ſummis ad eor' ſeparal' nomina ſuperius poſſit, ad contribuend' expenſis circa proviſionem navigii, virtute & ſecundum exigen' brevis ipſius Domini Regis e Cancell' ſua emanat', & ibidem de record' irrot', Vic' dicti com' Bucks inter alios direct' geren' dat' quarto die Auguſti, anno undecimo ſupradict', Heneag' Proby exiſten' Vic' prædict' com' Bucks proxime poſt exitum dicti Petri Temple Mil' & Baronet' ab officio Vic' ejuſd' com', vel ad manus collector' in ea parte virtute brevis ultimo mentionat' conſtitut', non ſolver', ſed eas ſolvere recuſaverunt. Et ulterius præfat' Johannes Hampden petit ſimiliter audit' præd' brevis de Mittimus, de quo in brevi de Sciri facias præd' fit mentio, & ei legitur in hæc verba.

ſſ. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, *&c.* Theſaur' & Baronibus de Scaccario ſuo, ſalutem. Tenore cujuſdam brevis noſtri ſub magno ſigillo noſtro Angliæ confect', geren' dat' quarto die Auguſti, anno regni noſtri undecimo, in rotulis Cancellar' noſtræ irrotulat', per quod Vic' com' noſtri Bucks, Ball' & Burgen' burgi & paroch' de Buckingham, Major', Ball', & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eiſd' burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, & in omnibus aliis burgis, villis, villatis, hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod pro defenſione regni, tuitione maris, ſecuritate ſubditorum noſtrorum, ac ſalva conductione navium & merchandizarum ad regnum noſtrum Angliæ venien', & de eod' ad partes exteras tranſeun', pararent unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinariis valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus ad certum diem, in eod' brevi content', ad tot homines competen', & abinde in vigint' & ſex ſeptiman', ad cuſtag' hominum & terr' tenen' burgor', vill', villat', hamlet', & al' locor' ſupra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum ſalar', & al' ad guerram neceſſar' per tempus illud ſuper defenſionem maris in obſequio noſtro, in comitiva cuſtod' maris moratur', & ad portum de Portſm', circa tempus in eod' brevi limitat', duci facerent. Quodque reſpective aſſiderent omnes homines in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & cæteris burgis, villis, villat', hamlet' & aliis locis in dicto com' Bucks, & membris eorund', & ter' tenentes in eiſd', ad contribuend' expenſis circa proviſionem præmiſſor', & ad cætera faciend' & exequend', modo & forma prout per idem breve præcept' fuit; vobis mittimus præſentibus inter claus' breve, pro eo quod ſalus regni noſtri Angliæ, & populi noſtri ejuſdem periclitabatur, quod e dicta Cancellar' noſtra emanari narravimus, inter al' brevia ad hujuſmodi proviſionem & aſſeſſament' faciend' per ſingulos com', civitat', burg', vill', villat', hamlet', & locos regni noſtri Angliæ & Walliæ, & membris eorund', e Cancellar' noſtr' præd' nuper emanat', & ibidem ſimiliter irrot'; ac etiam

etiam quod dictum al' breve noſtrum ad certificand' nobis in eand' Cancellar', tam de nominibus hominum & terr' tenend' in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & in cæteris burgis, villis, villat', hamlet' & locis dicti com' Bucks, qui de mandato noſtro præd' ad contribuend' erga proviſion' præmiſſor' aſſeſs' fuerint, ac denar' ſuper ipſos ſic aſſeſs' non ſolver', quam de ſeparal' portionibus & denar' ſummis ſuper homines & terræ tenen' illos ſic onerat' & impoſit', necnon certificationes quaſdam in ſcriptis, virtute brevis illius reduct', & in dictam Cancellar' noſtram miſs'. Vobis etiam mittimus præſentibus interclaus', mandantes, quod inſpectis brevibus & certificat' præd', ulterius inde pro levatione, collectione, & receptione omnium & ſingularum præd' denar' ſummar' de præd' contributionibus adhuc non ſolut', fieri fac', prout de jure & ſecundum legem & conſuetudinem regni noſtr' Angliæ fuerit faciend'. Teſte meipſo apud Weſtm' quinto die Maii, anno regni noſtri tertio decimo. EYRE. Sicut in eiſdem brevibus, & ſchedul' eiſd' annex' in Scaccar' dicti Dom' Regis certificat', & ibidem in cuſtod' Rememorator' ejuſd' Dom' Regis de record' remanen' plenius continetur. Quibus lectis, auditis, & per ipſum intellectis, idem Johannes queritur, ſe colore ſeparal' brev', return' eorund', & ſchedul' eiſd' annexat', graviter vexat' fore & inquietat', & hoc minus juſte; quia dicit, quod præd' ſeparal' brevia ſuperius mentionat', return' eorund', & ſchedul' eiſdem annexat', materia in eiſd' content', minus ſufficien' in lege exiſtunt ad onerand' ipſum Johannem Hampden de aut cum ſolutione præd' ſumm' vigint' ſolid' ſuper ipſum in ſchedul' præd, modo & forma præd', taxat' & aſſeſſat', aut alicujus inde parcell', ad quæ ipſe neceſſe non habet, nec per legem terr' tenetur reſpondere. Unde ob inſufficien' præd' ſeparal' brevium ſuperius mentionat', return' eorund', ſchedul' eiſdem annex', ac materiæ in eiſdem brevibus ac ſchedul' content', ipſe idem Johannes Hampden petit judicium, Si dictus Dominus Rex nunc ipſum de præd' vigint' ſolid', aut aliqua inde parcell', ulterius impetere, ſeu onerare debeat aut velit.

Robert Holborne.

Et Johannes Banks Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege ſequitur, præſens hic in cur' ad eund' diem in propria perſona ſua, dicit, quod præd' ſeparal' brevia, & return' eorund', ac ſchedul' præd' eiſdem annex', materiaq; in eiſdem content', ſufficien' in lege exiſtunt ad præd' Johan' Hampden de præd' vigint' ſolid' ſuper ipſum in forma & ex cauſa præd' aſſeſſat' onerand'; quam quidem materiam ipſe dictus Attornat' dicti Dom' Regis general', pro eodem Dom' Rege paratus eſt verificare; quamq; materiam præd' Johannes Hampden non didicit, nec ad eam aliqualiter reſpondit, ſed verificationem illam admittere omnino recuſat: Pro eodem Dom' Rege ideirco petit judicium, & quod præd' Johannes Hampden de eiſd' vigint' ſolid' oneretur, & inde ſatisfaciat, *&c.*

Johannes Banks.

A Copy of the Judgment, as it is entred upon Record, in purſuance of the ſaid Motion, and according to the major Votes.

ET quia Barones hic ſe adviſare volunt de & ſuper præmiſſis, priuſq' judicium inde reddant, dies dat' eſt præfat' Johanni Hampden eod' ſtatu quo nunc hic in octab' ſancti Michaelis, ut dicti Barones ſe interim de iiſdem præmiſſis adviſare poſſint, ac cum Juſticiar' de utroq' banco inde deliberent, eo quod iidem Barones hic inde nondum, *&c.* Et ſuper hoc concordat' eſt inter Barones hic, tam ex aſſenſu dict' Attornat' dict' Domini Reg' general', quod dict' Attornat' præd' Johannes Hampden, & Conſiliarior' in lege peritor' ejuſdem Johannis Hampden, quod aliqui legis periti, tam de conſilio & parte dict' Domini Reg', quam de conſilio & parte dict' Johannis Hampden, de præd' materia in lege, & cæteris præmiſſis in camera hujus Scaccarii, vulgariter nuncupat' *The Exchequer Chamber*, coram iiſd' Baronibus, aſſidentibus eis Juſticiar' de utroque banco, argumentari interim publice audiantur. Ad quas quid' octabas ſancti Michaelis præd' Johannes Hampden venit hic ut prius. Et quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis, priuſq' judicium inde reddant, dies ulterius dat' eſt præfat' Johanni Hampden, eod' ſtatu quo nunc hic uſq' in octab' ſancti Hilarii, ut aliqui legis periti, tam de conſilio & parte dict' Domini Reg', quam de conſilio & parte dict' Johannis Hampden, de præd' materia in lege, & cæteris præmiſſis, in præd' camer' hujus Scaccarii, coram Baronibus præd', aſſidentibus eis præd' Juſticiar' de utroque banco, argumentari interim publice audiantur; ac iid' Barones, cum iiſd' Juſticiar' inde deliberent, eo quod nullus in lege peritus, vel de conſilio ipſius Domini Reg', vel de conſilio dict' Johannis Hampden adhuc auditur, & Barones hic inde non adviſantur, *&c.* Poſteaq' medio tempore in præd' octab' ſancti Michaelis, & præd' octab' ſancti Hilarii, tum Attornat' & Solicitator ipſius Domini Reg', quam duo legis periti de conſilio præd' Johannis Hampden, in præmiſſis exiſten' ex parte ejuſd' Johannis Hampden, duodecim ſeparal' diebus in præd' camer' Scaccarii, coram Baronibus hujus Scaccarii, aſſidentibus eis tunc ibid' præd' Juſticiar' de utroq' banco, de præd' mater' in lege & cæteris præmiſſis (recitato tunc ibid' record' præd') ad largum & ſummat' argumentari quidq' inde ex utraq' parte dicere potuiſſent aut voluer', palam & ſingulatim audit' fuer'. Et præd' Attornat' & Solicitator general' diverſa & quamplurima record', brevia, commiſſion', & præceden' tam hujus Scaccarii, quam cur' Cancellar', cur' de Banco Reg', ac de Commu' Banco', mater' in lege, & cætera præmiſſa in ſeparal' brevibus return', & ſchedulis præd' content', ex parte dict' Domini Reg' proban', confirman', & manutenen', ad tunc & ibid' produxer', oſtenſer', & expoſuer'; & ad præd' octabas ſancti Hilar' præd' Johannes Hampden venit hic ut prius, & quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt præfat' Johanni Hampden, eod' ſtatu quo nunc hic, uſq' a die Paſchæ in quindecim dies, ut dicti Barones interim, cum præfat' Juſticiar' de utroq' Banco ulterius deliberent, eo quod iidem Barones hic inde nondum, *&c.* Ad quem diem præd' Johannes Hampden venit hic ut prius, & quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt eid' Johanni, eod' ſtatu quo nunc hic, uſq' in cro' ſanctæ Trin', & dict' Barones interim cum præfat' Juſticiar' de utroq' banco ulterius inde deliberent, eo quod iidem Juſticiar' hic inde nondum, *&c.* Ad quem diem præd' Johannes Hampden venit hic ut prius, & ſuper hoc viſis præmiſſis, & per Barones hic plene intellectis, habitaque inde matura deliberatione cum præd' Juſticiar' de utroque banco, ac poſt argumenta tam per eoſd' Juſticiar', quam per præd' Barones ſingulatim in præd' camer' Scaccarii publice inde fact', videtur inde Baronibus, ex adviſamento Juſticiar' præd', quod ſeparal' brevia præd', & return' eorund', ac ſchedulæ præd' eiſd' annex', ac mater' in eiſd' content', ſufficien' in lege exiſtunt ad præfat' Johannem Hampden de præd' vigint' ſolid', ſuper ipſum in forma & ex cauſa præd' aſſeſſat' onerand'. Ideo conſiderat' eſt per eoſd' Barones, quod præd' Johannes Hampden de eiſd' vigint' ſolid' oneretur, & exinde ſatisfaciet, *&c.*

Rex verſus Harriſon *(b), for a* Miſdemeanour.

Trin' 14 Car' I. B. R.

Middx' *ff.* A Lias, ſcilicet die Jovis prox' poſt octab' ſanctæ Trin' iſto eod' termino, coram Domino Rege apud Weſtm', per ſacrament' xii. jur' extitit præſentat', Quod cum cur' Domini Regis de Communi Banco eſt, & a tempore cujus contrar' memoria hominum non exiſtit, fuit antiqua cur' de recordo dicti Domini Regis nunc, & progenitor' & anteceſſor' ſuor' Reg' & Reginar' Angliæ, pro adminiſtratione juſtitiæ ſubdit' hujus regni Angliæ, & aliis in communibus pl'itis per tot' regnum Angliæ præd' motis & emergentibus. Cumque eſt contra coron' & dignitat' Regiæ majeſtatis, necnon contra legem & conſuetudinem hujus regni Angliæ, pro aliqua perſona, vel aliquibus perſonis cur' præd', ſeu aliquos Juſticiarios ejuſd' cur', ead' cur' aperta exiſten', & Juſticiar' cur' illius in cur' ill' præſentibus, & judicialiter ſedentibus, diſturbare. Cumq' Ric' Hutton miles eſt, & per diverſos annos jam ult' elapſos fuit, & adhuc eſt, unus Juſticiar' dict' Domini Regis nunc præd' cur' ſuæ; quidam tamen Thomas Harriſon de Creek in com' Northampton Clericus, Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' & ſeduct', ſecum malitioſe imaginans, atque in animo compaſſans, quibus modis poſſit præd' Ricardum Hutton Milit', & adtunc & adhuc un' Juſtic' Domini Regis nunc de Communi Banco præd' exiſten', multipliciter defamare & ſcandalizare, machinanſque & malitioſe intendens, quantum in ipſo fuit, ipſum Ricardum Hutton in ſcandalum, ignominiam, contempt', & vilipend' inducere, ipſumq' Ricardum Hutton de vita ſua, ac de bonis & catallis, terris, & tenementis ſuis praviter & malitioſe deprivare, necnon ad diſplacentiam & indignationem dict' Domini Regis nunc erga præfat' Ricard' Hutton incitand' & provocand', ac ipſum Ricardum Hutton pro proditore tam apud dict' Dominum Regem, & magnates hujus regni Angliæ, quam apud omnes ligeos ſubditos ejuſd' Domini Regis haberi & exiſtimari ſatagens, ac ad præd' cur' dict' Domini nunc de Communi Banco, & Juſticiar' dict' Domini Regis ejuſd' cur', in cur' ill' præſent' exiſtent', & judicialit' ſedentibus, diſturband', & adminiſtrationem juſtitiæ in cur' ill' impediend', quarto die Maii, anno regni Domini noſtri Caroli, Dei gratia Angliæ, Scotiæ, Franc', & Hibern' Regis, fidei defenſores, *&c.* decimo quarto, apud civitat' Weſtm' in com' Midd', viz. in magna aula pl'itorum ibidem, cur' ipſius Domini Regis coram ipſo Rege cur' Cancellar', & præd' cur' Communi Banco in præd' magna aula pl'itorum præd' apert', ac Juſtic' ejuſd' Domini Regis in cur' præd' tunc ibidem præſentibus, & judiciali ter ſedentibus, materias & cauſas Domini Regis, populi ſui, ac regni ſui Angliæ aſſidue attendent' & audient', legeſq' regni præd' ſubdit' ipſius Domini Regis miniſtrant', præd' Thomas Harriſon ad barram præd' cur' dicti Domini Regis de Communi Banco, adtunc & ibidem violenter, vi & armis, *&c.* acceſſit præd' cur' de Communi Banco adtunc & ibidem in præd' magna aula, ut præfertur, aperta exiſten', ac Ricardo Hutton Milit', & aliis Juſticiar' dicti Domini Regis cur' de Communi Banco præd', in cur' illa tunc ibidem (ut præfertur) præſentibus, & judicialit' ſedentibus, & præd' Thomas Harriſon adtunc & ibidem, ex ſua mera malitia, malo animo, & malevola intentione, in præſentia & audit' præfat' Juſticiar' præd' cur' de Communi Banco, ac diverſorum ſervien' ad legem, multor' viror' venerabilium, & alior' dicti Domini Regis fidelium ſubditor', falſo, nequit', & malitioſe præfat' Ricardum Hutton Milit' de alta proditione accuſavit, & adtunc & ibidem falſo, nequit', & malitioſe hæc ſcandaloſa, venenoſa, defamatori Anglicana verba, palam, publice, & alta voce dixit, *I* (ipſum præfat' Thomam Harriſon innuendo) *do accuſe Mr. Juſtice* Hutton (præfat' Ricardum Hutton Milit', un' Juſticiar' dicti Domini Regis de Communi Banco præd' innuendo) *of high Treaſon*, in dicti Domini Regis nunc, coron', dignitat', & Regiæ poteſtatis ſuæ læſionem & derogationem, & cur' ſuæ præd' contempt', & ſcandalum manifeſtum juriſque, & legum ipſius Domini Regis Regni ſui præd', ac cur' de Communi Banco præd', & Juſticiar' dicti Domini Regis, cur' illius, & adminiſtration' juſtitiæ in ead' cur', in nequiſſimum exemplum omnium aliorum malefactorum tali caſu delinquent', & ad graviſſimum ſcandalum, infamiam, dedecus, & final' deſtructionem præd' Ricardi Hutton Milit', & contra pacem dicti Domini Regis nunc, coronam, & dignitates ſuas, *&c.* Cum per quod præcept' fuit Vic', quod non omittat, *&c.* quin venire fac' eum ad reſpondend', *&c.* Cum & modo, ſcilicet die Veneris prox' poſt octabas ſanctæ Trin' iſto eod' termino, coram Domino Rege apud Weſtm' ven' præd' Thomas Harriſon Clericus, cuſtod' Henrici Hopkins Arm', guardian' priſonæ dicti Regis de la Fleete, virtute brevis dicti Regis de Habend' corpus ad ſubjic', *&c.* ei inde direct', ad barr' hic duct' in propria perſona ſua, qui committ' præfat' Marr', *&c.* Et ſtatu' de præmiſſis eo alloquunt' qualiter ſe inde acquietari, dicit, quod ipſe non eſt inde culpabil', & de hoc ponit ſe ſuper patriam. Et Johannes Keeling Ar', Cleric' Coronæ, & Attornat' Domini Regis in cur' ipſius Regis, coram ipſo Rege, qui pro eod' Domino Rege in

(b) Vol. I. p. 720. No. 38.

hac parte ſequitur, ſimiliter, *&c.* Jo' ven' inde jur' coram domino Rege apud Weſtm' die Lunæ prox' poſt quindenam ſanctæ Trin', & quia nec, *&c.* ad recogn', *&c.* quia tam, *&c.* Idem dies dat' eſt tam præfat' Johanni Keeling, qui ſequitur, *&c.* quam præd' Thomæ Harriſon Clerico, ſub cuſtod' præd' Marr' interim commiſſo ſalvo cuſtodiend', quouſq', *&c.*

Rex verſus Crook & *alios*, *for not taking the* Oaths

14 *Car.* II. *O. B.*

London ſſ. JUR' pro Domino Rege ſuper ſacrament' ſuum præſentant, Quod ad general' quarterial' ſeſſion' pacis Domini Regis, tent' pro civitat' London apud Guildhald' ejuſdem civitat', die Mercurii ſcil' viceſimo quinto die Junii, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſoris, *&c.* quarto decimo, coram Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Milite & Baronet', Aldermannis dictæ civitat', ac al' ſociis ſuis Juſtic' dicti Dom' Regis, ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' aſſign'. Seſſio iſta pacis adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ibidem uſque diem Jovis, ſcilicet viceſimum ſextum diem ejuſdem menſis Junii, anno ſupradicto, ad horam ſeptimam ante merid' ejuſdem diei, apud Juſtice-Hall in le Old Bailey, in paroch' ſanct' Sepulchri, in warda de Farringdon extra London præd', tenend' coram præfat' Juſtic' & al' ſociis ſuis, ad faciend' ulterius prout cur' con', *&c.* Ac ad eundem diem Jovis, viceſimum ſextum diem Junii, anno quarto decimo ſupradicto, general' quarterial' ſeſſio iſta pacis tent' fuit pro civitat' London præd' per adjornament' præd', apud Juſtice-Hall præd', in paroch' & ward' præd', coram præfat' Johe' Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Mil' & Baronet', uno Servien' dicti Dom' Regis ad legem, ac Recordator' civitat' præd', ac al' ſociis ſuis Juſtic' dicti Dom' Regis ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' aſſign'. Ac adtunc & ibidem præd' general' quarterial' ſeſſio pacis præd' ulterius adjornat' fuit per præfat' Juſtic' uſque diem Veneris, ſcilicet viceſimum ſeptimum diem dicti menſis Junii, anno quarto decimo ſupradicto, ad horam ſeptimam ante merid' ejuſd' diei, apud Juſtice-Hall præd', in parochia & warda præd' tenend' coram præfat' Juſtic' & al' ſociis ſuis, ad faciend' ulterius prout cur' con'. Ac ſuperinde ad iſtam eandem general' quarterial' ſeſſion' pacis, tent' pro civitat' London per adjornament' præd' apud Juſtice-Hall præd', in paroch' & warda præd', dicto die Veneris viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, coram præfat' Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Brown Mil' & Baronet', Ricardo Chiverton, Armigero, & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Milite & Baronet', uno Servien' dicti Domini Regis ad legem, ac Recordator' ejuſdem civitat', ac al' ſociis ſuis Juſtic' dicti Domini Regis ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eand' civitat' perpetrat', audiend' & terminand' aſſign', in aperta general' quarterial' ſeſſion' præd', præfat' Juſticiar' pacis ult' nominat', exiſtentes major pars Juſtic' pacis ipſius Domini Regis infra dictam civitatem London adtunc, ſcilicet dicto viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, apud dictam paroch' ſancti Sepulchri, in warda de Farringdon extra London præd' præſen' exiſtent', obtulerunt (Anglice *did tender*) Johanni Crooke nuper de London Generoſo, Johanni Bolton nuper de London Aurifabro, & Iſaac Gray nuper de London Generoſo, & eor' cuilibet ſeparatim per ſe (ad tunc exiſten', & cuilibet eor' exiſten' ultra ætat' octodecim annorum) jurament' content' in quodam actu in parliament' Domini Jacobi nuper Regis Angliæ, tent' per prorogationem apud Weſtm' in com' Middleſex, quinto die Novembris, anno regni ſui Angliæ, Franc', & Hiberniæ tertio, & Scotiæ triceſimo nono, nuper edit'. & provis' in his Anglicanis verbis ſequen', *viz.* 'I do truly and 'ſincerely acknowledge, profeſs, teſtify, and declare, in my Conſcience, 'before God and the World, that our Sovereign Lord King *Charles* the 'Second is lawful and rightful King of this Realm, and of all other his 'Majeſty's Dominions and Countries; and that the Pope neither of him-'ſelf, nor by any Authority of the Church or See of *Rome*, or by any 'other Means with any other, hath any Power or Authority to depoſe 'the King, or to diſpoſe of any of his Majeſty's Kingdoms or Dominions, 'or to authorize any foreign Prince to invade or annoy him, or his 'Countries, or to diſcharge any of his Subjects of their Allegiance and 'Obedience to his Majeſty, or to give Licence or Leave to any of them 'to bear Arms, raiſe Tumults, or to offer any Violence or Hurt to his 'Majeſty's Royal Perſon, State, or Government, or to any of his Ma-'jeſty's Subjects within his Majeſty's Dominions. Alſo I do ſwear from 'my Heart, that notwithſtanding any Declaration, or Sentence of Ex-'communication, or Deprivation made or granted, or to be made or 'granted by the Pope or his Succeſſors, or by any Authority derived, or 'pretended to be derived from him or his See, againſt the ſaid King, his 'Heirs or Succeſſors, or any Abſolution of the ſaid Subjects from their 'Obedience, I will bear Faith and true Allegiance to his Majeſty, his 'Heirs and Succeſſors, and him and them will defend to the uttermoſt of 'my Power, againſt all Conſpiracies and Attempts whatſoever, which 'ſhall be made againſt his or their Perſons, their Crown and Dignity, by 'Reaſon or Colour of any ſuch Sentence or Declaration, or otherwiſe; 'and will do my beſt Endeavour to diſcloſe and make known unto his 'Majeſty, his Heirs and Succeſſors, all Treaſons and traitorous Con-'ſpiracies which I ſhall know or hear of to be againſt him, or any of 'them. And I do further ſwear, That I do from my Heart abhor, de-'teſt, and abjure, as impious and heretical, this damnable Doctrine and 'Poſition, *That Princes which be excommunicated or deprived by the Pope, 'may be depoſed or murdered by their Subjects, or any other whatſoever.* And 'I do believe, and in my Conſcience am reſolved, that neither the Pope, 'nor any Perſon whatſoever, hath Power to abſolve me of this Oath, 'or any Part thereof, which I acknowledged by good and full Authority 'to be lawfully miniſtred unto me, and do renounce all Pardons and Diſ-'penſations to the contrary. And all theſe Things I do plainly and ſin-'cerely acknowledge and ſwear, according to theſe expreſs Words by me 'ſpoken, and according to the plain and common Senſe and Underſtand-'ing of the ſame Words, without any Equivocation, or mental Evaſion, 'or ſecret Reſervation whatſoever. And I do make this Recognition 'and Acknowledgment heartily, willingly, and truly, upon the true 'Faith of a Chriſtian. So help me God.' Ac quod præfat' Juſtic' pacis ult' nominat' ad tunc, ſcil' dicto viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto apud paroch' & ward' præd', in dicta quarterial' ſeſſion' pacis præd', coſdem Joh'em Crooke, Joh'em Bolton, & Iſaacum Gray, & eor' quemlibet ſeparatim per ſe requiſiver' ad jurament' illud ſuper ſacroſancta Dei Evangel' capiend'. Quodq; iidem Joh'es Crooke, Joh'es Bolton, & Iſaacus Gray, jurament' præd', ſic per præd' nominat' Juſtic' pacis ejuſdem Joh'i Crooke, Joh'i Bolton, & Iſaaco Gray, ut præfertur, oblat' & requiſit', ad tunc & ibidem obſtinate & pertinaciter capere recuſaver', & quilibet eor' recuſavit, in malum exemplum omnium alior' dicti Domini Regis nunc, fidel' ſubdit' & in contempt' dicti domini Regis nunc, legumq; ſuar', contra formam ſtatut' præd', ac contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, *&c.*

WILD.

Rex verſus Green, Hill (*i*), *and others, for the* Murder *of Sir* Edmondbury Godfrey.

Mich' 30 *Car'* II. *B. R.*

Middx, ſſ. JUrator' pro Dom' Rege ſuper ſacrament' ſuum præſentant, Quod Robertus Green nuper de paroch' ſanctæ Mariæ le Strond in com' Midd' labor', Laurentius Hill nuper de paroch' præd' in com' præd' lab', Dom' Kelly nuper de paroch' præd' in com' præd' Cler', & Philbert Vernat nuper de paroch' præd' in com' præd' lab', Deum præ oculis ſuis non habentes, ſed inſtigat' diabolica mot' & ſeduct' 12 die Oct', anno regni Domini Caroli ſecundi, Dei gratia Angl', Scot', Franc' & Hiberniæ Regis, fidei defenſor', *&c.* 30, vi & armis apud paroch' ſanctæ Mariæ le Strond præd', in com' præd', in & ſuper quendam Edmundumbury Godfrey Mil', in pace Dei & dict' Dom' Regis nunc, adtunc & ibidem exiſten', felonice, voluntarie, & ex malitia ſua præcogitata inſult' fecer'. Et quod præd' Robertus Green quoddam ſudarium panni lin', Anglici *a Linen Handkerchief*, valor' ſex denar', circa collum ipſius E. B. G. adtunc & ibidem felonice, voluntar', & ex malitia ſua præcogitat', plicavit & fixavit, Anglice *did fold and faſten.* Et quod prædict' R. G. cum prædict' ſudario ſic per ipſum R. G. plicat' & fixat' circa collum ipſius præd' E. B. G. adtunc & ibidem ipſum præd' E. B. G. felonice, voluntarie, & ex malitia ſua præcogitat', ſuffocavit & ſtrangulavit, Anglice *did choke and ſtrangle*, de quibus quidem ſuffocation' & ſtrangulation' ipſius E. B. G. præd' per ipſum præd' R. G. in forma præd' fact' & perpetrat' ipſe præd' E. B. G. adtunc & ibidem inſtant' obiit. Et quod præd' L. H. D. K. & P. V. adtunc & ibidem felonice, voluntarie, & ex malitia ſua præcogitat' fuer' præſentes, auxiliantes, abettantes, confortantes, aſſiſtantes, & manutenentes præfat' R. G. ad præd' E. B. G. in forma præd' felonice, voluntarie, & ex malitia ſua præcogitat' interficiend' & murdrand'. Et ſic jur' præd' dicunt ſuper ſacrament' ſuum præd', quod præd' R. G. L. H. D. K. & P. V. modo & forma præd' præfat' E. B. G. felonice, voluntarie, & ex malitia ſua præcogitata interfecer' & murdraver' contra pacem dict' Dom' Reg' nunc, coron', & dignitat' ſuas, *&c.*

Rex verſus Taſborough *and* Price (*k*), *for Subornation of* Perjury.

Poſchæ 32 *Car.* II. *B. R.*

ſſ. ALias ſcilicet die, *&c.* ult' præterit' coram Domino Rege apud Weſtm', per ſacramen' 12 jur' probor' & legalium hominum com' præd', jurat' & onerat' exiſten' ad inquirend' pro dicto Dom' Rege & corpore com' præd' præſent' exiſtit', Quod cum quidam Tho' White, alias Whitebread, Clericus, Johannes Fenwick Clericus, Willielmus Harcourt, alias Harriſon Clericus, Johannes Gavan Clericus, Anthonius Turner Clericus, & Jacobus Corker, falſi proditor' contra ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angl', *&c.* 13 die Junii, anno regni dicti Domini regis nunc 31 ad deliberation' gaol' dicti Domini Regis de *Newgate*, teint' per adjournament' pro com' præd' apud Juſtice-Hall in le *Old Bailey*, in ſuburbiis civitatis London, coram juſtic' ad gaol' præd' adtunc & ibidem deliberand' aſſign', ſteterunt indictat' pro compaſſation' (Anglice *the compaſſing*) mortis & finalis deſtruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento ſpecificat' poſteaque ad ſeſſion' præd' præd' T. W. alias, *&c.* J. F. W. H. alias, *&c.* J. G. & A. T. per jurat' patriæ adtunc & ibidem debito modo inde triat' & convict' fuer', & per judic' cur' adtunc & ibidem debito modo attinct' fuer', prout patet per record' inde juratoribus præd' in eviden' oſtens': Cumque etiam quidam Ricardus Langhorn Ar' poſtea ſcilicet ad deliberation' gaol' dicti Domini Regis tent' per adjornament' pro civitat' London' apud Juſtice-Hall præd', coram juſticiar' ad gaol' præd' adtunc & ibidem deliberand' aſſign', 14. die Junii, anno regni dicti Dom' Regis nunc 31. ſuprad'

(*i*) Vol. II. p. 760. No. 79.

(*k*) Vol. II. p. 1017. No. 91.

legitimo

legitimo modo ſtetit indict' pro compaſſatione (Anglice *compaſſing*) mortis & final' deſtruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento ſpecificat'; poſteaque ſuperinde ad eandem ſeſſion' triat' per jur' patriæ, & adtunc & ibidem per judic' cur' attinct' fuit, prout patet per record' inde juratorib' præd' ſimilit' in evidenc' oſtens'. Cumque etiam quidam Stephanus Dugdale ſuper ſeparal' triation' indictament' præd' fuit teſtis product '& jurat' ex parte dicti Domini Regis nunc, & adtunc & ibidem legitimo modo material' evidenc' verſus præd' T. W. W. H. J. G. A. T. & R. L. dedit ad proband' ipſos culpabil' de materia in præd' indictamento ſpecificat', quidam Johannes Taſburgh, nuper de, &c. Gen', alias dict' J. Tiſburgh de, &c. Gen', & Anna Price de, &c. Spinſter, præmiſſa præd' ſatis ſcien' & exiſten' perſon' diabolice affectat' erga ſereniſſimum Dom' noſtrum Carolum ſecundum nunc Regem Angl', &c. ſupremum & naturalem Dominum ſuum, ac machinant' & tot' virib' ſuis intenden' pacem & communem tranquillitat' hujus regni Angl' perturbare, impedire, & ſupprimere (Anglice *to ſtifle*) ulteriorem divulgationem (Anglice *diſcovery*) dictar' prodition', &, quantum in ipſis fuit, debitum legis curſum eludere, nec non cauſare & procurare quod credit' foret, quod perſon' ſic ut præfertur attinct', minus juſte attinct' fuiſſent, præd' J. T. & A. P. ante triation' præd' W. H. ſcilicet præd' 13 die Junii, anno, &c. nunc 31. ſuprad', apud paroch' ſancti Andreæ Holbourn in com' Midd', falſo, illicite, injuſte, corrupte, & contra ligeanc' ſuæ debit' ſolicitabant, ſubornabant, & conat' fuer' perſuader', & uterque eor' adtunc & ibidem ſolicitabat, ſubornabat, & conat' fuit perſuadere præfat' Stephanum Dugdale, quod ipſe præfat' S. D. non foret teſtis, nec daret evidenc' verſus præfat' W. Harcourt, alias, &c. ſuper triation' ipſius W. H. alias, &c. pro proditionibus præd', Et quod præd' J. T. & A. P. poſt triation' præd' ſcilicet 14 die Octobr', anno, &c. nunc 31 ſupradicto, apud præd' paroch' ſancti Andreæ Holbourn in com' Midd', falſo, illicite, injuſte, adviſate, contra ligeanc' ſuæ debit' ſolicitabant, ſubornabant, & conati fuer' perſuadere, & uterque eor' adtunc & ibidem, falſo, illicite, adviſate, corrupte, & contra ligeanc' ſuæ debitum ſolicitabat, ſubornabat, & conat' fuit perſuadere præd' Stephanum Dugdale, quod ipſe præd' Stephanus Dugdale retraheret & denegaret totam evidenc', quas ipſe præd' S. D. ut præfertur, dediſſet contra præd' proditor' eiſdem J. T. & A. P. adtunc & ibidem falſo, illicite, injuſte, adviſate, corrupte promitten' & uterque eor' promitten' præd' S. D. magn' & ingent' denar' ſum' & mercedes, ſi ipſe præd' S. D. retraheret & denegaret totam evidenc' per ipſum S. D. verſus præd' proditor'; ut præfertur, dat', & ſeipſum S. D. in lecis incognit' & tranſmarin' retraheret & abſentaret. Et quod præd' J. T. & A. P. ad nequiſſimas machination', practication'; & intention' ſuas præd' perimplend' & pro perficiend', poſtea ſcilicet 14 die Octobr', anno, &c. 31. ſuprad', apud paroch' ſancti Andreæ Holbourn præd' in dicto com' Midd', falſo, illicite, injuſte, adviſate, & corrupte contra ligeanciar' ſuar' debit', produxer' & oſtender', & uterque adtunc & ibidem produxit & oſtendit præfat' S. D. quandam notam in ſcriptis, tenor cujus quidem notæ ſequitur in his Anglican' verbis ſequen', videlicet, *Being touched with a true Remorſe of Conſcience, and hearty Sorry for the great Ill I did, in coming in a Witneſs againſt the Catholicks, and there ſpeaking Things which in my own Conſcience I know to be very far from the Truth, I think myſelf bound in Duty both to God and Man, and for the Safety of my own Soul, to make a true Declaration how I was drawn into this wicked Action: but being very well ſatisfied that I ſhall create myſelf many powerful Enemies upon this account, I have retired myſelf to a Place of Safety, where I will with my own Hand diſcover the great Wrong that hath been done the Catholicks, and hope it may gain belief. And likewiſe I proteſt before Almighty God, that I have no motive to induce me to this Confeſſion, but a true Repentance for the Miſchiefs I have done, and hope Almighty God will forgive me.* Quodque præd' J. T. & A. P. poſtea ſcilicet dicto 14 die Octob', anno, &c. nunc 31 ſuprad', ad paroch' ſancti Andreæ Holbourn præd' in com' Midd' præd', falſo, illicite, injuſte, adviſate, corrupte, & contra ligeanc' ſuar' debitum, præfat' Stephanum Dugdale ad præd' notam in ſcript', ſic ut præfertur. eidem S. D. product' & oſtens' ſignare & ſubſcribere ſolicitabant, & perſuadere conat' fuer', & uterque eor' adtunc & ibidem ſolicitabat & perſuadere conat' fuit, & adtunc & ibidem falſo, illicite, injuſte, adviſate, corrupte promiſer', & uterque eor' adtunc & ibidem promiſit, quod ſi ipſe præd' S. D. præd' notam in ſcript' ſignaret & ſubſcriberet, quod tunc ipſe præd' S. D. magn' & ingent' denar' ſum' haberet & reciperet, in malum & pernitioſum exemplum omn' al' in tali caſu delinquen', ac contra pacem dicti Domini Regis, coron', & dignitat' ſuas, &c.

Rex verſus Smith (*l*), *for a* Libel.

32 *Car.* II. *B. R.*

ſſ. JUrator' pro Domino Rege ſuper ſacram' ſuum præſentant, Quod Franciſcus Smith, nuper de in librar', Deum præ oculis ſuis non habens, ſed inſtigatione diabolica motus & ſeduct', & falſo & malicioſe machinans, & intendens ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defenſorem & regimen ſuum, in odium & infamiam inter ſubditos ſuos inducere & inferre, & ſeditionem inter ſubditos dict' Dom' Regis movere, 24 die Decembris, anno regni dict' Dom' Regis 32 apud in vi & armis, falſo, ſeditioſe, & malicioſe ſcripſit & publicavit, & ſcribi, imprimi, & publicari cauſavit quendam fict', fals', ſedit', & ſcandalos' libell', intitulat', *A Speech lately made by a noble Peer of the Realm.* In quo quidem libello continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *My Lords, 'tis a very hard thing to ſay, that we cannot truſt the King; and that we have been already deceived ſo often, that we ſee plainly the Apprehenſions of Diſcontent in the People is no Argument at Court; and tho' our Prince be in himſelf an excellent Perſon, that the People have the greateſt Inclination imaginable to love, yet we muſt ſay, he is ſuch an one, as no Story affords us a parallel of. How plain, and how many are the Proofs of the Deſigns to murder him? How little is he apprehenſive of it?* Et in altera parte ejuſdem libelli continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *ſſ. My Lords, I hear of a Bargain in the Houſe of Commons, and an Addreſs made to the King; but this I know, and muſt boldly ſay it, and plainly, That the Nation is betray'd, if upon any Terms we part with our Money, till we are ſure the King is ours. Have what Laws you will, and what Conditions you will, they will be of no Uſe, but Waſte Paper before* Eaſter, *if the Court have Money to ſet up for Popery and arbitrary Deſigns in the mean while. On the other hand, give me leave to tell you, my Lords, the King hath no reaſon to diſtruſt his People. No man can go home and ſay, That if the King comply with his People, they will do nothing for him, but tear all up from him. We want a Government, and we want a Prince that we may truſt even with the ſpending of half our annual Revenues for ſome time, for the Preſervation of theſe Nations.* In malum & pernicioſiſſimum exemplum omnium alior' in tali caſu delinquen', contra pacem dict' Dom' Regis, coronam, & dignitat' ſuas. Unde idem Attornat' petit adviſament' cur' in præmiſſis, & debit' legis proceſſum.

Rex verſus Cellier (*m*), *for a* Libel.

32 *Car'* II. *O. B.*

ſſ. JUratores pro Dom' Rege ſuper ſacramentum ſuum præſentant, Quod Eliz' Cellier uxor —— Cellier, de parochia ſanct' Clementis Dacor' in com' Midd' Gen', eadem Eliz' exiſten' religionis papalis, Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' & ſeduct', & falſo & malitioſe machinans & intendens, ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, & gubernationem ſuam hujus regni Angliæ, necnon veram religionem proteſtan', infra hoc regnum Angliæ lege ſtabilit', in odium, infamiam, & contemptum inducere & inferre, & ſcandalum & infamiam imponere ſuper quibuſdam perſonis, qui producti fuiſſent teſtes, & teſtimon' dediſſent ex parte dicti Dom' Regis contra præd' Eliz' Cellier, & alias perſonas, de alta proditione indictat' primo die Auguſti, anno regni dicti Dom' Regis triceſimo ſecundo, apud prædict' parochiam ſancti Clemen' Dacor', in com' Midd' præd', falſo, malitioſe, & ſeditioſe ſcripſit & publicavit, & ſcribi, imprimi, publicari cauſavit, quendam fictum, falſum, & ſcandaloſum libellum, intitulat', *Malice defeated, or a brief Relation of the Accuſation and Deliverance of* Elizabeth Cellier; *wherein her Proceedings both before and during her Confinement are particularly related, and the Myſtery of the Meal-Tub fully diſcovered; together with an Abſtract of her Arraignment and Trial, written by herſelf for the Satisfaction of all lovers of undiſguiſed Truth.* In quo quidem libello continentur hæc falſa, ficta, & ſcandaloſa verba, & figuræ ſequentia: *ſſ. I hope it will not ſeem ſtrange to any honeſt and loyal Perſon, of what Way or Religion ſoever, that I, being born and bred up under Proteſtant Parents, ſhould now openly profeſs myſelf of another Church* (Eccleſiam Romanam innuendo) *for my Education being in thoſe Times, when my own Parents and Relations, for their conſtant and faithful Affection to the King and Royal Family, were perſecuted, the King himſelf murdered, the Biſhops and Church deſtroyed, the whole loyal Party, merely for being ſo, oppreſt and ruined, and all, as was pretended by the Authors of theſe Villanies, for their being Papiſts and Idolaters, the conſtant Character given by them to the King and his Friends; and to make them odious, they aſſuming to themſelves only the Name of Proteſtants, making that the glorious Title by which they pretended Right to all things. Theſe ſort of Proceedings, as I grew in Underſtanding, produced in me more and more Horror of the Party that committed them, and put me on enquiring into that Religion to which they pretend the greateſt Antipathy, wherein, I thank God, I found my innate Loyalty not only confirmed, but encouraged; and, let Calumny ſay what it will, I never heard from any Papiſt, as they call them, Prieſt or Layman, but that they and I, and all true Catholicks, owe our Lives to the Defence of our lawful King, which our preſent Sovereign* Charles *the Second is, whom God long and happily preſerve ſo. Theſe ſort of Doctrines agreeing to my publick Morals, and no way, as ever I was taught, contradicting my private ones, commending at the ſame time to me Charity and Devotion, I without any Scruple have hitherto followed, glorying myſelf to be in Communion with thoſe* (Papiſtas innuendo) *who were the humble Inſtruments of his Majeſty's happy Preſervation from the fatal Battle at* Worceſter, *and whom, though poor, no Temptation could invite to betray him to theſe, who by a pretended Proteſtant Principle ſought his innocent Blood. Theſe Truths, I hope, may ſatisfy any innocent Perſon in my preſent Change; nor can they wonder at my Continuance therein, notwithſtanding the horrid Crimes of Treaſon and Murder laid to the Charge of ſome Perſons conſiderable for their Quality and Fortunes, in that Party: For when I reflected who were Witneſſes, and what unlikely things they depoſed, and obſerved that many of the chiefeſt Sticklers for the Plot were theſe, or the Sons of theſe, that acted the principle parts in the laſt Tragedy, which Hiſtory told me too had the Prologue of a pretended Popiſh Plot; I ſay, theſe things made me doubtful of the whole; and the more I ſearched for Truth, the more I doubted that the old Enemies of the Crown were at work again for its Deſtruction. I being fully confirmed in this, thought it my Duty, through all ſorts of Hazards, to relieve the poor impriſon'd Catholicks who in great numbers were locked up in Gaols, ſtarving for want of Bread; and this I did ſome Months before I ever ſaw the Counteſs of* Powis, *or any of thoſe honourable Perſons that were accuſed, or receiving one Penny of their Money, directly or indirectly, till about the latter end of* January

(*l*) Vol. II. p. 1040. No. 93. (*m*) Vol. III. p. 89. No. 101.

(1678) *the Prisoners increasing very much.* Et in alia parte ejusdem libelli (inter alia) continentur hæc falsa, ficta, & scandalosa verba, *ff. About this time I went daily to the Prisons, to perform those Offices of Charity I was obliged to; and on* Thursday, January 9, (1678) *I dined in* Newgate, *in the Room called the* Castle, *on the Master Debtors side; and about Four in the Afternoon I came down into the Lodge, with five Women, of which three were Protestants; and we all heard terrible Groans and Squeeks, which came out of the Dungeon called the* Condemned Hole: *I asked* Harris, *the Turnkey, what doleful Cry it was; he said it was a Woman in Labour; I bid him put us into the Room to her, and we would help her; but he drove us away very rudely, both out of the Lodge, and from the Door. We went behind the Gate, and there listened, and soon found that it was the voice of a strong Man in Torture, and heard, as we thought, between his Groans, the winding up of some Engine. These Cries stopped the Passengers under the Gate; and we six went to the Turner's Shop without the Gate, and stood there, amazed with the Horror and Dread of what we heard; when one of the Officers of the Prison came out in great Haste, seeming to run from the Noise: One of us caught hold of him, saying, Oh! what are they doing in the Prison?* Officer. *I dare not tell you, Mistress.* Cell. *It's a Man upon the Rack, I'll lay my Life on't.* Officer. *It is something like it.* Cellier. *Who is it,* Praunce? Officer. *Pray, Madam, do not ask me, for I dare not tell you; but it is that I am not able to bear any longer; pray, let me go. With that he ran away towards* Holbourn *as fast as he could. We heard these Groans perfectly to the End of the* Old-Baily: *They continued till near Seven of the Clock; and then a Person in the Habit of a Minister, of a middle Stature, grey-haired, accompanied with two other Men, went into the Lodge; the Prisoners were locked up, and the outward Door of the Lodge also, at which I set a Person to stand and observe what she could; and a Prisoner loaded with Irons was brought into the Lodge, and examined a long time; and the Prisoners that came down as low as they could, heard the Person examined, with great Vehemency say often, I know nothing of it; I am innocent; he forced me to bely myself; what would you have me say? will you murder me because I will not bely myself and others? Several other such like Expressions they heard spoken, as by one in great Agony. About four of the Clock the next Morning the Prisoners, that lay in a place about the Hole, heard the same Cry again two Hours, and on* Saturday *Morning again; and about eight of the Clock that Morning, a Person I employed to spy out the Truth of this Affair, did see the Turnkeys carry a Bed into the Hole: she asked who it was for; they told her it was for* Praunce, *who was gone mad, and had torn his Bed in pieces. That Night the Examiners came again, and* Praunce *was led away to the Press-yard. This, and many things of like nature, made me very inquisitive to know what passed in the Prison. Soon after this* Francis Coral, *a* Scotchman, *that had been put into* Newgate *upon suspicion of carrying away Sir* Edmundbury Godfrey's *Body, and lay there thirteen Weeks and three Days in great Misery, got out: I went to see him, and found him a sad spectacle, having the Flesh worn away, and great Holes in both his Legs, by the Weight of his Irons; and having been chained so long double, that he could not stand upright: He told me much of his hard and cruel Usage, as that he had been squeezed and hasped into a thing like a Trough in a Dungeon under Ground, which put him into inexpressible Torment, insomuch that he swooned; and that a Person in the Habit of a Minister stood by all the while; that a Duke beat him, pulled him by the Hair, and set a drawn Sword to his Breast three times, and swore he would run him through; and another great Lord had laid down a heap of Gold, and told him it was Five hundred Pounds; that he should have it all, and be taken into the aforesaid Duke's House, if he would confess what they would have him: and one F., a Vintner, that lives at the Sign of the* Half-Moon *in* Ch——— St———, *by whose Contrivance he was accused, took him aside, and bid him name some Person, and say they employed him to take up the dead Body in* Somerset-yard, *and gave him Money for so doing; That if he would do this, both* F. *and he should have Money enough. He also told me, that he was kept from* Thursday *till* Sunday *without Victuals or Drink, having his Hands every Night chained behind him; and being all this time locked to a Staple, which was driven into the Floor, with a Chain not above a Yard long; that in this great Extremity he was forced to drink his own Water; and that the Gaoler beat his Wife because she brought Victuals, and pray'd he might have it, and threw Milk on the Ground, and bid her be gone, and not look at him.* Et in altera parte ejusdem libelli continent' (inter al') hæc falsa, ficta, & scandalosa verba sequentia: *ff. My Arraignment, which, in Confidence of my own Innocency, I continually press'd for; not but that I knew the Danger, as to this Life, of encountering the Devil in the worst of his Instruments, which are perjurers encouraged to that degree, as that profligated wretch* (quendam Thomam Dangerfield testem product' ex parte Dom' Regis contra præd' Elizabetham Cellier, pro alta proditione innuendo) *was, and has been since his being exposed to the World in his true Colours, both at mine and another's Trial.* Et in altera parte ejusdem libelli continentur hæc falsa, ficta, & scandalosa verba sequen': *ff. Nor have I since received any thing towards my Losses, or the least Civility from any of them, whilst* Dangerfield, (prædict' Thomam Dangerfield iterum innuendo) *when made a Prisoner for apparent recorded Rogueries, was visited by and from Persons of considerable Quality, with great Sums of Gold and Silver, to encourage him in the new Villainies he had undertaken, not against me alone, but Persons, in whose Safety all good Men (as well Protestants as others) in the three Kingdoms are concerned.* Et in altera parte ejusdem libelli vocat' *A Postscript to the impartial Reader,* continent' hæc falsa, ficta, & scandalosa verba sequentia: *ff. And whensoever his Majesty pleases to make it as safe and honourable to speak Truth, as it is apparent it hath been gainful and meritorious to do the contrary, there will not want Witnesses to testify the Truth of more than I have written, and Persons that are above being made the Hangman's Hounds for weekly Pensions, or any other Considerations whatsoever.* In malum & pernicios[illegible]imum exemplum omn' alior' in tali casu delinquin' contra pacem dict' Dom' Regis, coron', & dignitat' suas.

Rex versus Dominum Grey (*n*) *& al', for a* Misdemeanour *in debauching the Lady* Henrietta Berkley.

Mich' 34 *Car'* II. *Rot.* 1. *B. R.*

ff. QUod Ford Dom' Gray de Wark, R. C. nuper de, *&c.* Gen', A. C. ux' præd' R. C. D. J. F. J. ux' præd' D. J. & R. I. cum divers' al' male disposit' person', eidem Attorn' dicti Dom' Regis nunc general' adhuc incognit', 20. die Augusti, anno regni Dom' Caroli secundi nunc Regis Angl', *&c.* 34. & divers' al' dieb' & vicibus, tam antea, quam postea, apud paroch' de Epsom in com' Surr', falso, illicite, injuste, & nequissime, per illicitas & impuras vias & medias, conspiran', machinan', practican', & intenden' final' ruinam & destruction' Dominæ Henriet' Berkley, tunc virgin' innupt' infra ætatem 18 annorum, & un' filiar' prænobilis G. comit' Berkley (eadem Dom' H. B. tunc & ibidem sub custod', regimine, & educat' præfat' prænobil' G. C. B. patris sui existen') præd' Ford Dom' Gray, R. C. *&c.* & divers' al' person' ignot' adtunc & ibidem falso, illicite, injuste, & diabolice ad nequissimas, nefandissimas, & diabolicas intention' suas præd' perimplend', perficiend', & ad effectum redigend', præd' Dom' H. B. ad deserend' præfat' prænobilem G. C. B. patrem præd' Dom' H. & ad scortac', fornicat', & adulterium committend', & in scortat', fornicat', & adulter' cum præfat' F. D. G. (eodem F. D. G. adtunc, & diu antea, & adhuc marito existen' Dom' Mariæ al' fil' præd' prænobil' G. C. B. & soror' præd' Dominæ H.) contra omnes leges tam divin' quam human', impie, nequit', impure, & scandalose vivere & cohabitare tentaver', incitaver', & sollicitaver', & quilibit eorum tunc & ibidem tentavit, incitavit, & sollicitavit. Et quod præd' F. D. G. R. C. *&c.* ac al' person' ignot', vi & armis, *&c.* illicite, injuste, sine licentia, & contra voluntat' præfat' prænobil' G. C. B. in prosecution' nefandissimar' conspirac' suar' præd', præfat' Dom' H. B. ibidem circa horam 12. in nocte præd' 20. diei August', anno suprad', apud præd' paroch' de E. in com' S. præd', e domo mansional' præd' prænobil' G. C. B. ibidem situat' & existen', & e custod' & regimine ejusdem G. C. B. ceper', asportaver', & abduxer'. Et præd' Dom' H. B. a præd' 20. die August', anno suprad', & continue postea, usque diem exhibition' hujus information', apud paroch' de E. præd' in com' præd', & in divers' locis secret' ibidem, cum præfat' F. D. G, illicite, nequit', & scandalose vivere, cohabitare, & remanere procuraver' & causaver', & quilibet eorum procuravit & causavit, in magn' Dei omnipotent' displicent', ad ruinam & destruction' præfat' D. H. B. & amicor' suorum tristitiam & disconsolat', in malum & pernitiosum exemplum, *&c.* Unde, *&c.*

Rex versus Major' & Commun' & Civ' *civitatis* Londini (*o*).

An Information in nature of a Quo Warranto.

Paschæ 34 *Car'* II. *B. R.*

London *ff. Memorand', Quod Robertus Sawyer Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte sequitur, in propria persona sua ven' hic in curia Dicti Domini Regis, coram ipso Rege apud Westm', die Lunæ prox' post quinden' sancti Martini ult' præterit', & pro eodem Domino Rege protulit hic in cur' dicti Domini Regis, coram ipso Rege tunc & ibidem, quand' Information' versus Majorem & Communitat' ac Cives civitat' London; quæ quidem Informatio sequitur in hæc verba: ff.*

London' ff. MEmorandum, Quod Robertus Sawyer Miles, Attorn' Dom' Regis nunc generalis, qui pro eodem Dom' Rege in hac parte sequitur, in propria persona sua ven' hic in cur' dict' Dom' Regis, coram ipso Rege apud Westm', die Lunæ prox' post quinden' S. Martini isto eodem termino, & pro eodem Dom' Rege dat cur' hic intelligi & informari, Quod Major & Communitas, ac Cives civitat' London' præd', per spacium unius mensis jam ult' elaps', & amplius, usi fuerunt, & adhuc utuntur, ac clamant habere & uti, absque aliquo warranto, sive regali concessione, infra civitat' London præd', & libertat' & precinct' ejusdem civitat', diversis libertat', privileg', & franchis' sequen', videl', Fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London', ac per idem nomen placitare & implacitari, respondere & responderi, ac etiam habere Vicecomit' civitat' & com' civitat' London', & nominare & eligere ex seipsis duas personas fore Vicecomit' civitat' præd' & com' ejusd' civitat', ac ill' sic nominat' & elect' præficere & constituere Vic' civit' præd' & com' ejusdem civitat', ad execution' & retorn' omnium brevium, billarum, & præceptorum Dom' Regis pro administratione & executione justic' infra civit' præd' & com' ejusdem civit' exequend', faciend', ac ad faciend' & exequend' omnia & singula al' infra civit' præd', & com' ejusdem civit', quæ ad officium Vic' faciend' pertinent; ac etiam habere Vic' com' Middlesex, & nominare, eligere & constituere ex seipsis Vic' com' Middlesex, pro eodem com' ut Vicecomes inde deservitur, ac omnia brevia, billas, & præcepta Dom' Regis infra com Middlesex' præd' pro administratione & executione justic' ibid' exequend', & retorn' inde faciend', absque aliqua commissione, sive aliquibus literis patentibus a Dom' Rege inde obtent', sive obtinend'. Ac etiam quod Major & Aldermanni ejusdem civit' fuerunt Justic' Dom' Regis ad pacem infra civit' præd' conservand', ac ad sessiones pacis & placita coronæ infra eandem civit' tenend', ac ad omnes felon', riot', & conventic' illicit' infra civit' præd' inquirend', audiend', & terminand' authoritate ip-

(*n*) Vol. III. p. 519. No. 113.

(*o*) Vol. III. p. 545.

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ſorum propria, abſque aliqua commiſſione, ſive al' authoritate a Dom' Rege in ea parte conceſs' ſive obtent'. De quibus quidem omnibus & ſingulis libertat', privileg', & franchis' iidem Major & Communitas, ac Cives civit' London præd', per totum tempus ſupradictum ſuper dictum Dom' Regem nunc uſurpaverunt & adhuc uſurpant, in dict' Dom' Regis nunc contempt', prærogativæ ſuæ regiæ grave dampnum & præjudicium. Unde idem Attorn' dict' Dom' Regis nunc general', pro eodem Dom' Rege pet' adviſament' cur' hic in præmiſs', & debit' legis proceſs' verſus præfat' Major' & Communitat', ac Cives civit' London præd', in hac parte fieri ad reſpondend' dict' Dom' Regi, Quo Warranto clamant haberi, uti, & gaudere, libertat', privileg', & franchis' ſupradict', *&c.* Per quod præceptum fuit Vicecomitibus London, quod venire fac' eos ad reſpondend', *&c.*

Et modo, ſcilicet die Lunæ prox' poſt craſtinum Aſcens' Dom', iſto eodem termino, coram Dom' Rege apud Weſtm', ven' prædicti Major & communitas, ac Cives civitatis London', per Benedictum Brown Attornat' ſuum, & habito auditu information' præd', querunt, ſe colore ejuſdem informationis gravit' fore vexat' & inquietat', & hoc minus juſte; quia proteſtando quod informatio præd', materiaq' in eadem content' min' ſuffic' in lege exiſt', ad quam quidem informat' ipſi neceſſe non habent, nec per legem terræ tenent' aliquo modo reſpondere: Pro placito tamen, quoad libertat' privileg', & franchis' ſequen' (*viz.*) ipſos Major' & Communitat', ac Cives civit' London fore de ſe ipſis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen placitare & implacitari reſpondere ac reſponderi, in informat' præd' ſuperius ſpecificat', iidem Major & Communitas, ac Cives Civit' London dicunt, quod dict' Dom' Rex nunc ipſos occaſione inde impetere ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas; quodque Cives ejuſdem Civit' ſunt, & a præd'. tempore cujus contrar' memor' homin' non exiſt', fuerunt un' corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen per tot' tempus illud placitaver' & implacitat' fuerunt, reſponder' & reſpons' fuerunt, & placitare & implacitari, reſpondere ac reſponderi a toto tempore ſupradicto uſi ſuerunt, & conſuever'. Quodque in Magna Charta de libertat' Angl', in Parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in comitat' Midd', anno regni ſui non tent', edit' & provis', continent', quod civitas London' habeat omnes libertat' ſuas antiquas & conſuetud' ſuas; & iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Edwardus quondam Rex Angl' tertius in parliamento ſuo apud' Weſtm' in Comit' Midd', anno regni ſui primo tent' per quandam chartam ſuam, de conſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parliament' ſuo apud Weſtm' præd' convocat' exiſten', ac authoritat' ejuſdem parliament', confirmavit tunc Civibus civit' London præd' libertat' ſubſequen' (int' alia) habend' ſibi & ſucceſſoribus ſuis in perpetuum imprimis recitando, Quod cum in Magna Charta de libertat' Angl' contineat, quod civit' London habeat omn' libertat' ſuas antiquas & conſuetud' ſuas; & quod iidem Cives tempore confection' dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Willielmi Conqueſtoris, & al' progenitor' dict' Regis Edwardi tertii, divers libertat' & conſuetud' tam per chartas ipſor' progenitor' ſuor', quam ſine chartis ex antiqua conſuetud' habuiſſent, voluit & conceſſit idem Rex Edwardus tertius, pro ſe & hæredibus ſuis, per chartam illam, authoritat' præd' quod iidem Cives haberent libertat' ſuas ſecund' form' Magn' Chartæ ſupradict', & quod pro aliqua perſonali tranſgr', vel judicio perſonal' alicujus miniſtri ejuſdem civit' non caperent' libertat' civit' ill' in manus ejuſdem Regis Edwardi tertii, vel hered' ſuor', ſed hujuſmodi miniſter, prout qualitas tranſgreſs' requireret, puniret' prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dict' Regis Edwardi tertii primo ſuperadict', ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (inter alia) plenus apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, Quod ad inſtant' & requiſit' Communitat' regni Angl' in parliamento Dom' Richardi nuper Regis Angl' ſecundo poſt Conqueſt', apud Weſtm' præd' anno regni ſui ſeptimo tent', aſſemblat' pro majore quiete & pace inter ligeos ejuſdem nuper Regis fovend' & pro bono publico, omnes conſuetud', libertat' privileg', & franch' civit' prædict' tunc Civibus civit' illius, & eor' ſucceſſor' licet uſi non fuerint, vel abuſi fuerint eiſdem, authoritat' ejuſdem parliament' ratificat' & confirmat' fuer'. Quodq' Domin' Henricus nuper Rex Angl' ſextus, per literas ſuas patent', ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo ſexto die Octobr', anno regni ſui viceſimo tertio, quas idem Major & Communitas, & Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis, confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud' adeo integras & illæſas, ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Henrici ſexti melius, quietus & liber habuiſſent & tenuiſſent, prout per eaſdem literas patent (int' alia) plenis apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', gerend' dat' apud Weſtm' præd' non die Novembr', anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe & hæredibus ſuis confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſoribus ſuis in perpetuum, omn' & ſingulas ſuas libertat', franc', & libertas conſuetud' adeo integr' & illæs', ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Reg' Edwardi quarti melius, quietus, & liber habuiſſent & tenuiſſant. Et ulterius idem nuper Rex Edwardus quartus per eaſdam literas ſua patent', conceſſit eiſdem Majori & Communitat', ac Civibus, quod licet ipſi, vel prædeceſſor' ſui, aut Major & Alderman' civit' prædict', vel prædeceſſor' ſui præantea, vel ſucceſſor ſui' extunc in poſter', aliqua vel aliquibus libertat' quietant' conceſs' ordinat' articulor' ſeu liberar' conſuetud', aut alior' eiſd' literis patent' ejuſdem nuper Regis Edwardi quarti, ſeu al' literis ſuis aut progenitor' ſuor' quondam Reg' Angl', eiſdem Majori & Communitat' conceſs' content', aliquo caſu emergente plene non uſi, vel abuſi fuerint, noluit tamen idem nuper Rex Edwardus quartus, quod propt' hoc ipſi Major & Communitas, Alderman' & Cives, ſeu ſucceſſores ſui, forisfactur' aliquor' præmiſs' incurrerent; ſed quod ipſi, & eor' ſucceſſor', univerſis & ſingulis libertat' quietant' conceſs', ordinat' articulis, liberis conſuetud', & quibuſcunque al' in chartis & literis prædict' content', taliter non uſis, vel etiam abuſis, & eor' quolibet extunc de cætero plene & libere gauderent, & eis uterent' ſine impetition' vel impediment' ejuſdem nuper Regis, ſeu hæred' ſuor', Juſtic', Eſchætor', Vicecom', aut al' Balliv' ſeu miniſtr' ipſius nuper Regis, vel al' quorumcunque, prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi quarti hic in cur' prolat' (int' alia) plenius apparet. Quodque Domin' Henricus nuper Rex Angl' ſeptimus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' viceſimo tertio die Julii, anno regni ſui viceſimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis ratificavit & confirmavit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſor', omnia & ſingula libertat', privileg', quietant' & liberas conſuetud', quibus ipſi Major & Communitas, & Cives ſeu prædeceſſor' ſui habere, exercere, ſeu gaudere conſueviſſent, vel uſi fuiſſent, aut debuiſſent, adeo plene, plan', & integre, ac ſi ea omnia & ſingula ſeparatim & verbat' in eiſdem literis patent' expreſs' declarat' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patent' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Jacobus nuper Rex Angl', *&c.* per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat', apud Honorem ſuum de Hampton Court viceſimo quarto die Septembris, anno regni ſui Angl' ſexto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, recitando, quod cum quamplurimi progenitores ipſius nuper Regis, quondam Regis Angl', de gratia ſua ſpecial', ac pro gratis, laudabil', multiplicib', & contin' ſervit' per Majorem & Communitat', ac Cives civit' London, & prædeceſſor' ſuos temporibus retroact' fact' & impens', necnon pro divers' al' urgent' cauſis & conſideration' eos ſeparatim moven', dediſſent, conceſſiſſent, & confirmaſſent Majori & Communitat', ac Civibus civit' London præd', & ſucceſſor ſuis, divers' libertat', privileg', franch', immunitat', authoritat', juriſdiction', ordinat', conſuetud', quietant', prout per ſeparal' literas patent' progenitor' & prædeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat; idem nuper Rex Jacobus pro & in conſiderat' ſummæ fidelitat', conſtant', & prompt' & laudabil' ſervit' per Major' & Communitat', ac Cives civit' London prædict' eidem nuper Regi, in ipſius regn' ſui primis auſpiciis, & continue uſque tunc manifeſt', & fideliſſim' fact' & impens', omnes & ſingulas literas patent', chartas, & confirmac' præclariſs' progenitor' & anteceſſor' ſuor' eiſdem Majori & Communitat', ac Civibus civit' London prædict', & prædeceſſor' ſuis, per quæcunque nomina incorporat' antea tunc tempora fact', conceſs', ſeu confirmat', ac omnes & ſingulas donac', conceſs', confirmac', reſtitut', conſuetud', ordinac', explanac', articul', & omnes al' res quaſcunque, in quibuſcunque literis patent' ſive chartis quorumcunque progenitor', prædeceſs', aut anteceſſor' ſuor' Regum Angl', necnon omnia & ſingula in dict' literis patent', chartis, conceſs', confirmat', ſeu eor' aliquibus content' recitat', ſpecific', confirmat', ſeu explanat', ac omnia & ſingula juriſdiction', authoritat', privileg', libertat', franch', quietanc', immunitat', liberas conſuetud' & hæreditament' quæcunque, quæ præd' Major & Communitas, ac Cives civit' London prædict', vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Major' & Aldermann' civit' London, ſeu per nomen Majoris, Civium, & Communitat' civit' London, ſeu per nomen Majoris, & Civium civit' London, ſeu per nomen Majoris & Communitatis civitatis London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civit' London, ſeu per aliquod al' nomen quodcunque, ratione ſeu vigore aliquar' literar' patent', chartar', ſeu confirmac' aliquor' progenitor', prædeceſſor', aut anteceſſor' ejuſdem nuper Regis Jacobi quondam Regis Angl', aliquo tempore, vel aliquibus temporibus habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, rata habuit & grata, ac pro ſe, hæred' & ſucceſſor' ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Major' & Communitat', ac Civibus civit' London' prædict', & eor' ſucceſſoribus, per eaſdem literas ſuas patent' ratificavit & confirmavit habend', tenend', gaudend' & exercend' omnia & ſingula præmiſs', eiſdem Major' & Communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac ſi ſeparatim, ſingulatim, & nominatim in literas patent' ill' expreſs' nominat', declarat', recitat', & manifeſt' eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque Domin' Carolus primus nuper Rex Angl', *&c.* per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' decimo octavo die Octobris, anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnia & ſingula privileg', libertat' franc', quietanc', immunitat', & liberas conſuetud' quæcunque, quæ prædict' Major & Communitas, ac Cives civit' London præd', vel prædeceſſor' ſui, per nomen Majoris & Communitat', ac Civium civit' London, ſeu per nomen Majoris & Aldermann' Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Majoris & Communitat' civit' London, ſe per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civit' London, ſeu per aliquod al' nomen quodcunque, ratione ſeu vigore literar' patent', chartar', ſeu confirmac', in eiſdem literis patent' dicti nuper Regis Caroli primi mentionat', vel uſu vel præſcriptione, aut alio legal' modo aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabiliter uſi fuiſſent, aut exercuiſſent, rat' habend' & grata, ac pro ſe, hæredibus, & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſor', per eaſdem literas ſuas patent' ratificavit & confirmavit, prout per literas patent' ill' (int' alia) plenius liquet & apparet. Quodque præd' Domin' Rex nunc per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major & Com-

& Communitas, ac Cives civit' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnia & ſingula juriſdiction', authoritat', privileg', libertat', franch', quietanc', immunitat', & conſuetud' quæcunque, quæ præfat' Major & Communitas, ac Cives civit' London, vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Major' & Communit' civit' London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod al' nomen quodcunque, ratione vel vigore literar' patent', chartar', ſeu confirmat' in eiſdem literis patent' dicti Domin' Regis nunc præmentionat', vel alicujus, ſeu aliquor' uſus, vel uſu præſcription' vel præſcriptionum, ſeu al' legali modo quocunque, aliquo tempore, vel aliquibus temporibus ante hunc habuiſſent, ſeu rationabilit' uſi fuiſſent, ſeu exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſs' prædict' eiſdem Majori & communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patent' ſuperius mentionat' fore data ſive conceſſa, aut alit' uſu, præſcription', vel al' legali modo, ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patent' ipſius Domin' Regis nunc expreſs' nominat', declarat', conceſs' & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Et eo waranto iidem Major & comtent' (inter alia) plenius apparet. Et eo waranto iidem Major & communitat', ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecific' uſi fuer', & adhuc utunt', ac clamant habere & uti, libertat', priveleg', & franch', fore de ſeipſis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, prout eis bene licuit & licet': Abſque hoc, quod iidem Major & Communitas, ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Domin' Regem nunc, per tempus præd' in informatione præd' ſuperius ſpecific', uſurpaver' ſeu uſurpant, prout per information' ill' pro dicto Domin' Rege nunc ſuperius ſupponitur. Quæ omnia & ſingula iidem Major ac Communitas, ac Cives civitat' London parat' ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent' & adjudicent', & quod ipſi, quoad præmiſs' ill' ab hac cur' dimittant', &c. Et iidem Major & Communitas, ac Cives civit' London, quoad libertat', privileg' & franch' ſequen', *viz.* ipſos habere Vicecom' civit' & com' civit' London, & Vicecom' Midd', & nominare & eligere ex ſeipſis duas perſonas fore Vicecom' civit' prædict', & com' ejuſdem civit' & Vicecom' Midd' ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' prædict' & com' ejuſdem civit', & Vicecom' Midd', ac ut Vicecom' civit' prædict', & com ejuſdem civit', ad execut' & retorn' omnium brevium, bill', & præcept' Domin' Regis, pro adminiſtratione & execut' Juſtic' infra civit' prædict', & com' ejuſdem civit' exequend', faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civit' & com' ejuſdem civit', quæ ad officium Vicecom' faciend' pertinent, ac ut Vicecom' com' Midd' pro eodem com' deſervitur', ac omnia brevia, bill', & præcept' Domin' Regis infra com' Midd' prædict', pro adminiſtratione & executione juſticiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinen'; dicunt, quod dictus Dominus Rex nunc ipſos Majorem & Communitat', ac Cives civitat' Londen, occaſione inde impetere ſeu occaſionare non debet, quia dicunt, quod prædict' civit London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas & antiqu' comit' de ſe, quodque præd' com' Midd' per totum tempus præd' fuit & eſt antiquus comit', quodque cives ejuſdem civit' ſunt, & a præd' tempore cujus contrar' memor' homin' non exiſt', fuer' un' Corpus corporat' & politic', tam per nomen Major' & Communitat' ac Civium civit' London, quam per nomen Civium London; quodque Domin' Johannes quondam Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud bonam villam ſuper Tokam quinto die Julii, anno regni ſui primo, quas iidem Major & Communitas, & Cives civitat' London, hic in cur' proferunt, conceſſit civibus London' præd', Vicecomit' London & de Midd' cum omnibus rebus & conſuetudinibus, quæ pertinebant ad præd' Vicecom' infra civit' & extra, per terras & per aquas, habend' & tenend' eis in perpetuum. Et præterea idem Domin' Rex Johannes, per literas ſuas patent' præd' conceſſit eiſdem civibus London, quod ipſi de ſeipſis facerent Vicecom' quoſcunque voluerint, & amoverent quando voluerint, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque in Magna Charta de libertatibus Angl', in parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in com' Midd' anno regni ſui nono tent', edit', & provis', continet', quod civit' London habeat omnes libertat' ſuas antiquas, & conſuetud' ſuas. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod idem Domin' Rex Henricus tertius, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Februarii, anno regni ſui undecimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, confirmavit Civibus London Vicecom' London & de Midd' cum omnibus rebus & conſuetudinib', quæ pertineb' ad præd' Vicecom' infra civitat' & extra, per terras & per aquas, prout per eaſdem literas patent' (int' al') plenius apparet. Quodque Domin' Edwardus quondam Rex Angl' tertius, in parliament' ſuo apud Weſtm' in com' Midd', anno regni ſui primo tent', per quandam chartam ſuam de aſſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parliamento ſuo apud Weſtm' præd' convocat' exiſten', ac authoritate ejuſdem parliamenti, confirmavit tunc Civibus civit' London præd' libertat' ſubſequen' (int' al') habendi ſibi & ſucceſſoribus ſuis in perpetuum, imprimis recitando, quod cum in Magna Charta de libertat' Ang' contineat', quod civitas London habeat omnes libertat' ſuas antiquas & conſuetud' ſuas; & quod iidem Cives tempore confection' dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Willielmi Conqueſtor' & al' progenitor' dicti Regis Edwardi tertii, diverſas libertat' & conſuetud', tam per chartas ipſor' progenitor' ſuor', quam ſine chartis ex antiqua conſuetud' habuiſſent, voluit & conceſſit idem Rex Edwardus tertius pro ſe & hæredibus ſuis per chartam ill', authoritat' præd', quod iidem Cives haberent libertat' ſuas ſecund' formam Magn' Chartæ ſupradict'; & quod pro aliqua perſonal' tranſgr', vel judicio perſonal' alicujus miniſtri ejuſdem civit', non caperet' libertas civit' ill' in manu ejuſd' Reg' Edwardi tertii, vel hæred' ſuor', ſed hujuſmodi miniſter, prout qualitas tranſgr' requireret, puniretur, prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dicti Regis Edwardi tertii primo ſupradict', ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod ad inſtant' & requiſition' Communitat' regni Angl' in parliamento Domin' Richardi nuper Regis Angl' ſecundi poſt Conqueſtum, apud Weſtm' præ anno regni ſui ſeptimo tent', aſſemblat' pro majore quiet' & pace inter ligeos ejuſdem nuper Regis fovend', & pro bono publico, omnes conſuetud', libertat', privileg', & franch' civit' præd', tunc civibus civitat' illius & eor' ſucceſſoribus, licet uſi non fuerint, vel abuſi fuerint eiſdem, authoritat' ejuſdem parliament', ratificat' & confirmat' fuer.' Quodque Dominus Henricus nuper Rex Angl' ſextus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo ſexto die Octobris, anno regni ſui viceſimo tertio, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis confirmavit Majori & Communitat' ac Civibus civit' London, & ſucceſſoribus ſuis, omnes & ſingulas ſuas libertat', franch' & liberas conſuetud' adeo integras & illæſas, ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Henrici ſexti melius, quietius, & liber' habuiſſent & tenuiſſent, prout per eaſdem literas patent' (int' al') plenius apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' nono die Novembr', anno regni ſui ſecundo, quas iidem Major & Communitas ac Cives civit' London hic in cur' proferunt pro ſe, & hæredibus ſuis, confirmavit Majori & communitat', ac Civibus civit' London, & ſucceſſoribus ſuis in perpetuum, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud', adeo integr' & illæs', ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Edwardi quarti melius, quietius, & liber' habuiſſent & tenuiſſent. Et ulterius idem nuper Rex Edwardus quartus, per eaſdem literas ſuas patent' conceſſit eiſdem Majori & Communitat' ac Civibus, quod licet ipſi, vel prædeceſſores ſui, aut Major & Aldermann' civit' præd', vel prædeceſſor' ſui præantea, vel ſucceſſores ſui extunc in poſterum. aliqua vel aliquibus libertat' quietant' conceſs', ordination' articulor', ſeu liberar' conſuetudin', aut alior' in eiſdem literis patentibus ejuſdem nuper Regis Edwardi quarti, ſeu al' literis ſuis, aut progenitor' ſuor' quondam Regum Angl', eiſdem Majori & Communitat' conceſs' content', aliquo caſu emergente plene non uſi vel abuſi fuerint. Noluit tamen idem nuper Rex Edwardus quartus, quod propter hoc ipſi Major & Communitas, Alderman' & Cives, ſeu ſucceſſor' ſui, forisfactur' aliquor' præmiſſor' incurrerent, ſed quod ipſi & eorum ſucceſſor' univerſis & ſingulis libertat' quietant' conceſs', ordinat' articulis, liberis conſuetud', & quibuſcunque al' in chartis & literis præd' content', talit' non uſis, vel etiam abuſis, & eor' quolibet extunc de cætero plene & libere gauderent, & eis uterent' ſine impetratione vel impediment' ejuſdem nuper Regis, ſeu hæred' ſuorum, Juſtic', Eſchætor', Vicecom', aut al' Balliv' ſeu miniſtr' ipſius nuper Regis, vel alior' quorumcunq', prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi quarti hic in cur' prolat' (int' al') plenius apparet. Quodque Dom' Henricus nuper Rex Angl' ſeptimus per literas ſuas patent' ſub magno ſigillo ſuo Angliæ ſigillat', gerend' dat' apud Weſtm' præd' viceſimo tertio die Julii, anno regni ſui viceſimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & eorum ſucceſſoribus, omnia & ſingula libertat', privileg', quietant', & liberas conſuetudines, quibus ipſi Major, Communitas, & Cives ſeu prædeceſſor' ſui habere, exercere, ſeu gaudere conſueviſſent, vel uſi fuiſſent, aut debuiſſent, adeo plene, plane, & integre, ac ſi ea omnia & ſingula ſeparatim & verbatim in eiſdem literis patent' expreſs' declarat' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque Dom' Henricus nuper Rex Angl' octavus per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' duodecimo die Julii, anno regni ſui quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnes conceſſiones, & al' quæcunque in præd' literis patent' præd' Dom' Regis Johannis ſuperius ſpecificat' content', pro ipſo Rege Henrico octavo, & Hæredibus ſuis Majori & Communitat', ac Civibus civitat' London, & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent ejuſdem nuper Regis Henrici octavi (inter alia) plenius apparet. Quodque Dom' Edwardus nuper Rex Angl' ſextus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo primo die Februarii, anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London præd' hic in cur' proferunt, omnes conceſſion', & al' quæcunque in præd' literis patent' dicti Dom' Regis Johannis ſuperius ſpecificat' content', pro ipſo nuper Rege Edwardo ſexto, & hæredibus ſuis, Major' & Communitat', ac Civibus civit' London præd', & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi ſexti (inter alia) plenius apparet. Quodque Dom' Maria nuper Regina Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' primo die Martii, anno regni ſui primo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſa nuper Regina, hæred' & ſucceſſoribus ſuis, omnes conceſſiones & al' quæcunque in præd' literis patent' dicti Dom' Regis Johannis ſuperius ſpecificat' content', Majori & Communitat', ac Civibus civitat' London præd' & ſucceſſoribus ſuis ratificavit et confirmavit, prout per eaſdem literas patent' ejuſdem nuper Reginæ (int' al') plenius apparet. Quod-

apparet. Quodque Domina Elizabetha nuper Regin' Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' anno die Maii, anno regni ſui quarto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, pro ipſa nuper Regina Elizabetha, hæred' & ſucceſſoribus ſuis omnes conceſſion', & al' quæcunque in præd' literis patent' dicti Dom' Regis Johann' ſuperius ſpecificat' content', Majori & Communicat', ac Civibus civit' London, & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Reginæ Elizabeth' (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Jacobus nuper Rex Angl' per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Honorem ſuum de Hampton-Court viceſimo quarto die Septembris, anno regni ſui Angl' ſexto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, recitando, quod cum quamplurim' progenitor' ipſius nuper Regis, quondam Reges Angl' de gratia ſua ſpeciali, ac pro gratis, laudabil', multiplicibus, & continuis ſervitus per Majorem & Communitat', ac Cives civitat' London, & prædeceſſores ſuos temporibus retroactis, fact' & impens', necnon pro diverſis al' urgentibus cauſis & conſiderationibus eos ſeparatim moventibus, dediſſent, conceſſiſſent, & confirmaſſent Majori & Communitati, ac Civibus civitat' London præd', ac ſucceſſoribus ſuis, diverſa libertat', privileg', franc', immunitat', authoritat', juriſdiction', ordinanc', conſuetudin', & quietantis, prout per ſeparal' literas patent' progenitor' & prædeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat, idem nuper Rex Jacobus pro & in conſideratione ſummæ fidelitat', conſtant', prompt', & laudabil' ſervitii per Majorem & Communitat', ac Cives civitat' London prædict', eidem nuper Regi in ipſis regni ſui primis auſpiciis, & continue uſque tunc manifeſtat', & fideliſſim' fact' & impens', omnes & ſingulas literas patentes, chartas, & confirmation' præclariſſimor' progenitor' & anteceſſor' ſuor', eiſdem Majori & Communitat', ac Civibus civitat' London prædict', & prædeceſſoribus ſuis per quæcunque nomina incorporat' ante tunc tempora fact', conceſs', ſeu confirmat', ac omnes & ſingulas donationes, conceſſiones, confirmation', reſtitution', conſuetudines, ordinationes, & explanationes, articul', & omnes al' res quaſcunque in quibuſcunque literis patentibus, ſive chartis quorumcunque progenitor', prædeceſſor', aut anteceſſor' ſuor' Regum Angl', necnon omnia & ſingula in dictis literis patentibus, chartis, conceſſionibus, confirmationibus, ſeu eor' aliquibus content', recitat', ſpecificat', confirmat', ſeu explanat', ac omnia & ſingula juriſdictiones, authoritates, privilegia, libertates, & franchis', quietant', immunitates, liberas conſuetudines, & hæreditament' quæcunque, quæ præd' Major & Communitat', ac Cives civitat' London præd' vel prædeceſſor' ſui, per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris & Aldermann' civitat' London, ſeu per nomen Majoris Civium, & Communitat' civitat' London, ſeu per nomen Major' & Communitat' civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunq', ratione ſeu vigore aliquar' literar' patent', chartar', ſeu confirmation' aliquor' progenitor', prædeceſſor', aut anteceſſor' ejuſdem nuper Regis Jacobi, quondam Regum Angl', aliquo tempore, vel aliquibus temporibus habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, rata habuit & grata, ac pro ſe, hæredibus & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitat', ac Civibus civitat' London prædict', & eor' ſucceſſoribus, per eaſdem literas ſuas patent' ratificavit & confirmavit, habend' & tenend', gaudend' & exercend' omnia & ſingula præmiſſa eiſdem Majori & Communitat', ac Civibus civitat' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac ſi ſeparatim, ſingulatim, & nominatim in literis patentibus ill' expreſs' nominat', declarat', recitat,' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patentes (inter alia) plenius apparet. Quodque Dominus Carolus primus nuper Rex Angl', &c. per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris, anno regni ſui quartodecimo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, omnia & ſingula privilegia, libertat', franch', quietant', immunitates, & liberas conſuetudines quæcunque, quæ præd' Major & Communitas, ac Cives civitat' London præd', vel prædeceſſor' ſui per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris & Aldermann', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitat' London, ſeu per nomen Majoris & Communitatis civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione ſeu vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliar' literar' patent', chartarum, ſeu confirmation' in eiſdem literis patentibus dicti nuper regis Caroli primi mentionat,' vel uſu, vel præſcription', aut alio legali modo aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent aut exercuiſſent, rata habens & grata ea pro ſe, hæredibus & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitati, ac Civibus London, & eor' ſucceſſoribus, per eaſdem literas ſuas patentes ratificavit & confirmavit, prout per literas patent' illas (inter alia) plenius apparet. Quodque prædictus Dominus Rex nunc per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' viceſimo quarto die Junii anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis ratificavit & confirmavit Majori & Communitati, ac civibus civitat' London, & ſucceſſoribus ſuis, omnia & ſingula juriſdiction', authoritat', privilegia, libertates, franch', quietant', immunitates, & conſuetudin' quæcunque, quæ præfat' Major & Communitas, ac Cives civitat' London, vel prædeceſſores ſui per nomen Majoris & Communitat', ac Civium civitatis London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitatis London, ſeu per nomen Major' & Communitat' civit' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione præd' literar' patent' præd' Dom' Regis Johannis, aut aliarum literar' patent', chartar', ſeu confirmation' in eiſdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus ſeu aliquor' uſus vel uſuum, præſcription' vel preſcription', ſeu alio legali modo quocunque aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſſa præd' eiſdem Majori & Communitat', ac Civibus civitat' London præd', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patentibus ſuperius mentionat' fore data, ſive conceſſa, aut alit' uſu, præſcription', vel alio legali modo ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patentes ipſius Dom' Regis nunc expreſs', nominat', declarat', conceſſa & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent, (inter alia) plenius apparet.

Et iidem Major & Communitas, & Cives civitat' London ulterius dicunt, quod a tempore confection' præd' literar' patent' præd' quondam Regis Johannis hucuſque iidem Major & Communitas, ac Cives civitat' London habuer' Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & quolibet anno nominaverunt & elegerunt ex ſeipſis duas perſonas, cives ejuſdem civitat', fore Vicecom' civitat' præd', & com' ejuſdem civitat' & Vicecom' com' Midd', ac ill' ſic nominat' & elect' præfecerunt & conſtituerunt Vicecom' civitat' præd', & com' ejuſdem civitat' & Vicecom' com' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat' ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis infra civit' præd', & com' ejuſd', civitat' exequend' & faciend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præſcripta Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent. Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecificat', uſi fuer' & adhuc utunt', ac clamant habere & uti libertat', privileg', & franch' habere Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & nominare & eligere ex ſeipſis duas perſon' fore Vicecom' civitat' præd', & com' ejuſdem civit', & Vicecom' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' præd', & com' ejuſdem civitat', & Vicecom' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiæ infra civit' præd, & com' ejuſdem civit', exequend' & faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' Midd' deſervitur, ac omnia brevia, billas, & præcepta Dom' Reg' infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent, prout eis bene licuit & licet.

Abſque hoc, quod iidem Major & Communit', ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Dom' Regem nunc per tempus præd' in informatione prædicta ſuperius ſpecificat', uſurpaver', ſeu uſurpant', prout per inform' illam pro dicto Dom' Rege nunc ſuperius ſupponitur, quæ omnia & ſingula iidem Major & Communitas, ac Cives civit' London, parati ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent', & adjudicentur, ac quod ipſi, quoad præmiſſa ill', ab hac cur' dimittantur, &c.

Et iidem Major & Communitas, & Cives civit' London, quoad libertat', privileg', & franch' ſequend' *viz.* Major dictæ civitat', & hujuſmodi Aldermann' ejuſd' civit', qui officium Majoritat' civit' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres ſenior' Aldermann' civit' prædict', qui diutius in offic' Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſtic' Dom' Regis ad pacem infra civitat' præd' conſervand', ac ad ſeſſion' pacis, & placita coron', ſcilicet, talia placit' coronæ, qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitim' tenere poſſent infra eandem civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', in informatione præd' ſuperius ſpecificat' dict', quod dict' Dom' Rex nunc ipſos Majorem & Communitat', at Cives civitat' London, occaſione inde impetere, ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memor' homin' non exiſtit, fuit antiqua civitas ac antiquus comitat' de ſe, ac cives ejuſdem civit' ſunt, & a prædicto tempore, cujus contrar' memor' homin' non exiſtit, fuer' unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London. Quodque Dom' Carolus primus nuper Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, pro ipſo nuper Rege, hæred' & ſucceſſorib' ſuis, conceſſit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſoribus, quod Major & Recordat' civit' præd', qui tunc fuer', ac Majores Recordator' civit' præd, qui pro tempore forent, actam ill' Aldermann', qui Major' civitat' illius præantea extitiſſent, quam ill' Aldermann', qui onus & officium & Majorat' civitat' prædict' tunc in poſterum ſuſtinerent & gererent, licet a Majorat' ill' ceſſarent, aut inde eſſent dimiſſi, quamdiu Addermann' ibidem ſtarent, & tres ſeniores Aldermann' civit' pro tempore exiſten', qui diutius in officium Aldermannat' ſteter', & ante tunc onus & officium Majorat' civitat' illius non ſuſtinuer', id perpetuum forent cuſtodes, & quilibet eor' eſſet cuſtos pacis ejuſdem nuper Regis hæred', & ſucceſſor' ſuorum, infra civitat' London præd', & libertat' ejuſdem conſervand' & cuſtodiend', ac eoſdem Majorem & Recordator', ac Aldermann' præd', ad omnia & ſingula ſtatuta & ordinationes pro bono pacis dicti nuper Regis, hæred'

ing to the Tenor in theſe Preſents enſuing; and theſe Preſents ſhall be your ſufficient Warrant and Diſcharge for the ſame.

The Writ de Hæretico comburendo.

REX Vicecomitibus London ſalutem. Cum Reverendus in Chriſto Pater Johannes, London Epiſcopus, nobis ſignificavit, quod cum ipſe in quodam hæreticæ pravitatis negotio contra quendam Bartholomeum Legatt, ſubditum noſtrum civitatis London, dicti London Epiſcopi dioces' & juriſdict', rite & legitime procedens per acta inactitata, deducta, propoſita, & per confeſſiones ipſius Bartholomei Legatt coram præfato Epiſcopo judicialiter factas & recognitas, comperit & invenit præfatum Bartholomeum Legatt quamplurimos nefandos errores, falſas opiniones, hæreſes & blaſphemias execrandas, & ſcelerata dogmata catholicæ & orthodoxæ fidei & religioni, & ſacroſancto Dei Verbo expreſſe contraria & repugnantia, ſcienter, malicioſe, animoq; pertinaci, obdurato, planeque incorrigibili credere, tenere, affirmare, & publicare; idem Reverendus Pater London Epiſcopus, cum conſilio & conſenſu tam Reverendorum Epiſcoporum & aliorum Theologorum, quam Juris etiam peritorum in judicio aſſiden' & aſſiſten', eundum Bartholomeum Legatt, per ſententiam ſuam definitivam, obduratum, contumacem, & incorrigibilem hæreticum pronunciavit, decrevit, & declaravit, eaque occaſione tanquam protervum hæreticum, & membrum putridum & contagioſum, ab eccleſia Chriſti & fidelium communione reciſum & amputatum fore. Cum igitur ſancta mater Eccleſia non habeat quod ulterius facere & exequi valeat in hac parte, idem Reverendus Pater præfatum Bartholomeum Legatt, ut blaſphemum hæreticum, brachio noſtro ſeculari reliquit condigna animadverſione plectend', prout per Literas Patentes præfati Reverendi in Chriſto Patris London Epiſcopi in hac parte ſuperinde confect' nobis in Cancellar' noſtram certificat' eſt. Nos igitur ut zelator juſtitiæ, & fidei catholicæ defenſor, volenteſq; Eccleſiam ſanctam, ac jura & libertates ejuſdem, & fidem catholicam manutenere & defendere, ac hujuſmodi hæreſes & errores ubiq; (quantum in nobis eſt) eradicare & extirpare, ac hæreticos ſic convictos animadverſione condigna puniri, attendenteſq; hujuſmodi hæreticum in forma prædict' convictum & damnatum juxta leges & conſuetudines regni noſtri Angliæ in hac parte conſuet', ignis incendio comburi debere: Vobis præcipimus, quod dictum Bartholomeum Legatt, in cuſtod' veſtra exiſten', apud Weſt-Smithfield in loco publico & aperto, ex cauſa præmiſſa, coram populo publice igni committi, ac ipſum Bartholomeum Legatt in eodem igne realiter comburi fac' in hujuſmodi criminis deteſtationem, aliorumq; Chriſtianorum exemplum manifeſtum, ne in ſimile crimen labantur; & hoc ſub periculo incumbente nullatenus omittatis. Teſte, &c.

Henry Hibirte.

The Writ for burning an Heretic in Engliſh.

THE King to the Sheriffs of *London*, Greeting. Whereas the Reverend Father in Chriſt, *John* Biſhop of *London*, hath ſignified unto us, that when he in a certain Buſineſs of heretical Pravity againſt one *Bartholomew Legatt*, our Subject of the City of *London*, of the ſaid Biſhop of *London*'s Dioceſe and Juriſdiction, rightly and lawfully proceeding by Acts enacted, drawn, propoſed and by the Confeſſions of the ſaid *Bartholomew Legatt*, before the ſaid Biſhop judicially made and acknowledged, hath found the ſaid *Bartholomew Legatt* very many wicked Errors, falſe Opinions, Hereſies, and curſed Blaſphemies, and impious Doctrines, expreſly contrary and repugnant to the Catholick Faith and Religion, and the holy Word of God, knowingly and maliciouſly, and with a pertinacious, obdurate, and plainly incorrigible Mind, to believe, hold, affirm, and publiſh; the ſame Reverend Father the Biſhop of *London*, with the Advice and Conſent as well of the Reverend Biſhops and other Divines, as alſo of Men learned in the Law, in Judgment ſitting and aſſiſting, the ſame *Bartholomew Legatt*, by his definitive Sentence, hath pronounced, decreed, and declared to be an obdurate, contumacious, and incorrigible Heretic, and, upon that Occaſion, as a ſtubborn Heretic, and rotten contagious Member, to be cut off from the Church of Chriſt, and the Communion of the Faithful; Whereas the holy Mother Church hath not further to do and proſecute in this Part, the ſame Reverend Father hath left the aforeſaid *Bartholomew Legatt*, as a blaſphemous Heretic, to our ſecular Power, to be puniſhed with condign Puniſhment, as by the Letters Patents of the ſaid Reverend Father in Chriſt the Biſhop of *London*, in this Behalf above made, hath been certified unto us in our Chancery. We, therefore as a Zealot of Juſtice, and a Defender of the Catholic Faith, and willing to maintain and defend the Holy Church, and Rights and Liberties of the ſame, and the Catholic Faith, and ſuch Hereſies and Errors every where, what in us lieth, to root out and extirpate, and to puniſh with condign Puniſhment ſuch Heretics ſo convicted, and deeming that ſuch an Heretic, in Form aforeſaid convicted, and condemned according to the Laws and Cuſtoms of this our Kingdom of *England* in this Part accuſtomed, ought to be burned with Fire; we do command you, that the ſaid *Bartholomew Legatt*, being in your Cuſtody, you do commit publickly to the Fire before the People, in a publick and open Place in *Weſt-Smithfield*, for the Cauſe aforeſaid; and that you cauſe the ſaid *Bartholomew Legatt* to be really burned in the ſame Fire, in Deteſtation of the ſaid Crime, for the manifeſt Example of other Chriſtians, leſt they ſlide into the ſame fault; and this that you in no wiſe omit, under the Peril that ſhall follow thereon. Witneſs, *&c.*

The [forged] *Indictment and Outlawry* [d] *of Sir* John Oldcaſtle, *Lord* Cobham, *for* High-Treaſon.

Hil. 1 *Hen.* V. *Rot.* 7. *B. R.*

ALIAS coram Gulielmo Roos de Hamlak, Henrico le Scrop, Gulielmo Crowmere Majore civitatis London, Hugone Huls & ſociis Juſtic' Domini Regis, ad inquirend' per ſacram' proborum & legal' hominum de civitate Domini Regis London, & ſuburbiis ejuſdem, ac de com' Midd' tam infra libertates, quam extra, de omnibus & ſingulis proditionibus & inſurrectionibus, per quamplures ſubditos Domini Regis Lollardos vulgarit' nuncupatos, & alios in civitate, ſuburbiis, & com' prædictis factis & perpetratis, necnon de omnibus proditionibus, inſurrectionibus, rebellionibus, & feloniis in civitate, ſuburbiis, & com' præd' per quoſcunque & qualitercunq; factis, perpetratis & ad eaſdem proditiones, inſurrectiones, rebelliones, & felonias audiend' & terminand' ſecundum legem & conſuetudinem regni Domini Regis Angliæ, per literas ipſius Domini Regis patentes, aſſign' apud Weſt' die Mercurii proximo poſt feſtum Epiphaniæ Domini, anno regni Regis Henrici quinti poſt conqueſtum primo, per ſacram' xii. jur' extitit præſentatum, quod Johannes Oldcaſtle de Coulyng in com' Kanc' chr' & alii Lollardi vulgar' nuncupat', qui contra fidem catholicam diverſas opiniones hæreticas, & alios errores manifeſtos legi catholicæ repugnantes diu temerarie tenuerunt, opiniones & errores prædictos manutenere, at in facto minime perimplere valentes, quandiu regia poteſtas, & tam ſtatus regal' Domini noſtri Regis, quam ſtatus & officium Prælaciæ dignitatis infra regnum Angl' in proſperitate perſeverarent, falſo & proditorie machinando, tam ſtatum regni, quam ſtatum & officium prælatorum, necnon ordines religioſorum infra dictum regnum Angl' penitus adnullare, ac Dominum noſtrum Regem, fratres ſuos, prælatos & alios magnates ejuſdem regni interficere, necnon viros religioſos, relict' cult' divinis & religioſis obſervanciis ad occupationes mundanas provocare, & tam eccleſias cathedrales, quam alias eccleſias & domos religioſas de reliquis & aliis bonis eccleſiaſticis totaliter ſpoliare, ad funditus ad terram proſternere, & dictum Johannem Oldcaſtle regentem ejuſdem regni conſtituere, quamplura regimina ſecundum eorum voluntatem, infra regnum prædictum, quaſi gens ſine capite, in finalem deſtructionem, tam fidei catholicæ & cleri, quam ſtatus & majeſtatis dignitatis regal' infra idem regnum ordinare, falſo & proditorie ordinaverunt & propoſuerunt, quod ipſo inſimul cum quampluribus rebellibus Domini Regis ignotis, ad numerum viginti millium hominum de diverſis partibus regni Angl' modo guerrino arrivat', privatim inſurgent', & die Mercurii proximo poſt feſtum Epiphaniæ Domini, anno regni Regis prædicti prædicto, apud villam & parochiam ſancti Ægidii extra Barram veteris Templi London, in quodam magno campo ibidem unanimit' convenirent, & inſimul obviarent pro nephando propoſito ſuo in præmiſſis perimplend'; quo quidem die Mercurii apud villam & parochiam prædicti J. Oldcaſtle & alii in' hujuſmodi propoſito proditorio perſeverantes, prædictum Dominum noſtrum Regem, fratres ſuos (videlicet, Thomam ducem Clarenciæ Johannem, de Lancaſtre, & Humfredum de Lancaſtre) necnon prælatos & magnates prædictos interficere, necnon ipſum Dominum noſtrum Regem, & hæredes ſuos, de regno ſuo prædicto exhæredare, & præmiſſa omnia & ſingula, necnon quamplura alia mala & intolerabilia, facere & perimplere falſo & proditorie propoſuerunt & imaginaverunt, & ibidem verſus campum prædictum modo guerrino arrivati' proditorie modo inſurrectionis contra ligeancias ſuas equitaverunt ad debellandum dictum Dominum noſtrum Regem, niſi per ipſum manu forti gratioſe impediti fuiſſent. Quod quidem inditament' Dominus Rex nunc, certis de cauſis, coram eo venire fecit terminandum. Per quod præceptum fuit Vic', quod non omitteret, *&c.* quin caperet præfatum Johannem Oldcaſtle, ſi, *&c.* & ſalvo, *&c.* ita quod haberet corpus ejus coram Domino Rege apud Weſtmonaſterium ad hunc diem, ſcilicet die Mercurii proximo poſt octavas ſancti Hilarii, iſto eodem termino ad reſpondendum Domino Regi de præmiſſis, *&c.* Ad quos diem & locum coram Domino Rege Vic', quod exigi faceret eum de com' in com' quouſque utlagetur, ſi non, *&c.* & ſi, *&c.* tunc cum caperet, & ſalvo, *&c.* ita quod haberent corpus ejus coram Domino Rege in octavas ſancti Johannis Baptiſtæ ex tunc proximum ſequentem, ubicunque, *&c.* ad reſpondendum Domino Regi de proditionibus & feloniis ſuperius ſibi impoſitis. Ad quas octavas ſancti Johannis Baptiſtæ, an' regni R. Henrici quinti poſt conqueſtum ſecundo, Johannes Sutton & Jo' Michell' Vic' Mid', coram Domino Rege returnaverunt, quod ad com' Midd' centum apud Braynford die Jovis proximo ante feſtum S. Barnabæ Apoſtoli, an' reg' R. Hen' quint' poſt conqueſtum ſecundo; & ad quatuor com' ex tunc ex proximo præcedentes, prædictus Johannes Oldcaſtle exactus fuit, & non comparuit; & quia ad nullum eorundem com' comparuit, ideo præſentibus Coronatoribus com' prædicti utlagat' fuit, per quod inquiratur de terra & catallis ſuis.

Rex verſus Dominum Audley [e], *for a* Rape.

7 *Car.* I.

Wilts, ſſ. JUratores pro Domino Rege ſuper ſacramentum ſuum præſent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts, & Ægidius Broadway de Fountell Gifford prædict' in comitatu prædicto generoſus, timorem Dei præ oculis ſuis non habentes, ſed inſtigatione diabolica moti & ſeducti, viceſimo die Junii, anno regni Domini noſtri Caroli, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſoris, ſexto, apud Fountell Gifford prædict' &

[d] The Record appears to have ſeveral Raſures in it. See Trials Vol. I. p. 36. N°. 3. and *Fox*'s Acts and Mon. Vol. I. p. 655.
[e] Vol. I. p. 388. N°. 31. and *Hut.* Rep. 115.

in & ſuper Annam dominam Audley, uxorem præfati domini Martini Audley, in pace Dei & dicti Domini Regis ibidem exiſtent' inſult' fecerunt. Et prædictus Ægidius Broadway prædictam Annam dominam Audley, vi & armis, contra voluntatem ipſius Annæ ad tunc & ibidem violenter & felonice rapuit, ac ipſam Annam ad tunc & ibidem contra voluntatem ſuam violenter & felonice carnaliter cognovit, contra pacem Domini Regis nunc, coron', & dignitat' ſuas, & contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Et ultra, juratores prædicti dicunt ſuper ſacramentum ſuum prædict', Quod prædictus Martinus dominus Audley prædicto viceſimo die Junii, ann' ſexto ſupradicto, apud Fountell Gifford prædictam, in comitatu prædicto, felonice fuit præſens, auxilians, & confortans, abettans, procurans, adjuvans, & manutenens prædictum Ægidium Br. ad feloniam prædictam, in forma prædicta felonice faciend' & perpetrand', contra pacem dicti Domini Regis nunc, coronam & dignitatem ſuas, ac contra formam ſtatuti prædicti.

Rex verſus Dominum Audley (*f*), *for* Sodomy.

7 *Car'* I.

Wilts, ſſ. JUratores pro Domino Rege ſuper ſacramentum ſuum præſent', Quod Martinus dominus Audley, nuper de Fountell Gifford in comitatu Wilts', Deum præ oculis non habens, nec naturæ ordinem reſpiciens, ſed inſtigatione diabolica motus & ſeductus, primo die Junii, an' regni Domini noſtri Caroli, &c. ſexto, apud Fountell Gifford prædict' in dicto comitatu Wilts, in domo manſionali ejuſdem Martini domini Audley, ibidem vi & armis in quendam Florence Fitzpatrick, yeoman, inſult' fecit, & cum eodem Florence F. ad tunc & ibidem nequit', diabolice, felonice, & contra naturam rem Veneream habuit; ipſumque F. ad tunc & ibidem carnaliter cognovit, peccatumque illud Sodomiticum deteſtabile & abominandum, Anglicè vocat' Buggery (inter Chriſtianos non nominandum) ad tunc & ibidem cum eodem Florence F. nequit' diabolice, felonice, & contra naturam commiſit & perpetravit in magnam Dei omnipotentis diſplicentiam, ac totius humani generis dedecus, ac contra pacem dicti Dom' Reg' nunc, coronam & dignitat' ſuas, & contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Rex verſus Johannem Hampden (*g*), *in the Caſe of* Ship-Money.

Trin' 13 *Car'* I. *in Scacc'*.

MEmorand', quod brev' Domini Regis nunc ſub ſigillo hujus Scaccar' per conceſs' Baron' hic emanavit in hæc verba:

ſſ. CAROLUS Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Vic' Bucks ſalutem. Cum diverſæ & ſaparal' denar' ſummæ in ſchedul' huic brevi annex' ſpec', virtute brevis noſtri ſub magno ſigillo noſtro Angliæ geren' dat' quarto die Auguſti, anno regni noſtri undecimo, aſſeſſat' & onerat' fuer' ſuper ſeparal' perſon' in ead' ſchedul' nominat', in & verſus proviſion' navis pro guerra, una cum apparat' & al' eid' pertin', in eod' brevi particular' mentionat'; quibus quid' ſeparal' denar' ſummis ſic aſſeſſat' & onerat', & non ſolut' & ſatisfact' exiſten', per breve noſtrum de certiorar' geren' dat' nono die Martii, anno regni noſtri duodecimo, ſub magno ſigillo noſtro' præd' emanat', nomina earund' ſeparal' perſon' una cum ſeparal' denar' ſummis ſuper ipſos onerat', in cur' Cancellat' noſtræ certificat' fuer'. Ac per breve noſtrum de Mittimus ſub eodem ſigillo, geren' dat' quinto die inſtant' menſis Maii in Scaccar' noſtr' miſs' fuer' pro ulterior' proceſs' ſuper inde habend', prout per tenorem prædicti brevis geren' dat' quarto die Auguſti, anno regni noſtri undecimo, ac per prædict' breve de Certiorar' et certificat' ſuper inde fact' in dictum Scaccar' noſtrum miſs', & ibid' de record' in cuſtodia Rememorat' noſtri remanen' plenius apparet, tibi præcipimus, quod non omitt' propter aliqu' libertat' quin ea ingr', & per probos & legales homines de bal' tua ſcir' fac' præfat' ſeparal' perſon' in dict' ſchedul' nominat' & ſpec', quod ſint coram Baron' de Scaccar' noſtro apud Weſtm' in octab' ſanctæ Trinit' proxim' futur', ad oſtend' & proponend', ſiquid pro ſe habeant, vel dicere ſciant, quare ipſi de præd' ſeparal' denar' ſummis ſuper ipſos modo & forma prædict' aſſeſſat', & non ſolut', in ſchedul' il' ſpec', onerari & inde ſatisfacere non deb' & ad ulterius faciend' & recipiend' in præmiſſis, quod cur' noſtra tunc ibidem duxerit ordinand' & habeas ibi tunc hoc breve, & nomina eor' per quos eis ſciri feceris. Teſte Humfr' Davenport' Mil, apud Weſtm', viceſimo ſecundo die Maii, anno regni noſtri decimo tertio. *Per rotulum.*

Memorandum de eodem anno Regis in recordor' rotulo termini Paſchæ, Tenor ſchedul' præd' in brevi prædict' mentionat', quoad Johannem Hampden, ſequitur in hæc verba: ſſ. Schedul' de nominibus certar' perſonar' in com' Bucks, & cert' denar' ſummar' ſuper ipſos aſſeſſat' & onerat' in & verſus proviſion' navis de guerra, una cum apparat' & al' eid' pertin', virtute cujuſd' brevis ſub magno ſigillo Angliæ, geren' dat' quarto die Auguſti, anno regni Domini Reg' nunc Caroli undecimo, & in cur' Cancellar' Dom' Regis, virtute brevis de Certiorar' ſub ſigillo præd' eman', geren' dat' nono die Martii, anno regni ſui duodecimo, certificat' eſſe inſolut', ac per breve de Mittimus ſub eodem ſigillo in Scaccar' dict' Dom' Regis nunc miſſis pro ulterior' proceſs' ſuper inde faciend', prout per tenor' prædict' brevis geren' dat' quarto die Auguſti, anno regni dicti Domini Regis nunc undecimo ſupradict', ac per breve de Certiorar', & certificat' ſuperinde fact' in dictum Scaccar' noſtr' miſs', & ibidem de record' in cuſtod' Rememorat' Dom' Regis reman' plenius apparet.

Stoake Mandivile, ſſ. Johann' Hampden Eſq; Ad quem diem Anthonius Cheſter Baronet', Vic' com' prædict', quoad præfat' Johannem Hampden retorn', quod per Nicolaum Aris, Robertum Alexander, Richardum Harriſon, & Will'um Heyborne, probos et legales homines de ball' ſua, ſciri fecit, præfat' Johann' Hampden, inter al', quod ſit coram Baron' infra ſcript' ad diem & locum infra content', ad oſtendend' & proponend' ſi quid pro ſe habeat, vel dicere ſciat, quare ipſe de prædict' ſumma ſuper ipſum aſſeſſat', & non ſolut', in ſchedul' prædict' ſpec', onerari & inde ſatisfacere non debeat, prout ulterius ſibi præcipitur: Et modo, ſcilicet a die ſanctæ Trinitatis in tres ſeptiman' venit hic præd' Johannes Hampden, in ſchedul' præd' nominat', in propria perſona ſua, & petit audit' brevis de Sciri facias præd', retorn' ejuſdem, ac præd' ſchedul' eid' annexat', & ei leguntur; petit etiam audit' præd' brevis, geren' dat' quarto die Auguſti, anno regni dicti Domini Regis nunc Caroli undecimo, in brevi de Sciri facias mentionat', & ei legitur in hæc verba:

ſſ. Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Vic' com' noſtri Bucks, Ball' & Burgens' burgi & paroch' de Buckingham, Majori, Ball' & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eiſdem burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, ac in omnibus aliis burgis, villat', hamlet' & al' locis in dicto com' Bucks, ſalutem. Quia dat' eſt nobis intelligi, quod prædones quid', pirati, & mar' graſſatores, tam nominis Chriſtiani hoſtes Mahumetani, quam alii congregati, naves & bona ac mercim' non ſolum ſubditor' noſtr', verum etiam ſuditor' amicor' noſtr' in mari, quod per gent' Anglican' ab olim defend' conſuevit, nefarie diripientes & ſpoliantes, ad libitum ſuum deportavere, homines in eiſdem in captivitate miſerrima mancipantes: Cumque ipſos conſpicimus navigium indies præparantes ad mercatores noſtros ulterius moleſtand', & ad regnum gravand', niſi citius remedium apponatur, eorumque conatui virilius obvietur: Conſideratis etiam periculis, quæ undique his guerrinis temporibus imminent, ita quod nobis & ſubditis noſtris, defenſion' maris & regni omni feſtinatione, qua poterimus, accelerare convenit: Nos volentes defenſioni regni, tuitioni maris, ſecuritati ſubditor' noſtr', ſalva conductione navium & merchandizar' ad regnum noſtrum Angliæ venien', & de eod' regno ad partes exteras tranſeun', auxiliante Deo, providere; maxime cumque nos & progenitores noſtri Reges Angliæ domini maris præd' ſemper hactenus extiter', & plurimum nos tæderet, ſi honor iſte regius noſtris temporibus depereat, aut in aliquo minuatur; cumque onus iſtud defenſionis, quod omnes tangat, per omnes debeat ſupportari, prout per legem & conſuetudinem regni Angliæ fieri conſuevit, vobis præfat' Vicecomiti, Ball', Burgens', Majori, probis hominibus, & omnibus aliis quibuſcunq; ſupra mentionat' in burgis, villis, villat', hamlet' & locis ſupradict', eorumque membris, in fide & ligeantia, quibus nobis tenemini, & ſicut nos & honorem noſtrum diligitis, necnon ſub forisfactur' omnium quæ nobis forisfacere poteritis, firmiter injungend' mandamus, quod unam navem de guerra, portagii quadringint' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinar' valentioribus & expertis cent' & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus uſque ad primum diem Martii jam proxime ſequent', ad tot homines competen', & abinde in vigint' & ſex ſeptiman' ad cuſtag' veſtra, tam in victualibus, quam in hominum ſalariis, & al' ad guer' neceſſar' per tempus illud, ſuper defenſionem maris in obſequio noſtro in comitiva cuſtodis maris (cui cuſtod' maris ante præd' primum diem Martii committemus) & prout ipſe ex parte noſtra dictaverit moratur', parari, & ad portum de Portſmouth citra dictum primum diem Martii duci faciatis, ita quod ſint ibid' eod' die ad ultimum, ad proficiend' exinde cum navibus noſtris, & navibus alior' fidelium ſubditor' noſtr', pro tuitione maris, defenſione noſtrum & noſtrorum, repulſioneque & debellatione quorumcunq; mercatores noſtros, & alios ſubditos fideles prædict' in dominia noſtra ex cauſa mercaturæ ſe diverſantes, vel abinde ad propria declinantes ſuper mare gravare ſeu moleſtare ſatagentium. Aſſignavimus autem vos Vic' com' noſtr' Bucks, Ball' & Major' burgor' & paroch' prædict', aut aliquos duos vel plures veſtrum, quorum te præfat' Vic' com' noſtri Bucks unum eſſe volumus, infra trigint' dies poſt receptionem hujus brevis, ad aſſidend' quantum de cuſtag' prædict' ſuper præd' burgos de Buckingham & Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſeparatim poni aut aſſideri debeat. Et ſi hujuſmodi aſſeſſament' infra prædict' triginta dies per vos duos, vel plures veſtrum fieri non contigerint, tunc aſſignavimus te præfat' Vic' com' noſtri Bucks ad aſſeſſamen' hujuſmodi ſuper prædict' burgos & paroch', & membr' eorund', faciend' prout rationabiliter vides faciend'; & volumes, quod de toto facto tu præfat' Vic' Bucks, ſub ſigillo tuo prædict' Majorem & Ballivos reddas certiores. Aſſignavimus etiam te præfat' Ball' burgi & paroch' de Buckingham, ad aſſidend' omnes homines in eodem burgo & paroch', & membris ejuſd', & terr' tenentes, in eiſdem navem vel partem navis prædict' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſion' præmiſſor' neceſſar'; & ſuper prædict' burgum & paroch', cum membris ejuſd' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eor' juxta ſtatum ſuum & facultates ſuas & portiones ſuas ipſis aſſeſſat' per diſtrictiones, alioſve modos debitos levand' & collectores in hac parte nominand' & conſtituend', & omnes eos, quos rebelles & contrarios inveneris in præmiſſis carcere mancipand', in eodem moratur' quouſque pro eod' deliberatione ulterius duxerimus ordinand'. Aſſignavimus etiam te præfat' Major' burgi de Chipping-Wiccombe, alias Wiccombe, ad aſſidend' omnes homines in eod' burgo & membris ejuſdem, & ter' tenentes, in eiſd' navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſion' præmiſſor' neceſſar'; & ſuper prædict' burg', cum membris ejuſd' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eorum juxta ſtatum ſuum & facultates ſuas, & portiones ſuper ipſos aſſeſs' per diſtrictiones, alioſve modos debitos levand', & collectores in hac parte nominand' & conſtituend' & omnes eos, quos rebelles & contrarios inveneris in præmiſſis in carcere mancipand', in eod' moratur', quouſque

(*f*) Vol. I. p. 388 No. 31. and *Hut.* Rep. 115.

(*g*) Vol. I. p. 505. No. 37.

uſque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius aſſignavimus te præfat' Vicecomitem com' noſtr' Bucks ad aſſidend' omnes homines in præd' villis de Agmondeſham, Wendover, & Marlow magna, & in membris eorund', & in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in prædict' com' Bucks, & terr' tenentes in eiſdem, navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' expenſis circa proviſionem præmiſſor' neceſſar', & ſuper prædict' villas, villat', burgos, hamlet' & locos, cum membris eorund' (ſicut præfertur) aſſidend' & ponend', *viz.* quemlibet eor' juxta ſtatum ſuum, & facultates ſuas, & portiones ſuper ipſos aſſeſſat' per diſtrictiones, aliosve modos debitos levand', & collectores in hac parte nominand' & conſtituend', & omnes quos rebelles & contrarios inveneris in præmiſſis carcere mancipand', in eod' moratur', quouſque pro eor' deliberatione ulterius duxerimus ordinand'. Et ulterius vobis mandamus, quod circa præmiſſa diligenter intendatis, & ea faciatis, & exequamini cum effectu ſub periculo incumbente. Nolumus autem quod colore prædict' mandat' noſtr', plus de eiſd' hominibus levari faciatis, quam ad præmiſſor' ſufficiet expenſas neceſſar', aut quod quiſquam, qui pecuniam de contributionibus ad prædict' cuſtag' faciend' levaverit, eam, vel partem inde aliquam penes ſe detineat, vel ad al' uſus quovis quæſito colore appropriare præſumat, volentes, quod ſi plus quam ſufficiat collect' fuerit, hoc inter ſolventes pro rata portionis ipſis contingen' exſolvatur. Teſte me ipſo apud Weſtm' quarto die Auguſti, anno regni noſtri undecimo. Petit etiam audit' prædict' brevis geren' dat' nono die Martii, anno regni dicti Domini Regis xii°, in prædict' brevi de Sciri facias mentionat', & ei ſimiliter legitur.

Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, *&c.* Vic' com' noſtri Bucks, qui fuer' inter quartum diem Auguſti anno regni noſtri undecimo, & primum diem Martii tunc proxime ſequent', Ball' burg' & paroch' de Buckingham, & Major' & Ball' burg' de Chipping-Wiccombe, alias Wiccombe, in dicto com' Bucks, qui fuer' inter tempus prædict', ſalutem. Per breve noſtrum ſub magno ſigillo noſtro Angliæ confect', geren' dat' prædict' quarto die Auguſti, anno undecimo ſupradict', pro defenſione regni, tuitione maris, ſecuritate ſubditor' noſtr', ac ſalva conductione navium & merchandizarum ad regn' noſtr' Angliæ venien', & de eodem ad partes exteras tranſeun', Vic' com' noſtri Bucks, Ball' burgi & paroch' de Buckingham, necnon Burgens' ejuſd' burgi, Major' & Ball' de Chipping-Wiccombe, alias Wiccombe, necnon Burgens' ejuſd' burgi, & probis hominibus in eiſdem burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, ac in omnibus aliis villis, burgis, villat', hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinar' valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus ad certum diem (in eod' brevi content') ad tot homines competen', & ab inde in vigint' & ſex ſeptiman', ad cuſtag' hominum & terr' tenen' burg', paroch', vill', villat', & al' locor' ſupra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum ſalariis, & al' ad guerr' neceſſar' per tempus illud, ſuper defenſionem maris moratur' parari, & ad portum de Portſmouth citra tempus in eod' brevi limitat' duci faceretis. Cumque etiam per idem breve aſſignaverimus Vic' com' noſtri Bucks præd', Ball' burgi & paroch' de Buckingham præd', & Major' burgi de Chipping-Wiccombe præd', aut aliquos duos vel plures eorum, quor' Vic' dicti com' noſtri Bucks unum eſſe volumus, infra certum terminum proxim' poſt receptionem brevis illius, ad aſſidend' quantum de cuſtag' præd' ſuper præd' burg' & paroch' de Buckingham, & ſuper præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſeparatim poni ſeu aſſideri deberet. Cumque etiam per præd' breve noſtrum aſſignaverimus Ball' burgi & paroch' de Bucking', & Majorem de burgo de Chipping-Wiccombe, alias Wiccombe, ſeparatim & reſpective, ad aſſidend' omnes homines in eiſd' ſeparal' burg' & paroch', & membr' eorund', & terr' tenentes in eiſdem, navem vel partem navis præd' non habentes, vel in eadem non deſervientes, ad contribuend' ad expens' circa proviſionem præmiſſor' neceſſar'; & ſuper præd' burg' & paroch' de Buckingham, & ſuper præd' burg' de Chipping-Wiccombe, alias Wiccombe, cum membris eorund', ſicut præfertur, ad tunc ſeparatim & diſtinctive ponend', *viz.* quemlibet eorum juxta ſtatum ſuum & facultates ſuas, & portiones ſuper ipſos aſſeſſat', per diſtrictiones alioſve modos debitos levand', & collectores in ea parte nominand' & conſtituend' modo & forma prout in eodem brevi præcept' fuit. Cumque per idem breve noſtrum ulterius aſſignaverimus Vic' dicti com' noſtri Bucks ad aſſidend' omnes homines in præd' villis de Agmondeſham, Wendover, Marlow magna, & in membris eorund', ac in omnibus aliis villis, villat', burgis, hamlet', & aliis locis in præd' com' Bucks, & terr' tenentes in eiſd', ad contribuend' expenſis circa proviſionem præmiſſor' neceſſar', & ad cætera faciend' & exequend' modo & forma, quibus per breve illud præceptum fuit. Et quia nonnulli homines & terr' tenentes in prædict' com', burg', paroch', vill', villat', hamlet', & aliis locis, per ſeparal' taxationes & denar' ſummas, per vos ſuper ipſos reſpective erga contribution' oneris præd', juxta exigen' brevis præd' poſit' & aſſeſſat', nondum ſolverint nec ſatisfecerint, ſed eas ſolvere recuſaver', & adhuc contradicunt, prout informamur: Cumq; nos nuper voluimus certiorari, tam de nominibus hominum & terr' tenent', qui ad contribuend' expenſis ſupradict' aſſeſs' fuiſſent, ac denar' ſic aſſeſs' non ſolviſſent, quam de ſeparal' portionibus vel denar' ſummis ſuper ipſos impoſit', vos tamen nihil in return' ejuſdem brevis noſtri miſiſtis, in noſtrum contemptum: Vobis igitur præfat' nuper Vic' com' noſtri Bucks mandamus, ſicut al' mandaverimus, quod tam de nominibus hominum & ter' tenen' in com' præd' per vos reſpective virtute dicti brevis noſtri aſſeſſat', quas denar' ſummis ſuper ipſos ſic aſſeſſat', quam nondum ſolver' nec ſatisfec', ſed eas ſolvere recuſant, quas de ſeparal' portionibus & denar' ſummis per vos præfat' nuper Vic' com' noſtri Bucks ſuper ipſos aſſeſſat', in ſcript' reduct', cum omnibus ill' tangen', nos in cancellar' noſtram ſub ſigillis veſtris diſtincte & aperte, ſine delatione, vel ad ultimum ante viceſimum ſextum diem April' proxime futuro, ubicunque tunc fuerit', reddat' certiores, una cum hoc brevi. Ac vobis præfat' nuper Ball' burgi & paroch' de Bucking', & Major' burg' de Chipping-Wiccombe, al' Wiccombe, mandamus, ſicut aliis mandaverimus, quod tam de nominibus præd' hominum & terr' tenen' in burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, per vos reſpective virtute dicti brevis noſtri ſuperius primo mentionat' aſſeſs', quam de ſeparal' denar' ſummis ſuper ipſos aſſeſs', quas nondum ſolver' nec ſatisfecer', ſed eas ſolvere recuſant, quam de ſeparal' portionibus & denar' ſummis per vos ſuper ipſos reſpective aſſeſs' in ſcriptis fideliter reduct', cum omnibus illis tangen', nos in cancellariam noſtr' præd' ſub ſigillo noſtro diſtincte & aperte, ſine delatione, vel ad ultim' ante prædict' viceſimum diem Aprilis proxime futur', ubicunque tunc fuerit', ſeparatim reddatis certiores, una cum hoc brevi. Teſte meipſo apud Weſtm' nono die Martii, anno regni noſtri duodecimo. EYRE.

Ad quem diem Petrus Temple & Heneagius Proby return' brev' præd' dors' ſic: *ſſ* Executio hujus brevis patet in quibuſd' ſchedul' huic brevi annexat', quarum quidem ſchedul' tenor, quoad præfat' Johan' Hampden per præfat' Petrum Temple retornat', ſequitur in hæc verba: *ſſ* Ego Petrus Temple Mil' & Baronet', qui fui Vic' com' Bucks, *viz.* inter quartum diem Auguſti, anno regni Domini noſtri Caroli nunc Regis Angliæ, *&c.* undecimo, & viceſimum ſecundum diem Februarii tunc proxime ſequen', quo die exivi ab officio meo Vic' com' præd', dicto Domino Regi in Cancellar' ſuam, virtute brevis ejuſdem Domini Regis huic ſchedul' anex', certifico, quod virtute & ſecundum exigen' brevis ipſius Domini Regis e Cancellar' ſua emanat', & ibidem de record' irrotulat', & Vic' dicti com' Bucks inter al' direct', geren' dat' quarto die Auguſti, anno undecimo ſupradict', aſſeſſavi, Anglice *have aſſeſſed*, ſuper ſeparal' homines & ter' tenentes com' Bucks præd', quorum nomina ſubſcribuntur, ſeparal' portiones & denar' ſummas ad eor' particular' inferius poſit' ad contribuend' expenſis circa proviſionem navigii in eod' brevi mentionat'; quas quidem portiones & denar' ſummas, ſive aliquam inde parcell', ante exitum ab officio meo Vic' com' prædict', ad manus meas, vel ad manus collector' in ea parte, virtute brevis ult' mentionat' per me conſtitut', præd' homines & ter' tenentes, aut eor' aliquis, quor' nomina ſubſcribuntur, non ſolverunt, ſed eas ſolvere recuſaver', *viz.* Stoake Mandivile, *ſſ* John Hampden Eſq; Et tenor al' ſchedul' per præfat' Heneag' Proby fidelit' return', & eid' brevi annex', ſequitur etiam in hæc verba: *viz. There is to be accounted upon by the Aſſeſſors, High Conſtables, Petty Conſtables within the ſaid County in general, which cannot be accounted for by Sir* Peter Temple, *being, as it is conceived, ſhort four Pounds.*

Ego Heneagius Proby Arm', qui fui Vic' com' Bucks inter viceſimum ſecundum diem Februar', anno Regni Dom' noſtri Caroli nunc Reg' Angliæ, *&c.* undecimo, & ab eodem die & anno uſque primum diem Martii tunc proxime ſequen', dicto Domini Regi in Cancellar' ſuam, virtute brevis ejuſdem Domino Reg' huic ſchedul' annex', certifico, quod homines & ter' tenentes com' Bucks præd', aut eor' aliquis, quor' nomina in quibuſd' ſchedul' huic brevi annex' exprimuntur, qui aſſeſs' fuer' per Petrum Temple Mil' & Baronet' nuper Vic' com' Bucks præd', dum in officio Vic' ejuſd' com' ſteterit, in ſeparal' denar' portionibus, & denar' ſummis ad eor' ſeparal' nomina ſuperius poſſit, ad contribuend' expenſis circa proviſionem navigii, virtute & ſecundum exigen' brevis ipſius Domini Regis e Cancell' ſua emanat', & ibidem de record' irrot', Vic' dicti com' Bucks inter alios direct' geren' dat' quarto die Auguſti, anno undecimo ſupradict', Heneag' Proby exiſten' Vic' prædict' com' Bucks proxime poſt exitum dicti Petri Temple Mil' & Baronet' ab officio Vic' ejuſd' com', vel ad manus collector' in ea parte virtute brevis ultimo mentionat' conſtitut', non ſolver', ſed eas ſolvere recuſaverunt. Et ulterius præfat' Johannes Hampden petit ſimiliter audit' præd' brevis de Mittimus, de quo in brevi de Sciri facias præd' fit mentio, & ei legitur in hæc verba.

ſſ Carolus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, *&c.* Theſaur' & Baronibus de Scaccario ſuo, ſalutem. Tenore cujuſdam brevis noſtri ſub magno ſigillo noſtro Angliæ confect', geren' dat' quarto die Auguſti, anno regni noſtri undecimo, in rotulis Cancellar' noſtræ irrotulat', per quod Vic' com' noſtri Bucks, Ball' & Burgen' burgi & paroch' de Buckingham, Major', Ball', & Burgens' burgi de Chipping-Wiccombe, alias Wiccombe, ac probis hominibus in eiſd' burgis & paroch', & membris eorund', & in villis de Agmondeſham, Wendover, & Marlow magna, & in omnibus aliis burgis, villis, villatis, hamlet', & aliis locis in dicto com' Bucks, mandavimus, quod pro defenſione regni, tuitione maris, ſecuritate ſubditorum noſtrorum, ac ſalva conductione navium & merchandizarum ad regnum noſtrum Angliæ venien', & de eod' ad partes exteras tranſeun', pararent unam navem de guerra portagii quadringent' & quinquagint' dolior', cum hominibus tam magiſtris peritis, quam marinariis valentioribus & expertis centum & octogint' ad minus, ac etiam tormentis tam majoribus quam minoribus, pulvere tormentario, ac haſtis & telis, aliiſque armaturis neceſſar' pro guerra ſufficien', & cum duplici eſkippamento, necnon cum victualibus ad certum diem, in eod' brevi content', ad tot homines competen', & abinde in vigint' & ſex ſeptiman', ad cuſtag' hominum & terr' tenen' burgor', vill', villat', hamlet', & al' locor' ſupra mentionat' in dicto com' Bucks, tam in victualibus, quam in hominum ſalar', & al' ad guerram neceſſar' per tempus illud ſuper defenſionem maris in obſequio noſtro, in comitiva cuſtod' maris moratur', & ad portum de Portſm', circa tempus in eod' brevi limitat', duci facerent. Quodque reſpective aſſiderent omnes homines in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & cæteris burgis, villis, villat', hamlet' & aliis locis in dicto com' Bucks, & membris eorund', & ter' tenentes in eiſd', ad contribuend' expenſis circa proviſionem præmiſſor', & ad cætera faciend' & exequend', modo & forma prout per idem breve præcept' fuit; vobis mittimus præſentibus inter claus' breve, pro eo quod ſalus regni noſtri Angliæ, & populi noſtri ejuſdem periclitabatur, quod e dicta Cancellar' noſtra emanari narravimus, inter al' brevia ad hujuſmodi proviſionem & aſſeſſament' faciend' per ſingulos com', civitat', burg', vill', villat', hamlet', & locos regni noſtri Angliæ & Walliæ, & membris eorund', e Cancellar' noſtr' præd' nuper emanat', & ibidem ſimiliter irrot'; ac

etiam

etiam quod dictum al' breve noſtrum ad certificand' nobis in eand' Cancellar', tam de nominibus hominum & terr' tenend' in præd' burg' & paroch' de Buckingham, & burg' de Chipping-Wiccombe, alias Wiccombe, & in cæteris burgis, villis, villat', hamlet' & locis dicti com' Bucks, qui de mandato noſtro præd' ad contribuend' erga proviſion' præmiſſor' aſſeſs' fuerint, ac denar' ſuper ipſos ſic aſſeſs' non ſolver', quam de ſeparal' portionibus & denar' ſummis ſuper homines & terræ tenen' illos ſic onerat' & impoſit', necnon certificationes quaſdam in ſcriptis, virtute brevis illius reduct', & in dictam Cancellar' noſtram miſs'. Vobis etiam mittimus præſentibus interclaus', mandantes, quod inſpectis brevibus & certificat' præd', ulterius inde pro levatione, collectione, & receptione omnium & ſingularum præd' denar' ſummar' de præd' contributionibus adhuc non ſolut', fieri fac', prout de jure & ſecundum legem & conſuetudinem regni noſtr' Angliæ fuerit faciend'. Teſte meipſo apud Weſtm' quinto die Maii, anno regni noſtri tertio decimo. EYRE. Sicut in eiſdem brevibus, & ſchedul' eiſd' annex' in Scaccar' dicti Dom' Regis certificat', & ibidem in cuſtod' Rememorator' ejuſd' Dom' Regis de record' remanen' plenius continetur. Quibus lectis, auditis, & per ipſum intellectis, idem Johannes queritur, ſe colore ſeparal' brev', return' eorund', & ſchedul' eiſd' annexat', graviter vexat' fore & inquietat', & hoc minus juſte; quia dicit, quod præd' ſeparal' brevia ſuperius mentionat', return' eorund', & ſchedul' eiſdem annexat', materia in eiſd' content', minus ſufficien' in lege exiſtunt ad onerand' ipſum Johannem Hampden de aut cum ſolutione præd' ſumm' vigint' ſolid' ſuper ipſum in ſchedul' præd, modo & forma præd', taxat' & aſſeſſat', aut alicujus inde parcell', ad quæ ipſe neceſſe non habet, nec per legem terr' tenetur reſpondere. Unde ob inſufficien' præd' ſeparal' brevium ſuperius mentionat', return' eorund', ſchedul' eiſdem annex', ac materiæ in eiſdem brevibus ac ſchedul' content', ipſe idem Johannes Hampden petit judicium, Si dictus Dominus Rex nunc ipſum de præd' vigint' ſolid', aut aliqua inde parcell', ulterius impetere, ſeu onerare debeat aut velit.

Robert Holborne.

Et Johannes Banks Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege ſequitur, præſens hic in cur' ad eund' diem in propria perſona ſua, dicit, quod præd' ſeparal' brevia, & return' eorund', ac ſchedul' præd' eiſdem annex', materiaq; in eiſdem content', ſufficien' in lege exiſtunt ad præd' Johan' Hampden de præd' vigint' ſolid' ſuper ipſum in forma & ex cauſa præd' aſſeſſat' onerand'; quam quidem materiam ipſe dictus Attornat' dicti Dom' Regis general', pro eodem Dom' Rege paratus eſt verificare; quamq; materiam præd' Johannes Hampden non didicit, nec ad eam aliqualiter reſpondit, ſed verificationem illam admittere omnino recuſat: Pro eodem Dom' Rege ideirco petit judicium, & quod præd' Johannes Hampden de eiſd' vigint' ſolid' oneretur, & inde ſatisfaciat, *&c.*

Johannes Banks.

A Copy of the Judgment, as it is entred upon Record, in purſuance of the ſaid Motion, and according to the major Votes.

ET quia Barones hic ſe adviſare volunt de & ſuper præmiſſis, priuſq' judicium inde reddant, dies dat' eſt præfat' Johanni Hampden eod' ſtatu quo nunc hic in octab' ſancti Michaelis, ut dicti Barones ſe interim de iiſdem præmiſſis adviſare poſſint, ac cum Juſticiar' de utroq' banco inde deliberent, eo quod iidem Barones hic inde nondum, *&c.* Et ſuper hoc concordat' eſt inter Barones hic, tam ex aſſenſu dict' Attornat' dict' Domini Reg' general', quod dict' Attornat' præd' Johannes Hampden, & Conſiliarior' in lege peritor' ejuſdem Johannis Hampden, quod aliqui legis periti, tam de conſilio & parte dict' Domini Reg', quam de conſilio & parte dict' Johannis Hampden, de præd' materia in lege, & cæteris præmiſſis in camera hujus Scaccarii, vulgariter nuncupat' *The Exchequer Chamber*, coram iiſd' Baronibus, aſſidentibus eis Juſticiar' de utroque banco, argumentari interim publice audiantur. Ad quas quid' octabas ſancti Michaelis præd' Johannes Hampden venit hic ut prius. Et quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis, priuſq' judicium inde reddant, dies ulterius dat' eſt præfat' Johanni Hampden, cod' ſtatu quo nunc hic uſq' in octab' ſancti Hilarii, ut aliqui legis periti, tam de conſilio & parte dict' Domini Reg', quam de conſilio & parte dict' Johannis Hampden, de præd' materia in lege, & cæteris præmiſſis, in præd' camer' hujus Scaccarii, coram Baronibus præd', aſſidentibus eis præd' Juſticiar' de utroque banco, argumentari interim publice audiantur; ac iid' Barones, cum iiſd' Juſticiar' inde deliberent, eo quod nullus in lege peritus, vel de conſilio ipſius Domini Reg', vel de conſilio dict' Johannis Hampden adhuc auditur, & Barones hic inde non adviſantur, *&c.* Poſteaq' medio tempore in præd' octab' ſancti Michaelis, & præd' octab' ſancti Hilarii, tum Attornat' & Solicitator ipſius Domini Reg', quam duo legis periti de conſilio præd' Johannis Hampden, in præmiſſis exiſten' ex parte ejuſd' Johannis Hampden, duodecim ſeparal' diebus in præd' camer' Scaccarii, coram Baronibus hujus Scaccarii, aſſidentibus eis tunc ibid' præd' Juſticiar' de utroq' banco, de præd' mater' in lege & cæteris præmiſſis (recitato tunc ibid' record' præd') ad largum & ſummat' argumentari quidq' inde ex utraq' parte dicere potuiſſent aut voluer', palam & ſingulatim audit' fuer'. Et præd' Attornat' & Solicitator general' diverſa & quamplurima record', brevia, commiſſion', & præceden' tam hujus Scaccarii, quam cur' Cancellar', cur' de Banco Reg', ac de Commu' Banco', mater' in lege, & cætera præmiſſa in ſeparal' brevibus return', & ſchedulis præd' content', ex parte dict' Domini Reg' proban', confirman', & manutenen', ad tunc & ibid' produxer', oſtenſer', & expoſuer'; & ad præd' octabas ſancti Hilar' præd' Johannes Hampden venit hic ut prius, & quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt præfat' Johanni Hampden, eod' ſtatu quo nunc hic, uſq' a die Paſchæ in quindecim dies, ut dicti Barones interim, cum præfat' Juſticiar' de utroq' Banco ulterius deliberent, eo quod iidem Barones hic inde nondum, *&c.* Ad quem diem præd' Johannes Hampden venit hic ut prius, & quia Barones hic ulterius ſe adviſare volunt de & ſuper præmiſſis priuſquam judicium inde reddant, dies ulterius dat' eſt eid' Johanni, eod' ſtatu quo nunc hic, uſq' in cro' ſanctæ Trin', & dict' Barones interim cum præfat' Juſticiar' de utroq' banco ulterius inde deliberent, eo quod iidem Juſticiar' hic inde nondum, *&c.* Ad quem diem præd' Johannes Hampden venit hic ut prius, & ſuper hoc viſis præmiſſis, & per Barones hic plene intellectis, habitaque inde matura deliberatione cum præd' Juſticiar' de utroque banco, ac poſt argumenta tam per eoſd' Juſticiar', quam per præd' Barones ſingulatim in præd' camer' Scaccarii publice inde fact', videtur inde Baronibus, ex adviſamento Juſticiar' præd', quod ſeparal' brevia præd', & return' eorund', ac ſchedulæ præd' eiſd' annex', ac mater' in eiſd' content', ſufficien' in lege exiſtunt ad præfat' Johannem Hampden de præd' vigint' ſolid', ſuper ipſum in forma & ex cauſa præd' aſſeſſat' onerand'. Ideo conſiderat' eſt per eoſd' Barones, quod præd' Johannes Hampden de eiſd' vigint' ſolid' oneretur, & exinde ſatisfaciet, *&c.*

Rex verſus Harriſon *(b), for a* Miſdemeanour.

Trin' 14 Car' I. B. R.

Middx' *ff.* ALias, ſcilicet die Jovis prox' poſt octab' ſanctæ Trin' iſto eod' termino, coram Domino Rege apud Weſtm', per ſacrament' xii. jur' extitit præſentat', Quod cum cur' Domini Regis de Communi Banco eſt, & a tempore cujus contrar' memoria hominum non exiſtit, fuit antiqua cur' de recordo dicti Domini Regis nunc, & progenitor' & anteceſſor' ſuor' Reg' & Reginar' Angliæ, pro adminiſtratione juſtitiæ ſubdit' hujus regni Angliæ, & aliis in communibus pl'itis per tot' regnum Angliæ præd' motis & emergentibus. Cumque eſt contra coron' & dignitat' Regiæ majeſtatis, necnon contra legem & conſuetudinem hujus regni Angliæ, pro aliqua perſona, vel aliquibus perſonis cur' præd', ſeu aliquos Juſticiarios ejuſd' cur', ead' cur' aperta exiſten', & Juſticiar' cur' illius in cur' ill' præſent' exiſtent', & judicialiter ſedentibus, diſturbare. Cumq' Ric' Hutton miles eſt, & per diverſos annos jam ult' elapſos fuit, & adhuc eſt, unus Juſticiar' dict' Domini Regis nunc præd' cur' ſuæ; quidam tamen Thomas Harriſon de Creek in com' Northampton Clericus, Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' & ſeduct', ſecum malitioſe imaginans, atque in animo compaſſans, quibus modis poſſit præd' Ricardum Hutton Milit', & adtunc & adhuc un' Juſtic' Domini Regis nunc de Communi Banco præd' exiſten', multipliciter defamare & ſcandalizare, machinanſque & malitioſe intendens, quantum in ipſo fuit, ipſum Ricardum Hutton in ſcandalum, ignominiam, contempt', & vilipend' inducere, ipſumq' Ricardum Hutton de vita ſua, ac de bonis & catallis, terris, & tenementis ſuis praviter & malitioſe deprivare, necnon ad diſplacentiam & indignationem dict' Domini Regis nunc erga præfat' Ricard' Hutton incitand' & provocand', ac ipſum Ricardum Hutton pro proditore tam apud dict' Dominum Regem, & magnates hujus regni Angliæ, quam apud omnes ligeos ſubditos ejuſd' Domini Regis haberi & exiſtimari ſatagens, ac ad præd' cur' dict' Domini nunc de Communi Banco, & Juſticiar' dict' Domini Regis ejuſd' cur', in cur' ill' præſent' exiſtent', & judicialit' ſedentibus, diſturband', & adminiſtrationem juſtitiæ in cur' ill' impediend', quarto die Maii, anno regni Domini noſtri Caroli, Dei gratia Angliæ, Scotiæ, Franc', & Hibern' Regis, fidei defenſores, *&c.* decimo quarto, apud civitat' Weſtm' in com' Midd', viz. in magna aula pl'itorum ibidem, cur' ipſius Domini Regis coram ipſo Rege cur' Cancellar', & præd' cur' Communi Banco in præd' magna aula pl'itorum præd' apert', ac Juſtic' ejuſd' Domini Regis in cur' præd' tunc ibidem præſentibus, & judiciali ter ſedentibus, materias & cauſas Domini Regis, populi ſui, ac regni ſui Angliæ aſſidue attendent' & audient', legeſq' regni præd' ſubdit' ipſius Domini Regis miniſtrant', præd' Thomas Harriſon ad barram præd' cur' dicti Domini Regis de Communi Banco, adtunc & ibidem violenter, vi & armis, *&c.* acceſſit præd' cur' de Communi Banco adtunc & ibidem in præd' magna aula, ut præfertur, aperta exiſten', ac Ricardo Hutton Milit', & aliis Juſticiar' dicti Domini Regis cur' de Communi Banco præd', in cur' illa tunc ibidem (ut præfertur) præſentibus, & judicialit' ſedentibus, & præd' Thomas Harriſon adtunc & ibidem, ex ſua mera malitia, malo animo, & malevola intentione, in præſentia & audit' præfat' Juſticiar' præd' cur' de Communi Banco, ac diverſorum ſervien' ad legem, multor' viror' venerabilium, & alior' dicti Domini Regis fidelium ſubditor', falſo, nequit', & malitioſe præfat' Ricardum Hutton Milit' de alta proditione accuſavit, & adtunc & ibidem falſo, nequit', & malitioſe hæc ſcandaloſa, venenoſa, defamatori Anglicana verba, palam, publice, & alta voce dixit, *I* (ipſum præfat' Thomam Harriſon innuendo) *do accuſe Mr. Juſtice* Hutton (præfat' Ricardum Hutton Milit', un' Juſticiar' dicti Domini Regis de Communi Banco præd' innuendo) *of high Treaſon*, in dicti Domini Regis nunc, coron', dignitat', & Regiæ poteſtatis ſuæ læſionem & derogationem, & cur' ſuæ præd' contempt', & ſcandalum manifeſtum juriſque, & legum ipſius Domini Regis Regni ſui præd', ac cur' de Communi Banco præd', & Juſticiar' dicti Domini Regis, cur' illius, & adminiſtration' juſtitiæ in ead' cur', in nequiſſimum exemplum omnium aliorum malefactorum tali caſu delinquent', & ad graviſſimum ſcandalum, infamiam, dedecus, & final' deſtructionem præd' Ricardi Hutton Milit', & contra pacem dicti Domini Regis nunc, coronam, & dignitates ſuas, *&c.* Cum per quod præcept' fuit Vic', quod non omittat, *&c.* quin venire fac' eum ad reſpondend', *&c.* Cum & modo, ſcilicet die Veneris prox' poſt octabas ſanctæ Trin' iſto eod' termino, coram Domino Rege apud Weſtm' ven' præd' Thomas Harriſon Clericus, cuſtod' Henrici Hopkins Arm', guardian' priſonæ dicti Regis de la Fleete, virtute brevis dicti Regis de Habend' corpus ad ſubjic', *&c.* ei inde direct', ad barr' hic duct' in propria perſona ſua, qui committ' præfat' Marr', *&c.* Et ſtatu' de præmiſſis eo alloquunt' qualiter ſe inde acquietari, dicit, quod ipſe non eſt inde culpabil', & de hoc ponit ſe ſuper patriam. Et Johannes Keeling Ar', Cleric' Coronæ, & Attornat' Domini Regis in cur' ipſius Regis, coram ipſo Rege, qui pro eod' Domino Rege in

(b) Vol. I. p. 720. No. 38.

hac parte ſequitur, ſimiliter, &c. Jo' ven' inde jur' coram domino Rege apud Weſtm' die Lunæ prox' poſt quindenam ſanctæ Trin', & quia nec, &c. ad recogn', &c. quia tam, &c. Idem dies dat' eſt tam præfat' Johanni Keeling, qui ſequitur, &c. quam præd' Thomæ Harriſon Clerico, ſub cuſtod' præd' Marr' interim commiſſo ſalvo cuſtodiend', quouſq', &c.

Rex verſus Crook & *alios*, *for not taking the* Oaths

14 *Car.* II. *O. B.*

London ſſ. JUR' pro Domino Rege ſuper ſacrament' ſuum præſentant, Quod ad general' quarterial' ſeſſion' pacis Domini Regis, tent' pro civitat' London apud Guildhald' ejuſdem civitat', die Mercurii ſcil' viceſimo quinto die Junii, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſoris, &c. quarto decimo, coram Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Milite & Baronet', Aldermannis dictæ civitat', ac al' ſociis ſuis Juſtic' dicti Dom' Regis, ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' aſſign'. Seſſio iſta pacis adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ibidem uſque diem Jovis, ſcilicet viceſimum ſextum diem ejuſdem menſis Junii, anno ſupradicto, ad horam ſeptimam ante merid' ejuſdem diei, apud Juſtice-Hall in le Old Bailey, in paroch' ſanct' Sepulchri, in warda de Farringdon extra London præd', tenend' coram præfat' Juſtic' & al' ſociis ſuis, ad faciend' ulterius prout cur' con', &c. Ac ad eundem diem Jovis, viceſimum ſextum diem Junii, anno quarto decimo ſupradicto, general' quarterial' ſeſſio iſta pacis tent' fuit pro civitat' London præd' per adjornament' præd', apud Juſtice-Hall præd', in paroch' & ward' præd', coram præfat' Johe' Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Browne Mil' & Baronet', & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Mil' & Baronet', uno Servien' dicti Dom' Regis ad legem, ac Recordator' civitat' præd', ac al' ſociis ſuis Juſtic' dicti Dom' Regis ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eandem civitat' perpetrat', audiend' & terminand' aſſign'. Ac adtunc & ibidem præd' general' quarterial' ſeſſio pacis præd' ulterius adjornat' fuit per præfat' Juſtic' uſque diem Veneris, ſcilicet viceſimum ſeptimum diem dicti menſis Junii, anno quarto decimo ſupradicto, ad horam ſeptimam ante merid' ejuſd' diei, apud Juſtice-Hall præd', in parochia & warda præd' tenend' coram præfat' Juſtic' & al' ſociis ſuis, ad faciend' ulterius prout cur' con'. Ac ſuperinde ad iſtam eandem general' quarterial' ſeſſion' pacis, tent' pro civitat' London per adjornament' præd' apud Juſtice-Hall præd', in paroch' & warda præd', dicto die Veneris viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, coram præfat' Johanne Frederick Milite, Majore civitat' London, Thoma Adams Mil' & Baronet', Ricardo Brown Mil' & Baronet', Ricardo Chiverton. Armigero, & Thoma Aleyn Mil' & Baronet', Aldermannis dictæ civitat', ac Willielmo Wilde Milite & Baronet', uno Servien' dicti Domini Regis ad legem, ac Recordator' ejuſdem civitat', ac al' ſociis ſuis Juſtic' dicti Domini Regis ad pacem in civitat' præd' conſervand', necnon ad divers' felon', tranſgr', & al' malefacta infra eand' civitat' perpetrat', audiend' & terminand' aſſign', in aperta general' quarterial' ſeſſion' præd', præfat' Juſticiar' pacis ult' nominat', exiſtentes major pars Juſtic' pacis ipſius Domini Regis infra dictam civitatem London adtunc, ſcilicet dicto viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto, apud dictam paroch' ſancti Sepulchri, in warda de Farringdon extra London præd' præſen' exiſtent', obtulerunt (Anglice *did tender*) Johanni Crooke nuper de London Generoſo, Johanni Bolton nuper de London Aurifabro, & Iſaac Gray nuper de London Generoſo, & eor' cuilibet ſeparatim per ſe (ad tunc exiſten', & cuilibet eor' exiſten' ultra ætat' octodecim annorum) jurament' content' in quodam actu in parliament' Domini Jacobi nuper Regis Angliæ, tent' per prorogationem apud Weſtm' in com' Middleſex, quinto die Novembris, anno regni ſui Angliæ, Franc', & Hiberniæ tertio, & Scotiæ triceſimo nono, nuper edit'. & provis' in his Anglicanis verbis ſequen', *viz.* 'I do truly and 'ſincerely acknowledge, profeſs, teſtify, and declare, in my Conſcience, 'before God and the World, that our Sovereign Lord King *Charles* the 'Second is lawful and rightful King of this Realm, and of all other his 'Majeſty's Dominions and Countries; and that the Pope neither of him-'ſelf, nor by any Authority of the Church or See of *Rome*, or by any 'other Means with any other, hath any Power or Authority to depoſe 'the King, or to diſpoſe of any of his Majeſty's Kingdoms or Dominions, 'or to authorize any foreign Prince to invade or annoy him, or his 'Countries, or to diſcharge any of his Subjects of their Allegiance and 'Obedience to his Majeſty, or to give Licence or Leave to any of them 'to bear Arms, raiſe Tumults, or to offer any Violence or Hurt to his 'Majeſty's Royal Perſon, State, or Government, or to any of his Ma-'jeſty's Subjects within his Majeſty's Dominions. Alſo I do ſwear from 'my Heart, that notwithſtanding any Declaration, or Sentence of Ex-'communication, or Deprivation made or granted, or to be made or 'granted by the Pope or his Succeſſors, or by any Authority derived, or 'pretended to be derived from him or his See, againſt the ſaid King, his 'Heirs or Succeſſors, or any Abſolution of the ſaid Subjects from their 'Obedience, I will bear Faith and true Allegiance to his Majeſty, his 'Heirs and Succeſſors, and him and them will defend to the uttermoſt of 'my Power, againſt all Conſpiracies and Attempts whatſoever, which 'ſhall be made againſt his or their Perſons, their Crown and Dignity, by 'Reaſon or Colour of any ſuch Sentence or Declaration, or otherwiſe; 'and will do my beſt Endeavour to diſcloſe and make known unto his 'Majeſty, his Heirs and Succeſſors, all Treaſons and traitorous Con-'ſpiracies which I ſhall know or hear of to be againſt him, or any of 'them. And I do further ſwear, That I do from my Heart abhor, de-'teſt, and abjure, as impious and heretical, this damnable Doctrine and 'Poſition, *That Princes which be excommunicated or deprived by the Pope, 'may be depoſed or murdered by their Subjects, or any other whatſoever.* And 'I do believe, and in my Conſcience am reſolved, that neither the Pope, 'nor any Perſon whatſoever, hath Power to abſolve me of this Oath, 'or any Part thereof, which I acknowledged by good and full Authority 'to be lawfully miniſtred unto me, and do renounce all Pardons and Diſ-'penſations to the contrary. And all theſe Things I do plainly and ſin-'cerely acknowledge and ſwear, according to theſe expreſs Words by me 'ſpoken, and according to the plain and common Senſe and Underſtand-'ing of the ſame Words, without any Equivocation, or mental Evaſion, 'or ſecret Reſervation whatſoever. And I do make this Recognition 'and Acknowledgment heartily, willingly, and truly, upon the true 'Faith of a Chriſtian. So help me God.' Ac quod præfat' Juſtic' pacis ult' nominat' ad tunc, ſcil' dicto viceſimo ſeptimo die Junii, anno quarto decimo ſupradicto apud paroch' & ward' præd', in dicta quarterial' ſeſſion' pacis præd', eoſdem Joh'em Crooke, Joh'em Bolton, & Iſaacum Gray, & eor' quemlibet ſeparatim per ſe requiſiver' ad jurament' illud ſuper ſacroſancta Dei Evangel' capiend'. Quodq; iidem Joh'es Crooke, Joh'es Bolton, & Iſaacus Gray, jurament' præd', ſic per præd' nominat' Juſtic' pacis ejuſdem Joh'i Crooke, Joh'i Bolton, & Iſaaco Gray, ut præfertur, oblat' & requiſit', ad tunc & ibidem obſtinate & pertinaciter capere recuſaver', & quilibet eor' recuſavit, in malum exemplum omnium alior' dicti Domini Regis nunc, fidel' ſubdit' & in contempt' dicti domini Regis nunc, legumq; ſuar', contra formam ſtatut' præd', ac contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, &c.

WILD.

Rex verſus Green, Hill (*i*), *and others, for the* Murder *of Sir* Edmondbury Godfrey.

Mich' 30 *Car'* II. *B. R.*

Middx, ſſ. JUrator' pro Dom' Rege ſuper ſacrament' ſuum præſentant, Quod Robertus Green nuper de paroch' ſanctæ Mariæ le Strond in com' Midd' labor', Laurentius Hill nuper de paroch' præd' in com' præd' lab', Dom' Kelly nuper de paroch' præd' in com' præd' Cler', & Philbert Vernat nuper de paroch' præd' in com' præd' lab', Deum præ oculis ſuis non habentes, ſed inſtigat' diabolica mot' & ſeduct' 12 die Oct', anno regni Domini Caroli ſecundi, Dei gratia Angl', Scot', Franc' & Hiberniæ Regis, fidei defenſor', &c. 30, vi & armis apud paroch' ſanctæ Mariæ le Strond præd', in com' præd', in & ſuper quendam Edmundumbury Godfrey Mil', in pace Dei & dict' Dom' Regis nunc, adtunc & ibidem exiſten', felonice, voluntarie, & ex malitia ſua præcogitata inſult' fecer'. Et quod præd' Robertus Green quoddam ſudarium panni lin', Anglici *a Linen Handkerchief*, valor' ſex denar', circa collum ipſius E. B. G. adtunc & ibidem felonice, voluntar', & ex malitia ſua præcogitat', plicavit & fixavit, Anglice *did fold and faſten.* Et quod prædict' R. G. cum prædict' ſudario ſic per ipſum R. G. plicat' & fixat' circa collum ipſius præd' E. B. G. adtunc & ibidem ipſum præd' E. B. G. felonice, voluntarie, & ex malitia ſua præcogitat', ſuffocavit & ſtrangulavit, Anglice *did choke and ſtrangle*, de quibus quidem ſuffocation' & ſtrangulation' ipſius E. B. G. præd' per ipſum præd' R. G. in forma præd' fact' & perpetrat' ipſe præd' E. B. G. adtunc & ibidem inſtant' obiit. Et quod præd' L. H. D. K. & P. V. adtunc & ibidem felonice, voluntarie, & ex malitia ſua præcogitat' fuer' præſentes, auxiliantes, abettantes, confortantes, aſſiſtantes, & manutenentes præfat' R. G. ad præd' E. B. G. in forma præd' felonice, voluntarie, & ex malitia ſua præcogitat' interficiend' & murdrand'. Et ſic jur' præd' dicunt ſuper ſacrament' ſuum præd', quod præd' R. G. L. H. D. K. & P. V. modo & forma præd' præfat' E. B. G. felonice, voluntarie, & ex malitia ſua præcogitata interfecer' & murdraver' contra pacem dict' Dom' Reg' nunc, coron', & dignitat' ſuas, &c.

Rex verſus Taſborough *and* Price (*k*), *for Subornation of* Perjury.

Poſchæ 32 *Car.* II. *B. R.*

ſſ. ALias ſcilicet die, &c. ult' præterit' coram Domino Rege apud Weſtm', per ſacramen' 12 jur' probor' & legalium hominum com' præd', jurat' & onerat' exiſten' ad inquirend' pro dicto Dom' Rege & corpore com' præd' præſent' exiſtit', Quod cum quidam Tho' White, alias Whitebread, Clericus, Johannes Fenwick Clericus, Willielmus Harcourt, alias Harriſon Clericus, Johannes Gavan Clericus, Anthonius Turner Clericus, & Jacobus Corker, falſi proditor' contra ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angl', &c. 13 die Junii, anno regni dicti Domini regis nunc 31 ad deliberation' gaol' dicti Domini Regis de *Newgate*, teint' per adjournament' pro com' præd' apud Juſtice-Hall in le *Old Bailey*, in ſuburbiis civitatis London, coram juſtic' ad gaol' præd' adtunc & ibidem deliberand' aſſign', ſteterunt indictat' pro compaſſation' (Anglice *the compaſſing*) mortis & finalis deſtruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento ſpecificat' poſteaque ad ſeſſion' præd' præd' T. W. alias, &c. J. F. W. H. alias, &c. J. G. & A. T. per jurat' patriæ adtunc & ibidem debito modo inde triat' & convict' fuer', & per judic' cur' adtunc & ibidem debito modo attinct' fuer', prout patet per record' inde juratoribus præd' in eviden' oſtens': Cumque etiam quidam Ricardus Langhorn Ar' poſtea ſcilicet ad deliberation' gaol' dicti Domini Regis tent' per adjornament' pro civitat' London' apud Juſtice-Hall præd', coram juſtic'iar' ad gaol' præd' adtunc & ibidem deliberand' aſſign', 14. die Junii, anno regni dicti Dom' Regis nunc 31. ſuprad' legitimo

(*i*) Vol. II. p. 760. No. 79.

(*k*) Vol. II. p. 1017. No. 91.

legitimo modo ſtetit indictat' pro compaſſatione (Anglice *compaſſing*) mortis & final' deſtruction' dicti Domini Regis, & al' altis proditionibus in eodem indictamento ſpecificat'; poſteaque ſuperinde ad eandem ſeſſion' triat' per jur' patriæ, & adtunc & ibidem per judic' cur' attinct' fuit, prout patet per record' inde juratorib' præd' ſimilit' in evidenc' oſtens'. Cumque etiam quidam Stephanus Dugdale ſuper ſeparal' triation' indictament' præd' fuit teſtis product '& jurat' ex parte dicti Domini Regis nunc, & adtunc & ibidem legitimo modo material' evidenc' verſus præd' T. W. W. H. J. G. A. T. & R. L. dedit ad proband' ipſos culpabil' de materia in præd' indictamento ſpecificat', quidam Johannes Taſburgh, nuper de, *&c.* Gen', alias dict' J. Tiſburgh de, *&c.* Gen', & Anna Price de, *&c.* Spinſter, præmiſſa præd' ſatis ſcien' & exiſten' perſon' diabolice affectat' erga ſereniſſimum Dom' noſtrum Carolum ſecundum nunc Regem Angl', *&c.* ſupremum & naturalem Dominum ſuum, ac machinant' & tot' virib' ſuis intenden' pacem & communem tranquillitat' hujus regni Angl' perturbare, impedire, & ſupprimere (Anglice *to ſtifle*) ulteriorem divulgationem (Anglice *diſcovery*) dictar' prodition', &, quantum in ipſis fuit, debitum legis curſum eludere, nec non cauſare & procurare quod credit' foret, quod perſon' ſic ut præfertur attinct', minus juſte attinct' fuiſſent, præd' J. T. & A. P. ante triation' præd' W. H. ſcilicet præd' 13 die Junii, anno, *&c.* nunc 31. ſuprad', apud paroch' ſancti Andreæ Holbourn in com' Midd', falſo, illicite, injuſte, corrupte, & contra ligeanc' ſuæ debit' ſolicitabant, ſubornabant, & conat' fuer' perſuader', & uterque eor' adtunc & ibidem ſolicitabat, ſubornabat, & conat' fuit perſuadere præfat' Stephanum Dugdale, quod ipſe præfat' S. D. non foret teſtis, nec daret evidenc' verſus præfat' W. Harcourt, alias, *&c.* ſuper triation' ipſius W. H. alias, *&c.* pro proditionibus præd', Et quod præd' J. T. & A P. poſt triation' præd' ſcilicet 14 die Octobr', anno, *&c.* nunc 31 ſupradicto, apud præd' paroch' ſancti Andreæ Holbourn in com' Midd', falſo, illicite, injuſte, adviſate, contra ligeanc' ſuæ debit' ſolicitabant, ſubornabant, & conati fuer' perſuadere, & uterque eor' adtunc & ibidem, falſo, illicite, adviſate, corrupte, & contra ligeanc' ſuæ debitum ſolicitabat, ſubornabat, & conat' fuit perſuadere præd' Stephanum Dugdale, quod ipſe præd' Stephanus Dugdale retraheret & denegaret totam evidenc', quas ipſe præd' S. D. ut præfertur, dediſſet contra præd' proditor' eiſdem J. T. & A. P. adtunc & ibidem falſo, illicite, injuſte, adviſate, corrupte promitten' & uterque eor' promitten' præd' S. D. magn' & ingent' denar' ſum' & mercedes, ſi ipſe præd' S. D. retraheret & denegaret totam evidenc' per ipſum S. D. verſus præd' proditor'; ut præfertur, dat', & ſeipſum S. D. in locis incognit' & tranſmarin' retraheret & abſentaret. Et quod præd' J. T. & A. P. ad nequiſſimas machination', practication'; & intention' ſuas præd' perimplend' & pro perficiend', poſtea ſcilicet 14 die Octobr', anno, *&c.* 31. ſuprad', apud paroch' ſancti Andreæ Holbourn præd' in dicto com' Midd', falſo, illicite, injuſte, adviſate, & corrupte contra ligeanciar' ſuar' debit', produxer' & oſtender', & uterque adtunc & ibidem produxit & oſtendit præfat' S. D. quandam notam in ſcriptis, tenor cujus quidem notæ ſequitur in his Anglican' verbis ſequen', videlicet, *Being touched with a true Remorſe of Conſcience, and hearty Sorry for the great Ill I did, in coming in a Witneſs againſt the Catholicks, and there ſpeaking Things which in my own Conſcience I know to be very far from the Truth, I think myſelf bound in Duty both to God and Man, and for the Safety of my own Soul, to make a true Declaration how I was drawn into this wicked Action: but being very well ſatisfied that I ſhall create myſelf many powerful Enemies upon this account, I have retired myſelf to a Place of Safety, where I will with my own Hand diſcover the great Wrong that hath been done the Catholicks, and hope it may gain belief. And likewiſe I proteſt before Almighty God, that I have no motive to induce me to this Confeſſion, but a true Repentance for the Miſchiefs I have done, and hope Almighty God will forgive me.* Quodque præd' J. T. & A. P. poſtea ſcilicet dicto 14 die Octob', anno, *&c.* nunc 31 ſuprad', ad paroch' ſancti Andreæ Holbourn præd' in com' Midd' præd', falſo, illicite, injuſte, adviſate, corrupte, & contra ligeanc' ſuar' debitum, præfat' Stephanum Dugdale ad præd' notam in ſcript', ſic ut præfertur. eidem S. D. product' & oſtens' ſignare & ſubſcribere ſolicitabant, & perſuadere conat' fuer', & uterque eor' adtunc & ibidem ſolicitabat & perſuadere conat' fuit, & adtunc & ibidem falſo, illicite, injuſte, adviſate, corrupte promiſer', & uterque eor' adtunc & ibidem promiſit, quod ſi ipſe præd' S. D. præd' notam in ſcript' ſignaret & ſubſcriberet, quod tunc ipſe præd' S. D magn' & ingent' denar' ſum' haberet & reciper t, in malum & pernitioſum exemplum omn' al' in tali caſu delinquen', ac contra pacem dicti Domini Regis, coron', & dignitat' ſuas, *&c.*

Rex verſus Smith (*l*), *for a* Libel.

32 *Car.* II. *B. R.*

ff. JUrator' pro Domino Rege ſuper ſacram' ſuum præſentant, Quod Franciſcus Smith, nuper de in librar', Deum præ oculis ſuis non habens, ſed inſtigatione diabolica motus & ſeduct', & falſo & malicioſe machinans, & intendens ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defenſorem & regimen ſuum, in odium & infamiam inter ſubditos ſuos inducere & inferre, & ſeditionem inter ſubditos dict' Dom' Regis movere, 24 die Decembris, anno regni dict' Dom' Regis 32 apud in vi & armis, falſo, ſeditioſe, & malicioſe ſcripſit & publicavit, & ſcribi, imprimi, & publicari cauſavit quendam fict', fals', ſedit', & ſcandalos' libell', intitulat', *A Speech lately made by a noble Peer of the Realm.* In quo quidem libello continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *My Lords, 'tis a very hard thing to ſay, that we cannot truſt the King; and that we have been already deceived ſo often, that we ſee plainly the Apprehenſions of Diſcontent in the People is no Argument at Court; and tho' our Prince be in himſelf an excellent Perſon, that the People have the greateſt Inclination imaginable to love, yet we muſt ſay, he is ſuch an one, as no Story affords us a parallel of. How plain, and how many are the Proofs of the Deſigns to murder him? How little is he apprehenſive of it?* Et in altera parte ejuſdem libelli continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *ff. My Lords, I hear of a Bargain in the Houſe of Commons, and an Addreſs made to the King; but this I know, and muſt boldly ſay it, and plainly, That the Nation is betray'd, if upon any Terms we part with our Money, till we are ſure the King is ours. Have what Laws you will, and what Conditions you will, they will be of no Uſe, but Waſte Paper before* Eaſter, *if the Court have Money to ſet up for Popery and arbitrary Deſigns in the mean while. On the other hand, give me leave to tell you, my Lords, the King hath no reaſon to diſtruſt his People. No man can go home and ſay, That if the King comply with his People, they will do nothing for him, but tear all up from him. We want a Government, and we want a Prince that we may truſt even with the ſpending of half our annual Revenues for ſome time, for the Preſervation of theſe Nations.* In malum & pernicioſiſſimum exemplum omnium alior' in tali caſu delinquen', contra pacem dict' Dom' Regis, coronam, & dignitat' ſuas. Unde idem Attornat' petit adviſament' cur' in præmiſſis, & debit' legis proceſſum.

Rex verſus Cellier (*m*), *for a* Libel.

32 *Car'* II. *O. B.*

ff. JUratores pro Dom' Rege ſuper ſacramentum ſuum præſentant, Quod Eliz' Cellier uxor —— Cellier, de parochia ſanct' Clementis Dacor' in com' Midd' Gen', eadem Eliz' exiſten' religionis papalis, Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' & ſeduct', & falſo & malitioſe machinans & intendens, ſereniſſimum Dominum noſtrum Carolum ſecundum, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, & gubernationem ſuam hujus regni Angliæ, necnon veram religionem proteſtan', infra hoc regnum Angliæ lege ſtabilit', in odium, infamiam, & contemptum inducere & inferre, & ſcandalum & infamiam imponere ſuper quibuſdam perſonis, qui producti fuiſſent teſtes, & teſtimon' dediſſent ex parte dicti Dom' Regis contra præd' Eliz' Cellier, & alias perſonas, de alta proditione indictat' primo die Auguſti, anno regni dicti Dom' Regis tricеſimo ſecundo, apud prædict' parochiam ſancti Clemen' Dacor', in com' Midd' præd', falſo, malitioſe, & ſeditioſe ſcripſit & publicavit, & ſcribi, imprimi, publicari cauſavit, quendam fictum, falſum, & ſcandaloſum libellum, intitulat', *Malice defeated, or a brief Relation of the Accuſation and Deliverance of* Elizabeth Cellier; *wherein her Proceedings both before and during her Confinement are particularly related, and the Myſtery of the Meal-Tub fully diſcovered; together with an Abſtract of her Arraignment and Trial, written by herſelf for the Satisfaction of all lovers of undiſguiſed Truth.* In quo quidem libello continentur hæc falſa, ficta, & ſcandaloſa verba, & figuræ ſequentia: *ff. I hope it will not ſeem ſtrange to any honeſt and loyal Perſon, of what Way or Religion ſoever, that I, being born and bred up under Proteſtant Parents, ſhould now openly profeſs myſelf of another Church* (Eccleſiam Romanam innuendo) *for my Education being in thoſe Times, when my own Parents and Relations, for their conſtant and faithful Affection to the King and Royal Family, were perſecuted, the King himſelf murdered, the Biſhops and Church deſtroyed, the whole loyal Party, merely for being ſo, oppreſt and ruined, and all, as was pretended by the Authors of theſe Villanies, for their being Papiſts and Idolaters, the conſtant Character given by them to the King and his Friends; and to make them odious, they aſſuming to themſelves only the Name of Proteſtants, making that the glorious Title by which they pretended Right to all things. Theſe ſort of Proceedings, as I grew in Underſtanding, produced in me more and more Horror of the Party that committed them, and put me on enquiring into that Religion to which they pretend the greateſt Antipathy, wherein, I thank God, I found my innate Loyalty not only confirmed, but encouraged; and, let Calumny ſay what it will, I never heard from any Papiſt, as they call them, Prieſt or Layman, but that they and I, and all true Catholicks, owe our Lives to the Defence of our lawful King, which our preſent Sovereign* Charles *the Second is, whom God long and happily preſerve ſo. Theſe ſort of Doctrines agreeing to my publick Morals, and no way, as ever I was taught, contradicting my private ones, commending at the ſame time to me Charity and Devotion, I without any Scruple have hitherto followed, glorying myſelf to be in Communion with thoſe* (Papiſtas innuendo) *who were the humble Inſtruments of his Majeſty's happy Preſervation from the fatal Battle at* Worceſter, *and whom, though poor, no Temptation could invite to betray him to theſe, who by a pretended Proteſtant Principle ſought his innocent Blood. Theſe Truths, I hope, may ſatisfy any innocent Perſon in my preſent Change; nor can they wonder at my Continuance therein, notwithſtanding the horrid Crimes of Treaſon and Murder laid to the Charge of ſome Perſons, conſiderable for their Quality and Fortunes, in that Party: For when I reflected who were Witneſſes, and what unlikely things they depoſed, and obſerved that many of the chiefeſt Sticklers for the Plot were theſe, or the Sons of theſe, that acted the principle parts in the laſt Tragedy, which Hiſtory told me too had the Prologue of a pretended Popiſh Plot; I ſay, theſe things made me doubtful of the whole; and the more I ſearched for Truth, the more I doubted that the old Enemies of the Crown were at work again for its Deſtruction. I being fully confirmed in this, thought it my Duty, through all ſorts of Hazards, to relieve the poor impriſon'd Catholicks who in great numbers were locked up in Gaols, ſtarving for want of Bread; and this I did ſome Months before I ever ſaw the Counteſs of* Powis, *or any of thoſe honourable Perſons that were accuſed, or receiving one Penny of their Money, directly or indirectly, till about the latter end of* January

(*l*) Vol. II. p. 1040. No. 93.

(*m*) Vol. III. p. 89. No. 101.

(1678) *the Priſoners increaſing very much.* Et in alia parte ejuſdem libelli (inter alia) continentur hæc falſa, ficta, & ſcandaloſa verba, *ſſ. About this time I went daily to the Priſons, to perform thoſe Offices of Charity I was obliged to; and on* Thurſday, January 9, (1678) *I dined in* Newgate, *in the Room called the* Caſtle, *on the Maſter Debtors ſide; and about Four in the Afternoon I came down into the Lodge, with five Women, of which three were Proteſtants; and we all heard terrible Groans and Squeeks, which came out of the Dungeon called the* Condemned Hole: *I aſked* Harris, *the Turnkey, what doleful Cry it was; he ſaid it was a Woman in Labour; I bid him put us into the Room to her, and we would help her; but he drove us away very rudely, both out of the Lodge, and from the Door. We went behind the Gate, and there liſtened, and ſoon found that it was the voice of a ſtrong Man in Torture, and heard, as we thought, between his Groans, the winding up of ſome Engine. Theſe Cries ſtopped the Paſſengers under the Gate; and we ſix went to the Turner's Shop without the Gate, and ſtood there, amazed with the Horror and Dread of what we heard; when one of the Officers of the Priſon came out in great Haſte, ſeeming to run from the Noiſe: One of us caught hold of him, ſaying, Oh! what are they doing in the Priſon?* Officer. *I dare not tell you, Miſtreſs.* Cell. *It's a Man upon the Rack, I'll lay my Life on't.* Officer. *It is ſomething like it.* Cellier. *Who is it,* Praunce? Officer. *Pray, Madam, do not aſk me, for I dare not tell you; but it is that I am not able to hear any longer; pray, let me go. With that he ran away towards* Holbourn *as faſt as he could. We heard theſe Groans perfectly to the End of the* Old-Baily: *They continued till near Seven of the Clock; and then a Perſon in the Habit of a Miniſter, of a middle Stature, grey-haired, accompanied with two other Men, went into the Lodge; the Priſoners were locked up, and the outward Door of the Lodge alſo, at which I ſet a Perſon to ſtand and obſerve what ſhe could; and a Priſoner loaded with Irons was brought into the Lodge, and examined a long time; and the Priſoners that came down as low as they could, heard the Perſon examined, with great Vehemency ſay often, I know nothing of it; I am innocent; he forced me to bely myſelf; what would you have me ſay? will you murder me becauſe I will not bely myſelf and others? Several other ſuch like Expreſſions they heard ſpoken, as by one in great Agony. About four of the Clock the next Morning the Priſoners, that lay in a place about the Hole, heard the ſame Cry again two Hours, and on* Saturday *Morning again; and about eight of the Clock that Morning, a Perſon I employed to ſpy out the Truth of this Affair, did ſee the Turnkeys carry a Bed into the Hole: ſhe aſked who it was for; they told her it was for* Praunce, *who was gone mad, and had torn his Bed in pieces. That Night the Examiners came again, and* Praunce *was led away to the Preſs-yard. This, and many things of like nature, made me very inquiſitive to know what paſſed in the Priſon. Soon after this* Francis Coral, *a* Scotchman, *that had been put into* Newgate *upon ſuſpicion of carrying away Sir* Edmundbury Godfrey's *Body, and lay there thirteen Weeks and three Days in great Miſery, got out: I went to ſee him, and found him a ſad ſpectacle, having the Fleſh worn away, and great Holes in both his Legs, by the Weight of his Irons; and having been chained ſo long double, that he could not ſtand upright: He told me much of his hard and cruel Uſage, as that he had been ſqueezed and haſped into a thing like a Trough in a Dungeon under Ground, which put him into inexpreſſible Torment, inſomuch that he ſwooned; and that a Perſon in the Habit of a Miniſter ſtood by all the while; that a Duke beat him, pulled him by the Hair, and ſet a drawn Sword to his Breaſt three times, and ſwore he would run him through; and another great Lord had laid down a heap of Gold, and told him it was Five hundred Pounds; that he ſhould have it all, and be taken into the aforeſaid Duke's Houſe, if he would confeſs what they would have him: and one F. a Vintner, that lives at the Sign of the* Half-Moon *in* Ch——— St———, *by whoſe Contrivance he was accuſed, took him aſide, and bid him name ſome Perſon, and ſay they employed him to take up the dead Body in* Somerſet-yard, *and gave him Money for ſo doing; That if he would do this, both* F. *and he ſhould have Money enough. He alſo told me, that he was kept from* Thurſday *till* Sunday *without Victuals or Drink, having his Hands every Night chained behind him; and being all this time locked to a Staple, which was driven into the Floor, with a Chain not above a Yard long; that in this great Extremity he was forced to drink his own Water; and that the Gaoler beat his Wife becauſe ſhe brought Victuals, and pray'd he might have it, and threw Milk on the Ground, and bid her be gone, and not look at him.* Et in altera parte ejuſdem libelli continent' (inter al') hæc falſa, ficta, & ſcandaloſa verba ſequentia: *ſſ. My Arraignment, which, in Confidence of my own Innocency, I continually preſs'd for; not but that I knew the Danger, as to this Life, of encountering the Devil in the worſt of his Inſtruments, which are perjurers encouraged to that degree, as that profligated wretch* (quendam Thomam Dangerfield teſtem product' ex parte Dom' Regis contra præd' Elizabetham Cellier, pro alta proditione innuendo) *was, and has been ſince his being expoſed to the World in his true Colours, both at mine and another's Trial.* Et in altera parte ejuſdem libelli continentur hæc falſa, ficta, & ſcandaloſa verba ſequen': *ſſ. Nor have I ſince received any thing towards my Loſſes, or the leaſt Civility from any of them, whilſt* Dangerfield, (prædict' Thomam Dangerfield iterum innuendo) *when made a Priſoner for apparent recorded Rogueries, was viſited by and from Perſons of conſiderable Quality, with great Sums of Gold and Silver, to encourage him in the new Villainies he had undertaken, not againſt me alone, but Perſons, in whoſe Safety all good Men (as well Proteſtants as others) in the three Kingdoms are concerned.* Et in altera parte ejuſdem libelli vocat' *A Poſtſcript to the impartial Reader,* continent' hæc falſa, ficta, & ſcandaloſa verba ſequentia: *ſſ. And whenſoever his Majeſty pleaſes to make it as ſafe and honourable to ſpeak Truth, as it is apparent it hath been gainful and meritorious to do the contrary, there will not want Witneſſes to teſtify the Truth of more than I have written, and Perſons that are above being made the Hangman's Hounds for weekly Penſions, or any other Conſiderations whatſoever.* In malum & pernicioſiſſimum exemplum omn' alior' in tali caſu delinquin' contra pacem dict' Dom' Regis, coron', & dignitat' ſuas.

Rex verſus Dominum Grey (*n*) *& al', for a* Miſdemeanour *in debauching the Lady* Henrietta Berkley.

Mich' 34 *Car'* II. *Rot.* 1. *B. R.*

ſſ. QUod Ford Dom' Gray de Wark, R. C. nuper de, *&c.* Gen', A. C. ux' præd' R. C. D. J. F. J. ux' præd' D. J. & R. I. cum divers' al' male diſpoſit' perſon', eidem Attorn' dicti Dom' Regis nunc general' adhuc incognit', 20. die Auguſti, anno regni Dom' Caroli ſecundi nunc Regis Angl', *&c.* 34. & divers' al' dieb' & vicibus, tam antea, quam poſtea, apud paroch' de Epſom in com' Surr', falſo, illicite, injuſte, & nequiſſime, per illicitas & impuras vias & medias, conſpiran', machinan', practican', & intenden' final' ruinam & deſtruction' Dominæ Henriet' Berkley, tunc virgin' innupt' infra ætatem 18 annorum, & un' filiar' prænobilis G. comit' Berkley (eadem Dom' H. B. tunc & ibidem ſub cuſtod', regimine, & educat' præfat' prænobil' G. C. B. patris ſui exiſten') præd' Ford Dom' Gray, R. C. *&c.* & divers' al' perſon' ignot' adtunc & ibidem falſo, illicite, injuſte, & diabolice ad nequiſſimas, nefandiſſimas, & diabolicas intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', præd' Dom' H. B. ad deſerend' præfat' prænobilem G. C. B. patrem præd' Dom' H. & ad ſcortac', fornicat', & adulterium committend', & in ſcortat', fornicat', & adulter' cum præfat' F. D. G. (eodem F. D. G. adtunc, & diu antea, & adhuc marito exiſten' Dom' Mariæ al' fil' præd' prænobil' G. C. B. & ſoror' præd' Dominæ H.) contra omnes leges tam divin' quam human', impie, nequit', impure, & ſcandaloſe vivere & cohabitare tentaver', incitaver', & ſollicitaver', & quilibit eorum tunc & ibidem tentavit, incitavit, & ſollicitavit. Et quod præd' F. D. G. R. C. *&c.* ac al' perſon' ignot', vi & armis, *&c.* illicite, injuſte, ſine licentia, & contra voluntat' præfat' prænobil' G. C. B. in proſecution' nefandiſſimar' conſpirac' ſuar' præd', præfat' Dom' H. B. ibidem circa horam 12. in nocte præd' 20. diei Auguſt', anno ſuprad', apud præd' paroch' de E. in com' S. præd', e domo manſional' præd' prænobil' G. C. B. ibidem ſituat' & exiſten', & e cuſtod' & regimine ejuſdem G. C. B. ceper', aſportaver', & abduxer'. Et præd' Dom' H. B. a præd' 20. die Auguſt', anno ſuprad', & continue poſtea, uſque diem exhibition' hujus information', apud paroch' de E. præd' in com' præd', & in divers' locis ſecret' ibidem, cum præfat' F. D. G, illicite, nequit', & ſcandaloſe vivere, cohabitare, & remanere procuraver' & cauſaver', & quilibet eorum procuravit & cauſavit, in magn' Dei omnipotent' diſplicent', ad ruinam & deſtruction' præfat' D. H. B. & amicor' ſuorum triſtitiam & diſconſolat', in malum & pernitioſum exemplum, *&c.* Unde, *&c.*

Rex verſus Major' & Commun' & Civ' *civitatis* Londini (*o*).

An Information in nature of a Quo Warranto.

Paſchæ 34 *Car'* II. *B. R.*

London *ſſ. Memorand', Quod Robertus Sawyer Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, in propria perſona ſua ven' hic in curia Dicti Domini Regis, coram ipſo Rege apud Weſtm', die Lunæ prox' poſt quinden' ſancti Martini ult' præterit', & pro eodem Domino Rege protulit hic in cur' dicti Domini Regis, coram ipſo Rege tunc & ibidem, quand' Information' verſus Majorem & Communitat' ac Cives civitat' London; quæ quidem Informatio ſequitur in hæc verba: ſſ.*

London' ſſ. MEmorandum, Quod Robertus Sawyer Miles, Attorn' Dom' Regis nunc generalis, qui pro eodem Dom' Rege in hac parte ſequitur, in propria perſona ſua ven' hic in cur' dict' Dom' Regis, coram ipſo Rege apud Weſtm', die Lunæ prox' poſt quinden' S. Martini iſto eodem termino, & pro eodem Dom' Rege dat cur' hic intelligi & informari, Quod Major & Communitas, ac Cives civitat' London' præd', per ſpacium unius menſis jam ult' elaps', & amplius, uſi fuerunt, & adhuc utuntur, ac clamant habere & uti, abſque aliquo warranto, ſive regali conceſſione, infra civitat' London præd', & libertat' & precinct' ejuſdem civitat', diverſis libertat', privileg', & franchis' ſequen', videl', Fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London', ac per idem nomen placitare & implacitari, reſpondere & reſponderi, ac etiam habere Vicecomit' civitat' & com' civitat' London', & nominare & eligere ex ſeipſis duas perſonas fore Vicecomit' civitat' præd' & com' ejuſd' civitat', ac ill' ſic nominat' & elect' præficere & conſtituere Vic' civit' præd' & com' ejuſdem civitat', ad execution' & retorn' omnium brevium, billarum, & præceptorum Dom' Regis pro adminiſtratione & executione juſtic' infra civit' præd' & com' ejuſdem civit' exequend', faciend', ac ad faciend' & exequend' omnia & ſingula al' infra civit' præd', & com' ejuſdem civit', quæ ad officium Vic' faciend' pertinent; ac etiam habere Vic' com' Middleſex, & nominare, eligere & conſtituere ex ſeipſis Vic' com' Middleſex, pro eodem com' ut Vicecomes inde deſervitur, ac omnia brevia, billas, & præcepta Dom' Regis infra com Middleſex' præd' pro adminiſtratione & executione juſtic' ibid' exequend', & retorn' inde faciend', abſque aliqua commiſſione, ſive aliquibus literis patentibus a Dom' Rege inde obtent', ſive obtinend'. Ac etiam quod Major & Aldermanni ejuſdem civit' fuerunt Juſtic' Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſiones pacis & placita coronæ infra eandem civit' tenend', ac ad omnes felon', riot', & conventic' illicit' infra civit' præd' inquirend', audiend', & terminand' authoritate ip-

(*n*) Vol. III. p. 519. No. 112.

(*o*) Vol. III. p. 545.

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ſorum propria, abſque aliqua commiſſione, ſive al' authoritate a Dom' Rege in ea parte conceſs' ſive obtent'. De quibus quidem omnibus & ſingulis libertat', privileg', & franchis' iidem Major & Communitas, ac Cives civit' London præd', per totum tempus ſupradictum ſuper dictum Dom' Regem nunc uſurpaverunt & adhuc uſurpant, in dict' Dom' Regis nunc contempt', prærogativæ ſuæ regiæ grave dampnum & præjudicium. Unde idem Attorn' dict' Dom' Regis nunc general', pro eodem Dom' Rege pet' adviſament' cur' hic in præmiſs', & debit' legis proceſs' verſus præfat' Major' & Communitat', ac Cives civit' London præd', in hac parte fieri ad reſpondend' dict' Dom' Regi, Quo Warranto clamant haberi, uti, & gaudere, libertat', privileg', & franchis' ſupradict', &c. Per quod præceptum fuit Vicecomitibus London, quod venire fac' eos ad reſpondend', &c.

Et modo, ſcilicet die Lunæ prox' poſt craſtinum Aſcens' Dom', iſto eodem termino, coram Dom' Rege apud Weſtm', ven' prædicti Major & communitas, ac Cives civitatis London', per Benedictum Brown Attornat' ſuum, & habito auditu information' præd', querunt, ſe colore ejuſdem informationis gravit' fore vexat' & inquietat', & hoc minus juſte; quia proteſtando quod informatio præd', materiaq' in eadem content' min' ſuffic' in lege exiſt', ad quam quidem informat' ipſi neceſſe non habent, nec per legem terræ tenent' aliquo modo reſpondere: Pro placito tamen, quoad libertat' privileg', & franchis' ſequen' (*viz.*) ipſos Major' & Communitat', ac Cives civit' London fore de ſe ipſis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen placitare & implacitari reſpondere ac reſponderi, in informat' præd' ſuperius ſpecificat', iidem Major & Communitas, ac Cives Civit' London dicunt, quod dict' Dom' Rex nunc ipſos occaſione inde impetere ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas; quodque Cives ejuſdem Civit' ſunt, & a præd' tempore cujus contrar' memor' homin' non exiſt', fuerunt un' corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen per tot' tempus illud placitaver' & implacitat' fuerunt, reſponder' & reſpons' fuerunt, & placitare & implacitari, reſpondere ac reſponderi a toto tempore ſupradicto uſi fuerunt, & conſuever'. Quodque in Magna Charta de libertat' Angl', in Parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in comitat' Midd', anno regni ſui non tent', edit' & provis', continent', quod civitas London' habeat omnes libertat' ſuas antiquas & conſuetud' ſuas; & iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Edwardus quondam Rex Angl' tertius in parliamento ſuo apud' Weſtm' in Comit' Midd', anno regni ſui primo tent' per quandam chartam ſuam, de conſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parliament' ſuo apud Weſtm' præd' convocat' exiſten', ac authoritat' ejuſdem parliament', confirmavit tunc Civibus civit' London præd' libertat' ſubſequen' (int' alia) habend' ſibi & ſucceſſoribus ſuis in perpetuum imprimis recitando, Quod cum in Magna Charta de libertat' Angl' contineat, quod civit' London habeat omn' libertat' ſuas antiquas & conſuetud' ſuas; & quod iidem Cives tempore confection' dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Willielmi Conqueſtoris, & al' progenitor' dict' Regis Edwardi tertii, divers libertat' & conſuetud' tam per chartas ipſor' progenitor' ſuor', quam ſine chartis ex antiqua conſuetud' habuiſſent, voluit & conceſſit idem Rex Edwardus tertius, pro ſe & hæredibus ſuis, per chartam illam, authoritat' præd' quod iidem Cives haberent libertat' ſuas ſecund' form' Magn' Chartæ ſupradict', & quod pro aliqua perſonali tranſgr', vel judicio perſonal' alicujus miniſtri ejuſdem civit' non caperent' libertat' civit' ill' in manus ejuſdem Regis Edwardi tertii, vel hered' ſuor', ſed hujuſmodi miniſter, prout qualitas tranſgreſs' requireret, puniret' prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dict' Regis Edwardi tertii primo ſuperadict', ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (inter alia) plenus apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, Quod ad inſtant' & requiſit' Communitat' regni Angl' in parliamento Dom' Richardi nuper Regis Angl' ſecundo poſt Conqueſt', apud Weſtm' præd' anno regni ſui ſeptimo tent', aſſemblat' pro majore quiete & pace inter ligeos ejuſdem nuper Regis fovend' & pro bono publico, omnes conſuetud', libertat' privileg', & franch' civit' prædict' tunc Civibus civit' illius, & eor' ſucceſſor' licet uſi non fuerint, vel abuſi fuerint eiſdem, authoritat' ejuſdem parliament' ratificat' & confirmat' fuer'. Quodq' Domin' Henricus nuper Rex Angl' ſextus, per literas ſuas patent', ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo ſexto die Octobr', anno regni ſui viceſimo tertio, quas idem Major & Communitas, & Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis, confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud' adeo integras & illæſas, ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Henrici ſexti melius, quietus & liber habuiſſent & tenuiſſent, prout per eaſdem literas patent (int' alia) plenis apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', gerend' dat' apud Weſtm' præd' non die Novembr', anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe & hæredibus ſuis confirmavit Majori & Communitat', ac Civibus civit' London, & ſucceſſoribus ſuis in perpetuum, omn' & ſingulas ſuas libertat', franc', & libertas conſuetud' adeo integr' & illæs', ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Reg' Edwardi quarti melius, quietus, & liber habuiſſent & tenuiſſant. Et ulterius idem nuper Rex Edwardus quartus per eaſdam literas ſua patent', conceſſit eiſdem Majori & Communitat', ac Civibus, quod licet ipſi, vel prædeceſſor' ſui, aut Major & Alderman' civit' prædict', vel prædeceſſor' ſui præantea, vel ſucceſſor ſui' extunc in poſter', aliqua vel aliquibus libertat' quietant' conceſs' ordinat' articulor' ſeu liberar' conſuetud', aut alior' eiſd' literis patent' ejuſdem nuper Regis Edwardi quarti, ſeu al' literis ſuis aut progenitor' ſuor' quondam Reg' Angl', eiſdem Majori & Communitat' conceſs' content', aliquo caſu emergente plene non uſi, vel abuſi fuerint, noluit tamen idem nuper Rex Edwardus quartus, quod propt' hoc ipſi Major & Communitas, Alderman' & Cives, ſeu ſucceſſores ſui, forisfactur' aliquor' præmiſs' incurrerent; ſed quod ipſi, & eor' ſucceſſor', univerſis & ſingulis libertat' quietant' conceſs', ordinat' articulis, liberis conſuetud', & quibuſcunque al' in chartis & literis prædict' content', taliter non uſis, vel etiam abuſis, & eor' quolibet extunc de cætero plene & libere gauderent, & eis uterent' ſine impetition' vel impediment' ejuſdem nuper Regis, ſeu hæred' ſuor', Juſtic', Eſchætor', Vicecom', aut al' Balliv' ſeu miniſtr' ipſius nuper Regis, vel al' quorumcunque, prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi quarti hic in cur' prolat' (int' alia) plenius apparet. Quodque Domin' Henricus nuper Rex Angl' ſeptimus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' viceſimo tertio die Julii, anno regni ſui viceſimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis ratificavit & confirmavit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſor', omnia & ſingula libertat', privileg', quietant' & liberas conſuetud', quibus ipſi Major & Communitas, & Cives ſeu prædeceſſor' ſui habere, exercere, ſeu gaudere conſueviſſent, vel uſi fuiſſent, aut debuiſſent, adeo plene, plan', & integre, ac ſi ea omnia & ſingula ſeparatim & verbat' in eiſdem literis patent' expreſs' declarat' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patent' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod Domin' Jacobus nuper Rex Angl', &c. per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat', apud Honorem ſuum de Hampton Court viceſimo quarto die Septembris, anno regni ſui Angl' ſexto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, recitando, quod cum quamplurimi progenitores ipſius nuper Regis, quondam Regis Angl', de gratia ſua ſpecial', ac pro gratis, laudabil', multiplicib', & contin' ſervit' per Majorem & Communitat', ac Cives civit' London, & prædeceſſor' ſuos temporibus retroact' fact' & impens', necnon pro divers' al' urgent' cauſis & conſideration' eos ſeparatim moven', dediſſent, conceſſiſſent, & confirmaſſent Majori & Communitat', ac Civibus civit' London præd', & ſucceſſor ſuis, divers' libertat', privileg', franch', immunitat', authoritat', juriſdiction', ordinat', conſuetud', quietant', prout per ſeparal' literas patent' progenitor' & prædeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat; idem nuper Rex Jacobus pro & in conſiderat' ſummæ fidelitat', conſtant', & prompt' & laudabil' ſervit' per Major' & Communitat', ac Cives civit' London prædict' eidem nuper Regi, in ipſius regn' ſui primis auſpiciis, & continue uſque tunc manifeſt', & fideliſſim' fact' & impens', omnes & ſingulas literas patent', chartas, & confirmac' præclariſs' progenitor' & anteceſſor' ſuor' eiſdem Majori & Communitat', ac Civibus civit' London prædict', & prædeceſſor' ſuis, per quæcunque nomina incorporat' antea tunc tempora fact', conceſs', ſeu confirmat', ac omnes & ſingulas donac', conceſs', confirmac', reſtitut', conſuetud', ordinac', explanac', articul', & omnes al' res quaſcunque, in quibuſcunque literis patent' ſive chartis quorumcunque progenitor', prædeceſs', aut anteceſſor' ſuor' Regum Angl', necnon omnia & ſingula in dict' literis patent', chartis, conceſs', confirmat', ſeu eor' aliquibus content' recitat', ſpecific', confirmat', ſeu explanat', ac omnia & ſingula juriſdiction', authoritat', privileg', libertat', franch', quietanc', immunitat', liberas conſuetud' & hæreditament' quæcunque, quæ præd' Major & Communitas, ac Cives civit' London prædict', vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Major' & Aldermann' civit' London, ſeu per nomen Majoris, Civium, & Communitat' civit' London, ſeu per nomen Majoris, & Civium civit' London, ſeu per nomen Majoris & Communitatis civitatis London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civit' London, ſeu per aliquod al' nomen quodcunque, ratione ſeu vigore aliquar' literar' patent', chartar', ſeu confirmac' aliquor' progenitor', prædeceſſor', aut anteceſſor' ejuſdem nuper Regis Jacobi quondam Regis Angl', aliquo tempore, vel aliquibus temporibus habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, rata habuit & grata, ac pro ſe, hæred' & ſucceſſor' ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Major' & Communitat', ac Civibus civit' London' prædict', & eor' ſucceſſoribus, per eaſdem literas ſuas patent' ratificavit & confirmavit habend', tenend', gaudend' & exercend' omnia & ſingula præmiſs', eiſdem Major' & Communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac ſi ſeparatim, ſingulatim, & nominatim in literas patent' ill' expreſs' nominat', declarat', recitat', & manifeſt' eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque Domin' Carolus primus nuper Rex Angl', &c. per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' decimo octavo die Octobris, anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnia & ſingula privileg', libertat' franc', quietanc', immunitat', & liberas conſuetud' quæcunque, quæ prædict' Major & Communitas, ac Cives civit' London præd', vel prædeceſſor' ſui, per nomen Majoris & Communitat', ac Civium civit' London, ſeu per nomen Majoris & Aldermann' Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Majoris & Communitat' civit' London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civit' London, ſeu per aliquod al' nomen quodcunque, ratione ſeu vigore literar' patent', chartar', ſeu confirmac', in eiſdem literis patent' dicti nuper Regis Caroli primi mentionat', vel uſu vel præſcriptione, aut alio legal' modo aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabiliter uſi fuiſſent, aut exercuiſſent, rat' habend' & grata, ac pro ſe, hæredibus, & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſor', per eaſdem literas ſuas patent' ratificavit & confirmavit, prout per literas patent' ill' (int' alia) plenius liquet & apparet. Quodque præd' Domin' Rex nunc per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major & Com-

& Communitas, ac Cives civit' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & ſucceſſor' ſuis, omnia & ſingula juriſdiction', authoritat', privileg', libertat', franch', quietanc', immunitat', & conſuetud' quæcunque, quæ præfat' Major & Communitas, ac Cives civit' London, vel prædeceſſor' ſui, per nomen Major' & Communitat', ac Civium civit' London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civit' London, ſeu per nomen Major' & Communit' civit' London, ſeu per nomen Civium civit' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod al' nomen quodcunque, ratione vel vigore literar' patent', chartar', ſeu confirmat' in eiſdem literis patent' dicti Domin' Regis nunc præmentionat', vel alicujus, ſeu aliquor' uſus, vel uſu præſcription' vel præſcriptionum, ſeu al' legali modo quocunque, aliquo tempore, vel aliquibus temporibus ante hunc habuiſſent, ſeu rationabilit' uſi fuiſſent, ſeu exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſs' prædict' eiſdem Majori & communitat', ac Civibus civit' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patent' ſuperius mentionat' fore data ſive conceſſa, aut alit' uſu, præſcription', vel al' legali modo, ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patent' ipſius Domin' Regis nunc expreſs' nominat', declarat', conceſs' & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Et eo waranto iidem Major & communitat', ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecific' uſi fuer', & adhuc utunt', ac clamant habere & uti, libertat', priveleg', & franch', fore de ſeipſis unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, prout eis bene licuit & licet': Abſque hoc, quod iidem Major & Communitas, ac Cives civitat' London, de libertat', privileg' & franch' ill' ſuper dictum Domin' Regem nunc, per tempus præd' in informatione præd' ſuperius ſpecific', uſurpaver' ſeu uſurpant, prout per information' ill' pro dicto Domin' Rege nunc ſuperius ſupponitur. Quæ omnia & ſingula iidem Major ac Communitas, ac Cives civitat' London parat' ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent' & adjudicent', & quod ipſi, quoad præmiſs' ill' ab hac cur' dimittant', *&c.* Et iidem Major & Communitas, ac Cives civit' London, quoad libertat', privileg' & franch' ſequen', *viz.* ipſos habere Vicecom' civit' & com' civit' London, & Vicecom' Midd', & nominare & eligere ex ſeipſis duas perſonas fore Vicecom' civit' prædict', & com' ejuſdem civit' & Vicecom' Midd' ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' prædict' & com' ejuſdem civit', & Vicecom' Midd', ac ut Vicecom' civit' prædict', & com ejuſdem civit', ad execut' & retorn' omnium brevium, bill', & præcept' Domin' Regis, pro adminiſtratione & execut' Juſtic' infra civit' prædict', & com' ejuſdem civit' exequend', faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civit' & com' ejuſdem civit', quæ ad officium Vicecom' faciend' pertinent, ac ut Vicecom' com' Midd' pro eodem com' deſervitur', ac omnia brevia, bill', & præcept' Domin' Regis infra com' Midd' prædict', pro adminiſtratione & executione juſticiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinen'; dicunt, quod dictus Dominus Rex nunc ipſos Majorem & Communitat', ac Cives civitat' Londen, occaſione inde impetere ſeu occaſionare non debet, quia dicunt, quod prædict' civit London eſt, & a tempore cujus contrar' memoria homin' non exiſt', fuit antiqua civitas & antiqu' comit' de ſe, quodque præd' com' Midd' per totum tempus præd' fuit & eſt antiquus comit', quodque cives ejuſdem civit' ſunt, & a præd' tempore cujus contrar' memor' homin' non exiſt', fuer' un' Corpus corporat' & politic', tam per nomen Major' & Communitat' ac Civium civit' London, quam per nomen Civium London; quodque Domin' Johannes quondam Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud bonam villam ſuper Tokam quinto die Julii, anno regni ſui primo, quas iidem Major & Communitas, & Cives civitat' London, hic in cur' proferunt, conceſſit civibus London' præd', Vicecomit' London & de Midd' cum omnibus rebus & conſuetudinibus, quæ pertinebant ad præd' Vicecom' infra civit' & extra, per terras & per aquas, habend' & tenend' eis in perpetuum. Et præterea idem Domin' Rex Johannes, per literas ſuas patent' præd' conceſſit eiſdem civibus London, quod ipſi de ſeipſis facerent Vicecom' quoſcunque voluerint, & amoverent quando voluerint, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque in Magna Charta de libertatibus Angl', in parliament' Domin' Henrici quondam Regis Angl' tertii, apud Weſtm' in com' Midd' anno regni ſui nono tent', edit', & provis', continet', quod civit' London habeat omnes libertat' ſuas antiquas, & conſuetud' ſuas. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod idem Domin' Rex Henricus tertius, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Februarii, anno regni ſui undecimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, confirmavit Civibus London Vicecom' London & de Midd' cum omnibus rebus & conſuetudinib', quæ pertineb' ad præd' Vicecom' infra civitat' & extra, per terras & per aquas, prout per eaſdem literas patent' (int' al') plenius apparet. Quodque Domin' Edwardus quondam Rex Angl' tertius, in parliament' ſuo apud Weſtm' in com' Midd', anno regni ſui primo tent', per quandam chartam ſuam de aſſenſu Prælator', Comit', Baron', ac totius Communitat' regni ſui in eodem parliamento ſuo apud Weſtm' præd' convocat' exiſten', ac authoritate ejuſdem parliamenti, confirmavit tunc Civibus civit' London præd' libertat' ſubſequen' (int' al') habendi ſibi & ſucceſſoribus ſuis in perpetuum, imprimis recitando, quod cum in Magna Charta de libertat' Ang' contineat', quod civitas London habeat omnes libertat' ſuas antiquas & conſuetud' ſuas; & quod iidem Cives tempore confection' dictæ chartæ, ac temporibus ſancti Edwardi Regis & Confeſſoris, & Willielmi Conqueſtor' & al' progenitor' dicti Regis Edwardi tertii, diverſas libertat' & conſuetud', tam per chartas ipſor' progenitor' ſuor', quam ſine chartis ex antiqua conſuetud' habuiſſent, voluit & conceſſit idem Rex Edwardus tertius pro ſe & hæredibus ſuis per chartam ill', authoritat' præd', quod iidem Cives haberent libertat' ſuas ſecund' formam Magn' Chartæ ſupradict'; & quod pro aliqua perſonal' tranſgr', vel judicio perſonal' alicujus miniſtri ejuſdem civit', non caperet' libertas civit' ill' in manu ejuſd' Reg' Edwardi tertii, vel hæred' ſuor', ſed hujuſmodi miniſter, prout qualitas tranſgr' requireret, puniretur, prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno regni dicti Regis Edwardi tertii primo ſupradict', ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (int' alia) plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod ad inſtant' & requiſition' Communitat' regni Angl' in parliamento Domin' Richardi nuper Regis Angl' ſecundi poſt Conqueſtum, apud Weſtm' præ anno regni ſui ſeptimo tent', aſſemblat' pro majore quiet' & pace inter ligeos ejuſdem nuper Regis fovend', & pro bono publico, omnes conſuetud', libertat', privileg', & franch' civit' præd', tunc civibus civitat' illius & eor' ſucceſſoribus, licet uſi non fuerint, vel abuſi fuerint eiſdem, authoritat' ejuſdem parliament', ratificat' & confirmat' fuer.' Quodque Dominus Henricus nuper Rex Angl' ſextus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo ſexto die Octobris, anno regni ſui viceſimo tertio, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis confirmavit Majori & Communitat' ac Civibus civit' London, & ſucceſſoribus ſuis, omnes & ſingulas ſuas libertat', franch' & liberas conſuetud' adeo integras & illæſas, ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Henrici ſexti melius, quietius, & liber' habuiſſent & tenuiſſent, prout per eaſdem literas patent' (int' al') plenius apparet. Quodq' Domin' Edwardus nuper Rex Angl' quartus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' nono die Novembr', anno regni ſui ſecundo, quas iidem Major & Communitas ac Cives civit' London hic in cur' proferunt pro ſe, & hæredibus ſuis, confirmavit Majori & communitat', ac Civibus civit' London, & ſucceſſoribus ſuis in perpetuum, omnes & ſingulas ſuas libertat', franch', & liberas conſuetud', adeo integr' & illæs', ſicut eas unquam aliquo tempore progenitor' ejuſdem nuper Regis Edwardi quarti melius, quietius, & liber' habuiſſent & tenuiſſent. Et ulterius idem nuper Rex Edwardus quartus, per eaſdem literas ſuas patent' conceſſit eiſdem Majori & Communitat' ac Civibus, quod licet ipſi, vel prædeceſſores ſui, aut Major & Aldermann' civit' præd', vel prædeceſſor' ſui præantea, vel ſucceſſores ſui extunc in poſterum. aliqua vel aliquibus libertat' quietant' conceſs', ordination' articulor', ſeu liberar' conſuetudin', aut alior' in eiſdem literis patentibus ejuſdem nuper Regis Edwardi quarti, ſeu al' literis ſuis, aut progenitor' ſuor' quondam Regum Angl', eiſdem Majori & Communitat' conceſs' content', aliquo caſu emergente plene non uſi vel abuſi fuerint. Noluit tamen idem nuper Rex Edwardus quartus, quod propter hoc ipſi Major & Communitas, Alderman' & Cives, ſeu ſucceſſor' ſui, forisfactur' aliquor' præmiſſor' incurrerent, ſed quod ipſi & eorum ſucceſſor' univerſis & ſingulis libertat' quietant' conceſs', ordinat' articulis, liberis conſuetud', & quibuſcunque al' in chartis & literis præd' content', talit' non uſis, vel etiam abuſis, & eor' quolibet extunc de cætero plene & libere gauderent, & eis uterent' ſine impetratione vel impediment' ejuſdem nuper Regis, ſeu hæred' ſuorum, Juſtic', Eſchætor', Vicecom', aut al' Balliv' ſeu miniſtr' ipſius nuper Regis, vel alior' quorumcunq', prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi quarti hic in cur' prolat' (int' al') plenius apparet. Quodque Dom' Henricus nuper Rex Angl' ſeptimus per literas ſuas patent' ſub magno ſigillo ſuo Angliæ ſigillat', gerend' dat' apud Weſtm' præd' viceſimo tertio die Julii, anno regni ſui viceſimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt pro ſe, hæredibus & ſucceſſoribus ſuis, ratificavit & confirmavit Major' & Communitat', ac Civibus civit' London, & eorum ſucceſſoribus, omnia & ſingula libertat', privileg', quietant', & liberas conſuetudines, quibus ipſi Major, Communitas, & Cives ſeu prædeceſſor' ſui habere, exercere, ſeu gaudere conſueviſſent, vel uſi fuiſſent, aut debuiſſent, adeo plene, plane, & integre, ac ſi ea omnia & ſingula ſeparatim & verbatim in eiſdem literis patent' expreſs' declarat' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patent' (inter alia) plenius apparet. Quodque Dom' Henricus nuper Rex Angl' octavus per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' duodecimo die Julii, anno regni ſui quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnes conceſſiones, & al' quæcunque in præd' literis patent' præd' Dom' Regis Johannis ſuperius ſpecificat' content', pro ipſo Rege Henrico octavo, & Hæredibus ſuis Majori & Communitat', ac Civibus civitat' London, & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent ejuſdem nuper Regis Henrici octavi (inter alia) plenius apparet. Quodque Dom' Edwardus nuper Rex Angl' ſextus, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo primo die Februarii, anno regni ſui ſecundo, quas iidem Major & Communitas, ac Cives civit' London præd' hic in cur' proferunt, omnes conceſſion', & al' quæcunque in præd' literis patent' dicti Dom' Regis Johannis ſuperius ſpecificat' content', pro ipſo nuper Rege Edwardo ſexto, & hæredibus ſuis, Major' & Communitat', ac Civibus civit' London præd', & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Regis Edwardi ſexti (inter alia) plenius apparet. Quodque Dom' Maria nuper Regina Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' primo die Martii, anno regni ſui primo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſa nuper Regina, hæred' & ſucceſſoribus ſuis, omnes conceſſiones & al' quæcunque in præd' literis patent' dicti Dom' Regis Johannis ſuperius ſpecificat' content', Majori & Communitat', ac Civibus civitat' London præd' & ſucceſſoribus ſuis ratificavit et confirmavit, prout per eaſdem literas patent' ejuſdem nuper Reginæ (int' al') plenius apparet. Quod-

apparet. Quodque Domina Elizabetha nuper Regin' Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' anno die Maii, anno regni ſui quarto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, pro ipſa nuper Regina Elizabetha, hæred' & ſucceſſoribus ſuis omnes conceſſion', & al' quæcunque in præd' literis patent' dicti Dom' Regis Johann' ſuperius ſpecificat' content', Majori & Communicat', ac Civibus civit' London, & ſucceſſoribus ſuis ratificavit & confirmavit, prout per eaſdem literas patent' ejuſdem nuper Reginæ Elizabeth' (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Jacobus nuper Rex Angl' per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Honorem ſuum de Hampton-Court viceſimo quarto die Septembris, anno regni ſui Angl' ſexto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, recitando, quod cum quamplurim' progenitor' ipſius nuper Regis, quondam Reges Angl' de gratia ſua ſpeciali, ac pro gratis, laudabil', multiplicibus, & continuis ſervitus per Majorem & Communitat', ac Cives civitat' London, & prædeceſſores ſuos temporibus retroactis, fact' & impens', necnon pro diverſis al' urgentibus cauſis & conſiderationibus eos ſeparatim moventibus, dediſſent, conceſſiſſent, & confirmaſſent Majori & Communitati, ac Civibus civitat' London præd', ac ſucceſſoribus ſuis, diverſa libertat', privileg', franc', immunitat', authoritat', juriſdiction', ordinanc', conſuetudin', & quietantis, prout per ſeparal' literas patent' progenitor' & prædeceſſor' ſuor' quondam Regum Angl' plenius & manifeſtius liquebat & apparebat, idem nuper Rex Jacobus pro & in conſideratione ſummæ fidelitat', conſtant', prompt', & laudabil' ſervitii per Majorem & Communitat', ac Cives civitat' London prædict', eidem nuper Regi in ipſis regni ſui primis auſpiciis, & continue uſque tunc manifeſtat', & fideliſſim' fact' & impens', omnes & ſingulas literas patentes, chartas, & confirmation' præclariſſimor' progenitor' & anteceſſor' ſuor', eiſdem Majori & Communitat', ac Civibus civitat' London prædict', & prædeceſſoribus ſuis per quæcunque nomina incorporat' ante tunc tempora fact', conceſs', ſeu confirmat', ac omnes & ſingulas donationes, conceſſiones, confirmation', reſtitution', conſuetudines, ordinationes, & explanationes, articul', & omnes al' res quaſcunque in quibuſcunque literis patentibus, ſive chartis quorumcunque progenitor', prædeceſſor', aut anteceſſor' ſuor' Regum Angl', necnon omnia & ſingula in dictis literis patentibus, chartis, conceſſionibus, confirmationibus, ſeu eor' aliquibus content', recitat', ſpecificat', confirmat', ſeu explanat', ac omnia & ſingula juriſdictiones, authoritates, privilegia, libertates, & franchis', quietant', immunitates, liberas conſuetudines, & hæreditament' quæcunque, quæ præd' Major & Communitat', ac Cives civitat' London præd' vel prædeceſſor' ſui, per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris & Aldermann' civitat' London, ſeu per nomen Majoris Civium, & Communitat' civitat' London, ſeu per nomen Major' & Civium civitat' London, ſeu per nomen Major' & Communitat' civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunq', ratione ſeu vigore aliquar' literar' patent', chartar', ſeu confirmation' aliquor' progenitor', prædeceſſor', aut anteceſſor' ejuſdem nuper Regis Jacobi, quondam Regum Angl', aliquo tempore, vel aliquibus temporibus habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, rata habuit & grata, ac pro ſe, hæredibus & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitat', ac Civibus civitat' London prædict', & eor' ſucceſſoribus, per eaſdem literas ſuas patent' ratificavit & confirmavit, habend' & tenend', gaudend' & exercend' omnia & ſingula præmiſſa eiſdem Majori & Communitat', ac Civibus civitat' London prædict', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, ac ſi ſeparatim, ſingulatim, & nominatim in literis patentibus ill' expreſs' nominat', declarat', recitat,' & manifeſtat' eſſent & fuiſſent, prout per eaſdem literas patentes (inter alia) plenius apparet. Quodque Dominus Carolus primus nuper Rex Angl', &c. per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris, anno regni ſui quartodecimo, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt, omnia & ſingula privilegia, libertat', franch', quietant', immunitates, & liberas conſuetudines quæcunque, quæ præd' Major & Communitas, ac Cives civitat' London præd', vel prædeceſſor' ſui per nomen Majoris & Communitat', ac Civium civitat' London, ſeu per nomen Majoris & Aldermann', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitat' London, ſeu per nomen Majoris & Communitatis civitat' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione ſeu vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliar' literar' patent', chartarum, ſeu confirmation' in eiſdem literis patentibus dicti nuper regis Caroli primi mentionat,' vel uſu, vel præſcription', aut alio legali modo aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent aut exercuiſſent, rata habens & grata ea pro ſe, hæredibus & ſucceſſoribus ſuis acceptavit & approbavit, ac ea omnia & ſingula præfat' Majori & Communitati, ac Civibus London, & eor' ſucceſſoribus, per eaſdem literas ſuas patentes ratificavit & confirmavit, prout per literas patent' illas (inter alia) plenius apparet. Quodque prædictus Dominus Rex nunc per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' viceſimo quarto die Junii anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſo Rege, hæredibus & ſucceſſoribus ſuis ratificavit & confirmavit Majori & Communitati, ac civibus civitat' London, & ſucceſſoribus ſuis, omnia & ſingula juriſdiction', authoritat', privilegia, libertates, franch', quietant', immunitates, & conſuetudin' quæcunque, quæ præfat' Major & Communitas, ac Cives civitat' London, vel prædeceſſores ſui per nomen Majoris & Communitat', ac Civium civitatis London, ſeu per nomen Majoris, Aldermannor', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitatis London, ſeu per nomen Major' & Communitat' civit' London, ſeu per nomen Civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' civitat' London, ſeu per aliquod aliud nomen quodcunque, ratione vel vigore præd' literar' patent' præd' Dom' Regis Johannis, aut aliarum literar' patent', chartar', ſeu confirmation' in eiſdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus ſeu aliquor' uſus vel uſuum, præſcription' vel preſcription', ſeu alio legali modo quocunque aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, habend', tenend', gaudend', & exercend' omnia & ſingula præmiſſa præd' eiſdem Majori & Communitat', ac Civibus civitat' London præd', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in eiſdem literis patentibus ſuperius mentionat' fore data, ſive conceſſa, aut alit' uſu, præſcription', vel alio legali modo ſeu jure quocunque ante tunc reſpective habit', 'obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patentes ipſius Dom' Regis nunc expreſs', nominat', declarat', conceſſa & manifeſta eſſent & fuiſſent, prout per eaſdem literas patent, (inter alia) plenius apparet.

Et iidem Major & Communitas, & Cives civitat' London ulterius dicunt, quod a tempore confection' præd' literar' patent' præd' quondam Regis Johannis hucuſque iidem Major & Communitas, ac Cives civitat' London habuer' Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & quolibet anno nominaverunt & elegerunt ex ſeipſis duas perſonas, cives ejuſdem civitat', fore Vicecom' civitat' præd', & com' ejuſdem civitat' & Vicecom' com' Midd', ac ill' ſic nominat' & elect' præfecerunt & conſtituerunt Vicecom' civitat' præd', & com' ejuſdem civitat' & Vicecom' com' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiæ infra civit' præd', & com' ejuſd', civitat' exequend' & faciend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præſcripta Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent. Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione prædicta ſuperius ſpecificat', uſi fuer' & adhuc utunt', ac clamant habere & uti libertat', privileg', & franch' habere Vicecom' civit' & com' civit' London, & Vicecom' comitat' Midd', & nominare & eligere ex ſeipſis duas perſon' fore Vicecom' civitat' præd', & com' ejuſdem civit', & Vicecom' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vicecom' civit' præd', & com' ejuſdem civitat', & Vicecom' Midd', ac ut Vicecom' civitat' præd', & com' ejuſdem civitat', ad execut' & retorn' omnium brevium, billar', & præceptor' Dom' Regis pro adminiſtratione & executione juſtitiæ infra civit' præd, & com' ejuſdem civit', exequend' & faciend', quæ ad officium Vicecom' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula alia infra civitat' præd', & com' ejuſdem civitat', quæ ad offic' Vicecom' faciend' pertinent, ac ut Vicecom' Midd' pro eodem com' Midd' deſervitur, ac omnia brevia, billas, & præcepta Dom' Reg' infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vicecom' faciend' pertinent, prout eis bene licuit & licet.

Abſque hoc, quod iidem Major & Communit', ac Cives civitat' London, de libertat', privileg' & franch' ill', ſuper dictum Dom' Regem nunc per tempus præd' in informatione prædicta ſuperius ſpecificat', uſurpaver', ſeu uſurpant', prout per inform' illam pro dicto Dom' Rege nunc ſuperius ſupponitur, quæ omnia & ſingula iidem Major & Communitas, ac Cives civit' London, parati ſunt verificare; unde petunt judicium, & quod libertat', privileg', & franch' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocent', & adjudicentur, ac quod ipſi, quoad præmiſſa ill', ab hac cur' dimittantur, &c.

Et iidem Major & Communitas, & Cives civit' London, quoad libertat', privileg', & franch' ſequend' *viz.* Major dictæ civitat', & hujuſmodi Aldermann' ejuſd' civit', qui officium Majoritat' civit' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres ſenior' Aldermann' civit' prædict', qui diutius in offic' Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſtic' Dom' Regis ad pacem infra civitat' præd' conſervand', ac ad ſeſſion' pacis, & placita coron', ſcilicet, talia placit' coronæ, qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitim' tenere poſſent infra eandem civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', in informatione præd' ſuperius ſpecificat' dict', quod dict' Dom' Rex nunc ipſos Majorem & Communitat', at Cives civitat' London, occaſione inde impetere, ſeu occaſionare non debet, quia dicunt, quod præd' civit' London eſt, & a tempore cujus contrar' memor' homin' non exiſtit, fuit antiqua civitas ac antiquus comitat' de ſe, ac cives ejuſdem civit' ſunt, & a prædicto tempore, cujus contrar' memor' homin' non exiſtit, fuer' unum corpus corporat' & politic' in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London. Quodque Dom' Carolus primus nuper Rex Angl', per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' decimo octavo die Octobris anno regni ſui quarto decimo, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, pro ipſo nuper Rege, hæred' & ſucceſſorib' ſuis, conceſſit Majori & Communitat', ac Civibus civit' London, & eor' ſucceſſoribus, quod Major & Recordat' civit' præd', qui tunc fuer', ac Majores Recordator' civit' præd, qui pro tempore forent, actam ill' Aldermann', qui Major' civitat' illius præantea extitiſſent, quam ill' Aldermann', qui onus & officium & Majorat' civitat' prædict' tunc in poſterum ſuſtinerent & gererent, licet a Majorat' ill' ceſſarent, aut inde eſſent dimiſſi, quamdiu Addermann' ibidem ſtarent, & tres ſeniores Aldermann' civit' pro tempore exiſten', qui diutius in officium Aldermannat' ſteter', & ante tunc onus & officium Majorat' civitat' illius non ſuſtinuer', id perpetuum forent cuſtodes, & quilibet eor' eſſet cuſtos pacis ejuſdem nuper Regis hæred', & ſucceſſor' ſuorum, infra civitat' London præd', & libertat' ejuſdem conſervand' & cuſtodiend', ac eoſdem Majorem & Recordator', ac Aldermann' præd', ad omnia & ſingula ſtatuta & ordinationes pro bono pacis dicti nuper Regis, hæred'

red' & ſucceſſorum ſuor', ac pro conſervatione ejuſdem, ac pro quiet', regimine, & gubernatione populi ipſius nuper Regis, hæred' & ſucceſſor' ſuor', edit' & edend' in omnib' ſuis articul', tam infra civitat' præd', quam libertat' ejuſdem, juxta vim, formam, & effectum eorundem cuſtodiend', & cuſtodire faciend', ac ad omnes illos, quos juxta formam & effectum ordination' & ſtatutor' eorundem, & eorum alicujus in civitat' prædict', & libertat' ejuſdem, delinquentes invenirent, caſtigand' & puniend', prout ſecundum formam ordination' & ſtatutor' ill' foret faciend'; & ad omnes illos, qui alicui vel aliquibus de populo ejuſdem nuper Regis, hæred', vel ſucceſſor' ſuor' de corporibus ſuis, vel de incendio domor' ſuar' minas facerent, ad ſufficien' ſecuritat' de pace, vel bono geſtu ſuo erga ipſum nuper Regem, hæred' & ſucceſſores ſuos, & cunctum populum ejus, hæred', vel ſucceſſor' ſuor', inveniend', & ſi hujuſmodi ſecuritat' invenire recuſarent, tunc eos in gaola ejuſdem Domin' Regis de Newgate, vel in aliqua al' priſona hæred' vel ſucceſſor' ſuor' in præd' civit' London, quouſque hujuſmodi ſecuritat' invenirent, ſalvo cuſtodiri faciend', Cuſtodes & Juſticiar' ipſius nuper Regis, & quemlibet eorum Cuſtodem & Juſticiar' ejus hæred' & ſucceſſor' ſuor' infra civit' London præd', & libertat' ejuſdem, idem nuper Rex Carolus primus, pro ſe, hæredibus & ſucceſſoribus ſuis, conſtituit, fecit, & ordinavit per literas patentes ſuas præd', ac ad omnia & ſingula alia exequend' & peragend', quæ Juſtic' & Cuſtod' pacis ejus, hæred' vel ſucceſſor' ſuor', infra aliquem com' regni ſui Angl' exequi, ſive peragere valerent, poſſent, aut deberent, virtute aliquor' ſtatutor' & ordination' hujus regni ſui Angl', aut virtute commiſſionis ejus, hæred' & ſucceſſor' ſuor', ad pacem in aliquo hujuſmodi com' conſervand'. Voluit etiam idem nuper Rex Carolus primus, ac per eaſdem literas patentes pro ſe, hæredibus & ſucceſſoribus ſuis, conceſſit præfat' Majori & Communitati, ac Civibus civitat' London, & eorum ſucceſſor', quod Major, Recordator civit' præd' pro tempore exiſten', & hujuſmodi, ut præfert', Aldermann' pro tempore exiſten', qui officium vel locum Majorat' civit' illius antea ſuſtinuer' & execuer', & tres hujuſmodi, ut præfert', ſeniores Aldermann' pro tempore exiſten', qui locum Majorat' prædict' non ſuſtinuer', vel quatuor eorundem, Major', Recordator', & Aldermannorum, quorum dict' Major vel Recordator pro tempore exiſten' unum eſſe voluit forent Juſticiar' ipſius nuper Regis, hæred' & ſucceſſor' ſuor', & ipſos Juſticiar' ſuos, hæred' & ſucceſſor' ſuor', pro ſe, hæredibus & ſucceſſor' ſuis in perpetuum, aſſignat' ad inquirend', quoties & quando eis melius videret' expedire, per ſacramentum probor' & legalium hominum, tam de civitat' præd', quam de libertat' ejuſdem, per quos rei veritas melius ſciri poſſet de omnibus murdris, felon', veneficiis, incantation', ſcortileg', arte magica, tranſgr', foreſtallar', regretar', ingroſſar', & extortionibus quibuſcunque, ac de omnibus & ſingulis al' malefactis & offenſis, de quibus Juſticiar' pacis ipſius nuper Regis, hæred' & ſucceſſor' ſuor' legitime inquirere poſſent aut deberent, per quoſcunque & qualitercunque infra civit' præd', ſeu libertat' ejuſdem, ante tunc habit' ſeu perpetrat', vel quæ ex tunc ibidem fieri vel attemptari contingerent, & tam de omnibus ill' qui in civitat' præd', & libertat' ejuſdem, in conventiculis, contra pacem ipſius nuper Regis, hæred' & ſucceſſor' ſuor', in perturbatione populi ſui, hæred' & ſucceſſor' ſuor', ſeu vi armata irent vel equitarent, ſeu extunc ire vel equitare præſumerent. Et etiam de his quæ ibidem ad gentem dict' Dom' Regis, hæred', vel ſucceſſor' ſuor' mahemand', vel interficiend' in inſidiis jacerent, vel in poſterum jacere præſumerent. Ac etiam de hoſtellar' & al' omnibus & ſingulis perſon', qui in abuſu menſurar' & ponderum, ſive in venditione victual' contra formam ordination' & ſtatut', vel eor' alicujus inde pro communi utilitate regni ſui Angl', & populi ejuſdem nuper Regis, hæred' & ſucceſſor' ſuor' ejuſdem edit' & edend' delinquerent vel attemptarent in civit' præd', & libertat' ejuſdem, ſeu extunc in poſterum delinquere vel attemptare præſumerent. Ac etiam de quibuſcunque Vicecom', Conſtabular', Cuſtod' gaolæ, & al' offic', qui in execut' officiorum ſuor' circa præmiſſa, vel eor' aliqua indebite ſe habuer', aut in poſterum indebite ſe habere præſumerent, aut tepidi, remiſs', vel negligentes fuer', aut extunc tepidi, remiſs', vel negligent' fore contingerent infra civit' præd' & libertat' ejuſdem, ac de omnibus & ſingulis articulis & circumſtant', & al' quibuſcunque, per quoſcunque & qualitercunque in civit' præd' & libertat' ejuſdem fact' ſive perpetrat', & quæ extunc ibidem fieri, vel attemptari contingerent qualitercunque præmiſs', aut eor' aliqua concernen'. Et ad indictament' quæcunque, quæ coram Majore aut Recordatore, civit' præd' pro tempore exiſten', & hujuſmodi, ut præfert', Aldermann', vel quatuor aut pluribus eorundem, quor' dict' Major' vel Recordator pro tempore exiſten' unum eſſe voluit, tunc in poſterum caperent' inſpiciend', & ad proceſs' inde verſus omnes & ſingul' ſic indictat', vel quos in poſterum ſic indictat' contingerent, quoſque caperent', redderent ſe, vel utlagarent' faciend' & continuand', & ad omnia & ſingula murdra, felon', venefic', incantat', ſcortileg', artes magic', tranſgreſs', falſas conſpiration', & al' maleſact', foreſtall', regretar', ingroſſar', extortion', conventicl', indictament' præd', cæteraque omnia & ſingula præmiſs' ſecund' leges & ſtatut' regni ſui Angl', prout in hujuſmodi caſu fieri conſuevit aut debuit, audiend' & terminand', & ad eaſdem delinquen', & quamlibet eorum, pro delictis ſuis per fines, redemption', amerciament', forisfactur', aut al' modo, prout ſecundum legem & conſuetud' regni ſui Angl', ac formam ordination' & ſtatut' eorundem fieri conſuevit aut debuit, caſtigand' & puniend', ac ad omnia al' & ſingula faciend', exercend', audiend', terminand', & exequend' infra civit' præd', ac libertat' ejuſdem, quæ Juſtic' ad pacem per leges vel ſtatut' hujus regni ſui Angl' facere, exercere, inquirere, vel exequi poſſent & valerent, & in tam amplis modo & forma prout aliquis al', aut aliqui al' Juſtic' ad pacem in aliquibus al' com' hujus regni ſui Angl' legitime facere, exercere, inquirere, punire, vel quoque modo exequi poſſent aut valerent, prout per eaſdem literas patent' (int' al') plenius apparet. Quodque præd' Dom' Rex nunc, per literas ſuas patent' ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' prædict' 24 die Junii, anno regni ſui decimo quinto, quas iidem Major & Communitas, ac Cives civit' London hic in cur' proferunt, omnes conceſſion' & al' quæcunque in prædict' literis patent', prædict' nuper Regis Caroli primi ſuperius ſpecificat', pro eodem Domin' Regis nunc, hæred' & ſucceſſor' ſuis, Majori & Communitat', ac Civibus civit' London præd' & ſuor' ſucceſſor' in perpetuum, ratificavit & confirmavit, prout per eaſdem literas patent' ipſius Domin' Regis nunc (inter al') plenius apparet. Et iidem Major & Communitas, ac Cives civit' London ulterius dicunt, quod tempore confection' præd' literar' patent' præd' nuper Regis Caroli primi, & diu antea, & extunc hucuſque fuer', & adhuc exiſtunt Major & Recordator civit' præd', ac Aldermann' ejuſdem civit', qui Major dictæ civit' extitiſſent, & onus Majorat' civit' illius ſuſtin', ac tres & plures al' Alderman' ejuſdem civit', qui onus Majorat' civit' ill' non ſuſtinuiſſent. Quodque a tempore confection' earundem literar' patent' præd' nuper Reg' Caroli primi hucuſq', Major & Recordator civit' præd' pro tempore exiſten', ac hujuſmodi Alderman' ejuſd' civitat' pro tempore exiſten', qui onus Majorat' civit' ill' ſuſtin', necnon tres ſenior' Alderman' civit' præd' pro tempore exiſten', qui diutius in officium Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' ill' non ſuſtin', virtute literar' patent' ill' fuer' Juſtic' ad pacem infra civit' præd', & libertat' ejuſdem conſervand', ac virtute literar' patent' ill', & ſecundum formam & effectum eorund' de tempore in tempus, per tot' tempus ill', tenuer' ſeſſion' pacis, & placita coron', ſcilicet, talia placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' per idem tempus legitime tenuer', vel tenere potuer' infra eandem civitat'.

Et eo warranto iidem Major & Communitas, ac Cives civitat' London, per tempus in informatione præd' ſuperius ſpecificat' uſi fuer', & adhuc utuntur, ac clamant habere & uti libertat', privileg' & franch', quod Major dict' civit' & hujuſmodi Aldermann' ejuſdem civit', qui onus Majorat' civit' ill' ſuſtinuer', ac inde fuerunt dimiſſi, ac tres ſeniores Aldermann' ejuſdem civit', qui diutius in offic' Aldermannat' civit' præd' ſteter', & onus & officium Majorat' civit' ill' non ſuſtinuer', fuer' Juſtic' dicti Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſion' pacis, & placita coronæ, ſcilicet, talia placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent, infra eand' civit' tenend', ac ad omnes felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand', prout eis bene licuit & licet.

Abſque hoc, quod iidem Major ac Communitas, ac Cives civit' London, de libertat', privileg', & franchis' ill' ſuper dictum Dom' Regem nunc, per tempus præd' in informatione præd' ſuperius ſpecificat' uſurpaver', ſeu uſurpant, prout per inform' illam pro dicto Dom' Rege nunc ſuperius ſupponit', quæ omn' & ſingula iidem Major & Communitas, ac Cives civit' London parati ſunt verificare; unde petunt judicium, & quod libertat', privileg' & franch' ill', eis & ſucceſſoribus ſuis in perpetuum deinceps allocentur & adjudicent', ac quod ipſi quoad præmiſſa illa ab hac curia dimittantur, &c.

Et quoad reſid' libertat', privileg', & franch' in information' prædict' ſpecificat', per ipſos Majorem & Communitat', ac Cives civitat' London ſuperius minime clamat', iidem Major & Communitas, ac Cives civit' London libertat', privileg', & franch' illis nunquam uſi fuerunt, ſeu utuntur, ſed de eiſdem penitus declamant, &c.

Et præd' Robertus Sawyer Attorn' dicti Dom' Regis nunc General' qui pro eod' Dom' Rege in hac parte ſequitur, habito auditu placiti præd' præfat' Majoris & Communitat', ac Civium civit' præd' petit inde diem loquendi uſq; craſtinum Sanctæ Trinitat'; & ei conceditur coram Dom' Rege ubicunque, &c. Idem dies dat' eſt præd' Majori & Communitat', ac Civib' civit' London præd', &c. Ad quod quidem craſtinum Sanctæ Trinitat' coram Dom' Rege apud Weſtm' ven' tam præd' Robertus Sawyer Miles Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte ſequitur, quam præd' Major & Communitas, ac Cives civit' præd' per Attorn' ſuum præd'. Et idem Attorn' Dicti Dom' Regis nunc General', quoad libertat' privileg', & franch' præd', per ipſos ſuperius clamat' (viz.) ipſos Majorem & Communitat', ac Cives civitat' London fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, ſuperius placitat' pro eodem Dom' Rege nunc dic' quod per aliqua per præfat' Majorem & Communitat' ac Cives civitat' London præd' ſuperius placitando allegat', eandem libertat', privileg', & franch' eiſdem Majori & Communitat' ac Civibus civitat' London præd' allocari, ſeu adjudicari non debent; nec iidem Major & Communitas, ac Cives de præmiſs' in informac' præd' ſuperius ſpecificat' exonerari debent, quia dic' quod Cives civit' London præd' a tempore cujus contrar' memor' homin' non exiſtit, non fuer' corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, modo & forma prout præfat' Major & Communitas, ac Cives civit' London præd' ſuperius placitando allegaver.' Et hoc idem Attorn' dict' Dom' Regis nunc General', pro eodem Dom' Rege nunc pet', quod inquiratur per patriam. Et præd' Major & Communitas, & Cives civit' London præd' ſcilicet, &c. Et præd' Attorn' dict' Dom' Regis nunc General', quoad placitum præfat' Majoris & Communitat', ac Civium civit' London præd', quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat' (viz.) ipſos Majorem & Communitat' ac Cives civit' London fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi ſuperius placitat', ulterius dic' quod per aliqua per præfat' Majorem & Communitat', ac Cives civit' London præd' ſuperius placitando allegat' eadem libertat', privileg', & franchis', eiſdem Majori & Communitat', ac Civibus civit' London præd' allocari, ſeu adjudicari non debent, nec iidem Major et Communitas, ac Cives de præmiſs' in Informatione præd' ſuperius ſpecificat', exonerari debent; quia proteſtando, quod Cives ejuſdem civitat', a tempore cujus contrar' memor' homin' non exiſtit, non fuer' corpus corporat' & politicum in re, facto, et nomine, per nomen Majoris et Communitatis, ac Civium civit' London, ac per idem nomen per totum tempus illud placitaver', ac implacitat' fuerunt, reſponder' ac reſpons' fuer', et placitare et implacitari, reſpondere ac reſponderi, a toto tempore ſupradict' uſi fuer' et conſuever', prout præd' Major et Communitas, ac Cives civit' London præd' ſuperius placitando allegaverunt; pro placito tamen idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege

ge nunc ulterius dic', quod præd' Major et Communitas, ac Cives civit' London præd' assumentes super se fore corpus corporat' et politicum, ac ratione inde potestatem et authoritatem, habere ad seipsos insimul convocand', et assembland' ad bona et salubria leges, ordines, et ordinat', legibus et statutis hujus Regni Angl' minime repugnan' sive contrar', faciend' et constituend' pro meliori regim' et gubernat' Civit' præd' ac civium et inhabitant' ejusdem civitat', ac pro conservat' pacis Dom' Regis infra civit' præd', iidem Major et Communitas, ac Cives civit' London præd', sub colore et prætextu inde, eorum privatum lucrum et commodum solum respicien', contra fiduciam in corpore corporato et politico per Dom' Regem et Leges hujus Regni Angl' reposit', assumpser' illicitam et injustam potestatem et authoritat', ad denar' de subdit' ac ligeis Dom' Regis nunc levand' ad usum ipsorum Majoris et Communitat' ac Civium civitat' London præd' propr', colore legum sive ordination' per ipsos de facto ordinat' et stabilit', absq; aliquo alio jure, titulo, sive authoritate quibuscunq; ac in prosecution' et execution' hujusmodi illegalis et injustæ potestat' et authoritat' per ipsos sic usurpat', iidem Major et Communitas, ac Cives civitat' London præd', die Jovis decimo septimo die Septembris, Anno Regni dict' Dom' Regis nunc vicesimo sexto, in eorum Communi Concilio adtunc tent' in Camera Guildhall civit' London præd' (viz.) in Paroch' Sancti Michaelis Bassishaw London insimul assemblat' fuer', condider' et publicaver' quandam Legem, per ipsos de facto inactitat', pro levatione separalium denar' summar', de omnibus subdit' ac Ligeis Dom' Regis nunc, tam liberis quam non liberis hominibus Civit' præd', et aliis extraneis ad publica Mercata infra Civitat' præd' tent' acceden' cum victual' et provisionibus suis ibidem vendend' (viz.) de qualibet persona pro quolibet onere equino (Angl' *Horse-load*) provision' in aliquod public' Mercat' infra Civit' præd' ipsum importat' ibidem vendend', duorum denar' per diem, et pro qualibet canistra (Angl' *Dosser*) provision' in aliquod Mercat' præd' ibidem vendend' importat' unius denar' per diem, et pro qualibet carectata provision' tract' cum non plur' quam tribus equis in aliquod Mercat' præd' ibidem vendend' importat', quatuor denar' per diem, et pro qualibet carectata provision' tract' cum quatuor equis vel plur' in aliquod Mercat' præd' ibidem vendend' importat', sex denar' per diem, ac diversarum al' denar' sum' de quibuslibet personis, quæ aliqua victualia sive provision' ad Mercat' infra civit' London præd', seu eorum aliqua vel aliquod importarent ibidem vendend', ac per eandem legem sic per eos illegalit' fact' iidem Major et Communit' ac Cives civit' London præd' de facto ordinaver', quod eædem separal' denar' summæ solut' forent ad propr' opus et usum præfat' Majoris et Communitat', ac Civium civit' London præd', ac quod si aliquis in Mercat' præd' existen' cum victual' sive provisionibus suis ibidem vendend' recusaret, sive differret solvere respectivas ratas præd', tunc talis recusans sive differens amot' foret a loco suo Mercat' præd'. Et ulterius idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc dic', quod præd' Major et Communitas, ac Cives civit' London præd' sub solo colore et prætextu legis præd', sic per ipsos pro eorum privato lucro et commodo illegalit' fact', et absq; aliquo alio jure, titulo, sive authoritate quibuscunq; diversas ingentes denar' Summas, in toto sc. attingen' ad quinq; mille libras per annum, per spatium septem annorum post præd' decimum septimum diem Septembris, Anno vicesimo sexto supradicto prox' sequen', et amplius, apud London præd' in Paroch' præd', de omnibus Dom' Regis ligeis et subditis ad publica Mercata per totum spatium præd' infra Civit' præd' tent', cum victualibus et provisionibus ibidem vendend' accedentibus, exegerunt, levaver', et exigi et levari fecerunt, et denarios illos ad eorum proprios usus converterunt et disposuerunt, in subversionem boni regiminis et gubernationis Civitatis præd', et in magnam oppressionem et depauperation' subditor' dic' Dom' Regis nunc ad Mercat' prædict' cum victualibus et provision' suis acceden' et venien', ad grave dampn' et nocument' omnium Ligeorum et Subdit' dict' Dom' Regis, in augmentac' preciorum omnium victual' et provision' in Mercatis præd' vendit', ac in dict' Dom' Regis nunc et Coronæ suæ Regiæ exhæredation' manifestam, ac contra fiduciam in corpore corporat' et politico per Dom' Regem ac Leges hujus Regni Angl' reposit'. Et ulterius idem Attorn' dicti Dom' Regis nunc General' pro eodem Dom' Rege nunc dic', quod ubi Sessio Parliamenti Dom' Regis nunc per Prorogation' tent' fuit apud Westm' in Com' Middlesex super vicesimum primum diem Octobris, anno Regni dicti Dom' Regis nunc tricesimo secundo, ac ibidem continuat' usq; decimum diem Januar' tunc prox' sequen', ac super eodem decimo die Januarii, anno Regni dict' Dom' Regis nunc tricesimo secundo supradict' apud Westminst' præd' idem Parliamentum prorogat' fuit per dict' Dom' Regem nunc usq; vicesimum diem tunc instantis Januar', præd' Major et Communitas, ac Cives civitat' London præd' postea scil' die Jovis decimo tertio die Januar' anno Regni dict' Dom' Regis nunc tricesimo secundo supradict', in eorum Communi Concilio tent' in Camera Guildhall Civit' præd', viz. in Paroch' Sancti Michaelis Bassishaw London præd' assemblat', illicite, malitiose, advisate, et seditiose, et absq; aliqua legali authoritate in se assumpser' ad censend' & judicand' dict' Dom' Regem nunc, et Prorogation' Parliamenti per dict' Dom' Regem nunc sic fact'. Ac adtunc et ibidem iidem Major et Communitas ac Cives civitat' London, sic in eodem Communi Concilio assemblat', vota et suffragia sua deder' et ordinaver', quod quædam Petitio sub nomine Majoris, Aldermannorum et Commun' civit' London in Communi Concil' assemblat', dicto Dom' Regi nunc exhibit' foret, in qua quidem Petitione content' fuit, quod per præd' prorogation' Parliamenti præd' prosecutio Justic' publicæ hujus Regni ac præparatio (Angl' *the making provision*) necessar' pro præservation' dicti Dom' Regis nunc, ac ejus subditorum protestantium recepissent obstruction' (Angl' *Interruption*) et iidem Major et Communitas ac Cives civitat' London, præd', in Communi Concilio præd', sicut præfertur, assemblat', illicite, malitiose, advisate, et seditiose, et ea intentione, quod eadem Petitio publicat' et dispersa foret inter subditos dict' Dom' Regis nunc fideles ad ipsos in opinion' inducend', quod idem Dom' Rex nunc per prorogation' Parliamenti præd' publicam Justic' Regni obstruxisset, et ad eosdem Subditos dict' Dom' Regis incitand' in odium personæ dict' Dom' Regis, et gubernation' in hoc regno stabilit', et ad perturband' pacem et tranquillitat' in hoc Regno Angl' adtunc et ibidem ordinaver', quod eadem Petitio sic continen' seditiosam et scandalosam materiam præd' impress' foret, ac postea scil' die et anno ult' supradict', apud London præd' in Paroch' præd' eandem Petition' ea intentione, quod eadem publicat' et dispers' foret inter subdit' dict' Dom' Regis nunc ad affectiones suas a dict' Dom' Rege nunc et gubernation' sua alienand' et divertend', malitiose, advisate, et seditiose, impresser' et imprimi et publicari fecer' et causaver', in contempt' et scandalum dict' Dom' Regis nunc ac gubernation' suæ hujus Regni Angl', ac in promotion' et excitation' seditionis, et perturbation' pacis et tranquillitat' infra hoc Regnum Angl', et in pernitiosum aliorum Dom' Regis nunc Subdit' et Ligeorum exemplum, per quod idem Major et Communitas ac Cives civit' London præd' libertat', privileg', et franchis', præd' fore de seipsis corpus corporat' et politicum, per nomen Majoris et Communitat' ac Civium civitat' London forisfecer', præd' tamen Major et Communitas ac Cives civitat' London præd' postea, scil' per tempus superius in Informatione præd' specificat', libertat', privileg' et franchis' ill' super dict' Dom' Regem nunc usurpaver' et adhuc usurpant, prout per Information' præd' superius versus eos supponitur. Et hoc idem Attorn' dict' Dom' Regis nunc General' pro eodem Dom' Rege nunc parat' est verificare, unde petit judicium, et quod præd' Major et Communitas ac Cives civitat' London de præmiss' præd' convincantur, ac de libertat', privileg' et franchis' ill' abjudicentur et excludantur, &c. Et quod placitum præfat' Majoris et Communitat' ac Civium civitat' London præd', quoad libertat', privileg' et franchis' præd' per ipsos superius clamat' (viz.) ipsos habere Vicecom' Civit' et Com' civit' London, et Vicecom' Com' Midd', et nominare et eligere ex seipsis duas personas fore Vicecom' Civit' præd', et Com' ejusdem Civit', et Vicecom' Com' Midd', ac illos sic nominat' et elect' præficere et constituere Vic' Civit' præd' et Com' ejusdem Civit', et Vic' Com' Midd', ac ut Vicecom' Civitat' præd' et Com' ejusdem Civitat' ad execution' et retorn' omnium brevium, billarum et præcept' Dom' Regis pro Administration' et Execution' Justiciæ infra Civit' præd' et Com' ejusdem Civit', exequend' et faciend' quæ ad Officium Vic' faciend' pertinent, ac ad faciend' et exequend' omnia et singula alia infra Civit' præd' et Com' ejusdem Civit', quæ ad Officium Vicecom' faciend' pertinent, ac Vicecom' Com' Middlesex pro eod' Com' deservitur', ac omnia brevia, billas, et præcept' Dom' Regis infra Com' Middlesex præd' pro Administratione et Executione Justiciæ ibidem exequend' et retorn' inde faciend', quæ ad officium Vic' faciend' pertinent, superius placitat': Necnon quoad placitum præfat' Majoris et Communitat' ac Civium civitat' London præd', quoad libertat', privileg' franchis' per ipsos superius clamat' (viz.) Major dict' Civitat' et hujusmodi Alderman' ejusdem Civitat', qui Officium Majorat' Civit' illius sustinuer', ac inde fuer' dimissi, ac tres Alderman' ten' Civit' præd', qui diutius in officio Alderman' Civit' præd' steter'; et onus et officium Majorat' Civit' præd' non sustinuer', fore justiciar' Dom' Regis ad pacem infra Civit' præd' conservandam, ac ad Session' pacis et placita Coronæ, (scilicet) talia placita Coronæ, qual' Justiciar' Dom' Regis ad pacem conservand' assign' legitime tenere possent, infra eandem Civitat' tenend', ac ad omnia Felon' Riot', Rout' et Conventicul' illicit' infra Civitat' præd' inquirend', audiend', et terminand' superius placitat', idem Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte sequitur, pet' licenc' inde interloquend' coram Dom' Rege usq; a die Sancti Michaelis in tres septimanas ubicunq; &c. Et ei concreditur, &c. idem dies dat' est præfat' Major' et Communitat' Civibus civit' London præd', &c.

Et præd' Major et Communitas, ac Cives civitat' London, quoad præd' placit' præd' Attorn' dicti Dom' Regis nunc generalis, in assign' forisfactur' libertat', privileg' et franchis' sequen', videlicet, ipsos Majorem et Communitat', ac Cives civitat' London, fore de seipsis unum corpus corporat' et politicum in re, facto, et nomine, per nomen Majoris et Communitat' ac Civium civitat' London, ac per idem nomen placitare et implacitari, respondere ac responderi, per ipsos superius clamat', superius replicando placitat' protestando, quod placit' illud, ac materia in eodem content', minus sufficien' in lege existunt ad ipsos Major' et Communitat', ac Cives civitat' London, de libertat', privileg', et franchis' illis abjudicand' sive excludend'; protestando etiam, quod nullus actus vel factum, neque aliqua ordinatio (Angl' *By-Law*) per Commune Concilium, vel per Majorem, Aldermannos, et Commune Concilium civitat' præd' confect', est actus vel factum corporis corporat' et politici præd'; protestandoq; etiam, quod ipsi præd' Major' et Communitas, ac Cives civitat' London, contra fiduciam in eis reposit', nunquam assumpser' super se aliquam illicitam vel injustam potestatem, ad denar' de subditis et ligeis Domini Regis levand' ad privat' lucrum et commodum ipsor' Majoris et Communitat', ac Civium civitat' London, colore legum sive ordinationum per ipsos fact' sive ordinat', prout præd' Attorn' dicti Dom' Regis nunc generalis, pro eodem Dom' Rege superius suppon'; protestandoque ulterius, quod iidem Major et Communitas, ac Cives civitat' London non levaver' seu exeger' tantas denar' summas per annum, de personis ad publica mercata infra civitat' præd' tent', cum victualibus et provisionibus ibidem venden' acceden', quant' dictus Attorn' generalis pro eodem Domino Rege superius allegavit. Pro placito tamen, quoad confection' et publication' legis pro levatione denarior' de personis ad publica mercata infra civitat' præd' tent', cum victualibus et provisionibus ibidem venden' acceden', ac exactionem et levation' hujusmodi denar' superius fieri suppos', iidem Major et Communitas, ac Cives civitat' London dicunt, quod Civitas London præd' est, et a tempore cujus contrar' memoria hominum non existit, fuit summa et capitalis civitas et metropolis, ac principalis portus hujus regni Angl', et in civibus et inhabitantibus maxime populosa, et in concursu hominum tam ligeor' Dom' Regis, quam extraneor' copiosissima, emporiumque totius Europæ celeberrimum; quodq' habentur et tenentur, et a tempore cujus contrar' memoria hominum non existit, habebantur et tenebantur publica mercata infra civitat' præd' pro victualibus et provisionibus abinde adduct' ibidem venden'; quodque ipsi præd' Major et Communitas, ac Cives civitat' London præd', decimo septimo die Septembris, anno vicesimo sexto supradicto in replicatione præd' mentionat', necnon continue postea, et a tempore cujus contrar' memoria hominum non existit, seizit' fuer', et adhuc seizit' existunt, de et in publicis mercatis præd' in

Dom' ſuo, ut de fœdo, ac per totum idem tempus ſumptibus ſuis propriis provider', ac providere conſuever' & debuerunt, fora mercatoria, ſive loca ubi hujuſmodi mercata tent' fuer', quotieſcunque neceſſe fuit, & ſtallas, ſtationes,& al' accommodationes pro perſonis ad eadem mercata venien' cum victualibus & proviſionibus ibidem vendend', pro meliori & magis convenien' venditione & expoſitione eorundem, & ſuperviſores, & alios officiarios mercatorum illorum, pro præſervatione boni ordinis in eiſdem mercatis, & meliori regulatione eorundem, & magni concurſus populi adinde confluen', ac emundaverunt, & emundare conſueverunt & debuerunt, fora mercatoria prædicta, & pro ſuſtentatione dictorum ſumptuum ſuorum per totum tempus prædictum habuer' & perceper', ac habere & percipere conſuever', diverſas rationabiles tolnet', ratas, ſive denariorum ſummas de quibuſcunque perſonis ad mercata præd', ſicut præfertur, venien', pro ſtallis, ſtationibus, & aliis accommodationibus per eas pro venditione, expoſitione hujuſmodi victualium & proviſionum in mercatis illis habet'. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod cives & liberi homines civitatis præd', prædicto decimo ſeptimo die Septembris, anno viceſimo ſexto ſupradicto, & ſemper fuer', & adhuc exiſtunt valde numeroſi, videlicet, quinquaginta mille homines, & plur'; quodque infra dictam civitat' London, videlicet, apud præd' Parochiam ſancti Michaelis Baſſiſhaw, a tempore cujus contrar' memoria hominum non exiſtit, habebatur & fuit Commune Concilium ejuſdem civitatis, de tempore in tempus, quoties neceſſe fuit, in eadem civitate aſſemblat', conſiſtens de Majore & Alderman' dictæ civitatis pro tempore exiſten', ac de quibuſdam Civibus exiſten' liberis hominibus civitatis illius, non exceden' numerum ducentar' & quinquagintar' perſonarum, e civibus & liberis hominibus civitat' præd' annuatim elect', fore de Communi Concilio illo, qui quidem Cives ſic elect' in hujuſmodi Communi Concilio vocantur Communiarii (Angl' *Commons*) civitat' London. Quodque infra civitat' præd', videlicet, apud præd' parochiam ſancti Michaelis Baſſiſhaw, habetur & exiſtit, & a tempore cujus contrar' memoria hominum non exiſtit, habebatur & fuit talis conſuetudo uſitat' et approbat', videlicet, quod Major Alderman' dict' civit', ac hujuſmodi Cives ſic elect' fore de Com' Conc' ejuſdem civitatis pro tempore exiſten', in Communi Concilio ſuo infra civitat' ill' aſſemblat', a toto tempore ſupradicto, ſecundum conſuetudinem civitat' præd', fecer' et conſtituer', ac facere et conſtituere conſuever' et poſſunt, ac potuer', leges et ordinationes pro meliori regulatione et gubernatione publicor' mercator' infra civitat' præd', ac pro appunctuatione convenien' locor' et tempor', quando et ubi infra eandem civitat' mercata illa tent' fuerint, et pro aſſeſſione, et in certitudin' reductione rationabilium tolnet', ratar', ſive denar' ſummarum ſolvend' per perſonas ad eadem mercata venien', pro ſtallis, ſtationibus, et aliis accommodationibus per eas pro venditione, expoſitione victualium et proviſionum in mercatis illis habit', quoties et quando eis videbitur expediri; dum tamen leges et ordinationes hujuſmodi Dom' Regi et populo ſuo ſint bonæ fidei, et rationi conſonæ, ac legibus et ſtatut' hujus regni Angl' minime contrar'. Quodque in Magna Charta de libertatibus Angl', in parliamento Dom' Henrici quondam Regis Angl' tertii, apud Weſtm' in Com' Middleſex, anno regni ſui nono tent', edit' et provis', continetur, quod civitas London habeat omnes libertates ſuas antiquas, & conſuetudines ſuas; & iidem Major et communitas, ac Cives civitat' London ulterius dicunt, quod Dom' Edwardus quondam Rex Angl' tertius, in parliamento ſuo apud Weſtm' in com' Midd', anno regni ſui primo tent', per quandam chartam ſuam de aſſenſu prælator', Comitum, Baronum, ac totius Communitatis regni ſui, in eodem parliamento ſuo apud Weſtm' præd' convocat' exiſten', ac authoritate ejuſdem parliamenti, confirmavit tunc Civibus civitat' London præd' libertates ſubſequen' (inter alia) habend' ſibi & ſucceſſoribus ſuis in perpet' imprimis recitando, quod cum in Magna Charta de libertatibus Angl' contineatur, quod civitas London habeat omnes libertates ſuas antiquas, et conſuetudines ſuas, et quod iidem Cives tempore confectionis dictæ chartæ, ac temporibus ſancti Edwardi Regis et Confeſſoris, et Will' Conqueſtoris, et al' progenitor' dicti Regis Edwardi tertii, diverſas libertates, conſuetudines, tam per chartas ipſor' progenitorum ſuorum, quam ſine chartis ex antiqua conſuetudine habuiſſent, voluit et conceſſit idem Rex Edwardus tertius pro ſe, et hæredibus ſuis per chartam ill', authoritate præd', quod iidem Cives haberent libertates ſuas ſecundum formam Magnæ Chartæ ſupradict', prout per eandem chartam geren' dat' apud Weſtm' præd' ſexto die Martii, anno Regni dicti Regis Edwardi tertii primo ſupradicto, ſub magno ſigillo ſuo Angl' ſigillat', hic in cur' prolat' (inter alia) plenius apparet. Et iidem Major et Communitas, ac Cives civitat' London ulterius dicunt, quod ad inſtant' et requiſitionem Communitatis regni Angl' in parliamento Dom' Richardi nuper Regis Angl' ſecundi poſt Conqueſt', apud Weſtm' præd' anno regni ſui ſeptimo tent', aſſemblat' pro majori quiete et pace inter ligeos ejuſdem nuper Regis fovend', et pro bono publico, omnes conſuetudines, libertates, privileg', et franchis' civitat' præd' tunc Civibus civitat' præd', et eorum ſucceſſoribus, authoritate ejuſdem parliamenti ratificat' et confirmat' fuer'. Quodque prædictus Dominus Rex nunc, per literas ſuas patentes ſub magno ſigillo ſuo Angl' ſigillat', geren' dat' apud Weſtm' præd' viceſimo quarto die Junii, anno regni ſui decimo quinto, quas iidem Major et Communitas, ac Cives civitat' London hic in cur' proferunt pro ipſo Rege, hæred' et ſucceſſoribus ſuis, ratificavit et confirmavit Majori et Communitati, ac Civibus civitat' London, et ſucceſſoribus ſuis, omnia et ſingula juriſdictiones, authoritat', privileg', libertates, franchis', quietantias, immunitates, et conſuetudines quæcunque, quæ præfat' Major et Communitas, ac Cives civitat' London, vel prædeceſſores ſui, per nomen Majoris et Communitat', ac Civium civitat' London, ſeu per nomen Majoris, Alderman', Civium & Communitat' London, ſeu per nomen Majoris & Civium civitat' London, ſeu per nomen Major' & Communitat' civitat' London, ſeu per nomen civium civitat' London, ſeu per nomen Baron' London, ſeu per nomen Baron' Civitat' London, ſeu per aliquod aliud nomen quodcunque ratione vel vigore literar' patent', chartar', ſeu confirmation' in eiſdem literis patentibus dicti Dom' Regis nunc præmentionat', vel alicujus ſeu aliquor' uſus vel uſuum, præſcriptionis vel præſcriptionum, ſeu alio legali modo quocunque, aliquo tempore, vel aliquibus temporibus ante tunc habuiſſent, ſeu rationabilit' uſi fuiſſent, aut exercuiſſent, haben', tenend', gaudend', & exercend' omnia ſingula præmiſs' præd' eiſdem Majori & Communitati, ac Civibus civitat' London præd', & ſucceſſoribus ſuis in perpetuum, adeo plene, libere, & integre, ac in tam amplis modo & forma, prout in iiſdem literis patentibus ſuperius mentionantur fore data ſive conceſſa, aut aliter uſu, præſcript', vel alio legali modo, ſeu jure quocunque ante tunc reſpective habit', obtent', ſive gaviſa fuiſſent, ac ſi ſeparatim, ſingulatim, & nominatim in & per dictas literas patentes ipſius Dom' Regis nunc expreſs', nominat', declarat', conceſs', & manifeſta eſſent & fuiſſent, prout per eaſdem literas patentes (inter alia) plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt quod poſt magnam illam conflagration' maximæ partis civitat' London præd', quæ fuit in menſe Septembris, anno Dom' milleſimo ſexcenteſimo ſexageſimo ſexto, ac alteration' in civit' & mercat' præd' perinde occaſionat', diverſæ controverſiæ, & quæſtiones ortæ fuer' infra eandem civitat' de & concernen' ſtabilition' publicorum mercator' infra civit' ill', & denar', ſummar' per ligeos Dom' Regis pro victualibus & proviſionibus in mercatis illis venditioni expoſit' ſolubil', ac ſuperinde præd' die Jovis decimo ſeptimo die Septembris, anno regni dicti Dom' Regis nunc viceſimo ſexto ſupradicto, quidem Will' Hooker Miles, tunc Major civitat' præd' & Alderman' dictæ civitat', ac Communiarii, ſive Cives de Communi Concilio ejuſdem civitatis, tunc exiſten' in Communi Concilio ſuo infra eandem civitat' (ſcil' in præd' camera Guildhall civitatis illius, ſituat' in præd' parochia ſancti Michaelis Baſſiſhaw) ad tunc aſſemblat' ſecundum conſuetudinem dictæ civitat', ac authoritate ejuſdem Communis Concilii, fecer' conſtituer', & publicaver' quendam actum, ſive ordination' pro meliori regulatione & gubernatione publicorum mercator' infra civitat' præd' tent', intitulat', *An Act for the Settlement and well ordering of the ſeveral publick Markets within the City of London*; per quem quidem actum ſive ordination' (inter alia) recitando, quod cum pro accommodation' pupuli mercat' (Angl' *of Market People*) cum ſtallis, aſſeribus, tectur' (Angl' *Shelter*) & aliis hujuſmodi rebus neceſſariis, pro eor' ſtationibus in aliquibus mercat' infra civitat' ill', ac pro emundand', paviend', eſcurand', & munda cuſtodiend' eadem, ac etiam pro ſuſtinendo (Angl' *defraying*) inciden' onera reparationis & manutentionis dictorum mercator', & ſimiliter ad gratificand' & munerand' curam & attendentiam talium perſonarum, qual' forent occupat' in eaſdem, quædam rationabiles ratæ pro dict' accommodationibus & oneribus ſemper ſolut' fuiſſent; & ad intentionem quod dictæ ratæ forent certe & publice factæ omni populo mercatario (Angl' *Market People*) per quod perſonæ, quæ extunc per ordinem illius cur' Com' Concilii occupat' forent, tanquam collectores vel receptores earundem ratar', prævenirentur a demandando, exigendo, ſeu recipiendo plus quam allocat' fuit per actum ſive ordination' ill', ordinat' & inactitat' fuit authoritate ejuſdem Com' Concilii (inter alia) quod omnes & quælibet perſona & perſonæ, ad aliquod dict' mercator' accedend' ad commoditates ſuas vendend' & utterand', extunc ſolverent tali perſonæ ſeu perſonis, quales fuer' vel forent de tempore in tempus appunctuat' ad capiend' & recipiend' proficua omnium, vel aliquor' dictor' mercator', ad uſum Majoris & Communitat', ac Civium civitat' London, de & ab omni populo mercatorio adinde acceden', pro ſtallis, ſtationibus, & aliis accommodationibus ſuis in ſeparal' mercatis præd', ut præfertur, ſecundum ratas ſequen', & non amplius; videl', pro qualibet ſtalla ſive ſtation' de longitudine octo pedum, & latitudine quatuor pedum, pro venditione carnis aut piſcis, duos ſolid' & ſex denar' per ſeptimanam; pro qualibet ſtalla ſive ſtatione de longitudine ſex pedum, & latitudine quatuor pedum, duos ſolid' per ſeptiman'; pro qualibet ſtalla ſive ſtatione de longitudine ſex vel acto pedum, & latitudine quatuor pedum, pro aliis commoditatibus, tres denar' per diem; pro quolibet onere equino proviſion' non ſuper ſtallas, vel ſub publica tectur' (Angl' *Shelter*) duos denar' per diem; pro qualibet caniſtra (Angl' *Doſſer*) conſimilis proviſion', un' denar' per diem; pro qual' carectat' tract' cum non plur' quam tribus equis, quatuor denar' per diem; & pro qualibet caractat' tract' cum quat' equis vel pluribus, ſex denar' per diem. Ac ulterius ordinat' & inactitat' fuit dicta authoritate, quod collectores aut receptores appunctuat' vel' appunctuand', ut præfertur, haberent poteſtatem ſuper obſtinata denegatione ſeu dilatione alicujus populi mercatorii, ad ſolvend' reſpectivas ratas præd' illos ab eorum reſpectivis ſtationibus & locis amovere & diſlocare. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod eædem ratæ per actum ſive ordinationem ill', ut præfertur, ſolvi ordinat', præd' tempore confectionis ordinationis illius, & extunc hucuſque fuerant rationabiles, & adhuc rationabiles exiſtunt; quodque ratæ & denariorum ſummæ per eundem actum ſive ordinationem ſolvi ordinat', ſunt omnes ratæ, tolnet', & denarior' ſummæ pro victualibus & proviſionibus in mercat' præd' vendit', ſeu venditioni expoſit' per aliquas perſonas a dicto tempore confectionis ejuſdem ordinationis hucuſque, ad uſum Majoris & Communitat', ac Civium civitat' London ſolubil' & ſolut', quas quidem ratas ſic ſolvi ordinat', & null' alias, iidem Major & Communitas, ac Cives civitat' London, a tempore actus ſive ordinationis illius, ut præfertur, fact', hucuſque exeger' & perceper' ſecundum formam & effectum ejuſdem actus ſive ordinationis; qui quidem actus ſive ordinatio eſt eadem lex per ipſos Majorem & Communitat', ac Cives civitat' London ſuperius de facto inactitat' & publicat', ſuppoſit' in præd' placito præd' Attorn' generalis ſuperius replicando placitat' ſpec'; abſque hoc quod aliqua lex, actus ſive ordinatio pro levatione denar' præd' de perſonis ad mercata præd' accedent' cum victualibus & proviſionibus ibid' vendend', inactitat' fact', ſive publicat' fuit aliter, vel alio modo, quam iidem Major & Communitas, ac Cives civitatis London ſuperius allegaver', prout idem Attorn' generalis pro Dicto Dom' Rege nunc ſuperius ſuppon', & hoc parat' ſunt verificare. Et quoad reſid' præd' placiti præd' Attornat' generalis in aſſign' forisfactur', ut præfertur, ſuperius replicando placitat', iidem Major & Communitat', ac Cives civitat' London dicunt, quod viceſimo quarto die Aprilis, anno regni dict' Dom' Regis nunc triceſimo, & per diverſos annos tunc ult' elapſos, ac poſt eundem viceſimum quartum diem

diem Aprilis, infra hoc regnum Angl', & alibi, videlicet, apud London præd', in præd' parochia sanct' Michaelis Bassishaw, proditoria & execrabilis conspiratio & conjuratio machinat' & prosecut' fuit per Papistas (Angl' *Papists*) ad interficiend' & murdrand' Dom' Regem nunc, & ad alterand', mutand', & subvertend' antiquas gubernation' & leges ejusdem regni, & ad supprimend' veram religionem in eodem stabilit', & ad extirpandum & destruendum professores ejusdem religionis; quæ quidem conspiratio & conjuratio machinat' & prosecut' fuer', & diversis locis, & per separal' vias & media, ac per magnum numerum personarum separal' qualitat' & graduum, quæ agebant & se occupaver' in eisdem, ad exequend' & perimplend' prædicta scelerata & proditoria machinationes & proposita; quodque postea, scilicet, vicesimo septimo die Septembris, anno tricesimo supradicto, Edmundus-Bury Godfrey, Miles, tunc unus Justiciar' Dom' Regis ad pacem in com' Midd' conservandum assignat', secundum officii & juramenti sui debitum, apud parochiam sancti Martini in campis, in eodem comitat' Midd', cepit examination' & information' de præfat' conspiratione & conjuratione, ac information' quod magna illa conflagratio maximæ partis civitatis London, quæ fuisset in mense Septembris, anno Dom' millesimo sexcentesimo sexagesimo sexto, fact' fuit per Papistas; posteaque per advisamentum, assensum, consilium, instigationem, & procurationem aliquorum dictorum conspiratorum, diversæ personæ in insidiis jacuer' & insecut' fuerunt præfat' Edmund-Bury Godfrey diversis diebus, ea intentione, ad ipsum murdrand', videlicet, apud parochiam sanct' Mariæ le Savoy, in dicto comitat' Midd'; quod quidem murdrum postea, scil', duodecimo die Octobris, anno tricesimo supradicto, apud eandem parochiam, per eos perpetrat' & effectum fuit ac perpetrat' et effectum fuit ea intentione, ad supprimendum examination' & information', quas ipse, ut præfertur, cepisset, & ad deterrend' & intimidand' magistrat' & al' ab agendo in ulteriori detectione conspirationis & conjurationis præd'; pro quo quidem murdro quidam Robertus Green, Girald Clericus, Henricus Bury, Laurencius Hill, Dominic Kelley, & Filibertus Vernat, postea (scilicet, termino sanct' Hilarii, annis regni dict' Dom' Regis nunc tricesimo, & tricesimo primo) in curia Dom' Regis coram ipso Rege apud Westm', in dicto com' Midd', per quandam jurat' præd' ejusdem com' Midd', debita juris forma indictat' fuerunt; ad quod quidem indictamentum, postea (scilicet, eodem termino) præd' Robertus Green, Henricus Bury, & Laurencius Hill, separatim placitaver', quod ipsi non fuer' inde culpabiles, & de eo posuer' se supra patriam; ac postea, scilicet eodem termino sanct' Hilarii, in eadem cur' apud Westm' præd', pro dict' felonia & murdro per jurat' patriæ præd', in debita juris forma triati fuerunt, & inde legitime convicti & attincti, prout per record' inde in eadem curia Dom' Regis coram ipso Rege apud Westm' præd' resident' plenius apparet. Quodque pro altis proditionibus & proditoriis conspirationibus & conjurationibus præd' quidam Edwardus Coleman & Willielmus Ireland, Thomas Pickering & Johannes Grove, ac Thomas White alias Whitebread, Willielmus Harcourt alias Harrison, Johannes Fenwick, Johannes Gavan, & Antonius Turner, ac Richardus Langhorn, Arm', existen' Papistæ, & superstition' Romanam profitentes ante præd' decimum tertium diem Januarii, anno tricesimo secundo supradicto, debito modo, & secundum legis hujus regni Angl' formam triat', convict' & attinct' fuer' (scil', præd' Edwardus Coleman termino sanct' Michaelis, anno regni Dom' Regis nunc tricesimo, in cur' Dom' Regis coram ipso Rege; eadem cur' apud Westm' in com' Midd' adtunc & adhuc existen') prout per recordum & processum inde in eadem cur' resident' plenius apparet; ac præd' Willielmus Ireland, Thomas Pickering, & Johannes Grove, ad deliberation' gaolæ Dom' Regis de Newgate, tent' pro dicto com' Midd' apud Justice Hall in le Old Baily, in suburbiis dictæ civitatis London, in mense Decembris, anno tricesimo supradicto, prout per recordum & processum inde in custod' Custodis Rotulorum dict' com' Midd' reman' plenius apparet; ac præd' Thomas White alias Whitebread, Johannes Fenwick, Willielmus Harcourt alias Harrison, Johannes Gavan, & Antonius Turner, ad deliberationem gaolæ Dom' Regis de Newgate, tent' per adjornament' pro com' Midd' præd', apud præd' Justice Hall in le Old Baily, in suburbiis civitatis London, die Veneris decimo tertio die Junii, anno regni dict' Dom' Regis nunc tricesimo primo, prout per recordum & processum inde in custodia dict' Custodis Rotul' ejusdem com' Midd' remanen' plenius apparet; & præd' Rich' Langhorn ad deliberationem gaolæ Dom' Regis de Newgate, tent' per adjornament' pro dict' civit' London apud Justice Hall in le Old Baily, in parochia sanct' Sepulchri, in warda de Farrington extra London, die Sabbati decimo quarto die Junii, anno tricesimo primo supradict', prout per record' & proces' inde in custod' Custodis Rotul' dict' civitat' London remanen' plenius apparet: quodque Willielmus comes Powis, Willielmus vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellasis, tricesimo die Novembris, anno regni dict' Dom' Regis nunc tricesimo supradict', apud Westm' præd' in præd' com' Midd' de altis proditionibus, & proditoriis conspirationibus & conjurationibus præd' legitime accusati, & super inde prisonæ Dom' Regis, scil', Turri London commis' fuer', ibidem salvo custodiend', ac in custodia sic existen' idem Williel' comes Powis, Williel' vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, & Johannes dom' Bellasis, ad session' parliamen' dict' Dom' Regis nunc, apud Westm' præd' decimo quinto die Martii, anno regni sui tricesimo primo, per prorogation' tent' per Communes hujus regni Angl' in eodem parliamento assemblat', coram Magnatib' & Procerib' ejusdem regni in parliamento illo convocat' & convent', de eo quod per multos annos tunc ult' præterit' proditoria & execrabilis conspiratio & conjuratio infra hoc regnum Angl', & alibi machinat' & prosecut' fuit per Papistas, ad alterand', mutand', & subvertend' antiquas gubernation' et leges hujus regni et nationis, et ad supprimend' veram religionem in eisdem stabilit', et ad extirpand' et destruend' professores inde; quæ quidem conspiratio et conjuratio machinat' et prosecut' fuisset in diversis locis, et per separal' vias et media, et per magnum numerum personar' separal' qualitatum et graduum, quæ agebant in eisdem, et intendebant per inde ad exequend' et consummand' præd' scelerat' et proditorias machinationes et proposita. Quodque die' Willielmus comes Powis, Willielmus vicecomes Stafford, Henricus dom' Arundel de Wardor, Willielmus dom' Petre, et Johannes dom' Bellasis, simul cum Phil' Howard' communiter voc' Cardinal de Norf. Thoma White alias Whitebread, com' voc' Provincial' Jesuitar' in Anglia, Ric' Strange nuper voc' Provincial' Jesuitar' in Anglia, Vincent, com' voc' Provincial' Domincor' in Anglia, Jacobo Cooper com' voc' Præsident' Benedictinor', Jolianne Warner alias Clare Baronetto, Williel' Harcourt, Johanne Keins, Nicho' Blundel, Pool, Edwar' Mico, Thoma Bedinfield alias Benesield, Basil' Langworth, Carolo Peters, Rich' Peters, Joan' Convers, Dom' Georgio Wakeman (Anglice *Sir George Wakeman*) Thoma Fenwick, Dominic Kelly, Fitz-Gerald, Evers, Dom' Thoma Preston (Anglice *Sir Thomas Preston*), Willelm' Lovel, *Jesuitis*, Dom' Baltemore, Johanne Carrel, Johanne Townly, Rich' Langhorn, Willelm' Fogarty, Thoma Penny, Matthæo Medbourne, Edward' Coleman, Willielm' Ireland, Johanne Grove, Thoma Pickering, Johanne Smith, et diversis aliis Jesuitis, sacerdotib', fratrib' (Angl' *Friers*) et aliis personis, ut falsi proditores Dom', Regi nunc, et huic Regno infra Tempus ult' præd' proditorie consuluissent, machinat' fuissent et egissent, ad et pro consummatione dict' iniprobar' pernitiosar' et proditoriar' machination', et ea de causa nequissime et proditorie agreassent, conspirassent, et determinassent imprisonare, deponere, et murdrare sacram Majestatem Dom' Regis nunc, et ipsum de regali statu, corona, et dignitate suis deprivare, et per malicios am et advisat' Locutionem, Scriptionem, et alit' declarassent tal' sua proposita et intentiones, ac etiam hoc Regnum et Nationem Papæ et tyrannicæ suæ Gubernationi subjicere, et status et hæreditates Protestant' subdit' Dom' Regis seizire, et int' se partiri, ac erigere et restituere Abbatias, Monasteria, et al' Convent' et Societates, quæ dudum per Leges hujus Regni pro superstitione et idolatria suis suppress' fuissent, et eis tradere et restituere terras et possessiones in Dom' Rege nunc et subditis suis per Leges et Statuta hujus Regni vestit', ac etiam nova Monasteria et Conventus fundare et erigere et omnes Protestant' Episcopos, et al' personas Ecclesiasticas ab officiis, beneficiis, et promotionib' suis amovere et deprivare, et eo modo personam Dom' Regis nunc destruere, Protestantem Religionem extirpare, jura, libertates et proprietates omnium probor' subditor' Dom' Regis evertere, legalem gubernationem hujus Regni subvertere, et idem Tyrannidi sedis Romanæ subjicere. Quodq; dic' Conspiratores et eorum participes et confederatores proditorie habuissent et tenuissent separales conventiones, assemblationes, et consultationes, in quibus inter eos machinat' et designat' fuissent, quæ media uterentur, et quæ personæ et Instrumenta impens' forent ad Dom' Regem nunc murdrand', et ad tunc et ibidem determinassent id efficere per venefic', displosionem (Angl' *Shooting*) perforationem (Angl' *Stabbing*) vel aliqua tal' vias et media, et obtulissent munera et promissiones de advantag' separalib' personis ad idem exequend', ac conduxissent et impendissent separales improbas personas ire ad Windsor, et alia loca ubi Dom' Rex residebat, ad ipsum Dom' Regem murdrand' et destruend', quæ quidem personæ, seu earum aliqu' talia munera acceptassent, et perpetrationem inde suscepissent, et actualit' et dic' loca intentione et proposito ill' ivissent. Quodq; dic' Conspiratores ad melius perimplend' proditorias suas machinationes consuluissent ad levand', ac procurassent et levassent homines, monetam, equos, arma et ammunitionem, ac etiam applicationem fecissent ad, et tractassent et correspondissent cum Papa, ejus Cardinalib', Nunciis et Agentib', et aliis forinsecis ministris et personis, ad levand' et obtinend' supplementa (Ang' *Supplies*) homin', monet', armor', et ammunitiones, cum eisdem facere, levare et excitare guerram, rebellionem et tumultus infra hoc Regn' et idem invadere cum virib' forinsecis, et deprehendere (Angl' *to surprize*) sesire et destruere Regiæ Majestatis classem (Angl' *Navy*) fortalitia (Angl' *Forts*) armamentaria (Angl' *Magazines*) et loca fortia (Angl' *Places of Strength*) infra hoc Regn', super quo calamitates guerræ, murdra innocenc' subditor', viror', mulier' et liberor', conflagrationes, rapinæ, devastationes et al' tremend' miseriæ et exitia inevitabil' insequerentur, in ruinam et destructionem hujus nationis; et quod dic' conspiratores procurassent, et acceptassent, ac deliberassent separal' instrumenta, commissiones, et potestates fact' et concess' per aut subt' Papam vel al' illicitam et usurpat' authoritatem, ad levand' et disponend' homines, monetam, arma, et al' necessaria pro eor' sceleratis et proditoriis machinationibus, ac nominatim Commissionem pro dic' Henrico Dom' Arundel de Wardor fore Dom' Cancellar' Angl', aliam Commission' dic' Willielm' Comit' Powis fore Dom' Thesaurarium Angl', aliam Commission' dic' Johanne Dom' Bellasis fore ducem General' (Angl' *General*) ad exercitus levand', al' Commissionem dic' Willielmo Dom' Petre fore locum tenen' ducis General, (Angl' *Lieutenant-General*) dic' exercitus et potestatem Angl' (*a Power*) pro dic' Willielmo Vicecomite Stafford fore Expenditorem (Angl' *Paymaster*) exercitus illius. Quodq; in ordine ad animand' seipsos in prosecutione dictar' sceleratar' conjurationum, conspiration' et prodition', et ad celand' et impediend' detectionem earundem, et ad seipsos a justicia et punitione securand' Conspiratores præd' participes et confederatores sui usi fuissent multis impiis et diabolicis praxib', videl', causassent sacerdotes suos administrare dic' Conspiratorib' juramentum taciturnitatis (Angl. *of Secrecy*) una cum eor' sacramento, ac etiam causassent dic' Sacerdotes suos super Confessionib' dare absolutiones suas sub conditione, quod ipsi concelarent dic' Conspirationem, ac cum circa mensem Septembris tunc ult' præterit' Edmunbury Godfrey miles Justic' pacis secundum juramenti et officii sui debit' cepisset separal' examinationes et informationes concern' præfat' conspirationem et conjurationem, dic' conspiratores, seu eor' aliqui, per advisamentum, assensum, consil' et instigationem resid' eor' incitassent et procurassent diversas personas in insidiis jacere, et insequi præfat' Edmundbury Godfrey diversis dieb' ea intentione ad ipsum murdrand', quod postea per eos perpetrat' et effectum fuit (pro quib' quidem horridis criminib' et offensis Robertus Gren, Henricus Berry, et Laurentius Hill, postea attincti fuissent, ac Dominic Kelley et Girald, et alii fugam fecissent pro eisdem) post quod quid' murdrum, et antequam cadaver invent' fuit, vel murdrum cognitum aliquibus nisi particibus, in eodem dic' person' falsè retuler' quod vivus fuit, et privatim maritat', et postquam cadaver' invent' fuit

fuit, diſperſer' falſam & malitioſam relationem, quod ipſe ſeipſum murdraſſet. Quod quidem murdrum commiſſum fuit ea intentione, ad celand' & ſupprimend' evidentiam quam ipſe cepiſſet, ac de qua notitiam habuit, & intimidand' & deterrend' Magiſtrat' & alios ab agendo in ulteriori detectione conſpirationis & conjurationis præd', ea etiam intentione dic' Edmunbury Godfrey, dum vivus fuit, per eos ac participes & fautores ſuos minatus & deterritus fuit in ejus proſecutione inde, quodq' de eor' ulteriori malicia ſcelerate machinati fuiſſent perquam plurimas ſuggeſtiones impon' imputationem & culpam præd' horridor' & deteſtabil' criminum ſuper Poteſtantes, ita quod perinde ipſimet evitarent punitiones, quas juſte meruiſſent, & exponerent Proteſtentes ſcandalo magno, & eos ſubjicerent proſecutioni & oppreſſioni in omnibus regnis & patriis, ubi Romana Religio recepta & profeſſa fuit. Quodque omnia ill' proditiones, crimina & offenſæ præmentionat' fuer' machinat', commiſs', perpetrat', acta & facta per præd' Willielm' Comitem Powis, Willielm' Vicecomitem Stafford, Willielmum Dom' Petre, Henricum Dom' Arundel de Wardor, & Johannem Dom' Bellaſis, ac alios conſpiratores præd' contr' Dom' Regem nunc, Coronam & Dignitat' ſuas, ac contr' Leges & Statuta hujus Regni ſecun' Lege' & conſuetudinem Parliament' impetit' fuer' ac inde debite onerat', & in Priſona præd' ea occaſione detent', prout per Record' & proceſs' inde int' Recorda Parliament' remanent' plenius apparet. Et iidem Major & Communitas, ac Cives civitat' London ulterius dicunt, quod in Seſſion' præd' Parliamenti dic' Dom' Regis nunc, apud Weſtm' præd' per prorogation' tent' ſuper prædict' viceſimum primum diem Octobris, Anno Regni dicti Domini Regis nunc triceſimo ſecundo ſupradict', in replicatione præd' mentionat' ad inchoation' ejuſdem Seſſionis Dom' Rex nunc, ex maxima regali cura & ſedulitate ſua pro præſervatione Religionis Proteſtan' & ſubditor' a periculis per Papiſticas Conſpirationes imminen', per ejus gratioſam oration' ambob' domibus ejuſdem Parliamenti adtunc & ibidem fact' & allocut', inter alia recommendavit Dom' & Commun' in Parliamento illo aſſemblat', ad proſequend' ulteriorem examinationem Conſpiration' præd' cum ſtricta & impartiali inquiſitione, & eis tunc dixit, quod ipſe non putavit ſeipſum neque ipſos ſecur' quoſque materia illa plenarie perageretur. Ac ideo quod neceſſar' foret, quod præd' Dom' in præd' priſona Turris London ad celerem triation' ſuam adducerentur, quod Juſticia fieret. Et iidem Major & Communitas ac Cives civitat' London ulterius dicunt, quod poſtea in eadem Seſſion' Parliamenti utraque domus Parliamenti illius in proſecution' dic' direction' Dom' Regis ſtrictam & impartialem inquiſition' de præd' conſpiratione fecer', & ſuper inquiſition' ill' declaraver', quod fuiſſet horribilis conſpiratio & conjuratio per Papiſtas contra perſonam dic' Dom' Regis & Gubernation' ſuam quæ tunc continuabant; ac Commun' in eodem Parliamento aſſemblat' ulterius declaraverunt, quod conſpiratio & conjuratio ill' ſupportat' & proſecut' fuiſſent per poten' & irrequiet' molimina & machinationes, præſertim duran' tunc nuperis receſſib' Parliamenti & poſtea in eadem Seſſione Parliamenti Dom' Spirituales, Temporales ac Communes in eodem Parliamento aſſemblat', eorum humilem Supplicationem (Angl' *Addreſs*) eidem Dom' Regi apud Weſtm' præd' fecer' & exhibuer', in forma ſequen', videl', Quod ipſi Subditi Regiæ ſuæ Majeſtatis obſequentiſſimi & fideliſſimi Dom' Spirituales & Temporales, ac Communes in tunc præſenti Parliamento illo aſſemblat', profunde ſenſibiles exiſten' de triſti & calamitoſa conditione hujus Regni, præcipue per impias & horrendas Conſpirationes Papalis Factionis cauſat', quæ non ſolum deſtructionem Regalis Perſonæ Regiæ ſuæ Majeſtatis, verum etiam totalem ſubverſionem Gubernat' & veræ Religion' in hoc Regno Angl' ſtabilit' conſpiraviſſet & intendiſſet, ac invenien' eaſdem deteſtabiles machinationes adtunc obſtinate per eandem Factionem proſecut', tam fovendo diviſiones inter Majeſtatis ſuæ fideles Subdit' Proteſtan', quam per omnes al' nequiſſimas machinationes, non obſtan' quamplurimis detectionibus inde (magna Dei miſericordia & mirabili providentia) tunc nuper in lucem prolat', quæ omnia tremenda judicia tunc fuer' ſuper hoc Regnum impenden' pro pluribus & gravibus ſuis peccatis, quam meritiſſime ac alit', humana ratione evitari nequibant, quam per benediction' Dei particularem ſuper conſultationes & conamina magni Concilii ipſius Dom' Regis tunc in Parliamento aſſemblat', in omni humilitate Regiæ ſuæ Majeſtati ſupplicaver', quod per Proclamation' ſuam Regalem dies ſolempnit' foret dedicat', in quo tam ipſi quam omnes ipſius Dom' Regis Subdit' per jejun' & preces Deo omnipotenti reconciliationem conarentur. Ac cum cordibus humilibus & penetentibus eum implorarent, per ejus potentiam & bonitatem, ad judicia ill' divertend', & ad impia conſilia & machinationes inimicorum ſuorum fruſtrand', ad corda fidelium Proteſtant' Subdit' dict' Dom' Regis uniend', & ad miſericordiam ſuam & Evangelii ſui lumen eidem Domino Regi & dictis Subdit' ſuis, & eor' Poſteritat' continuand', ac præcipue ad abundantes benedictiones ſuas ſuper ſacram Majeſtatem ipſius Dom' Regis & tunc præſen' Parliament' impendend', quod conſultationes & conamina eor' honorem, incolumitatem, & proſperitatem Regiæ ſuæ Majeſtati ac Populo ſuo producerent; & ſuperinde dictus Dominus Rex nunc duran' dicta Seſſione Parliamenti, ſcilicet ſecundo die Decembris anno Regni ſui triceſimo ſecundo ſupradicto, per proclamationem ſuam Regalem ſub magno ſigillo ſuo Angl' ſigillat' geren' dat' apud Weſtm' eiſdem die & anno, recitando, quod cum Dom' Spirituales & Temporales ac Communes in Parliamento illo aſſemblat' per eor' Supplication' (Angl' *Addreſs*) eidem Domino Regi exhibit', notum ei feciſſent, quod ipſi profunde ſenſibiles fuer' de triſti & calamitoſa conditione hujus Regni per impias & horrendas Conſpirationes Papalis Factionis cauſat', quæ non ſolum deſtructionem Regalis Perſonæ Regiæ ſuæ Majeſtatis, verum etiam total' ſubverſionem Gubernat' & veræ Religionis apud ipſum Regem & Subditos ſuos ſtabilit', conſpiraviſſet & intendiſſet; quodque eædem deteſtibiles machinationes adtunc obſtinate per eandem Factionem proſecut' fuer', tam fovendo diviſiones int' ejus fideles Subdit' Proteſtan', quam per omnes al' nequiſſimas machinationes, non obſtan' quamplurimis detectionibus inde (magna Dei miſericordia & mirabili providentia) tunc nuper in lucem prolat', quæ omnia tremenda judicia tunc fuer' ſuper eundem Dom' Regem & dictos Subdit' ſuos impendend' pro pluribus & gravibus ſuis peccatis, quam meritiſſime ac alit' humana ratione prævi-

niri nequibant, quam per benedictionem Dei particularem ſuper conſultationes & conamina magni Concilii ipſius Dom' Regis tunc in Parliamento aſſemblat', eidem Domino Regi humillime ſupplicaſſent, quod dies maxime ſolempnit' foret dedicat', in quo Rex ipſemet & omnes Subditi ſui fideles per jejunium & preces Deo omnipotenti reconciliationem conarentur, ac cum cordibus humilibus & pœnitentibus cum implorarent, per ejus potentiam & bonitatem ad judicia illa divertend', & ad impia conſilia & machinationes inimicorum ipſius Dom' Regis & dict' Subdit' ſuor' fruſtrand', ac corda fidelium Proteſtan' Subdit' dict' Dom' Regis uniend', & miſericordiam ſuam & Evangelii ſui lumen eidem Domino Regi & dictis Subdit' ſuis & eor' Poſteritat' continuand', ac præcipue ad abundantes benedictiones ſuas ſuper ipſum Dom' Regem & tunc præſen' Parliament' impendend', quod conſultationes & conamina eor' honorem, incolumitatem, & proſperitatem dicto Domino Regi ac populo ſuo producerent, idem Dominus Rex ad illam eor' humilem requiſitionem promptiſſime inclinavit, ac per illam ejus Regalem Proclamation' mandavit generale & publicum Jejunium per totum hoc Regnum obſervari, in tali modo quali poſtea per eandem Proclamationem fuit direct' & præſcript', ita quod tam idem Dominus Rex, quam populus ſuus preces & ſupplicationes ſuas Deo omnipotenti emitterent ad & pro propoſitis præd', ac ea intentione, quod tam Religioſum Exercitium ad unum & idem tempus performaretur, dictus Dominus Rex per Proclamation' ill' publicavit & declaravit omnibus Subditis ſuis amantibus, ac ſtricte præcepit & mandavit, quod die Mercurii exiſten' viceſimo ſecundo die Decembris tunc inſtan' jejunium ill' religioſe obſervat' & celebrat' foret per Regnum ſuum Angl', Dominium Walliæ, & Villam Berwici ſuper Twedam, & ut idem cum omni decentia & uniformitate performaretur, idem Dominus Rex per adviſamentum reverend' Epiſcopor' ſuor' componi, imprimi, & publicari direxerat talem formam Divini Servicii qual' ipſe apt' uti cenſuerat in omnibus Eccleſiis & Locis ad tempus præd', & Epiſcopis ſuis dederat in mandatis ad ill' congruent' diſpergend'. Quæ omnia idem Dominus Rex per Proclamationem ſuam præd' reverent' & decent' obſervari expreſſe præcepit & mandavit, per omnes ſubdit' ſuos amantes, ſicut favorem Dei Omnipotentis reſpexer', ac iram & indignation' ejus contra hanc terram evitarent, & ſub pœna ſubeundi tales punitiones, qual' dictus Dominus Rex juſte infligere poſſet ſuper omnes, qui tam religioſum officium contemnerent ſeu negligerent, prout per irrotulament' ejuſdem proclamationis in cur' Cancellar' ipſius Dom' Regis de recordo remanen' plenius apparet. Qui quidem dies jejunii ſecundum formam & effect' proclamat' præd' debite & ſolempnit' obſervat' & celebrat' fuit in & per totum hoc regnum Angl', ac præcipue apud London præd', in parochia ſancti Michaelis Baſſiſhaw. Quodque in eadem ſeſſione parliamenti ult' mentionat', Communes hujus regni in eodem parliamento aſſemblat', reſolution' fecerunt procedere ad triationem præd' Dominor' in priſona Turris London tunc exiſten', ſicut præfertur, impetit', & ſtatim incipere cum præfat' Vicecomite Stafford, ac notitiam inde Dominis parliamenti illius tunc deder', & eos requiſiver' ad convenien' diem pro triatione ejuſdem Vicecomitis Stafford appunctuand', & ſuperinde præd' Vicecomes Stafford de altis proditionibus & proditoriis conſpirationibus & conjurationibus præd', unde ipſe, ut præfertur, impetit' fuit per Dominos Temporales in eodem parliamento convent' ad proſecution' Commun' hujus regni in parliamento illo aſſemblat', in eadem ſeſſione parliamenti triat', convict', & debita juris forma attinct' fuit, prout per record' & proceſs' inde inter recorda parliament' remanen' plenius apparet, poſteaque in eadem ſeſſione parliamenti Willielmus Scrogs Miles, tunc Capital' Juſtic' Dom' Regis ad placita coram ipſo Rege tenend' aſſign' per Communes hujus regni Angl' in eodem parliamento aſſemblat' coram magnatibus & proceribus ejuſdem regni in parliamento illo convocat' & convent' ſecundum legem & conſuetudinem parliamenti accuſat' & impetit' fuit de alta proditione, & aliis magnis criminibus & malegeſturis (inter alia) quod ipſe dictus Willielmus Scrogs tunc exiſten' Capital' Juſtic' cur' Domini Regis coram ipſo Rege proditorie & nequit' conat' fuiſſet ſubvert' leges fundamental' & ſtabilit' religion' hujus regni Angl', ac loco inde introducere Papiſmum (Angl' *Popery*) & arbitrariam & tyrannicam gubernationem contra legem, quod ipſe declaraſſet per diverſa proditoria & improba verba, opiniones, judicia, praxes, & facta: Ac etiam quod cum fuiſſet horribilis & diabolica conſpiratio, machinat' & proſecut' per Papiſtas pro murdrando Dominum Regem nunc, ſubvertendo leges & gubernationem hujus regni, & pro deſtruendo religionem Proteſtan' in eodem regno, quæ omnia dictus Willielmus Scrogs bene ſciviſſet, in quantum ipſemet non ſolum triaſſet, verum etiam judicium reddidiſſet contra ſeparal' hujuſmodi delinquentium, nihilominus dictus Willielmus Scrogs ad diverſa tempora & loca, tam in cur' ceden', quam alit', palam defamaſſet & ſcandalizaſſet ſeparal' de teſtibus, qui probaſſent dictas proditiones contra diverſos de conſpiratoribus, & dediſſent evidentiam contra diverſas alias perſonas, quæ tunc fuer' minime triat', ac conatus fuiſſet defamare (Angl' *to diſparage*) eor' evidenciam, & adimere credentiam eorum, per quod, quantum in ſe fuit, proditorie & nequit' ſuppreſſiſſet & ſuffocaſſet detectionem dictæ Papalis conſpirationis, ac animaſſet conſpiratores (ad procedend' in eadem) in magnum & manifeſtum periculum ſacræ vitæ dicti Domini Regis nunc, & bene ſtabilit' gubernation' & religionis hujus regni Angl', prout per record' inde inter record' parliament' remanent' plenius apparet. At etiam in eadem ſeſſione parliamenti, Dom' Spiritual' & Temporal', ac Communes in eod' parliamento aſſemblat', ſe declaraver' eis manifeſt' eſſe quod ad tunc fuit, & per diverſos annos tunc ult' elaps', fuiſſet horrenda & proditoria conſpiratio & conjuratio, machinat' & proſecut' per ill' de Papali religione in regno Hiberniæ pro trucidatione (Angl' *maſſacring*) Anglor', & ſubverſion' religionis Proteſtan', & antiquæ ſtabilit' gubernationis regni illius; de qua quidem horrenda & proditoria conſpiratione & conjuratione Richardus Power Comes Tyrone in regno Hiberniæ, ad eandem ſeſſion' parliamenti per Communes hujus regni Angl' in eodem parliamento aſſemblat' coram Magnatibus & proceribus ejuſdem regni Angl' in parliamento illo convocat' & convent' ſecundum legem & conſuetudinem parliamenti impetit' fuit, ac inde debite onerat' & priſonæ Dom' Regis de le Gate-houſe Weſtm' ea occaſione commiſſus fuit, prout per record'

record' inde inter recorda parliament' remanen' plenius apparet. Quodque tam Domin', quam Communes in dicto parliamento aſſemblat' in eadem ſeſſione parliamenti fuer' præparantes billas ſecundum curſum parliament' in leges inactitand' pro præſervatione Domini Regis nunc, & ſubditorum ſuorum Proteſtan', contra proditorias conſpirationes & conjurationes prædicta penden', quibus quidem ſeparalibus impetitionibus verſus eundem Richardum Power, & dictum Willielm' Scrogs, ac prædict' Willielm' Comitem Powis, Henricum Dominum Arundel de Wardour, Willielm' Dom' Petre, & Johannem Dom' Bellaſis, minime determinat', ac eiſdem Willielm' Comite Powis, Henrico Domino Arundel de Wardour, Willielm' Dom' Petre, Johanne Dom' Bellaſis, & Richardo Power in priſon' Domini Regis ex cauſis præd', ut præfertur, exiſten', idem parliament', ſuper præd' decimum diem Januarii, anno regni dicti Dom' Regis nunc triceſimo ſecundo ſupradicto, prorogat' fuit, prout præd' Attorn' dict' Dom' Regis nunc generalis ſuperius inde allegavit, abſq; aliqua triatione dictor' Willielm' Comit' Powis, Henric' Dom' Arundel de Wardour, Willielm' Dom' Petre, Johan' Dom' Bellaſis, Willielm' Scrogs, & Richard' Power, ſeu eorum alicujus, de altis prodition', & al' præmiſſis (unde ipſi reſpective, ut præfertur, impetit' fuer', ac qui aliter quam in parliament' inde triari non potuer') fact' ſive habit', ac antequam hujuſmodi billæ in leges inactitat' fuer': Quæ quidem oratio dicti Dom' Regis, ac declarationes & proceſſus Dom' & Commun' parliamenti illius, duran' dicta ſeſſione ejuſdem parliament', ut præfertur, fact', ante eandem prorogationem parliamenti illius publicat' fuer', videl', apud London præd', in prædicta parochia ſancti Michaelis Baſſiſhaw, ratione quorum quidem præmiſſor', cives & inhabitan' præd' civitatis London, fideles ſubdit' dicti Dom' Regis nunc exiſten' maxime perterriti, & in animis affecti, ac quam plurimum inquietat' fuer' profundo ſenſu & apprehenſione magnor' periculor' perſonæ Dom' Regis nunc, & gubernationi ſuæ hujus regni, ac religioni Proteſtan', & profeſſoribus ejuſdem, occaſione conſpiration' præd' impenden' & imminen', non aliter (prout per Dom' Spirituales & Temporales, ac Communes in dicto parliamento aſſemblat', in ſupplicatione ſua præd', per Dom' Regem in proclamat' præd', ut præfert', publicat' affirmat') humana ration' evitand', quam per benedictionem Dei particularem ſuper conſultationes & conamina ejuſdem parliamenti, quidam cives & inhabitantes ejuſdem civitatis, nomine civium & inhabitantium dict' civitatis, ante petitionem inde in prædicto placito præd' Attorn' General' ſuperius replicando placitat' ſpec' fact', ſeu fieri ordinat', ſcil', præd' decimo tertio die Januarii, anno regni dict' Dom' Regis nunc triceſimo ſecundo ſupradict', Patient' Ward Mil', tunc Majori civitatis London, & Alderman' dict' civitatis, ac Communiariis ſive Civib' de Com' Concilio ejuſdem civitatis, in Communi Concilio adtunc in prædicta camera Guildhall ejuſdem civitatis, in parochia ſancti Michaelis Baſſiſhaw præd', ſecundum conſuetudinem dictæ civitatis aſſemblat', exhibuer' quandam petitionem continen', quod ipſi cives & inhabitan' civitat' London, profunde ſenſibles exiſten' de malis & exitiis ſuper hanc nationem in generali, ac ill' civitatem London in particulari penden', in reſpect' periculi perſonæ Dom' Regis nunc, religion' Proteſtan', & bene ſtabilit' gubernation' ſuæ, per continuat', infernales, & diabolicas machinationes Papiſtar', & alior' adhærentium ſuor', ac ſcientes nullam viam (ſub Deo) tam effectual' ad præſervand' Dom' Regem, ac cives & inhabitan' ill' ab extrema ruina & deſtructione minat', quam per celerem ſeſſionem tunc præſentis parliamen', cujus inopina prorogatio magnopere addidit & augebat juſtos timores & ſuſpiciones animor' dictor' petitionarior'; ipſi iidem petitores obſecraver' eidem Com' Concilio, ſic ut præfertur aſſemblat', ad informand' Regiam Majeſtatem de ill' eor' timoribus & apprehenſionibus, ac quod fuit humile & fervens deſiderium, tam eor' petitior', quam ipſor' Majoris & Aldermannor', ac Communiar' de Com' Concilio illo, quod Regiæ ſuæ Majeſtati placeret, pro totali fruſtratione impior' & ſanguinolentor' propoſitor' inimicor' ſuor', ad permittend' ill' tunc præſens parliamentum, quod extitit prorogat' uſque viceſimum diem tunc inſtan' Januarii, adtunc aſſemblare, & ſedend' continuare, quouſque effectualit' ſecuraret hoc regnum contra Papiſm', ac reformaret (Angl' *redreſſed*) multiplicia gravamina, ſub quibus tunc gemuit, & pro immediata ſecuritate ſua, quod iidem Major & Alderman', ac Communiarii de Com' Concilio ill', ordinarent quodcunque aliud, quod neceſſar' & expedien' eis videretur in illo tempore periculi imminen', pro incolumitate magnæ civitatis illius. Et quia per legem terræ hujus regni Angl' licitum eſt ſubdit' Dom' Regis in anguſtiis & difficultatib' ſuis ad humilit' ſupplicand' Dom' Regi pro remedio congruo in ea parte habend', præd' die Jovis decimo tertio die Januarii, anno regni dict' Dom' Regis nunc triceſimo ſecundo ſupradict', præd' Patient' Ward Miles, tunc Major præd' civitatis London, & Alderman' ejuſdem civitat', ſcil', Thomas Alleyn Miles & Bar', Johannes Fredericke Miles, Johannes Lawrence Miles, Georgius Waterman Miles, Joſephus Sheldon Miles, Jacobus Edwards Miles, Robertus Clayton Miles, Johannes Moore Miles, Gulielmus Pritchard Miles, Henricus Tulſe Miles, Jacobus Smith Miles, Robertus Jeffrey Miles, Johannes Shorter Miles, Thomas Gould Miles, Gulielmus Rawſterne Miles, Thomas Beckford Miles, Johannes Chapman Miles, Simon Lewis Miles, Thomas Pilkington Arm', & Henricus Corniſh Arm', ac Communiarii ſeu Cives de Com' Concilio dict' civitatis, in Com' Concilio ſuo infra eandem civitatem, ſcil', in præd' camera Guildhall civitatis illius ad tunc ſecund' conſuetudinem dict' civitatis aſſemblat', vota & ſuffragia ſua, ex animis Dom' Regi perfidelib', & pro ſatisfaction' civium & inhabitan' ejuſdem civitat', qui petitionem eis in forma præd' exhibuiſſent, pro allevatione timoris & apprehenſionis, & inquietudinis illor', ac ea intentione, quantum in ſe fuit, pro præſervatione perſonæ Dom' Regis nunc, & gubernation' ſuæ hujus regni Angl', & religionis Proteſtan', deder', ac nemine contradicente agreaver' & ordinaver', quod quædam petitio ſub nomine ipſor' Majoris, Alderman', & Commun' civitatis London in Communi Concilio aſſemblat', dicto Domino Regi nunc exhibita foret; cujus quidem petitionis tenor ſequitur in his Anglicanis verbis, videlicet, *To the King's moſt Excellent Majeſty: The humble Petition of the Lord Mayor, Aldermen, and Commons of the City of* London *in Common Council aſſembled, moſt humbly ſheweth, That your Majeſty's great Council in Parliament, having in their late Seſſion, in purſuance of your Majeſty's Direction, entered upon a ſtrict and impartial Inquiry into the horrid and execrable Popiſh Plot, which hath been for ſeveral Years laſt paſt, and ſtill is carried on, for the Deſtruction of your Majeſty's Sacred Perſon and Government, and Extirpation of the Proteſtant Religion, and the utter Ruin of your Majeſty's Proteſtant Subjects: having ſo far proceeded therein, as juſtly to attaint, upon full Evidence, one of the five Lords impeached for the ſame, and were in further Proſecution of the remaining four Lords, and other Conſpirators therein: And as well the Lords Spiritual and Temporal, as the Commons in your ſaid Parliament aſſembled, having declared, That they are fully ſatisfied that there now is, and for divers Years laſt paſt hath been, a horrid and treaſonable Plot and Conſpiracy contrived and carried on by thoſe of the Popiſh Religion in* Ireland, *for Maſſacring the* Engliſh, *and ſubverting the Proteſtant Religion, and the antient eſtabliſhed Government of that Kingdom: And your ſaid Commons having impeached the Earl of* Tyrone, *in order to the bringing him to Juſtice for the ſame, and having under Examination other Conſpirators in the ſaid* Iriſh *Plot: And your ſaid Commons having likewiſe impeached Sir* William Scrogs, *Chief Juſtice of your Majeſty's Court of King's Bench, for Treaſon, and other great Crimes and Miſdemeanors, in endeavouring to ſubvert the Laws of this Kingdom by his arbitrary and illegal Proceedings; and having voted Impeachments againſt ſeveral other Judges for the like Miſdemeanors, your Petitioners, conſidering the continual Hazards to which your Sacred Life, and the Proteſtant Religion, and the Peace of the Kingdom are expoſed, while the Hopes of a Popiſh Succeſſor give Countenance and Encouragement to the Conſpirators in their wicked Deſigns: And conſidering alſo the Diſquiet and dreadful Apprehenſions of your good Subjects, by Reaſon of the Miſeries and Miſchiefs which threaten them on all Parts, as well from Foreign Powers, as from the Conſpiracies within your ſeveral Kingdoms, againſt which no ſufficient Remedy can be provided but by your Majeſty; and your Parliament were extremely ſurprized at the late Prorogation, whereby the Proſecution of the publick Juſtice of the Kingdom, and the making the Proviſions neceſſary for the Preſervation of your Majeſty, and your Proteſtant Subjects, have received an Interruption. And they are the more affected herewith, by reaſon of the Experience they have had of the great Progreſs which the emboldened Conſpirators have formerly made in their Deſigns, during the late frequent receſſes of Parliament; but that which ſupports them againſt Deſpair is, the Hopes they derive from your Majeſty's Goodneſs, that your Intention was and does continue by this Prorogation to make way for your better Concurrence with the Counſels of your Parliament. And your Petitioners humbly hope, that your Majeſty will not take Offence that your Subjects are thus zealous, and even impatient of the leaſt delay of the long-hoped for Security, whilſt they ſee your precious Life invaded, the true Religion undermined, their Families and innocent Poſterity likely to be ſubjected to Blood, Confuſion, and Ruin, and all theſe Dangers encreaſed by reaſon of the late Endeavours of your Majeſty and your Parliament, which have added Provocation to the Conſpirators, but have had little or no effect towards ſecuring againſt them; and they truſt your Majeſty will graciouſly accept of this Diſcovery, and Deſire of their loyal Hearts to preſerve your Majeſty, and whatſoever elſe is dear to them, and to ſtrengthen your Majeſty againſt all Popiſh and pernicious Counſels, which any ill-affected Perſons may preſume to offer: They do therefore moſt humbly pray, that your Majeſty will be graciouſly pleaſed (as the only means to quiet the Minds, and extinguiſh the Fears of your Proteſtant People, and prevent the eminent Dangers which threaten your Majeſty's Kingdoms, and particularly this your great City, which hath already ſo deeply ſuffered for the ſame) to permit your ſaid Parliament to ſit from the Day to which they are prorogued, until by their Counſels and Endeavours thoſe good Remedies ſhall be provided, and thoſe juſt Ends attained, upon which the ſafety of your Majeſty's Perſon, the preſervation of the Proteſtant Religion, the Peace and Settlement of your Kingdoms, and the Welfare of this your ancient City, do ſo abſolutely depend; for the purſuing and obtaining of which good Effects, your Petitioners unanimouſly do offer their Lives and Eſtates, and ſhall ever pray,* &c. Ac adtunc & ibidem ulterius agreaver' & ordinaver', quod petitio ill', poſt præſentation' inde eidem Dom' Regi, impreſſa foret per talem perſonam, qual' dictus tunc Major civitat' London præd' appunctuaret; quæ quidem petitio ſic fuit imprimi ordinat', ea intentione, quod publicatio falſor' & rumor' & relation' de & concernen' præd' petition' dicto Domino Regi exhibit' evitaretur, inimici Domini Regis, & conſpiratores præd', a procedendo in conſpiratione ſua præd' deterrerentur, perturbationes, quas boni & fideles ſubditi dicti Domini Regis nunc in animis ſuis ex cauſis prædictis concepiſſent, alleviarentur, & cives & inhabitan' ejuſdem civitat' melius ſcirent quid factum fuiſſet in dicto Communi Concilio de materia in petitione præd' eidem Communi Concilio, ut præfertur, exhibit' content'. Quodque præd' petitio dicto Dom' Regi ſic præſentari agreat', poſtea (ſcil', præd' decimo tertio die Januarii, anno triceſimo ſecundo ſupradicto) eidem Dom' Regi humillime præſentat' fuit, videlicet, apud London præd', in prædicta parochia ſancti Michaelis Baſſiſhaw, ac poſtea (ſcil', decimo quinto die ejudem menſis Januarii) per Samuelem Roycroft, quem dictus Patient' Ward tunc Major civitat' London ad inde appunctuavit, impreſſa fuit juxta ordinem præd' in ea parte fact', videlicet, apud London præd', in parochia prædict'; quæ quidem petitio, & impreſſio inde in forma prædict', & ea ex cauſa præd' fact', ſunt eædem petitio & impreſſio, & publicatio inde in præd' placito præd' Attorn' Generalis ſuperius replicando placitat' ſpec': Abſque hoc, quod aliqua petitio de vel concernen' prorogation' parliamenti præd' fact', ordinat', publicat', ſeu impreſs' fuit, alit' vel alio modo, quam iidem Major & Communitas, ac Cives civitat' London ſuperius allegaver', prout idem Attorn' Generalis pro dicto Domino Rege ſuperius ſuppon'; & hoc ſimiliter parat' ſunt verificare. Unde iidem Major & Communitas, ac Cives civitat' London non intendunt, quod ipſi per aliqua prædicat' præd' libertat' privileg' & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat' ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi, per ipſos ſuperius, ut præfertur, clamat' forisfecer', ac, ut prius, pet' judicium, & quod libertat', privileg', & franchis' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocentur & adjudicentur, ac quod ipſi, quoad præmiſs' ill', ab hac cur' dimittantur, &c.

Et

Et quoad exit' int' Dom' Regem, & Major' & Communitat', ac Cives civitat' London superius in forma præd' junct', idem Attorn' dict' Dom' Regis nunc general' dicit, quod Major & Communitas, ac Cives civitat' London præd', sunt partes Defendentes, vers' quos idem Attorn' dicti Dom' Regis nunc general' prosecut' est information' præd', & ea de causa pet' breve Vicecom' Hertf. (existen' Com' civit' præd' prox' adjacen') dirigend' de Venire fac' coram Dom' Rege duodecim, &c. de vicineto Vill' de Hertf. in Com' præd', quæ quidem Villa de Hertf. in Com' præd' est villa & visn' in Com' Hertf. prox' adjacen' civit' London præd'. Et quia præd' Major & Communitas ac Cives civitat' præd' hoc non dedicunt, ideo præcept' est Vic' com' Hertf. præd' quod Venire fac' coram Dom' Rege a præd' die sancti Michaelis in tres septiman' ubicunq; &c. duodecim, &c. de vicineto præd', per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. Idem dies dat' est tam præfat' Roberto Sayer Miles, qui sequitur, &c. quam prædict' Majori & Communitat', ac Civibus civitat' London prædict', &c. Et præd' Attorn' dicti Dom' Regis nunc general', quoad placitum præfat' Major' & Communitat' ac Civium civitat' London præd superius rejungendo' placitat', pet' inde diem interloquendi coram dicto Dom' Rege, a die sancti Michaelis in tres septiman' ubicunq; &c. & ei conceditur, &c. idem dies dat' est præfat' Majori & Communitat', ac Civibus civit' London præd', &c. ad quas quidem tres septim' sancti Michaelis coram dicto Dom' Rege apud Westm' venit tam præfat' Robertus Sawyer Miles, qui sequitur, &c. quam præd' Major & Communitas, ac Cives civitat' London præd' per Attorn' suum præd'. Et præd' Vic' com' Hertf. non misit inde breve, ideo sicut alias præcept' est Vic' com' Hertf. præd', quod venire fac' coram dicto Dom' Rege in octab' sancti Hilar' ubicunque, &c. duodecim, &c. de vicineto de villa Hertf. præd', &c. per quos, &c. & qui, &c. ad recogn', &c. quia tam, &c. idem dies dat' est tam præfat' Roberto Sawyer Militi, qui sequitur, &c. quam predict' Majori & Communitat', ac Civibus civitat' London, &c.

Et præd' Attorn' dict' Dom' Regis nunc general', qui, &c. quoad placitum ipsorum Major' & Communitat', ac Civium civitat' præd', quoad confectionem & publicationem legis pro levatione denariorum de personis ad publica mercata infra civitat' præd' tent' cum victualibus & provisionibus ibidem vendend' acceden', ac exactionem & levationem hujusmodi denar' superius fieri supposit' per ipsos Majorem & Communit', ac Cives, superius rejungendo placitat', pro eodem Dom' Rege nunc dicit, quod per aliqua per ipsos superius inde allegat' libertat', privileg', & franchis' fore de seipsis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, respondere ac responderi per ipsos superius, ut præfertur, clamat', eisdem Majori & Communitat' ac Civibus allocari non debent, quia protestando, quod ipsi præd' Major & Communit', ac Cives civitat' London præd', decimo septimo die Septembris, anno vicesimo sexto supradicto, in replicatione præd' mentionat', necnon continue postea, & a tempore cujus contrar' memoria hominum non existit' minime seisit' fuer', seu adhuc seisit' existunt de & in publicis mercatis præd' in dominico suo, ut de feodo, nec per totum idem tempus sumptibus suis propriis providerunt, seu providere consuever' & debuer' fora mercatoria, sive loca ubi hujusmodi mercata tent' fuer' quotiescunq; necesse fuit, stallas, stationes, & alias accommodationes pro personis ad eadem mercata venien' cum victualibus & provisionibus ibidem vendend', pro meliori & magis conveniend' vendition' & expositon' eorundem, prout præd' Major & Communitas, ac Cives superius rejungendo allegaver'; protestandoq; etiam, quod rat' præd' per actum sive ordination' præd', ut præfertur, solvi ordinat' præd', tempore confectionis ordinationis illius, & extunc hucusq; non fuer' rationabiles, nec adhuc rationabiles existunt, prout iidem Major & Communitas, ac Cives superius similiter allegaverunt. Pro placito tamen idem Attorn' dict' Domin' Regis nunc generalis dicit, quod per quendam actum in parliamento dict' Dom' Regis nunc tent' apud Westmonaster' per separales prorogationes, decimo quarto die Februarii, anno regni dict' Dom' Regis nunc vicesimo secundo (inter alia) inactitat' fuit, ad finem quod apti & commodi loci infra dictam civitat' & libertat' ejusdem, extraposit' & appunctuat' forent pro re-ædificand' & custodiend' mercata ampliori convenientia quam antea fuer', ita quod principales stratæ non forent impedit' (Angl' *pestred*) & obstruct' perinde, prout antea consuet' fuit, & quod Regale Excambium, Guildhall, le Sessions House in le Old Baily, & commun' gaolæ & prisonæ infra præd' civitat', forent amplificat' & fact' magis commoda pro publicis usu & ornament' Civitatis, & melius securitand' a periculo & casualitate conflagrationis, & quod aliquæ convenien' distantiæ, intervall' & circuitus fundi forent relict' inter Regal' Excambium, & alias domos ædificand' infra civitat' præd', quod Major, Aldermanni, & Commun' civitat' præd' in Commun' Concilio assemblat' impenderent (Ang' *should and might employ*) & per actum præd' authoritat' fuer' impendere talia loca & portion' fundi infra Civitat' præd' & libertat' ejusdem, prout per & cum dicti Dom' Regis nunc approbation' tunc fuer', vel ante decimum diem Martii, millesimo sexcentesimo sexagesimo nono, forent extraposit' & adjudicat' necessar' & convenien', tam pro publicis mercatis ibidem, quam etiam pro ornamento, amplificatione, & convenien' præd' Regal' Excambii, & aliorum locorum præmentionat', & cujuslibet vel alicujus eorundem respective, & ad intention', quod rationabilis satisfactio dat' foret proprietar', & aliis habent' aliquem statum sive interesse in fundis & locis, quæ fuissent vel forent extraposit', capiend' & occupand' pro publicis locis mercatoriis, præd' Major, Aldermann', & Commun', per ipsos, vel alios in ea parte fore appunctuat' & authorizat', tractarent & agrearent cum proprietar' & al' interessat' in eisdem, & in casu voluntariæ recusationis, sive alicujus talis inhabilitatis, sive impediment' qual' in quodam al' actu parliamenti in eodem actu specificat', pro re-ædificatione civitat' London, nuper antea fact', mentionat' fuer', seu alius incapacitat' cujuscunq; in proprietar' inde, vel al' interessat' in eisdem, ad tractand' & agreand', præd' Major & cur' Alderman' forent & fuer' per actum præd' authorizat' & requisit' causare jur' fore impannellat' in tal' modo & forma, prout per actum præd' direct' & appunctuat' fuit, ita quod null' duo jur' præd' sic fore impannellat' venirent ex una & eadem warda, adjudicare & assidere qual' compensation', & satisfaction' in quibuslibet casibus præd' forent adjudicat', & dat' respectivis proprietar', & aliis interessat' in fundis & locis sic extraposit', capiend' & occupand' pro aliquibus usibus vel propositis, ut præfertur, in prosecutione ejusdem actus, secundum tal' eorum respectivos status & interess'. Et ulterius inactitat' fuit, quod pro omnimodis carbonibus, quæ ab & post primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante vicesimum nonum diem Septembris, qui foret in anno Dom' millesimo sexcentesimo octogesimo septimo, forent importat' & adduct' in præd' portum civitat' London, seu rivum Thamesis, infra libertat' civitat' præd' super eundem rivum, solut' foret per viam impositionis superinde, secund' ratas postea mentionat' (videl') pro omnibus tal' carbonibus, qual' ibi importat' & induct' forent ab & post primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, solut' foret pro qualibet celdar' seu tonna inde duos solidos ultra imposition', duodecim denar' pro celdar' seu tonna per præd' actum pro re-ædificatione civitat' London appunctuat' solvend', & pro omnibus tal' carbonibus, quæ ibidem importat' & induct' forent ab & post prædict' vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, & ante præd' vicesimum nonum diem Septembris, millesimo sexcentesimo octogesimo septimo, solut' forent pro qualibet celdar' sive tonna inde tres solidos; & iidem, vigore actus præd', forent collect', levat' & solut' in tali forma & modo, in omni & quolibet respectu, prout in & per præd' priorem actum fuit limitat' & appunctuat' pro collectione & levatione debit' duodecim denar' pro celdar', sive tonna carbonum imposit' per priorem actum præd', & omnes & quaslibet potestat', authoritat', directiones, & provision' in vel per præd' priorem actum mentionat', vel provis' pro levatione & collectione inde: Omnesque quidem denar' sic recipiend', super comput' præd' respectivarum imposition', seu earum ulterius de tempore in tempus forent solut' in receptu Cameræ civitat' London, & abinde forent emanat' & solut' secundum directionem & appunctuation' præd' actus de anno vicesimo secundo supradicto, & non aliter; & præd' Camera civitat' London staret & onerat' foret cum toto resid' denar' præd' ibidem solut', qui non sic emanat' forent & solut'. Et ulterius inactitat' fuit, quod omnes & quælibet summa & summæ monet', quæ levat' foret super reception' separal' & respectivarum imposition' præd', sive per tal' additional' debit' in casu concealament' inde, prout per præd' priorem actum appunctuat' fuit, foret occupat' & disposit' modo & forma sequen' (videl') una quarta pars omnium denarior', quæ ab & post præd' primum diem Maii, millesimo sexcentesimo & septuagesimo, & ante præd' vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, forent levat', sive solubil' super reception' præd' imposition' duorum solid' pro qualibet celdar' vel tonna carbonum, seu in casu concealament' inde, ut præfertur, foret occupat' & disposit' pro & erga satisfaction' pro fundis extraposit' & occupat' pro amplificatione stratarum, confection' wharfarum & portuum, publicorum mercatorum locorum, & aliorum publicorum usuum, tam in actu ill', quam in actu prærecitat', mentionat', & appunctuat', & quod una medietas omnium denar', qui ab & post vicesimum quartum diem Junii, millesimo sexcentesimo septuagesimo septimo, forent levat' seu solubil' super præd' imposit' trium solid' pro celdar' vel tonna carbonum, de tempore in tempus foret occupat' & disposit' pro satisfactione pro fundo extraposit', & occupat', ut præfertur, & tal' al' publicis usibus & proposit', qual' in actu ill', & in actu prærecitat' fuer' mentionat', & appunctuat', prout per eundem actum de anno vicesimo secundo supradicto (inter al') plenius liquet & apparet. Et præd' Attorn' dict' Dom' Regis nunc general', qui, &c. pro eodem Dom' Rege nunc ulterius dicit, quod virtute actus illius iidem Major & Communitas, ac Cives civitat' London præd', ante confectionem & publicationem legis præd', scilicet, primo die Septembris, anno regni dicti Dom' Regis nunc vicesimo sexto supradicto, apud London præd', in parochia & warda præd', habuer' & receper' pro debito & vectigali præd' de duobus solidis pro qualibet celdar' sive tonna carbonum in civitat' London, sive portum ejusdem importat', ingent' denariorum summam ad proposita præd'. Et ulterius idem Attorn' Dom' Regis nunc general', qui, &c. pro eodem Dom' Rege nunc dicit, quod Major & Communitas, ac Cives civitat' London, absque aliquo jure, titulo, sive authoritat' quibuscunque, præmissis præd' non obstantibus, præd' die Jovis, scilicet, præd' decimo septimo die Septembris, anno regni dicti Dom' Regis nunc vicesimo sexto supradict', in eorum Commun' Concilio adtunc tent' in camera Guildhall civitat' London præd', videlicet, in parochia sancti Michaelis Bassishaw London, insimul assemblat', fecer', condider', & publicaver' præd' legem per ipsos de facto inactitat', pro levatione separal' denar' summar' præd', de omnibus subditis ac ligeis Dom' Regis nunc, tam liberis quam non liberis hominibus civitat' præd', & aliis extraneis ad publica mercat' infra civit' præd', tent' acceden' cum victual' & provisionibus suis ibidem vendend', ac easdem separal' denar' summas, sub solo colore & prætextu legis præd' sic per ipsos, pro eorum privato lucro & commodo, illegaliter fact', & absque aliquo alio jure, titulo, sive authoritat' quibuscunque, per præd' spatium septem annorum post præd' decimum septimum diem Septembris, anno vicesimo sexto supradicto prox' sequen', & amplius, apud London præd', in parochia præd', de omnibus dict' Dom' Regis ligeis & subditis ad præd' publica mercata, per totum tempus præd', infra civitat' præd' tent', cum victual' & provisionibus ibidem vendend' accedentibus, exeger' & levaver', & exigi & levari fecer', & denar' ill' ad eorum proprios usus converterunt & dispose-runt, in subversion' boni regiminis & gubernation' civitatis præd', & in magnam oppression' & depauperation' omnium dicti Dom' Regis nunc ligeorum, ad mercata præd' cum victualibus & provisionibus suis acceden' & venien', ad grave dampnum & nocumentum omnium ligeorum & subditorum dicti Domini Regis, in augmentation' preciorum omnium victual' & provision' in mercata præd' vendit', ac in dicti Domini Regis nunc

& coronæ

& coronæ ſuæ Regiæ exhæredationem manifeſtam, ac contra fidúc' in ipſis, ut corpore corporat' & politic', per Dom' Regem ac leges hujus regni Angl' repoſit', prout præd' Attorn' dict' Dom' Regis nunc generalis pro eodem Dom' Rege nunc ſuperius replicando allegavit; abſque hoc, quod præd' Major & Communitas, ac Cives civitatis London, a tempore cujus contrar' memoria hominum non exigit, habuer', ſeu habere conſuever' tolnet', ratas, ſive denar' ſummas per ipſos Majorem & Communitat' ac Cives civitat' præd', ſuperius ſuppoſit' fore per præfat' legem ſive ordination' præd' aſſeſs', & in certitudinem reduct', prout per placitum ipſorum Majoris & Communitat', ac Civium civitat' London præd' ſuperius rejungendo ſupponitur. Et hoc idem Attorn' General' pro eodem Dom' Rege nunc parat', eſt verificare; unde & ex quo iidem Major & Communitas, ac Cives, libertat', privileg' & franchis' præd' fore de ſeipſis corpus corporat' & politicum, ex cauſa præd' forisfecer', idem Attorn' General', ut prius, pro eodem Dom' Rege nunc pet' judicium, & quod præd' Major & Communitas, ac Cives civitat' London præd', de præmiſſis convincantur, ac de libertat', privileg' & franchis' ill' abjudicentur & excludantur, &c.

Et quoad placitum præfat' Majoris & Communitat', ac Civium civit' London præd' ſuperius rejungendo placitat', quoad reſid' præd' placiti præfat' Attorn' general', in aſſign' forisfactur', ut præfertur, ſuperius replicando placitat' idem Attorn' dict' Dom' Regis nunc general', proteſtando, quod præd' prorogatio dicti parliamenti per præfat' Dom' Regem fuit pro diverſis neceſſar' & urgentibus cauſis, bonum & utilitatem dicti Dom' Regis & regni ſui concernen', & ſecundum veram & indubitat' prærogativam & poteſtatem dicti Dom' Regis nunc; & per eandem prorogationem proſecutio publicæ juſtitiæ regni, & præparationis (Angl' *the making Proviſions*) neceſſar' pro præſervation' dict' Dom' Regis, & ejus ſubditorum Proteſtantium, non recepiſſent obſtructionem (Angl' *Interruption*) prout per petitionem præd' per vota & ſuffragia præfat' Majoris & Communitat', ac Civium civitat' præd' in dicto Communi Concilio aſſemblat', ſic ut præfertur ordinat', falſe & malitioſe allegatur; pro placito tamen idem Attorn' general' pro eodem Dom' Rege nunc dic', quod placitum præfat' Majoris & Communit', ac Civium civitat' London præd' ſuperius rejungendo in ea parte placitat', materiaque in eodem content' minime ſufficien' in lege exiſtunt ad ipſos Majorem & Communit', ac Cives civitat' præd' ad clamand' libertat', privileg', & franchis' præd', fore de ſeipſis corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Commun', ac Civium civ' London præd', ac per idem nomen placit' & implacit', reſp' & reſponderi, ſibi allocand', ſeu adjudicand' manuten'. Quodq; ipſe idem Attorn' gener' ad placitum ill' modo & forma præd' placitat' pro eodem Dom' Reg' nunc neceſſe non habet, nec per legem terræ tenetur aliquo modo reſpondere. Et hoc idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege nunc parat' eſt verificare. Unde pro defectu ſufficien' placiti ipſorum Majoris & Communitat', ac Civium civitat' præd' in hac parte idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege nunc, ut prius, pet' judicium, & quod præd' Major & Communitas, ac Cives civitat' London præd' de præmiſſis convincantur, & de libertat', privileg', & franch' ill' adjudicentur & excludantur, &c.

Et præd' Major & Communitas, ac Cives civit' præd', quoad moration' in lege præfat' Attorn' dic' Dom' Regis nunc generalis, quoad præd' placitum ipſor' Major' & Communitat', ac Civium civitat' London ſuperius rejungendo placit', quoad præd' reſid' præd' placiti dic' Attorn' general' in aſſign' forisfactur', ut præfertur, ſuperius replicando placitat', ex quo ipſi ſufficien' materiam in lege in eod' placito ſuo ad ipſos Majorem & Communitat', ac Cives civitat' London ad clamand' præd' libertat', privileg', & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Major' & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi per ipſos ſuperius clamat', eis allocand' & adjudicand', manutenend' ſuperius allegaver', quam ipſi parat' ſunt verificare, quam quid' materiam præd' Attorn' dic' Dom' Regis nunc general', pro eodem Dom' Rege non didicit, nec ad eam aliqualit' reſpond', ſed verification' ill' admittere omnino recuſat, ut prius, pet' judicium. Et quod libertat', privileg', & franchis' ill' eis & ſucceſſoribus ſuis deinceps allocentur & adjudicentur, & quod ipſi, quoad præmiſs' ill', ab hac cur' dimittantur, &c.

Et quoad præd' placit' præd' Attorn' Dom' Regis nunc general' pro eod' Dom' Rege, quoad confection' & publication' legis pro levatione denar' de perſon' ad publica mercata infra civit' præd' tent' cum victual' & proviſionibus ibidem venend' acceden', ac exaction' & levation' hujuſmodi denar' ſuperius fieri ſuppoſit' ſuperius rejungend' placitat', iidem Major & Communitas, ac Cives civit' præd' (ut prius) dicunt, quod Major & Communitas, ac Cives civit' London præd', a tempore cujus contrar' memor' hom' non exiſtit, habuer', & habere conſuever', rationabil' tolnet', ratas, ſive denar' ſummas de omnibus perſon' ad mercat' præd' cum victual' & proviſion' ibidem venend' teniend' pro ſtallis, ſtationibus, & al' accommodation' per eas pro vendition', expoſitione hujuſmodi victual' & proviſion' in mercat' ill' habit', & de hoc pon' ſe ſuper patriam.

Et præd' Robertus Sawyer Mil', Attorn' dic' Dom' Regis nunc general', qui pro eod' Dom' Rege in hac parte ſequitur, dic', quod placitum præd' præfat' Major' & Communitat', ac Civium civit' London præd' ſuperius repellando placitat', materiaque in eod' content' minus ſufficien' in lege exiſtunt ad ipſos Major' & Communitat', ac Cives civit' præd' ad clamand' libertat', privileg', & franchis' præd', fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Major' & Communitat', ac Civium civitat' London præd', ac per idem nomen placitare & implacitari, reſpondere & reſponderi ſibi allocand' ſeu adjudicand' manutenend', ad quod quidem placitum modo & forma præd' placitat', idem Attorn' dic' Dom' Regis nunc general' neceſſe non habet, nec per legem terræ tenetur aliquo modo reſpondere, pro eo, quod iidem Major & Communitas, ac Cives civit' præd' non oſtender' quanta vel qualia tolnet', ratas, ſive denar' ſummas iidem Major & Communitas, ac Cives civit' London præd', a tempore cujus contrar' memor' hominum non exiſtit', habuer', nec allegaver' quod ipſi unquam habuer' tolnet', rat', ſive denar' ſummas per ipſos ſuperius ſuppoſit' fore per legem ſuam præd' fore reduct' in certitudinem; & hoc idem Attorn' dic' Dom' Regis nunc general' pro eodem Dom' Rege parat' eſt verificare; unde pro defectu ſufficien' placiti præd' in hac parte, idem Attorn' dic' Dom' Regis nunc general' pro eodem Domino Rege, ut prius, pet' judicium, & quod præd' Major & Communitas, ac Cives civitat' London præd', de præmiſs' præd' in placit' præd' convincantur, & de libertat', privileg', & franchis' ult' ſupradict' penitus excludantur & abjudicentur, &c.

Et præd' Major et Communitas, ac Cives civitat' London præd' petunt licentiam inde interloquend' coram Dom' Rege uſque in octab' ſancti Hilar', ubicunque, &c. et eis conceditur. Idem dies dat' eſt præfat' Attorn' dic' Dom' Regis nunc general', &c. Et præd' Attorn' dic' Dom' Regis nunc general', qui pro eod' Dom' Rege in hac parte ſequitur, quoad placitum præfat' Majoris et Communitat', ac Civium civitat' London præd', quoad libertat', privileg', et franchis' præd', per ipſos ſuperius clamat', videlicet, ipſos habere Vicecom' civit' et com' civit' London, et Vicecom' com' Midd', et nominare et eligere ex ſeipſis duas perſon' fore Vic' civit' præd', et com' ejuſdem civit', et Vic' com' Midd', ac ill' ſic nominat' et elect' præficere et conſtituere Vic' civit' præd', et com' ejuſdem civit', et Vic' com' Midd' ac ut Vic' civit' præd', et com' ejuſdem civit' de execution' et retorn' omnium brevium, billarum, et præceptorum Dom' Regis pro adminiſtratione juſtitiæ infra civit' præd', et com' ejuſdem civit' exequend' et faciend' quæ ad officium Vic' faciend' pertinent, et ad faciend' et exequend' omnia et ſingula alia infra civit' præd', et com' ejuſdem civit' quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deſervitur, ac omnia brevia, billas, et præcept' Dom' Regis infra com' Midd' præd', pro adminiſtratione et executione juſticiæ ibidem exequend', et retorn' inde faciend' quæ ad officium Vic' faciend' pertinent ſuperius placitat'; necnon quoad placitum præfat' Major' et Communitat', ac Civium civitat' London præd', quoad libertat', privileg', et franchis' per ipſos ſuperius clamat', videlicet, Major dic' civitat', et hujuſmodi Alderman' ejuſdem civitatis, qui officium Majorat' civit' ill' ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſenior' civit' præd' qui diutius in offic' Alderman' civit' præd' ſteter', et onus et officium Majorat' civit' præd' non ſuſtinuer', fore Juſtic' Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſion' pacis et placita coron', ſcilicet, tal' placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent infra eand' civitat' tenend', ac ad omnia felon', riot', rout', et conventicul' illicit' infra civit' præd' inquirend', audiend', et terminand' ſuperius placitat', idem Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, petit ulterius licenc' inde interloquend' coram Dom' Rege uſque octab' ſancti Hilarii, et ei conceditur, &c. Idem dies dat' eſt præfat' Majori et Communitat', ac Civibus civitat' London præd', &c. Et quoad materiam in lege, unde tam præd' Attorn' dic' Dom' Regis nunc general', quam præd' Major et Communitas, ac Cives civitat' præd' poſuer' ſe in judic' cur'; ſed quia cur' dic' Dom' Regis nunc hic de judic' ſuo de et ſuper præmiſſis reddend' nondum adviſatur, dies inde dat' eſt tam præfat' Roberto Sawyer Mil', Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, quam præd' Major' & Communitat', ac Civibus civitat' London, &c. coram Dom' Rege in præd' octab' ſancti Hilar', ubicunque, &c. de judic' ſuo inde audiend', eo quod cur' Dom' Regis hic nondum, &c.

Ad quam quidem octab' ſancti Hilar' coram Dom' Rege apud Weſtm', ven' tam præfat' Robertus Sawyer Mil', qui ſequitur, &c. quam præd' Major & Communitas, ac Cives civitat' London præd', per Attorn' ſuum præd'. Et præd' Major & Communitas, ac Cives civitat' London præd', ex quo ipſi ſufficien' materiam in lege in placito ſuo præd' ſuperius repellando placitat' ad ipſos Majorem & Communitat', ac Cives civitat' London ad clamand' libertat', privileg', & franchis', fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere ac reſponderi per ipſos ſuperius clamat', eis allocand' & adjudicand' manutenend' ſuperius allegaver', quam ipſi parat' ſunt verificare; quam quidem materiam præd' Attorn' dic' Dom' Regis nunc general' pro eodem Dom' Rege non dedic', nec ad eam aliqualit' reſpond', ſed verification' ill' admittere omnino recuſat, ut prius, pet' judic', & quod libertat', privileg', & franchis' ill' eis & ſucceſſoribus ſuis in perpetuum deinceps allocentur & adjudicentur, & quod ipſi, quoad præmiſs' ill', ab hac cur' dimittantur, &c. Et præd' Attorn' dic' Dom' Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, quoad exit' præd' int' præd' Dom' Regem & præfat' Major' & Communitat', ac Cives civitat' London per patriam trjand' ſuperius junct', & quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat', videlicet, ipſos habere Vic' civit' & com' civit' London, & Vic' com' Mid', & nominare & eligere ex ſeipſis duas perſon' fore Vic' civit' præd', & Com' ejuſdem civit', ac Vic' com' Midd', ac illas ſic nominat' & elect' præficere & conſtituere Vic' civit' præd' & com' ejuſdem civitat', & Vic' com' Midd' ac ut Vic' civit' præd' & Com' ejuſdem civit' & execution' & retorn' omnium brevium, billarum, & præceptor' Dom' Regis pro adminiſtratione juſticiæ infra civit' præd', & com' ejuſdem civit' exequend', & faciend' quæ ad officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula al' infra civit' præd' & com' ejuſdem civit', quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præcept' Dom' Regis infra com' Midd' præd' pro adminiſtratione & executione juſticiæ ibidem exequend', & retorn' inde faciend' quæ ad officium Vic' faciend' pertinent ſuperius placitat', necnon quod libertat', privileg', & franchis' per ipſos ſuperius clamat', videlicet, Majorem dic' civitat', & hujuſmodi Alderman' ejuſdem civitat', qui officium Majorat' civitat' illius ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſen' civitat' præd', qui diutius in officio

Alderman' civit' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſticiat' Dom' Regis ad pacem infra civit' præd' conſervand', ac ad ſeſſion' pacis & placita coron', ſcilicet', tal' placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſent infræeandem civit' tenend', ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' ſuperius placitat' dic', quod ipſe pro eodem Dom' Rege in ea parte ulterius proſequi non vult verſus præfat' Majorem & Communitat', ac Cives civitat' London præd'.

Ideò cons' quod præfat' Major & Communitas, ac Cives civitat' London præd', quoad exit' int' præd' Dom' Regem, & præfat' Majorem & Communitat', ac Cives civitat' London præd', per patriam triand' ſuperius junct', & quoad libertat', privileg', & franchis' præd' per ipſos ſuperius clamat', videlicet', ipſos habere Vicecom' civit' & com' civit' London, & Vic' com' Midd', & nominare & eligere ex ſeipſis duas perſonas fore Vic' civit' præd' & com' ejuſdem civit', & Vic' com' Midd', ac ill' ſic nominat' & elect' præficere & conſtituere Vic' civit' præd' & com' ejuſdem civit', & Vic' com' Midd', ac, ut Vic' com' civit' præd' & com' ejuſdem, ad execution' & retorn' omnium brevium, billarum, & præceptor' Dom' Regis pro adminiſtratione juſtitiæ infra civit' præd' & com' ejuſdem civit', exequend' & faciend' que ad officium Vic' faciend' pertinent, ac ad faciend' & exequend' omnia & ſingula al' infra civit' præd', & com' ejuſdem civitat', quæ ad officium Vic' faciend' pertinent, ac ut Vic' com' Midd' pro eodem com' deſervitur', ac omnia brevia, billas, & præcepta Dom' Regis infra com' Midd' præd', pro adminiſtratione & executione juſtitiæ ibidem exequend', & retorn' inde faciend', quæ ad officium Vic' faciend' pertinent ſuperius placitat', necnon quoad libertat', privileg', & franchis' per ipſos ſuperius clamat', videlicet, Majorem dic' civit', & hujuſmodi Alderman' ejuſdem civitat', qui officium Majorat' civit' ill' ſuſtinuer', ac inde fuer' dimiſſi, ac tres Alderman' ſen' civit' præd', qui diutius in offic' Alderman' civitat' præd' ſteter', & onus & officium Majorat' civit' præd' non ſuſtinuer', fore Juſticiar' Dom' Regis ad pacem infra civit' prædict' conſervand', ac ad ſeſſion' pacis & placita coron', ſcilicet, talia placita coron', qual' Juſtic' Dom' Regis ad pacem conſervand' aſſign' legitime tenere poſſint infra eandam civit' tenend' ac ad omnia felon', riot', rout', & conventicul' illicit' infra civit' præd' inquirend', audiend', & terminand' ſuperius placitat', eant inde ſine die, ſalvo jure Dom' Regis, ſi al', *&c.* Et quoad dic' ſeparal' materias in lege, unde tam præd' Attorn' dic' Dom' Regis nunc general', quam præd' Major & Communitas, ac Cives civitat' præd', poſuer' ſe in judic' cur', ſed quia cur' dic' Dom' Regis nunc hic de judic' ſuo de & ſuper præmiſs' reddend' nondum adviſatur, dies inde dat' eſt tam præfat' Roberto Sawyer Mil', Attorn' dic' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, quam præd' Major' & Communitat', ac Civibus civitat' London, *&c.* coram Domino Rege a die Paſchæ in quindecim dies, ubicunque, *&c.* de judicio ſuo inde audiend', eo quod cur' dic' Domini Regis hic nondum, *&c.* Ad quem quid' quinden' Paſchæ coram Domino Rege apud Weſtm' ven' tam præfat' Robertus Sawyer Mil', Attorn' dict' Domini Regis nunc general', qui pro eodem Dom' Rege in hac parte ſequitur, quam præfat' Major & Communitas, ac Civit' London præd' per Attorn' ſuum præd', ſed quia cur' dic' Domini Regis nunc hic de judicio ſuo de & ſuper præmiſs' reddend' nondum adviſatur, dies inde ulterior dat' eſt tam præfat' Roberto Sawyer Mil', qui ſequitur, *&c.* quam præfat' Majori & Communitat', ac Civib' civitat' London præd' coram Domino Rege in craſtin' Sanctæ Trinitat', ubicunque, *&c.* de judicio ſuo ſuperinde audiend', *&c.* eo quod cur' Domini Regis hic nondum, *&c.* Ad quod quidem craſtin' Sanctæ Trinitat', coram Domino Rege apud' Weſtm' ven' tam præfat' Robertus Sawyer Mil', Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, quam præd' Major & Communitas, ac Cives civit' London præd' per Attorn' ſuum præd'; & idem Attorn' dic' Domini Regis pro eodem Domino Rege pet' judic' verſus præd' Major' & Communitat', ac Cives civit' London præd' in præmiſs' reddend', quod dic' libertat', privileg', & franchis' fore de ſeipſis unum corpus corporat' & politicum in re, facto, & nomine, per nomen Majoris & Communitat', ac Civium civitat' London, ac per idem nomen placitare & implacitari, reſpondere & reſponderi per ipſos ſuperius clamat', capiantur in manus Domini Regis nunc, ſup' quo, pro eo quod videtur cur' hic, quod præfat' Major & Communitas, ac Cives civit' præd', forisfecer' Domino Regi nunc libertat', privileg', & franchis' præd', ob cauſas in replicatione præfat' Attorn' general' ſuperius ſpecificat'; quodque placita præfat' Majoris & Communitat', ac Civium civitat' London præd' ſuperius rejungendo & repellendo in ea parte placitat', materiaque in eiſdem content', minus ſufficien' & invalida in lege exiſtunt ad præcludend' dict' Dom' Regem a forisfactur' præd', aut ad ipſos Majorem & Communitat', ac Cives civit' præd', ad clamand' libertat', privileg', & franchis' præd', ſibi allocand' & adjudicand', manutenend', maturaque deliberatione ſuperinde prius habit'.

Cons' eſt, quod libertat', privileg', et franchis' præd' fore de ſeipſis unum corpus corporat' et politicum in re, facto, et nomine, per nomen Majoris et Communitat', ac Civium civit' London, ac per idem nomen placitare et implacitari, reſpondere ac reſponderi, per eoſdem Majorem et Communitat', ac Cives civit' London præd' ſuperius clamat', capiantur et ſeiſiantur in manus Domini Regis, et quod præfat' Major et Communitas, ac Cives civit' London præd', capiantur ad ſatisfaciend' dic' Domini Regi de fine ſuo pro uſurpatione libertat', privileg', et franchis' præd'.

Rex verſus Pilkington *, *& al' for a* Riot.

Trin. 34. *& Hil.* 34 *&* 35. *Car.* II. *B. R.*

London ſſ. QUod 24 die Junii, anno regni Domini Caroli ſecundi nunc Regis Angl', *&c.* 34. apud Guildhall civit' London quædam Cur' aſſemblation' civium & liberor' homin' civit' London (communit' vocat' *a Common Hall)* per Johannem Moore, Mil', adtunc & adhuc Majorem civit' London, ſummonit' & convocat' coram eodem J. Moore Mil', Majore civit' præd', legitimo modo tent' fuit tam pro debit' election' Vic' civit' præd' pro execution' Offic' Vic' civit' præd' pro uno anno integro prox' ſequen' poſt vigil' feſti ſancti Michaelis Arch' adtunc & adhuc prox' futur', quam pro election' diverſor' al' officiar' civit' præd', quodq; adtunc & ibidem in Cur' præd' incept' fuit numerare capita (Anglice *to take the Poll)* de electorib' tunc & ibidem præſentib' pro manifeſtatione electionis perſonar' deſervitur' in offic' Vic' civit' præd' pro anno ſuprad', quodq; præd' J. Moore Mil', Major civit' prædict', poſtea eodem 24 die Junii anno regni dicti Dom' Regis nunc 24 ſuprad' apud Guildhall civit' London' præd' in paroch' ſancti Michaelis Baſſiſhaw London præd' legitimo modo fecit & fieri cauſavit proclamation' pro adjornation' Cur' præd' ſic ut præfertur' tent', & adtunc & ibidem præd' J. Moore Mil', Major civit' præd', Cur' præd', legitimo modo uſque diem Martis tunc prox' futur', adjornavit apud Guildhall civit' London præd' tenend', & adtunc & ibidem poſt adjornment' præd', ſic ut præfertur, fact' præd', J. Moore Mil', Major civit' London præd' fecit & fieri cauſavit proclamation' publicam pro deceſſion' omnium perſonar' ibidem ex occaſione præd' aſſemblat'. Et ulterius idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Rege dat Cur' hic intelligi & informari, quod Thomas Pilkington nuper de London Ar' & Samuel Shute nuper de London Ar' (tunc Vic' civit' London' præd'), et Henr' Corniſh nuper de London Ar', Ford Dominus Grey de Warke, Thomas Goldnuper de London Mil', Johannes Shorter nuper de London Mil', Thomas Player nuper de London Mil', Willielmus Gulſton nuper de London Mil', Slingſby Bethel nuper de London Ar',
Nelthrope nuper de London Ar', Johannes Ayliffe nuper de London Ar', Johannes Ellis nuper de London Ar', Franciſcus Jenks nuper de London Lintear', Robertus Barker nuper de London Gen', Johannes Deagle nuper de London Panuar', Richardus Freeman nuper de London Caſearius, Benjamin Smith nuper de London Gen', Richardus Goodenough nuper de London Gen', R Kay nuper de London Mercator, Lucy Knightley nuper de London Gen', Johannes Wickham nuper de London Gen', Samuel Swynnock nuper de London Mercator, Joſhua Brooks nuper de London Gen', Jo' Jekyll nuper de London Gen', Dorman Newman nuper de London Gen', T. Rawlinſon nuper de London Gen', T. Carpenter nuper de London Gen', T. Charleton nuper de London Gen', Johannes Jekyll jun. nuper de London Gen', Benj' Alſop nuper de London Gen', M. Meriton nuper de London Gen', Car' Bateman nuper de London Gen', Johannes Trenchard nuper de London Ar', Sim' Miller nuper de London Gen', Jervas Byfield nuper de London Gen', W. Peachy nuper de London Gen', & Richardus Farrington nuper de London Ar', præmiſs' præd' ſatis ſcien', ſed exiſten' perſon' male diſpoſit', & machinan' & intenden' pacem dicti Domini Regis nunc & communem tranquillitat' hujus regni Angl' inquietare, moleſtare, & perturbare, ipſi præd' T. Pilkington & S. Shute, ſub colore officii Vic' civit' London præd', & præd' H. Corniſh, Ford Dominus Grey, T Gold Mil', J. Shorter Mil', *&c.* poſtea, & poſt adjornament' præd', ſcil' dicto 24 die Junii anno regni dicti Domini Regis nunc 34 ſuprad', apud paroch' ſancti Michaelis B. London præd', in Guildhall præd' ibidem vi & armis, *&c.* riotoſe, routoſe, illicite, & ſeditioſe, ſeſe cum plur' al' perſon' male diſpoſit', & pacis dicti Domini Regis nunc perturbatorib', ad numer' mille perſonar' eidem Attorn' dicti Domini Reigs nunc general' adhuc incognit' aſſemblaver', congregaver' & coadunaver' ad pacem dicti Domini Regs nunc perturband'; & ſic aſſemblat', congregat', & coadunat' exiſten', adtunc & ibidem vi & armis, *&c.* riotoſe, routoſe, & illicite, in & ſuper præd' J. Moore Mil', Major' civit' præd' in pace Dei & dicti Dom' Regis adtunc & ibid' exiſten', inſult' & afraiam fecer', & ipſum Johannem Moore Mil' adtunc & ibid' verberaver', vulneraver,' & maletractaver', ita quod de vita ejus maxime deſperabatur: Et poſt adjornament' præd', & proclamation' præd', ſic ut præfertur, per præfat' J. Moore Mil' Major' civit' præd' fact', ipſi præd' T. Pilkington & Samuel Shute, adtunc & ibidem, colore officii ſui Vic' civit' London' præd', & præd' Henr' Corniſh, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', *&c.* cum divers' al' perſon' eidem Attorn' dicti Domini Regis nunc general' adhuc incognit', præfat' T. P. & S. Shute illicite & ſeditioſe auxilian' & aſſiſten' vi & armis, *&c.* riotoſe, routoſe, & illicite, ibidem continuaver' ad capita numerand' (Anglice *to take the Poll)* de perſon' ſic adtunc & ibidem illicite aſſemblat', tanquam & quaſi eædem perſon' licite aſſemblat' fuiſſent pro electione Vic' civit' præd': Et quod præd' T. P. S. Shute, H. Corniſh, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', *&c.* tunc & ibidem illicite, tumultuoſe, & ſeditioſe affirmaver', & quilibet eor' affirmavit, dixit, & alta voce præd' male diſpoſit' perſonis affirmavit, quod præd' Johannes Moore Mil', Major civit' London præd', illicite & injuſte aſſumpſiſſet ſuper ſe libertat' ad adjornand' Cur', quæ ſibi præd' J. Moore non pertinebat; quodque præd' T. Pilkington, S. Shute, H. Corniſh, Ford Dominus Grey, T. Gold Mil', J. Shorter Mil', et al' tunc et ibidem præd' illicite et male diſpoſit' perſon', ſic ut præfertur aſſemblat' et congregat' vi et armis, *&c.* riotoſe, routoſe, illicite, et ſeditioſe, per

* Vol. III. p. 630. No. 115.

ſpatium

ſpatium trium horar' ad pacem dicti Domini Regis nunc perturband', & riot' præd' committend', excitaver', mover', perſuaver', procuraver', & adtunc & ibidem, per totum tempus prædictum, in paroch' & warda prædicta Guildhall London præd', magnos rumores, clamores, vociferationes terribiles, & inſolitos ſtridores, vi & armis, &c. riotoſe, routoſe, & illicite, tumultuoſe, & ſeditioſe fecer', & fieri cauſaver' & excitaver', in contempt' dicti Domini Regis nunc, legumq; ſuar', paciſque ſuæ perturbation', & violation' manifeſt', ad magn' pericul' incitand' & movend' tumult', & effuſion' quamplurimum ſanguinis ibidem, ad magn' terror', inquietud', & timor' omn' ligeor' ſubdit' dicti Domini Regis, in malum exemplum omn' al' in tali caſu delinquen', & contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, &c. Unde idem Attorn' dicti Domini Regis nunc general' pro eodem Domino Regi pet' adviſament' Cur' hic in præmiſs' & debit' legis proceſs' verſus præfat' T. Pilkington, S. Shute, H. Corniſh, Ford Dominum Grey, T. Gold Mil', J. Shorter Mil', &c. in hac parte fieri ad reſpondend' dicto Dom' Regi de & in præmiſs', &c. per quod præcept' fuit Vic' civit' London præd', quod venire fac' eos ad reſpond', &c. Et modo, ſcil', die Mercur' prox' poſt tres ſeptiman' ſanctæ Trin', coram Dom' Rege apud Weſtm', ven' præd' T. Pilkington, S. Shute, & Richardus Goodenough, per Benedict' Brown Attornatum ſuum, & habito auditu information' præd', ſeparatim dicunt, quod ipſi non ſunt inde culp', & de hoc pon' ſe ſeparatim ſuper patriam: Et præd' R. Sawyer Mil', Attorn' Dom' Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur ſimilit', &c. Et ſuper hoc idem Attorn' dicti Dom' Regis nunc General', pro eodem Domino Rege dicit, & Cur' hic oſtendit, quod Thomas Pilkington & S. Shute Ar', duo defend' ſuperius nominat', Vicecom' civit' London præd' ad præſens exiſtunt, tamen ipſe idem Attorn' dicti Domini Regis nunc General' pro eodem Domino Rege pet' breve Domini Regis præfat' Vic' London dirigend', de venire fac' coram Domino Rege duodecim, &c. ad triand' exit' præfat' int' dictum Dominum Regem & partes præd' ſuperius in forma præd' junct': Et quia præd' defend' hoc non dedic', ideo præcept' eſt præfat' Vic' civit' London, quod venire fac' coram Dom' Rege, a die ſancti Michaelis in tres ſeptiman' ubicunque, &c. duodecim, &c. per quos, &c. & qui, &c. ad recogn' &c. quia tam, &c. idem dies dat' eſt tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. &c. Ad quas quid' tres ſeptiman' ſancti Michaelis coram dicto Domino Rege ven' tam præd' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. per Attorn' ſuu' præd': Et Vic' civit' London non miſer' inde breve, ideo ſicut al' ven' inde Jur' coram dicto Dom' Rege in octab' ſancti Hilar' ubicunque, &c. per quos, &c. & qui, &c. ad recog', &c. quia tam, &c. idem dies dat' eſt tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. &c. ad quas quidem Octab' ſancti Hilar' coram dicto Domino Rege apud Weſtm' ven' tam præfat' R. S. Mil', qui ſequitur, &c. quam præd' T. P. S. S. & R. G. per Attorn' ſuum præd', & Ford Dominus Grey, H. Corniſh, T. Gold Mil', J. Shorter Mil', T. Player Mil', &c. per præfat' B. B. Attorn' ſuu' ſimiliter ven', & habito auditu information' præd', ſeparatim dicunt, quod ipſi non ſunt inde culp' & de hoc ſimiliter ſeparatim pon' ſe ſuper patriam. Et præd' R. Sawyer Mil', Attorn' Domin' Regis nunc General', qui pro eodem Domino Rege in hac parte ſequitur, ſimiliter, &c. ideo, ſicut al' ven' inde jur' coram dicto Domino Rege in octab' Pur' beatæ Mariæ Virginis, ubicunque, &c. per quos, &c. et qui nec, &c. ad recogn', &c. qui tam', &c. idem dies dat' eſt tam præfat' R. Sawyer Mil', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, &c. ad quas quidem octab' Pur' beatæ Mariæ Virginis, coram Domino Rege apud Weſtm', ven' tam præfat' R. Sawyer, Mil', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. T. G. Mil', &c. per Attorn' ſuum præd': Et Vic' civit' London præd' retorn' nomina duodecim' jur', quor' nul', &c. ideo præcept' eſt Vic' præd', quod' diſtring' eos per omnes terr', &c. & quod de exit', &c. & quod habeant corpora eor' coram dicto Domino Rege a die Paſch' in quindecim ſeptiman', ubicunque, &c. vel coram dilect' & fidel' Domini Regis Edwardo Saunders Mil', Capital' Juſtic' Domini Regis ad placita coram ipſo Rege tenend aſſign', ſi prius die Martis prox' poſt menſem Paſchæ, apud Guildhall civit' London, per formam ſtatut', &c. ven' pro defectu jur', &c. ideo Vic' habeant corpora, &c. ad recogn' in forma præd', &c. Idem dies dat' eſt tam præfat' R. Sawyer Mil', qui, &c. quam præd' T. P. S. S. R. G. Ford Domino Grey, H. O. T. G. Mil', &c. ad quas quidem quinque ſeptiman' Paſchæ, iſto eodem termino, cor' Domino Rege apud Weſtm', ven' tam' præfat' R. S. Mil', qui ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' ſuum præd', & præfat' Capital' Juſtic', coram quo, &c. mis' hic record' ſuum coram eo habit', in hæc verba, Poſtea, die & loco infra content', coram infra nominat' Edwardo Saunders Mil', Capital' Juſtic' dicti Domini Regis infra ſcript', aſſociat' ſibi Edwardo Watts Gen', per formam ſtatut', &c. ven' tam infra nominat' R. Sawyer Mil', Attorn' Domini Regis nunc General', qui' ſequitur, &c. quam præd' T. P. S. S. R. G. Ford Dominus Grey, H. C. &c. per Attorn' ſuum infra ſcript': Et jur' jurat', unde infra fit mentio exact' ven' & in jur' ill' jurat' exiſtunt, et ſuper hoc publica proclamatio pro Domino Rege fact', prout mos eſt, quod ſi aliquis ſit, qui præfat' Capital' Juſtic', aut Servien' dicti Domini Regis ad legem, aut Attornatum dicti Domini Regis Generalis, aut jur' præd', de infra content' informare vellet, veniret, & audiretur; & ſuper hoc Georgius Jeffereys Mil' & Bar', ex parte dicti Domini Regis ad hoc faciend' ſe obtulit, ſuper quo proceſs' eſt per cur' hic ad caption' jur præd' pro jur' præd' modo comparen', qui ad veritat' de infra content', elect', triat', & jurat' ſuper ſacramentum præd' dicunt, quod præd' T. Gold Mil', J. Brooks, W. Miller, T. Charlton, D. Newman, J. Jekyll jun', B. Alſop, M. Meriton, J. Trenchard, & J. Byfield, non ſunt culp', nec eor' aliquis culp' eſt de præmiſs' in informatione in recordo præd' mentionat', prout interius placitando allegaver': & ulterius jur' præd' ſuper ſacramentum ſuum præd' dicunt, quod præd' Thomas Pilkington, S. Shute, Ford Dominus Grey, T. Player Mil', S. Bethell Arm', F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Kay, J. Wickham, S. Swynnock, & S. Jekyll ſen', ſunt culp', & quilibet eor' eſt culp' de præmiſs' in informatione infra ſcript' mentionat', prout per information' præd' interius verſus eos ſupponitur, ideo, &c.

Rex verſus Walcott (*b*), *for* High-Treaſon.

35 *Car'* II. *O. B.*

GUlielmus Tertius Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor' &c. dilect' & fideli noſtro Johanni Holt Militi, Capitali Juſticiario noſtro ad placita coram nobis tenend' aſſign', ſalutem. Quia in recordo & proceſſu, ac etiam in redditione judicii cujuſdam indictamenti verſus Thomam Walcott, nuper de London generoſum modo defunct', pro quibuſdam altis proditionibus perſonam Domini Caroli ſecundi nuper Regis Angliæ tangent' modo indictat' fuit, & ſuperinde per quand' jur' ſuperinde intr' præfat' nuper Regem & præfat' Thomam Walcott, capt' coram Juſtic' dict' nuper Regis ad gaolam deliberand' aſſign, convict' exit', & judicium ſuperinde reddit' fuit pro præfat' nuper Rege verſus præfat' Thomam Walcott, ut dicitur, quæ quidem recordum & proceſſum prædict' cauſa erroris intervenient' in curia noſtra coram nobis venire fecimus, & judicium inde in eadem curia noſtra coram nobis reverſatur. Et quia in reverſatione judicii prædict' coram nobis ſuper brev' de error' prædict', error intervenit manifeſtus ad grave dampnum cujuſdam Iſabellæ Dillon viduæ, Comitiſſæ Roſcomon, nuper uxori Wentworth Dillon Armig', nuper Comitis Roſcomon in regno noſtro Hibernico, ſicut ex querela ſua accepimus, nos errorem, ſi quis fuerit, modo debito corrigi, & eidem Iſabellæ plenam & celerem juſticiam fieri volentes in hac parte:

Vobis mandamus, quod ſi judicium ſuper breve de errore prædict' reverſat' ſit, tum recordum & proceſſum prædicta, cum omnibus ea tangent', nobis in parliamentum noſtrum ad proximam ſeſſionem, viceſimo octavo die inſtantis menſis Julii tenend', diſtincte, & aperte mittatis, & hoc breve, ut inſpect' record' & proceſſu prædictis, ulterius inde de aſſenſu Dominorum Spiritualium & Temporalium in eodem parliamento exiſtent', pro errore illo corrigendo fieri fac', quod de jure & ſecundum legem & conſuetudinum regni noſtri Angliæ fuerit faciend'. Teſte Thoma Archiepiſcopo Cantuar', & cæteris Cuſtodibus & Juſticiariis regni, apud Weſtm', ſexto die Julii, anno regni noſtri octavo.

Martin.

Reſpons' Johannis Holt Mil', Capital' Juſticiarii infra nominat'.

Record' & proceſs' unde infra fit mentio, cum omnibus ea tangen', Domino Regi infra nominat' in præſens parliamentum propriis manibus protuli, in quodam record' huic brevi annex', prout interius mihi præcipitur.

J. Holt.

Placita coram Domino Rege apud Weſtm' de termino Paſchæ, anno regni Domini Willielmi tertii nunc Regis Angliæ, &c. *ſeptimo.* Rot. 3.

London ff. Dominus Rex mandavit Juſtic' ſuis, per literas ſuas patentes ſub magno ſigillo, ad inquirend' per ſacram' proborum & legalium hominum civitat' London, ac aliis viis, modis, & mediis, quibus melius ſciverint aut poterint de quibuſcunque prodition', miſpriſion', prodition', inſurrection', rebellion', & al' malefactis, offens', & injur' quibuſcunque; necnon Juſtic' ſuis ad gaolam ſuam de Newgate pro civitat' London de priſon' in eadem exiſten' deliberand' aſſign', & eorum cuilibet breve ſuum in hæc verba:

Gulielmus tertius Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. Juſticiar' ſuis per literas ſuas patentes ſub magno ſigillo Angliæ confect' ad inquirend' per ſacram' proborum & legalium hominum civitat' London, ac aliis viis, modis, & mediis, quibus melius ſciverint aut poterint de quibuſcunque prodition', miſpriſion', prodition', inſurrection', rebellion', & al' malefactis, offens', & injur' quibuſcunque, necnon Juſtic' ſuis ad gaolam ſuam de Newgate pro civitat' London de priſonariis in eadem exiſten' deliberand' aſſign', & eorum cuilibet, ſalutem. Quia in recordo & proceſſu, ac etiam in redditione judicii cujuſdam indictamenti verſus Thomam Walcott nuper de London gen' defunctum, pro quibuſdam altis prodition' perſon' Domini Caroli ſecundi nuper Regis Angliæ tangent', unde indictat' eſt, & ſuperinde per quandam jur' patriæ inter præfat' Dominum nuper Regem, & præfat' Thomam Walcott, capt' coram Juſticiar' dicti Domini Caroli ſecundi nuper Regis Angliæ, &c. ad gaolam prædict' deliberand' aſſign', convict', & judic' ſuperinde reddit' ſit, ut dicitur, error intervenit manifeſtus ad grave dampnum Johannis Walcott gen', filii & hæred' præd' Thomæ, ſicut ex querela ſua accepimus: Nos errorem, ſiquis fuit, modo debito corrigi, & eidem Johanni plenam & celerem juſtitiam fieri volentes in hac parte, vobis mandamus, quod ſi judicium reddit' ſit, tunc record' & proceſs' prædict', cum omnibus ea tangent', nobis, ſub ſigillis veſtris, vel un' veſtrum, diſtincte & aperte mittat', & hoc breve, ita quo ea habeamus a die Paſchæ in tres ſeptiman', ubicunque tunc fuerimus in Anglia, ut inſpect' record' & proceſs' prædict' ulterius inde pro errore illo corrigend' fieri faciamus, quod de jure, & ſecundum legem & conſuetudinem regni noſtri Angliæ fuerit faciend'. Teſte meipſo apud Weſtm' decimo ſeptimo die Martii, anno regni noſtri ſeptimo.

Executio iſtius brevis patet in ſchedula & recordo huic brevi annex'.

Reſpons' Thomæ Lane Mil', Major' civitat' London, ac un' Juſtic' infraſcript' record' & proceſs', unde in brevi ſupradict' fuit mentio, ſequitur in hæc verba.

London ff. Memorand', quod per quandam inquiſition' capt' pro ſereniſſimo Domino Rege, apud *Juſtice Hall in the Old Bailey, London,* in

(*b*) Vol. III. p. 684. No. 117.

parochia

parochiâ ſancti Sepulchri in wardo de Faringdon extra London prædict', die Jovis, ſcilicet, duodecimo die Julii, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defenſor' &c. triceſimo quinto, coram Willielmo Pritchard' Mil', Majore civitat' London, Franciſco Pemberton Mil', Capitali Juſtic' Domini Regis de banco, &c. ac aliis ſociis ſuis Juſticiariis dicti Domini Regis, per literas patent' ipſius Domini Regis eiſdem juſticiar' prænominat', & aliis, ac quibuſcunque quatuor vel plur' eorum, ſub magno ſigillo dict' Domini Regis Angliæ confect', ad inquirend' per ſacrament' proborum & legalium hominum de civ' London, ac aliis viis, modis, & mediis, quibus melius ſcierint aut poterint, tam infra libertat' quam extra, per quas rei veritas melius ſciri poterit, & inquir' de quibuſcunque prodition', miſpriſion', prodition, &c. infra civitat' prædict', tam infra libertat', quam extra, per quoſcunque & qualitercunque habit', fact', perpetrat', ſive commiſs', per quos vel per quæ, cui vel quibus, quando, qualit', & quomodo, & de aliis articulis & circumſtant' præmiſſis, & eorum aliquod vel aliqua qualitercunque concernen' plenius veritat', & ad eadem & al' præmiſſa audiend' & terminand' ſecundum legem & conſuetudinem regni dicti Domini Regis Angliæ aſſignat', per ſacrament' Rich' Alie arm', & aliorum proborum & legalium hominum civitat' London præd', qui adtunc & ibidem jurat' & onerat' exiſtent ad inquirend' pro dict' Domino Rege pro corpore civitat' prædict' extitit, præſentat' quod Tho' Walcots nuper de London gen', ut falſus proditor contra illuſtriſſimum & excellentiſſimum principem Dominum noſtrum Carolum ſecund', Dei grat' Angl', Scot', Franc', & Hibern' Regem, & naturalem Dom' ſuum, timorem Dei in corde ſuo non habens, nec debit' ligean' ſuam ponderan', ſed inſtigatione diabolica mot' & ſeduct', dilectionem veram & debitam, & naturalem obdient', quas verus & fidelis ſubdit' dict' Domini Regis erga ipſum Dominum Regem gereret & de jure gerere tenetur, penitus ſubtrahens, & totis viribus ſuis intenden' pacem & communem tranquillitat' hujus regni Angliæ perturbare, & guerram & rebellion' contra dictum Dominum Regem ſuſcitare & movere, & gubernat' dicti Domini Regis in hoc regno Angliæ ſubvertere, & dict' Dominum Regem a titulo, honore, & regali nomine, coron' ipmerial' regni ſui Angliæ deponere & depravare, & dictum Dominum Regem ad mortem & finalem deſtruction' adducere & ponere, ſecundo die Martii, anno regni Domini Caroli ſecundi nunc Regis Angliæ, &c. triceſimo quinto, & diverſis al' diebus & vicibus, tam antea, quam poſtea, apud parochiam ſancti Michaelis Baſſiſhaw, in warda Baſſiſhaw London, malitioſe & proditorie, cum diverſis aliis proditoribus jur' præd' ignot', conſpiravit, compaſſavit, imagnat' fuit, & intendebat dictum Dominum Regem, ſupremum Dominum ſuum, non ſolum de Regali ſtatu, titulo, poteſtate, & regimine regni ſui Angliæ deprivare & dejicere, verum etiam eundem Dominum Regem interficere, & ad mortem adducere & ponere, & antiquam gubernat' hujus regni Angliæ mutare, alterare, & penitus ſubvertere, ac ſtragem miſerabilem inter ſubdit' dict' Domini Regis per totum regnum ſuum Angliæ cauſare & procurare, ac inſurrection' & rebellion' contra dict' Dominum Regem movere & ſuſcitare infra hoc regnum Angliæ, & ad eaſdem nefandiſſimas prodition', & proditorias compaſſation', imagination', & propoſita ſua præd' preimplend' & preficiend' idem Thomas Walcott, & falſus proditor, tunc & ibid' & diverſis aliis diebus & vicibus tam antea, quam poſtea, malitioſe, proditorie, & adviſate ſe aſſemblabat, conveniebat, & conſultabat cum præd' al' proditoribus jur' prædict' ignot', & cum eiſdem tractabat de & pro eiſdem ſuis proditionibus, & proditoriis compaſſation', imagination', & propoſitis ſuis proſequend', exequend' & perimplend', quodque idem Thomas Walcott, ut falſus proditor, malitioſe, proditorie, & adviſate tunc & ibidem, & diverſis al' diebus & vicibus, tam antea quam poſtea, ſuper ſe aſſumebat, & prædict' aliis proditoribus promittebat ſe fore auxiliant' & aſſiſtent' in execution' prodition', & proditor' compaſſation', imagination', & propoſit' ſua prædict' perimplend' & perficiend' & eaſdem nefandiſſimas prodition', & proditor' compaſſation, imagination', & propoſita ſua prædict' perimplend' & perficiend' idem Thomas Walcott, ut falſus proditor, malitioſe, proditorie, & adviſate tunc & ibidem arma, videlicet, (Anglice, *Blunderbuſſes*) Bumbard' (Anglice *Carabines*) Sclop' (Anglice *Piſtols*) & procurabat & præparabat contra ligeantiæ ſuæ debit', contra pacem dicti Domini nunc, coron' & dignitat' ſuas, &c. necnon contra formam ſtatut', in hujuſmodi caſu edit' & provis', &c. per quod præcept' fuit, videlicet, civitat' prædict', quod non omitt', &c. quin caperent præfat' Thomam Walcott, ſi, &c. ad reſpond', &c. & modo, ſcilicet, ad deliberation' gaolæ dicti Domini Regis de Newgate tent' pro civitat' London apud Juſtice Hall prædict', in dicta parochia ſancti Sepulchri, in warda de Faringdon extra London prædict', dicto die Jovis, undecimo die Julii, anno triceſimo quinto ſupradict', coram præfat' Willielm' Pritchard Mil', Majore civitat' London, ac aliis ſociis ſuis Juſticiariis dicti Domini Regis ad gaolam ſuam de Newgate de priſon' in ea exiſten' deliberand' aſſign', præfat' Juſtic' dicti Domini Regis prius nominat' per manus ſuas proprias deliberaver' indictament' prædict' hic in cur' de recordo in formam juris terminand', &c. ſuper quo ad iſtam eandem deliberation' gaolæ dict' Domini Regis de Newgate, tent' pro civitat' London præd' apud Juſtice Hall prædict', dicto die Jovis duodecimo die Julii, anno triceſimo quinto ſupradict', coram præfat' Juſtic' ult' nominat' ven' præd' Thomas Walcott, ſub cuſtod' Dudlei North Mil', & Petri Rich arm', Vicecom' civitat' prædict' (in quorum cuſtod' ex cauſa prædicta præantea commiſs' fuit) ad barram hic duct' in propria perſona ſua, qui committitur præfat' Vic' civitat' London, &c. & ſtatim de præmiſſis prædict', in indictament' prædict' ſpecificat', ei ſuperius impoſit' allocut', qualit' ſe vellet inde acquietari, idem Thomas Walcott dicit, quod ipſe non eſt inde culpabil', & inde de bono & malo pon' ſe ſuper patriam. Ideo immediate ven' inde jur' &c. coram præfat' Juſtic' ult' nominat' hic, &c. & jur' jurat' illius per præfat' Vic' ad hoc impanellat, ſcil', &c. exact' vener', qui ad veritat' de præmiſs' dicend' elect', triat', & jurat', dicunt ſuper ſacrament' ſuum, quod prædictus Tho' Walcott eſt culpabil' de alt' prodition' prædict' in indictament' prædict' ſpecificat', ei ſuperius impoſit' modo & forma, prout per indictament' prædict' ſuperius verſus eam ſupponitur, & quod idem Thomas Walcott nulla habuit bona ſeu catalla, terras ſive tenementa ad eorum notic'; et ſuper hoc ſtatim quæſit' eſt de præfat' Tho' Walcott, ſi quod pro ſe habeat vel dicere ſciat, quare cur' dict' Domini Regis hic ad judicium et execution' de eo ſuper veredict' prædict' procedere non debeat, qui nihil ulterius dicit præterquam ut prius dixerat, ſuper quo viſis, et per cur' hic plene intellectis omnibus et ſingulis præmiſſis, conſiderat' eſt per cur' hic, quod præd' Tho' Walcott ducatur ad gaolam dicti Domini Regis de Newgate, unde venit, et ibidem ſuper bigam ponatur, et abinde uſque ad furcas de Tyburn trahatur, et ibidem per collum ſuſpendatur, et vivens ad terram proſternatur, et quod ſecreta membra ejus amputentur, et interiora ſua extra ventrem ſuum capiantur, et in ignem ponantur, et ibidem comburantur, et quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, ill' ponantur ubi Dominus Rex ea aſſignare voluit, &c. per quod præcept' fuit Vic', quod caperent eum, ſi, &c. ad ſatisfaciend', &c. et modo, ſcil', die Jovis prox' poſt menſem Paſchæ iſto eodem termino, coram Domino Rege nunc apud Weſtm', ven' quidam Johannes Walcott, filius et hæres prædict' Thomæ Walcott defunct', de alta proditione prædict', convict' et attinct', per Benedict' Browne Attornat' ſuum, et habit' audit' record' prædict', ſuper quo præd' Thomas convict' et attinct' exiſtit, dicit, quod in record' et proceſs' prædict', ac etiam in redditione judicii prædict' manifeſte eſt errat' in hoc, vid', quod apparet per record' prædict', quod judicium reddit' eſt pro dicto Domino nuper Rege, ubi per leges hujus regni Angliæ judicium prædict' pro' dicto Thoma Walcott reddi debuiſſet, et in eo manifeſte eſt errat'. Erratum eſt etiam in hoc, viz. quod Crimina in et per indictamentum prædict' verſus prædict' Thomam impoſit', per leges hujus regni Angliæ inſerte, dubie, et nimis generalit' allegat' exiſtunt, quodque idem indictamentum ſuppoſuit, et eidem Thomæ onerat et imponit crimina diverſimoda, et toto genere inter ſe diſcrepantia, quodque judicium ſuperinde reddit', ſit et exiſtit contrarium legibus Angliæ, et minime pronunciand' vel imponend' pro vel ſuper hujuſmodi crimina, qual' in indictamento prædict' ſupponuntur, et in eo manifeſte eſt errat', unde pet' judicium cur' hic in præmiſs', et quod judic' et attinctur' prædict' ab error' prædict', et al' in recordo et proceſs' prædict' compert' exiſtent', reverſetur, adnulletur, et penitus pro nullo habeatur, et quod ipſe prædict' Johannes Wolcott filius et hæres prædict' Thomæ, ad omnia quæ ipſe præd' Johannes, occaſione judicii et attinctur' prædict' amiſit, reſtituatur, et quod cur' hic procedat ad examinationem tam record' et proceſs' prædict', quam materiar' ſuperius pro errore aſſign', &c. et quia cur' dicti Domini Regis hic de judicio ſuo de et ſuper præmiſſis reddend' nondum adviſatur, dies inde dat' eſt præfat' Johanni Walcott in ſtatuto quo nunc, &c. in cro' ſanctæ Trinitat', coram Domino Rege, ubicunque, &c. de judicio ſuo inde audiend', &c. ad quod quidem craſt' ſanctæ Trinitat, coram Domino Rege apud Weſtm' ven' prædictus Johannes Walcott per Attornat' ſuum prædict', et, ut prius, petit judicium, & quod judicium, & attinctur' prædict', verſus prædict' Thomam Walcott reddit', ab error' prædict', & al' in recordo & proceſs' prædict' compert' et exiſten', reverſetur, adnulletur, et penitus pro nullo habeatur, et quod ipſe prædict' Johannes Walcott, filius et hæres prædict' Thomæ, ad omnia quæ ipſe idem Johannes, occaſione judicii et attinctur' prædict' amiſit, reſtituatur, et quod cur' hic procedat ad examination' tam record' et proceſs' prædict', quam materiarum ſuperius pro errore aſſign', &c. *And after many Continuances, 'tis entred thus:* Super quo vis', et per cur' hic intellectis omnibus et ſingulis præmiſſis, diligenterque examinat' record' et proceſs' prædict', et err' per prædict' Johannem Walcott ſuperius aſſign', et al' in record' et proceſs' prædict' compert' exiſten', maturaque deliberatione inde prius habita, conſiderat' eſt, quod judicium prædict' ab error' prædict', et al' in record' et proceſs' prædict' compert' exiſten', revocetur, adnulletur, et penitus pro nullo habeatur, et quod prædict' Johannes Walcott, filius et hæres prædicti Thomæ Walcott, ad omnia quæ ipſe occaſione judicii et attinctur' prædict' amiſit, reſtituatur, et quod prædict' Johannes Walcott eat inde ſine die, &c. Et ſuper hoc Johannes Trevor Miles, Attorn' Domini Regis nunc general', qui pro eodem Domino Rege in hac parte ſequitur, coram Rege ac proceribus hujus regni Angliæ hoc prædicto parliamento apud Weſtm' in com' Middleſex aſſemblat', in propria perſona ſua ven' et dicit, quod in record' et proceſs', ac etiam in redditione judicii ſuper prædict' priori brevi dicti Domini Regis de errore corrigend', per prædict' Johannem Walcott proſecut' pro revocatione et adnullatione judicii prædict' verſus prædict' Thomam Walcott, ſuper indictamentum prædict', pro alta proditione prædict', reddit', manifeſte eſt erratum in hoc, *viz.* quod ubi per recordum prædict' ſupponitur, quod prædict' Johannes Walcott poſuit loco ſuo quendam Benedict' Browne Attornat' ſuum ad proſequend' prædict' primum breve de errore in et ſuper indictament' prædict' pro alta proditione prædict', quod tamen Benedict' Browne nullum habuit warrant' Attorn' pro eodem Johanne Walcott de recordo affilat', ideo in eo manifeſte eſt errat'. Errat' eſt etiam in hoc, *viz.* quod per record' prædict' apparet quod judicium prædict' pro revocatione et adnullatione judicii prædict' verſus prædict' Thomam Walcott, in forma præd' reddit', redditum fuit pro præd' Johanne Walcott verſus dict' Dominum Regem, ubi per legem terræ hujus regni Anglæ judicium ill' reddi debuiſſent pro dicto Domino Rege verſus eundem Johannem; ideo in eo ſcil' manifeſte eſt errat', et hoc parat' eſt verificare, unde pet' judicium, et quod judic' ill' ab error' prædict', et al' in record' et proceſs' prædict' exiſten', revocetur, adnulletur, et penitus pro nullo habeatur, et quod dictus Dominus Rex, ad quæ omnia ipſe occaſione revocation' et adnullation' judicii prædict' amiſit, reſtituatur, &c.

Rex

Rex verſus Sidney *(c), for* High-Treaſon.

Mich' 35 *Car'* II. *B. R.*

The Plea (drawn by Mr. Serjeant Rotheram) *which he offered to the Court.*

PRædict' Algernon Sidney dicit, quod per ſtatut' in parliamento inchoat' & tent' apud Weſtm' octavo die Maii, anno regni Domini Regis nunc decimo tertio, & ibi continuat' uſque triceſimum diem Julii tunc prox' ſequen', & ab eodem triceſimo die Julii adjornatum uſque viceſimum diem Novembris tunc prox' ſequen', intitulatum, *An Act for the Safety and Preſervation of his Majeſty's Perſon and Government againſt Treaſonable and Seditious Practices and Attempts*, inter alia, ordinat' & inactitat' fuit, per autoritatem parliamenti prædicti, quod nulla perſona ſive perſonæ, virtute actus prædicti, incurreret aliquas penalitates in actu prædicto mentionat', niſi ipſe vel ipſi proſecut' eſſet vel eſſent, infra ſex menſes prox' poſt offens' commiſs', & indict' eſſet ſuperinde infra tres menſes poſt talem proſecutionem, aliquo in ſtatuto prædict' content' in contrarium non obſtante. Et prædictus Algernon ulterius dicit, quod ipſe proſecut' fuit & commiſſus priſonæ Turris de London, pro offens' in indictamento prædict' mentionat', viceſimo ſexto die Junii ultimo præterito, & non antea, & ibidem continuat' priſonar' huc uſque, & quod ipſe prædict' Algernon non fuit indictat' pro aliquo vel aliquibus offens' in indictamento prædict' mentionat', infra tres menſes prox' poſt proſecutionem prædict'. Et hoc prædict' Algernon parat' eſt verificare; unde petit judicium, ſi ipſe prædict' Algernon, quoad aliquod crimen ſive offens' in indictamento prædict' mentionat', quod crimen vel offens' non fuit alta proditio ante confectionem ſtatuti præd', reſpondere debeat, & quoad omnes proditiones, crimina, & offens' indictamento prædict' mentionata, quæ non fuere vel fuit alta proditio ante confectionem ſtatuti prædict', idem Algernon dicit, quod per ſtatutum in parliamento tento apud Weſtm' in com' Middleſex in feſto ſancti Hilarii, anno regni Domini Edwardi nuper Regis Angliæ tertii, anno regni ſui viceſimo quinto editum, intitulatum, *A Declaration, which Offences ſhall be judged High-Treaſon*, inter alia, inactitatum fuit autoritate ejuſdem parliamenti, quod ſi ullus caſus ſuppoſitus eſſe proditio, qui non ſpecificatur in eodem ſtatuto, acciderit coram aliquibus Juſtitiariis, Juſtitiarii moram facient (Anglice *ſhall tarry*) ſine aliquo progreſſu ad judicium (Anglice *going to Judgment*) de prædicta proditione, uſque cauſa monſtretur & declaretur coram Rege & parliamento ſuo. Quodque per ſtatutum in parliamento tent' apud Weſtm' in comm' Midd', quinto die Octobris, anno regni Dominæ Mariæ nuper Reginæ Angliæ primo, intitulatum, *A Repeal of ſeveral Treaſons, Felonies and Præminires*, inactit' fuit, inter alia, autoritate ejuſdem parliamenti, quod abinde nullum factum vel offens' exiſten' per actum parliamenti, vel ſtatut' fact' proditio per verba ſcript' notationem (Anglice *Cyphering*) fact', aut aliter quocunque capt' habit' cenſus (Anglice *deemed*) vel adjudicat' eſſe alta proditio, niſi tantum tal' quæ declarantur & exprimuntur eſſe proditio in vel per actum parliamenti, vel ſtatut' factum in anno viceſimo quinto regni prænobilis Regis Edwardi tertii tangen' vel concernen' proditiones vel declarationes proditionis, & null' al', nec quod aliquæ pœnæ mortis, pœnalitates, vel forisfactur' in aliquo modo ſequuntur (Anglice *enſue*) vel ſint alicui peccatori (Anglice *Offender*) vel peccatoribus (Anglice *Offenders*) pro facien' vel committen' aliquam proditionem aliter quam tal' quæ in ſtatuto prædicto facto, in dicto anno viceſimo quinto regni dicti Edwardi Regis ordinat' & provis', aliquo actu vel actus parliamenti, ſtatut', vel ſtatuta ad aliquod tempus antea habit' vel fact' poſt dictum viceſimum quintum annum dicti nuper Regis Edwardi tertii, vel aliquam al' declarationem vel materiam in contrarium aliquo modo non obſtante. Et prædictus Algernon dicit, quod ipſe non eſt culpabilis de aliqua vel aliquibus proditione vel proditionibus in indictamento prædicto mentionat' quæ ſpecificatur vel ſpecificantur in ſtatuto ultimo mentionato modo & forma prout in indictamento prædicto mentionat'. Et de hoc ponit ſe ſuper patriam.

Rex verſus Hampden *(d), for a* Miſdemeanour.

Hil' 36 *Car'* II. *B. R.*

Midd' ſſ. QUod Johannes Hampden nuper de paroch', *&c.* Gen', exiſten' homo pernitioſus, ſeditioſus, ac perſon' pravæ mentis, necnon impiæ, inquiet', & turbulen' diſpoſition', ac machinans, practicans, & falſo, illicite, & injuſte, malitioſe, turbulent' & ſeditioſe intenden' pacem dict' Dom' Regis nunc, & communem tranquillitatem hujus regni Angl' inquietare, moleſtare, & perturbare, et, quantum in ipſo fuit ſeditiouem infra hoc regn' Angl' ſuſcitare, movere, & pericula procurare, & gubernation' dict' Dom' Regis in hoc regn' Angl' in odium inferre. Quodque præd' J. H. ad nequiſſimas, nefandiſſimas, & ſeditioſas intention' ſuas præd' perimplend' & perficiend', & ad effectum redigend' ult' die Junii, anno regni, *&c.* 35. & diverſis al' diebus & vicibus, tam antea quam poſtea, vi & armis, *&c.* apud paroch', *&c.* illicite, injuſte, malitioſe, & ſeditioſe ſe aſſemblavit, conveniebat, conſultabat, conſpirabat, & confederabat cum diverſis male diſpoſit' ſubdit' dict' Dom' Regis jur præd' ignot', & cum eiſdem tractabat de eiſdem ſuis nefandis & ſeditioſis compaſſation', imagination', & propoſit' præd' exequend', perimplend', & ad effectum redigend'. Et ulterius præd' J. H. ad nequiſſimas, nefandiſſimas, & ſeditioſas machination', practication', & intention' ſuas perimplend', & ad effectum redigend', adtunc & ibidem, ſcil', ult' die Junii, anno regni, *&c.* 35. ſuprad', & diverſis al' diebus & vicibus, tam antea, quam poſtea, apud paroch' præd' in com' præd', vi & armis, *&c.* falſo, illicite, injuſte, malitioſe, & ſeditioſe conſultabat, conſulebat, conſpirabat, & confederabat de inſurrection' infra hoc regn' Angl' habend', & de procuration' & proviſion' armor' & hominum armatorum præparandor' in diverſis locis infra hoc regn' Angl' ad eaſdem nefandiſſimas, nequiſſimas, & ſeditioſas intention', compaſſation', imagination', & propoſita ſua præd' perimplend' & perficiend'. Quodq; præd' J. H. ad nefandiſſimas, nequiſſimas, & ſeditioſas intention', ſuas præd' perimplend' et perficiend', et ad effectum redigend', poſtea (ſcil', dicto ult' die Junii, anno, *&c.* 35. ſuprad') apud paroch' præd' in com' præd', vi et armis, *&c.* falſo, illicite, injuſte, nequiſſime, malitioſe, et ſeditioſe conſultabat, agreabat, et conſentiebat, quod quædam perſona, jur' præd' ignot', mitteretur in Scotiam ad invitand' et incitand' diverſos male diſpoſit' ſubdit' dicti Dom' Regis de regn' ſuo Scotiæ ad conveniend' in hoc regn' Angl', ad adviſand' et conſultand' cum præfat' J. H. et præfat' al' male diſpoſit' ſubdit' dicti Dom' Regis in hoc regn' Angl', de auxilio et aſſiſtanc' expectand' et ſupplend' e dicto regno Scotiæ, ad eaſdem nequiſſimas, nefandiſſimas, et ſeditioſas intentiones et compaſſation' ſuas præd' perimplend', faciend', et promovend', in contempt' legum hujus regn' Angl' manifeſt', in malum et pernicioſum exemplum omnium al' in tali caſu delinquen', ac contra pacem dict' Dom' Regis nunc, coron', et dignitat' ſuas, *&c.*

Rex verſus Braddon *and* Speke *(e) for a* Miſdemeanour.

Mich' 35 *Car'* II. *Rot.* 54. *B. R.*

ſſ. QUod cum Arthur Comes Eſſex duodecimo die Jan', anno, *&c.* 35. commiſs' fuit priſon' Dom' Regis Turris London, pro quibuſdam alt' prodition' per ipſum perpetrari ſuppoſit', et idem A. Comes Eſſex exiſten' priſonar' in Tur' London' præd', pro alta proditione præd', 13. die Jan', anno regni dict' Dom' Regis 35. ſuprad', Deum præ oculis ſuis non habens, ſed inſtigatione diabolica mot' et ſeduct', apud Tur' London præd' in com' Midd', ſeipſum felonice, et ut felo de ſe, interfecit et murdravit, prout per inquiſition' capt' apud Turr' London præd', in Com' Midd' præd' 14 die Julii, anno ſuprad', coram Edwardo Farnham Arm', tunc Coron' dict' Dom' Regis libertat' Turr' London, ſuper viſum corporis præd' A. Com' E. coram Domino Rege de recordo remanen' plenius liquet et apparet. Quidam tamen Laurentius Braddon de Medio Templo London Gen', et Hugo Speke de Lincoln's-Inn in com' Midd' Gen', præmiſſor' non ignar', ſed machinan' et malitioſe, et ſeditioſe intenden' gubernation' dict' Dom' Regis hujus regn' Angl' in odium, vilipend', et contempt' ducere, 15. die Auguſti, anno regni dict' Dom' Regis nunc 35. ſuprad', et diverſis al' diebus et vicibus, tam antea, quam poſtea, apud paroch', *&c.* vi et armis, *&c.* falſo, illicite, malitioſe, et ſeditioſe conſpirabant, et conabantur cauſare ſubdit' dict' Dom' Regis hujus regn' Angl' credere, quod inquiſitio præd' indebite capt' fuit, et quod præd' A. Com' E. per quaſdam perſon' ignot', in quar' cuſtod' fuit, interfect' et murdrat' fuit, et ad malitioſas et ſeditioſas machination' et intention' ſuas præd' perficien', et ad effectum redigend', iidem L. B. et H. S. apud paroch', *&c.* dicto 15. die Auguſti, anno 35. ſuprad', falſo, illicite, injuſte, et ſeditioſe conſpiraver' procurare quoſdam falſos teſtes ad proband', quod præd' A. Com' E. non fuit felo de ſe, ſed quod idem A. Com' E. per præd' perſon' ignot' interfect' et murdrat' fuit, et ad perſuadend' al' ſubdit' dict' Dom' Regis credere hoc fore verum, iidem L. B. et H. S. falſo, malitioſe, et ſeditioſe adtunc et ibidem in ſcriptis declaraver', et declarari cauſaver' præfat' L. B. fore perſon', quæ proſequebatur murdrum præd' A. Com' E. in maximum ſcandalum et contempt' gubernation' Dom' Regis hujus regni Angl', in malum exemplum omnium al' in tali caſu delinquen', ac contra pacem dict' Dom' Regis nunc, coron', et dignitat' ſuas, *&c.* Unde idem Attorn' dict' Dom' Regis nunc general', *&c.*

Rex verſus Barnardiſton *(f), for a* Miſdemeanour.

Hil' 35 *&* 36 *Car'* II. *Rot'* 43 *B. R.*

Midd' ſſ. QUod cum quædam diabolica & proditoria conſpiratio & inſurrectio diverſar' ſeditioſar' & male-diſpoſit' perſonar' ad Dominum noſtrum Carolum ſecundum nunc Regem Angl' murdrand' & interficiend', & leges & gubernationem hujus regn' Angl', ut per leges modo conſtitut' & ſtabilit', ſubvertend' detect' fuiſſet: cumque etiam quidam Willielmus Ruſſel Arm', & diverſæ al' perſon' de conſpiratione & proditione ill' per debitum legis proceſs' fuiſſent triat', convict', et attinct', & pro eiſdem execut'. Ac quidam Algernon Sidney Arm', de conſpiratione & proditione ill' exiſtebat ſimiliter triat' & convict': Cumque ſuper triation' præd' W. R. & A. S. Willielmus Dominus Howard de Eſcrick, teſtis ex parte dict' Dom' Regis ad prodition' & conſpiration' præd' proband' product' fuiſſet, quidam Samuel Barnardiſton nuper de London Bar', exiſtens homo ſeditioſus et pernitioſus, et turbulentæ et inquietæ animæ et converſation', falſo, illicite, malitioſe, nequit' et ſeditioſe machinan' et practican' et intendens dict' Dom' Regem nunc, et gubernationem et regimen ſua, necnon publicam adminiſtrat' juſtic' in hoc regno Angl' in odium, ſcandalum, et vilipendium cum ſubdit' ſuis inducere et inferre, ac diſcordiam et ſeditionem int' dictum Dominum Regem, et ligeos ſubdit' ſuos, et int' eoſdem ſubdit' movere, incitare et ponere, necnon pacem ejuſdem Dom' Regis, et tranquillitat' hujus regn' Angl' inquietare, moleſtare, et perturbare, et conſpiration' et prodition' præd' concelare, et evident' pro dicto Rege in ea parte vilificare, ſcandalizare, et

(c) Vol. III. p. 974. No. 122. *(d)* Vol. III. p. 824. No. 123. *(e)* Vol. III. p. 855. No. 124. *(f)* Vol. III. p. 933. No. 125.

deterrere, & ad nequiſſimas, diabolicas, & neſandiſſimas machination', practication', & intentiones ſuas præd' perimplend', perficiend', & ad effectum ridigend', 20 die Septembr', anno regn' Dom' Caroli ſecundi nunc Regis Angl', &c. 35. apud paroch' ſancti Michaelis Cornhill, London; vi & armis, &c. falſo, illicite, injuſte, malitioſe, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit; & fieri, componi, ſcribi, & publicari cauſavit, quoddam falſum, ſcandaloſum, & ſeditioſum libellum, geren' dat' 29 die Novembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ falſæ, fictæ, ſcandaloſæ, libelloſæ, malitioſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videlicet, *SIR, The Return of the Duke of* Monmouth *to* Whitehall, *and his being received into extraordinary Favour of his Majeſty hath made a ſtrange Alteration of Affairs at Court; for thoſe that before ſpake of him very indecently, now court, cringe, and creep to him, His Grace complained to the King of the ſcandalous Miſrepreſentation that was made of him in the* Monday's Gazette, *upon which the Gazetteer was called to an Account for it, who alledg'd for himſelf, that a Perſon of great Quality ſent him in Writing the Words therein recited, commanding him to put them in the* Gazette. *Yeſterday being the laſt Day of the Term, all the Priſoners that were in the* Tower *upon the late ſham Preſbyterian Plot* (conſpiration' & prodition' præd' innuendo) *were diſcharged upon Bail; Mr.* Braddon, *who proſecuted the Murder of the Earl of* Eſſex, *the Information put in againſt him in the* King's Bench *by Mr. Attorney, for a pretended Subornation, &c. was not proſecuted, and his Bail was diſcharged; and the paſſing Sentence upon the Author of* Julian the Apoſtate, *and the Printer of the late Lord* Ruſſel's *Speech, was paſſed over with Silence. Great Applications are made to his Majeſty for his pardoning Mr.* Sidney *in the* Tower (dictum Algernon Sidney, ut præfertur, convict' innuendo) *which is believed will be attained, and that he will be baniſhed. The Lord* Howard (dict' Willielmum Howard innuendo) *appears deſpiſeable in the Eyes of all men; he is under a Guard at* Whitehall, *and (as believed) will be ſent to the* Tower, *for that the Duke of* Monmouth (Jacobum Ducem Monmouth innuendo) *will accuſe him concerning the Teſtimony he hath given,* &c. (evident' ſuper triation' & conviction' præd' W. R. & A. S. per eundem Dominum Howard, ut præfertur, dat' innuendo) *The Papiſts and high Tories are quite down in the Mouth, their Pride is abated, themſelves and their Plot confounded, but their Malice is not aſſwaged. 'Tis generally ſaid the Earl of* Eſſex *was murdered: the brave Lord* Ruſſel (dict' Willielmum Ruſſel, pro conſpiration' præd', ut præfertur, convict', attinct', & execut' innuendo) *is afreſh lamented. The Plot* (conſpiration' & prodition' præd' innuendo) *is loſt here, except you in the Country can find it out amongſt the Addreſſers and Abhorrers. This ſudden Turn is an Amazemet to all men, and muſt produce ſome ſtrange Event, which a little Time will ſhew.* Ac ad nequiſſimas & nefandiſſimas machination' & intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', idem S. B. Bar' poſtea (ſcil', dict' 20 die Decembris, anno regn' dict' Dom' Regis nunc 35 ſuprad') apud paroch' ſancti Michaelis Cornhill London præd', falſo, illicite, injuſte, malitioſe, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, ſcribi, & publicari cauſavit, quoddam al' falſum, ſcandaloſum, libelloſum, & ſeditioſum libellum, geren' dat' primo die Decembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ falſæ, fictæ, ſcandaloſæ, malitioſæ, libelloſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videlicet, *Dear Sir, I am to anſwer you of 27th and 29th paſt; and truly I cannot but with great Sorrow lament the Loſs of our good Friend, honeſt Sir* John Wright; *but with Patience we muſt ſubmit to the Almighty, who can as well raiſe up Inſtruments to do his Work, as change Hearts, of which we have ſo great an Inſtance in the times of the Duke of* Monmouth (præd' J. Duc' M. innuendo) *that no Age or Hiſtory can parallel. I am now thoroughly ſatisfied, that what was printed in the* Monday's Gazette *is utterly falſe, and you will ſee it ſo declared ſhortly. The King is never pleaſed but when he is with him, hath commanded all the Privy Council to wait on him, and happy is he that hath moſt of his Favour; His Pardon was ſealed and delivered him laſt* Wedneſday; *'tis ſaid, he will be reſtored to be Maſter of the Horſe, and be called into the Council Table, and to all his other Places; and 'tis reported he will be made Captain-General of all the Forces, and Lord High Admiral; and he treats all his old Friends, that daily viſit him, with great Civilities; they are all ſatisfied with his Integrity, and, if God ſpares his Life, doubt not but he will be an Inſtrument of much Good to the King and Kingdom: He ſaid publickly, that he knew my Lord* Ruſſel (dict' Willielm' Ruſſel pro conſpiration' & prodition' præd' convict', attinct', & execut' innuendo) *was as loyal a Subject as any in* England, *and that his Majeſty believed the ſame; now I intend ſhortly to wait on him myſelf. It would make you laugh to ſee how ſtrangely our High Tories and Clergy are mortified, their Countenances ſpeak it; were my Lord* S—— *to be moved for now, it would be readily granted, Sir* George (Georgium Jeffreys Mil' & Bar', Capital' Juſtic' Dom' Regis ad placita in cur' ipſius Dom' Regis coram ipſo Rege tenend' aſſign', adtunc & adhuc exiſten' innuendo) *is grown very humble. 'Tis ſaid, Mr.* Sidney (dictum A. S. innuendo) *is reprieved for forty Days, which bids well.* Ac ad nequiſſimas & nefandiſſimas machination' & intention' ſuas præd' perimplend', perficiend', & ad effectum redigend', idem S. B. poſtea (ſcilicet, dicto 20 die Decembr', anno regn' dict' Dom' Regis nunc 35. ſuprad', apud paroch' ſancti Michaelis Cornhill London præd') falſo, illicite, injuſte, malitioſe, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, & ſcribi, & publicari cauſavit, quoddam al' falſum, ſcandaloſum, libelloſum, & ſeditioſum libellum, geren' dat' primo die Decembris, anno Dom' 1683. in quo quidem libello (inter al') content' fuer' hæ falſæ, fictæ, ſcandaloſæ, malitioſæ, libelloſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videl', *The late Change here in publick Affairs is ſo great and ſtrange, that we are like Men in a Dream, can hardly believe that we ſee, and fear we are not fit for ſo great a Mercy as the preſent Juncture ſo ſeems to promiſe. The ſham Proteſtant Plot* (conſpiration' & prodition' præd' innuendo) *is quite loſt and confounded. The Earl of* Macklesfield *is bringing Actions of* Scandalum Magnatum *againſt all the Grand Jurymen that indicted him at the laſt Aſſizes, and the ſeveral Gentlemen that were indicted in* Cheſhire *and* Northamptonſhire *will bring their ſeveral Actions at Law againſt them.* Ac ad nequiſſimas & nefandiſſimas machination' & intention' ſuas præd' ulterius perimplend', perficiend', & ad effectum redigend', idem S. B. Bar' poſtea (ſcilicet, 20 die Decembr', anno regn' Dom' Caroli ſecundi nunc Regis Angl', &c. 35.) apud paroch' ſancti Michaelis Cornhill London præd', falſo, illicite, injuſte, corrupte, & ſeditioſe fecit, compoſuit, & ſcripſit, & fieri, componi, ſcribi, & publicari cauſavit quoddam al' falſum, ſcandaloſum, libelloſum, & ſeditioſum libellum, geren' dat' 4 die Decembr', anno Dom' 1683, in quo quidem libello (int' al') content' fuer' hæ al' falſæ, fictæ, ſcandaloſæ, malitioſæ, libelloſæ, & ſeditioſæ ſententiæ Anglican' ſequen', videl', *Contrary to moſt Men's Expectation, a Warrant is ſigned at laſt for beheading Mr.* Sidney (dict' Algernon Sidney innuendo) *at* Tower-Hill *next* Friday: *Great Endeavours have been uſed to obtain his Pardon, but the contrary Party have carried it, which much daſheth our Hopes; but God ſtill governs.* Ea intentione, ad incitand', movend', & procurand' ſeditionem, malevolent', & diſcord' int' dict' Dom' Regem, & ſubdit' ipſius Dom' Regis hujus regn' Angl', necnon int' ipſos ſubdit', in malum & pernitioſum exemplum omn' al' in tali caſu delinquen', ac contra pacem Dom' Regis nunc, coron', & dignitat' ſuas, &c. Unde, &c.

Rex verſus Roſewell *(g), for* High-Treaſon.

Mich' 36 *Car'* II. *Rot.* 133. *B. R.*

Surry ſſ. ALias, ſcil' die Martis, ſcil' ſeptimo die Octobris, anno regni Domini noſtri Caroli ſecundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, fidei defens', &c. tricesimo ſexto. Per quandam inquiſitionem capt' pro ſereniſſimo Domino Rege apud Kingſton ſuper Thames, in comitatu Surr', coram Georgio Com' Berkley, Franciſco Wythens Mil', un' Juſtic' dicti Domini Regis ad placita coram ipſo Rege tenend' aſſign'; Thoma Jenner Mil', un' Servien' dicti Domini Regis ac legem, ac Recordator civitat' London; Adamo Browne Bar', Franciſco Vincent Bar', Edvardo Evelin Mil' & Bar', Jacobo Clarke Mil', Chriſtophero Buckle Mil', Richardo Heath Servien' ad legem, Petro Rich, & Stephano Harvey Arm', Juſtic' dicti Domini Regis, per literas patentes ipſius Domini Regis eiſdem Juſtic' prænominat', ac quibuſcunque tribus vel pluribus eorum, ſub magno ſigillo dicti Domini Regis Angliæ confect', ad inquirend' per ſacramentum proborum & legalium hominum com' prædict', ac aliis viis, modis, & mediis, quibus melius ſciverint aut poterint tam infra libertat', quam extra, per quos rei veritas melius ſciri poterit, de quibuſcunque proditionibus, miſpriſionibus proditionum, inſurrectionibus, rebellionibus, contrafacturis, tonſur', lotur', falſis fabricationibus, & aliis falſitat' monetæ hujus regni Angliæ, ac aliorum regnorum, ſive dominiorum quorumcunque; ac de quibuſcunque murdris, feloniis, homicid', interfectionibus, burglar', raptibus mulierum, congregationibus ac conventiculis illicitis, verborum prolationibus, coadunationibus, miſpriſionibus, confederationibus, falſis allegantiis, tranſgreſſionibus, riot', rout', retentionibus, eſcapiis, contempt', falſitat', negligent' conceleament', manutenent', oppreſſionibus, cambipartiis, deceptionibus, ac aliis malefactis, offens', & injur' quibuſcunque; necnon acceſſar' eorumdem infra com' prædict', tam infra libertat', quam extra, per quoſcunque & qualitercunque habit', fact', perpetrat', ſive commiſſa, & per quos, vel per quem, cui vel quibus, quando, qualiter, & quomodo; ac de aliis articulis & circumſtantiis, præmiſſa & eorum aliquod vel aliqua qualitercunque concernen', plenius veritat', & ad eaſdem proditiones, & alia præmiſſa audiend' & examinand' aſſign', ſecundum legem & conſuetudinem regni dicti Dom' Regis Angliæ, per ſacramentum duodecim jur' proborum & legalium hominum com' prædict', qui adtunc & ibidem jurat' & onerat' exiſten' ad inquirend' pro dicto Domino Rege, & corpore com' prædict', extitit præſentat'. *Surr. ſſ.* Juratores, &c. *The whole Indictment as in the Trial.*

Quod quidem indictamentum Dominus Rex nunc coram eo poſtea, certis de cauſis, venire fecit terminand', &c. Per quod præcept' fuit Vic' com' prædict' non omitt', &c. quin caperet eum, ſi, &c. ad reſpondend', &c. Et modo, ſcil', die Jovis prox' poſt tres ſeptimanas ſancti Michaelis, iſto eodem termino, coram Domino Rege apud Weſtm', venit prædict' Thomas Roſewell, ſub cuſtod' cuſtod' priſon' de le Gatehouſe, Weſtminſt', in cujus cuſtod' præantea ex cauſa prædict' commiſs' fuit virtute brevis dicti Domini Regis de Habeas Corpus, ad ſubjiciend' & recipiend' ad barram hic duct' in propria perſon' ſua, qui committitur Marr', &c. Et ſtatim de præmiſſis ei ſuperius impoſit', alloquut', qualiter ſe velit inde acquietari, dicit, quod ipſe in nullo eſt inde culpabilis, & inde de bono & malo ponit ſe ſuper patriam. Ideo ven' inde jur' coram dicto Domino Rege apud Weſtm', die Martis in octab' ſancti Martini, per quos, &c. Et qui, &c. ad recogn', &c. quia, &c. Idem dies dat' eſt præfat' Thomæ Roſewell, ſub cuſtod' præfat' cuſtodis priſon' de le Gatehouſe Weſtm' iterum commiſs', ſalvo cuſtodiend' quouſque, &c. Ad quem quidem diem Martis in octab' ſancti Martini, coram Domino Rege apud Weſtm', venit prædict' Thomas Roſewell ſub cuſtod' præfat' cuſtod' priſon' de le Gatehouſe Weſtm' prædict', virtute brevis Domini Regis de Habeas Corpus, ad ſubjiciend', &c. ad barram hic duct' in propria perſona ſua, qui committitur Marr', &c. Et jur' prædict' per Vic' com' prædict' ad hoc impanellat' exact' ven', qui ad veritatem de præmiſſis dicend' elect', triat' & jurat', dicunt ſuper ſacramentum ſuum, quod prædict' Thomas Roſewell eſt culpabilis de alta proditione prædict', in indictament' prædict' ſpecificat', modo & forma prout per indictament' prædict' ſuperius verſus eum ſupponitur. Et quod idem Tho' Roſewell tempore perpetrationis altæ proditionis prædict', ſeu unquam poſtea, nulla habuit bona ſeu catalla, terras, ſive tenementa, ad notitiam jur' prædict'. Et quia curia dicti Domini Regis hic de judic' ſuo inde reddend', nondum adviſatur, dies inde dat' eſt præfat' Thomæ Roſewell, in ſtatu quo nunc, &c. uſque diem Mercur' prox' poſt octab' Purificationis beatæ Mariæ Virginis coram Domino Rege, ubicunque, &c. de judic' ſuo inde reddend', &c.

(g) Vol. III. p. 997. No. 130.

Ante quem diem dictus Dominus Carolus ſecundus Rex Angliæ, &c. diem ſuum clauſit extremum, & Dominus Jacobus ſecundus ſuper ſe ſuſcepit gubernationem hujus regni Angliæ. Et modo, ſcilicet die Mercur' prox' poſt octab' Purificationis beatæ Mariæ virginis, iſto eodem termino coram Domino Rege apud Weſtm' venit prædict' Thomas Roſewell in propria perſona ſua, ſub cuſtod' præfat' cuſtodis priſon' de le Gatehouſe Weſtm' prædict', & alloquut' ei ſi quid pro ſe habeat, vel dicere ſciat, quare curia hic ad judic' ſuper indictament' prædict' procedere non debeat, dicit, quod dictus Dominus Carolus ſecundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ nuper Rex, fidei defenſor, &c. per literas ſuas patent' ſub magno ſigillo ſuo Angliæ ſigillat', geren' dat' apud Weſtm' viceſimo octavo die Januar', anno regni ſui triceſimo ſexto, de gratia ſua ſpeciali, ac ex certa ſcientia & mero motu ſuis, pardonavit, remiſit, & relaxavit, ac per eaſdem literas patentes, pro ſe, hæred', & ſucceſſor' ſuis, pardonabat, remittebat, & relaxabat eidem Thomæ Roſewell, per nomen Thomæ Roſewell nuper de paroch' de Redriffe in com' Surr' Clerico, ſeu quocunque alio nomine vel cognomine, ſeu additione nominis vel cognominis, aut loci, idem T. Roſewell ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, omnes proditiones, quaſcunque, unde præfat' Thomas Roſewell in termino ſancti Michaelis jam ult' elaps', in curia dicti nuper Regis, coram ipſo Rege apud Weſtm' tent', convict' ſive attinct' fuit; ac omnia & ſingula indictament', judicia, convictiones, condemnationes, executiones, impriſonament', punitiones, & omnes alias pœnas & pœnalitat' quæcunque ſuper vel verſus ipſum Thomam Roſewell, de, pro, ſive concernen' præmiſſis, ſeu eorum aliquo habit', fact', reddit', ſive adjudicat', aut in poſterum habend', reddend', faciend', ſive adjudicand', necnon omnia & ſingula utlagar' verſus dictum Thomam Roſewell, ratione ſeu occaſione præmiſſorum, ſeu eorum aliquor' vel alicujus promulgat', ſive in poſterum promulgand', ac omn' & omnimod' ſect', querel', forisfactur', impetitiones & demand' quæcunque, quæ dictus nuper Rex verſus ipſum ratione præmiſſorum, ſeu eorum alicujus, habuit, habet, ſeu in futuro habere poterit, aut hæred' ſeu ſucceſſores dicti nuper Regis ullo modo habere poterint in futuro, ſectamque pacis ipſius nuper Regis, quæ ad ipſum nuper Regem verſus præfat' Thomam Roſewell pertinet, ſeu pertinere poteſt occaſione præmiſſorum, ſeu eorum aliquor' vel alicujus; & firmam pacem dicti nuper Regis ei inde dabat & concedebat per eaſdem literas patent', volens quod idem Thomas Roſewell per Vicecomites, Juſtic', Ballivos, aut alios miniſtros ipſius nuper Regis, hæred', ſeu ſucceſſor' ſuorum, occaſione præmiſſor', ſeu eorum alicujus, moleſtetur, occaſionetur, perturbetur, ſeu in aliquo gravetur; volens quod eædem literæ ſuæ patent', quod omnia & ſingula præmiſſa ſuperius mentionat', bon', firm', valid', ſufficient', & effectual' in lege ſint & erint, licet crimina & offens' prædict' minus certe ſpecificat' exiſtunt; quodque pardonatio illa in omnibus cur' dicti nuper Regis, & alibi, interpretetur & adjudicetur in beneficentiſſimo ſenſu, pro firmiori exoneratione præfat' Thomæ Roſewell, ac etiam placitetur & allocetur in omnibus cur' dicti nuper Regis, abſque aliquo brevi de allocatione in ea parte prius obtent' ſive obtinend', non obſtant' ſtatut' in parliamento, anno regni dict' nuper Regis decimo tertio fact' & edit', & non obſtante aliquo defect' aut aliquibus defectibus in eiſdem literis patent' content', aut aliquo alio ſtatut', actu, ordinatione, proviſione, proclamatione, ſive reſtrictione, aut aliqua alia re, cauſa, vel materia quacunque in contrar' inde in aliquo non obſtant'. Ita tamen quod dictus Thomas Roſewell tal' bon' & ſuffic' ſecuritat' de ſe bene gerend', a dat' literar' patent' prædict' erga dictum nuper Regem, hæred', & ſucceſſores ſuos, & cunctum populum ſuum inveniat, qual' appunctuat' & limitat' erit per Capital' Juſtic' de cur' præd' pro tempore exiſten'. Et idem Thomas Roſewell profert hic in cur' literas patentes præmiſſa teſtificantes in hæc verba:

Carolus ſecundus, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor, &c. omnibus ad quos præſentes literæ noſtræ pervenerint, ſalutem. Sciatis, quod nos de gratia noſtra ſpeciali, ac ex certa ſcientia, & mero motu noſtris, pardonavimus, remiſimus, & relaxavimus, ac per præſentes, pro nobis, hæredibus, & ſucceſſoribus noſtris pardonamus, remittimus, & relaxamus Thomæ Roſewell, nuper de paroch' de Redriffe in com' Surr' Clerico, ſeu quocunque alio nomine vel cognomine, ſeu additione nominis, aut loci, idem Thomas Roſewell ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur vocabatur, ſive nuncupabatur, omnes proditiones quaſcunque, unde præfat' Thomas Roſewell, in termino ſancti Michaelis jam ult' elaps', in curia noſtra coram nobis apud Weſtmonaſt' tent', convict' ſive attinct' fuit; ac omnia & ſingula indictamenta. judicia, convictiones, condempnationes, executiones, impriſonamenta, punitiones, & omnes alias pœnas & pœnalitates quaſcunque ſuper vel verſus ipſum Thomam Roſewell, de, pro, ſive concernen' præmiſſis, ſeu eorum aliquibus habit', fact', reddit', ſive adjudicat', aut in poſterum habend', reddend', faciend', ſive adjudicand', nec non omnia & ſingula utlagar' verſus dict' Thomam Roſewell, ratione ſeu occaſione præmiſſorum, ſeu eorum aliquorum vel alicujus promulgat', ſive in poſterum promulgand', ac omnia & omnimod' ſect', querel', forisfactur', impetitiones, & demand' quæcunque, quæ nos verſus ipſum ratione præmiſſorum, ſeu eorum alicujus habuimus, habemus, ſeu in futuro habere poterimus, aut hæred' ſeu ſucceſſor' noſtri ullo modo habere poterint in futuro, ſectamque pacis noſtræ, quæ ad nos verſus præfat' Thomam Roſewell pertinent, ſeu pertinere poterint ratione præmiſſorum ſeu eorum aliquorum vel alicujus; & firmam pacem noſtram ei inde damus & concedimus per præſentes, nolentes quod idem Thomas Roſewell, per Vicecomites, Juſticiar', Ballivos, aut alios miniſtros noſtros, hæredum, ſeu ſucceſſor' noſtrorum, occaſione præmiſſorum, ſeu eorum alicujus, moleſtetur, occaſionetur, ſeu in aliquo gravetur. Volent' quod hæ literæ noſtræ patentes, quoad omnia & ſingula præmiſſa ſuperius mentionat', bonæ, firmæ, valid', ſufficient', & effectual' in lege ſint & erint, licet crimina & offens' prædict' minus certe ſpecificat exiſtunt, quodque hæc pardonatio noſtra in omnibus curis noſtris, & alibi, interpretetur & adjudicetur in beneficentiſſimo ſenſu, pro firmiori exoneratione præfat' Thomæ Roſewell, ac etiam placitetur & allocetur in omnibus curiis noſtris abſque aliquo brevi de allocatione in ea parte prius obtent', ſive obtinend', non obſtante ſtatut' in parliament' anno regni noſtri decimo tertio fact' & edit', & non obſtant' aliquo defect', aut aliquibus defectibus in his literis patentibus content', aut aliquo alio ſtatuto, actu, ordinatione, proviſione, proclamatione, ſive reſtrictione, aut aliqua alia re, cauſa, vel materia quacunque in contrar' inde in aliquo non obſtante; ita tamen, quod dict' Thomas Roſewell tal' bon' & ſufficien' ſecuritat' de ſe bene gerend' ex nunc erga nos, hæred' & ſucceſſores noſtros, & cunctum populum noſtrum inveniat, qual' appunctuat' & limitat' erit per Capital' Juſtic' de curia prædict' pro tempore exiſten'. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes, teſte meipſo apud Weſtmonaſt' viceſimo octavo die Januarii, anno regni noſtri triceſimo ſexto.

Per breve de privato ſigillo, *Barker.*

Super quo vis' & per cur' hic intellect' omnibus & ſingulis præmiſs', cons' eſt per cur' hic, quod prædict' Thomas Roſewell (ſub conditione mentionat' in literis patent' ſuperius recitat') de altis proditionibus prædict' in indictament' prædict' ſuperius ſpecificat' exoneretur, & eat inde ſine die.

On the Back of the Pardon is written as follows:

Iſta Charta placitatur, allocatur, & irrotulatur de record' coram Domino Rege apud Weſtm' termino ſancti Hilar', anno regni Domini Jacobi ſecundi nunc Regis Angl', &c. primo.

Rex verſus Hayes (h), *for* High-Treaſon.

Mich' 36 *Car'* II. *B. R.*

London ſſ. QUod Joſephus Hayes nuper de London mercator, ut falſus proditor contra illuſtriſſimum & excellentiſſimum Principem Dom' Carolum ſecundum, Dei gratia Angl', Scot', Franc', & Hiberniæ Regem, & naturalem Dominum ſuum, timorem Dei in corde ſuo non habens, nec debitum ligeanc' ſuæ ponderans, ſed inſtigatione diabolica mot' & ſeduct', dilection' veram & debitam, & naturalem obedienc', quas verus & fidel' ſubdit' dict' Dom' Reg' erga ipſum Dom' Regem gereret, & de jure gerere tenetur pentitus ſubtrahens, & totis viribis ſuis intendens pacem & communem tranquillitat' hujus regni Angl' iniquietare, moleſtare, & perturbare, & guerram & rebellion' contra dict' Dom' Regem ſuſcitare & movere, & gubernation' dict' Dom' Reg' in hoc regn' Angl' ſubvertere, & dict' Dom' Regem a titulo, honore, & regali nomine, coron' imperial' regni ſui Angl' deponere, dejicere, & deprivare, & dict' Dom' Regem ad final' deſtruction' adducere & ponere, 31. die Auguſti, anno reg' Dom' Caroli ſecundi nunc Reg' Angl', &c. 35. apud paroch' ſancti Mich' Baſſiſhaw, in warda de Baſſiſhaw London, ſatis ſciens, quendam Thomam Armſtrong nuper de London Milit', ut falſum proditor', proditorie conſpiraviſſe & imaginat' fuiſſe mortem & final' deſtruction' dict' Dom' Reg', & pro eadem proditione proditorie fugam feciſſe, ipſe præd' Johannes Hayes poſtea, ſcilicet dicto 31. die Auguſti anno reg' dict' Dom' Regis nunc 35. ſuprad', & diverſis al' diebus & vicibus, tam antea quam poſtea, apud paroch' ſancti Michael' Baſſiſhaw, in warda de Baſſiſhaw London præd', ſcienter, malitioſe, ſeditioſe, & proditorie præd' T. Armſtrong comfortavit, ſubſtinuit, & manutenuit, & præd' J. H. adtunc & ibidem pro comfortatione, ſuſtentatione, & manutentione præd' T. A. ſummam attingen' ad centum & quinquaginta libras legal' monet' Angl', malitioſe, ſeditioſe, & proditorie ſolvit, & ſolvi cauſavit, contra ligeanc' ſuæ debitum, ac contra pacem dict' Dom' Regis nunc, coron', & dignitat' ſuas, &c. necnon contra formam ſtatuti, &c.

Pritchard *verſus* Papillon (i), *An Action for* Falſe Impriſonment.

Paſchæ 36 *Car'* II. *B. R.*

London ſſ. WIlhelmus Pritchard Miles, nuper Major civit' prædict', querit' de Thoma Papillon in cuſtod' Mar', &c. pro eo videlicet, quod cum duodecimo die Februarii, anno noſtri Domini Caroli ſecundi nunc Regis Angliæ, &c. triceſimo quinto, ipſe idem Wilhelmus Pritchard, ac antea, & abinde per ſeparat' menſes ex tunc prox' ſequend' extitit Major civitat' London præd', in officium Majoratus illius debito modo elect', præfect', & jurat', ac ſecundum conſuetudinem civitat' London' prædict', a tempore cujus contrar' memoria hominum non exiſtit, in eadem uſitat' & approbat' officium ſuum Majoratus illius indies intendi debuit, per aſſiduam diligent' ipſius Wilhelmi in regimine civitat' illius, per ipſum ſecundum debitum officii ſui præd' exequend', & performand' ad honorem & dignitat' ad officium illud ſpectant' & pertinen', prædictus tamen Thomas exiſtens unus de Comitat' civitat' præd', & ſub regimine dicti Wilhelmi, virtute officii ſui prædicti, præmiſſor' non ignarus, ſed machinans, & falſe ac malitioſe invidens felici ſtatui ipſius Wilhelmi in officio ſuo prædict', necnon ipſum Wilhelmum in executione officii illius minus juſte inquietare & diſturbare, prædicto duodecimo die Februarii, anno triceſimo quinto ſupradicto, idem Thomas Papillon, pro vexatione præfat' Wilhelmo adhibend' (eodem Thoma adtunc non habente aliquam legitimam vel probabilem cauſam actionis verſus ipſum Wilhelmum) falſe & malitioſe proſequut' fuit extra cur' dicti Domini Reg' coram ipſo Rege nunc habit', ſcilicet, apud Weſtmon' in com' Middleſex adtunc & adhuc tent' exiſten', quoddam breve ipſius Dom' Reg' de alias Capias

(h) Vol. III, p. 1067. N° 131.

(i) Vol. III. p. 1072. N° 132.

verſus

verſus ipſum Wilhelmum, per nomen Wilhelmi Pritchard, Militis, adtunc Coronator' civitat' London' præd' direct', per quod quidem breve idem Dominus Rex nunc eidem tunc Coronatori præcepit quod caper' ipſum Wilhelmum Pritchard, ſi invent' foret in civitat' London' præd', & eum ſalvo cuſtodiret, ita quod haberet corpus ejus coram Domino Rege apud Weſtm' die cur' prox' poſt quindenam Paſchæ ex tunc prox' ſequend', ad reſponden' præfat' Thomæ Papillon, per nomen Thomæ Papillon, Armiger', de placito tranſgres', & quod idem tunc Coronator haberet ibi tunc breve illud. Et prædictus Thomas Papillon, ex ulteriori nequitia & malitia ſua præcogitat' verſus ipſum Wilhelmum, poſtea & ante retorn' brevis prædicti, ſcilicet, viceſimo quarto die Aprilis, anno triceſimo ſupradicto, apud London' præd', videlicet, in parochia ſanctæ Mildredæ Virginis in Pulletria, in warda de Cheap', London, prædictum breve de alias capias cuidam Johanni Brome, Gen', adtunc Coronator' civit' London præd' exiſten', deliberavit exequend', ac adtunc & ibidem apud Wilhelmum adtunc Major' civitat' London' præd', ut præfert', exiſten', prætextu brevis illius præd' corp' ſuum capi & arreſtari, ac in priſona ſub cuſtod' ejuſdem tunc Coronator' per ſpatium ſex horarum, ex tunc prox' ſequen', detineri malitioſe & minus juſte procuravit, in vituperation', derogation', & vilipendium prædicti Wilhelmi & officii Majoratus ipſius Wilhelm' præd', necnon ad damnum, præjudicium, & gravamen ipſius Wilhelmi manifeſt', ubi revera, & de facto prædictus Thomas Papillon, prædicto tempore captionis, arreſtionis, & detentionis ipſius Wilhelm' in priſona ſic, ut præfert' fact', non habuit aliqam juſtam vel probabilem cauſam actionis verſus ipſum Wilhelmum in præmiſſis præd', unde idem Wilhelmus dic' quod ipſe deteriorat' eſt, & damnum habet ad valent' decem mille librarum, & inde produc' ſectam, *&c.*

Rex verſus Hampden (k) *for* High-Treaſon.

1 *Jac'* II. *O. B.*

Midd' ſſ. DOminus Rex mandavit Juſtic' ſuis ad inquirend' per ſacram' probor' ac legal' homin' de Com' Midd', ac aliis viis, modis & mediis, quibus melius ſciverint aut poterint, de quibuſcunq; proditionibus, miſpriſionibus prodition', inſurrectionibus, rebelliionibus, contrafactur', tonſur', lotur', falſis fabricationibus & al' falſitat' monet' hujus regni Angliæ, & al regnor', ſive dominior' quorumcunque, ac de al' offens & injur' quibuſcunque, ac Juſtic' ſuis ad gaolam ſuam de Newgate de priſonar' in eadem exiſten', deliberand' aſſign', necnon cuſtod' pacis ſuæ, ac Juſtic' ſuis ad divers' felon', tranſgr', & al' malefacta in eodem Com' perpetrat', audiend', & terminand' aſſign', & eorum cuilibet breve ſuum clauſum, in hæc verba: Jacobus ſecundus, dei gratia, *&c.* Juſtic' noſtris ad inquirend' per ſacrament' proborum & legalium homin' de Com' Midd', ac aliis viis, modis & mediis, quibus melius ſciverint aut poterint, de quibuſcunque proditionibus, miſpriſionibus prodition', inſurrection', rebellion', contrafactur', tonſur', lotur', falſis fabricationibus, & al' falſitat' monet' hujus regni Angliæ, & al' regnor' ſive dominior' quorumcunque, ac de al' offens' & injur' quibuſcunque, ac Juſtic' noſtris ad gaolam noſtram de Newgate, de priſonar' in eadem exiſten' deliberand' aſſign', necnon cuſtod' pacis noſtræ, ac Juſtic' noſtris ad divers' felon', tranſgr', & al' malefacta in eodem Com' perpetrat', audiend', & terminand' aſſign', & eorum cuilibet, ſalutem. Volen' certis de cauſis record' conviction', Johannis Hampden, Gen', pro quibuſdam altis proditionibus unde coram nobis indictat' eſt, & ſuperinde convict' extitit, ut dicitur, coram nobis per vos mitti, vobis & cuilibet veſtrum mandamus, quod record' præd', cum omnibus illud tangend', adeo plene et integre prout coram vobis jam reſidet, quocunque nomine idem Johannes nuncupetur in eodem, coram nobis ſub ſigill' veſtris, aut unius veſtrum, a die Paſchæ in quindecim dies ubicunque tunc fuerimus in Angl' mittat', ſeu unus veſtrum mittas, una cum hoc brevi, ut ult' inde fieri fac', quod de jure ac ſecundum legem & conſuetud' regni noſtri Angliæ fore viderimus faciend', T. E. Herbert, Mil', *&c.* *Per Cur'* Aſtry.

Quod quidem breve & record' in eodem brevi mentionat', retornat', & certificat' fuit, prout ſequitur: ſſ. Virtute iſtius brevis mihi & al' direct', record' conviction' infra nominat' Johan' Hampden, Gen', unde in iſto brevi fit mentio, cum omnibus ea tangen', coram Dom' Rege huic brevi annex', mitto prout interius præcipitur: *Reſpons' Roberti, Jeffereys, Mil', Major' civit' London', ac ún' Juſtic' infraſcript'.* Midd' ſſ. Memorand' quod, ad Seſſion' Oyer & Terminer Dom' Regis, tent' pro Com' Midd' apud Hicks's Hall, in St. John's-Street, in Com' præd', die Lunæ, ſcil', 7. die Septemb', anno regni Dom' noſtri Jacobi ſecundi, Dei gratia, *&c.* primo, coram W. Smith, Bar', J. Berry, Mil', & al' ſociis ſuis, Juſtic' dicti Dom' Regis, per literas paten' ipſius Dom' Regis eiſdem Juſtic' prænominat', ac quibuſcunque quatuor vel pluribus eor', ſub magno ſigillo dicti Dom' Regis Angliæ confect', ad inquirend' per ſacrament' probor' & legalium homin' Com' Midd' præd', ac omnibus al' viis, modis & mediis, quibus melius ſciverint aut poterint, tam infra libertat' quam extra, per quos rei veritas melius ſcir' poterit, & inquiri de quibuſdam prodition', miſpriſion' prodition', inſurrectionibus, rebellionibus, contrafactur', tonſur', lotur', falſis fabricationibus, & al' falſitat' monet' hujus regni Angliæ, & al regnor' ſive dominior' quorumcunque, ac de quibuſcunque murdris, felon', homicid', interfection', burglar', raptibus mulierum, congregationibus & conventicul' illicit', verbor' prolationibus & coadunationibus, miſpriſionibus, confederationibus falſis, alleganc', tranſgr', riot', rout', retentionibus, eſcapiis, contempt', oppreſſionibus, ac de al' articulis & offens' in eiſdem literis paten' dicti Dom' Regis ſpecificat', necnon acceſſar' corundem, infra Com' præd', tam infra libertat' quam extra, per quoſcunque & qualitercunque habit', fact', perpetrat', ſive commiſs', ac de al' articulis & circumſtantiis præmiſs' & eor' aliquo vel alit' qualitercunque concernen' plenius veritat', & ad eaſdem proditiones & al' præmiſs' audiend' & terminand', ſecund' legem & conſuetud' hujus regni Angliæ, aſſign', per ſacrament' W. Wood, Ar' & 14 al' probor' & legalium homin' Com præd', adtunc & ibidem jurat' & onerat' ad inquirend' pro dicto Domino Rege & corpore Com' præd', præſentat' exiſtit, modo & forma ſequen', ſcil', Midd' ſſ. Jur' pro Domino Rege ſuper ſacrament' ſuum præſentant, quod Johannes Hampden, nuper de paroch' ſancti Ægidii in campis in Com' Midd', Gen', ut falſus proditor contra illuſtriſſimum & excellentiſſimum principem Dom' Carolum ſecundum, nuper Regem Angliæ, *&c.* naturalem Dominum ſuum, timorem Dei in corde ſuo non habens, nec debit' ligeanc' ſuæ ponderans, ſed inſtigatione diabolica mot' & ſeduct', cordialem dilection', & veram, debitam & naturalem obedienc' quas verus & fidel' ſubdit' dicti nuper Dom' Regis erga ipſum nuper Dom' Regem gereret, & de jure gerere tenebatur, penitus ſubtrahens, & machinans, practicans, & totis virib' ſuis intendens pacem & communem tranquillitat' hujus regni Angliæ inquietare, moleſtare, & perturbare, & guerram & rebellion' contra dictum nuper Dom' Regem infra hoc regnum Angliæ ſuſcitare, movere, & procurare, & gubernation' dicti nuper Dom' Regis hujus regni ſui Angliæ ſubvertere, mutare, & alterare, & dictum nuper Dom' Regem a titulo, honore, & regali nomine, & corona imperiali regni ſui Angliæ deponere & deprivare, & dictum nuper Dom' Regem ad mortem & final' deſtruction' adducere & ponere, 20 die Julii, anno regni dicti Dom' Caroli ſecundi, nuper Regis Angliæ, 35 & divers' al' diebus & vicibus, tam antea quam poſtea, apud paroch' ſancti Ægidii in campis in Com' Midd', falſo, malicioſe, diabolice, & proditorie, cum divers' al falſis rebellibus & proditoribus jur' præd' ignot', conſpiravit, compaſſavit, imaginat' fuit, & intendebat dictum nuper Dominum Regem, tunc ſupremum & naturalem Dom' ſuum, non ſolum de regali ſtatu, titulo, poteſtat', & regimine regni ſui Angliæ deprivare, & dejicere, verum etiam eundem nuper Dom' Regem interficere, & ad mortem adducere & ponere, & antiquam gubernation' hujus regni Angliæ mutare, alterare, & penitus ſubvertere, & ſtragem miſerabil' inter ſubdit' dicti nuper Dom' Regis per totum regnum ſuum Angliæ cauſare & procurare, & inſurrection' & rebellion' contra dictum nuper Dom' Regem infra hoc regn' Angliæ procurare & auxiliari; & ad eaſdem nequiſſimas, nefandiſſimas, & diabolicas prodition' & proditor' compaſſation', imagination', & propoſita ſua prædict' perimplend', perficiend', & ad effectum redigend', idem Johannes Hampden, ut falſus proditor tunc & ibidem, ſcil', dicto 20 die Julii, anno regni dicti nuper Dom' Regis 35 ſupradict', & divers' al' diebus & vicibus, tam antea quam poſtea, apud parochiam ſancti Ægidii in campis præd' in dicto com' Midd', falſo, illicite, nequiſſime, diabolice, & proditorie, cum Jacobo nuper Duce Monmouth, & divers' al' falſis proditor' jur' præd' ignot', ſe aſſemblabat, congregabat, conſultabat, & conſentiebat ad ſuſcitand' & procurand' divers' magn' denar' ſumm' & ingent' numerum homin' armat', ad guerram & rebellion' contra dictum nuper Dominum Regem infra hoc regn' proditiorie levand' & faciend', contra debit' ligeanc' ſuæ, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, necnon contra formam ſtatuti in hujuſmodi caſu edit' & provis', *&c.* Per quod præcept' eſt Vic' com' Midd', quod non omitteret, *&c.* quin caperet eum ad reſpondend, *&c.* Ac quod ad deliberation' goal' dicti Dom' Regis de Newgate tent' pro com' Midd' præd' apud Juſtice-Hall in le Old Baily in ſuburbiis civitat' London', die Mercur', ſcil', 9 die Decembr', anno regni dicti Dom' Regis Jacobi ſecundi nunc Regis Angliæ, *&c.* primo ſuprad', coram Roberto Jeffereys, Mil', Major' civit' London', Edwardo Herbert, Mil' Capital Juſtic' dicti Dom' Regis ad placita coram ipſo Rege tenend' aſſign', & al' ſociis ſuis Juſtic' dicti Dom' Regis, ad gaolam ſuam de Newgate de priſonar' in eadem exiſten' deliberand' aſſign', iſta gaolæ deliberatio adjornat' fuit per præfat' Juſtic' dicti Dom' Regis, ult' nominat' hic uſque diem craſtin', diem Jovis, ſcil', 10 diem ejuſdem menſis Decembr', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd' tenend', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ad faciend' ulterius prout cur ibidem conſideraret, *&c.* Et ſuper eundem diem Jovis 10 diem ejuſdem menſis Decembr', anno primo ſuprad', iſta gaol' deliberatio tent' fuit per adjorn' præd' pro com' præd', apud Juſtic' Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ac adtunc & ibidem præd' gaol' deliberatio dicti Dom' Regis ulterius adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat' ibidem uſque diem craſtin', diem Veneris, ſcil', 11 diem ejuſdem menſis Decembr', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd' tenend', ad faciend' ulterius prout cur' ibidem conſideraret, *&c.* Ac ad eundem diem Veneris 11 diem ejuſdem menſis Decembr', anno primo ſuprad', deliberatio iſtius gaolæ tent' fuit per adjorn' prædict' pro com' præd', apud Juſtice Hall præd' coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ac adtunc & ibidem præd' deliberatio goal' dicti Dom' Regis ulterius adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat' hic uſque diem Sabbati, ſcil', 19 diem ejuſdem menſis Decembr', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd' tenend' coram præfat' Juſtic' dicti Dom' Regis nunc ult' nominat', ad faciend' ulterius prout cur' ibidem conſideraret, *&c.* Ac ad eundem diem Sabbati 19 diem ejuſdem menſis Decembr', anno primo ſuprad', deliberatio iſtius gaol' tent' fuit per adjorn' præd' pro com' præd, apud Juſtice Hall præd', coram præfat', Juſtic' dicti Dom' Regis ult' nominat', ac adtunc & ibidem præd' deliberatio gaolæ dicti Dom' Regis ulterius adjornat' fuit per præfat' Juſtic' dicti Dom' Regis ult' nominat', hic uſque diem Mercur', ſcil', 30 diem ejuſdem menſis Decemb', anno primo ſuprad', ad horam ſeptimam ante meridiem ejuſdem diei, apud Juſtice Hall præd', tenend' coram præfat' Juſtic' dicti Dom' Regis ult' nominat', ad faciend' ult' prout cur' ibidem conſideraret, *&c.* Ac ad eundem diem Mercur', 30 diem ejuſdem menſis Decembr', anno primo ſuprad', deliberatio iſtius gaolæ tent' fuit per adjorn' præd' pro com' præd' apud Juſtice Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult' nominat', & ad eundem diem Mercur' 30 diem ejuſdem menſis Decembr' anno ſuprad', ad dictam deliberation' gaolæ dicti Dom' Regis adtunc tent' per adjornament' præd' pro com' præd', apud Juſtice Hall præd', coram præfat' Juſtic' dicti Dom' Regis ult nominat', præfat' Juſtic' dicti Dom' Regis per dictas literas paten' ipſius Dom' Regis, ſub magno ſigill' Angl',

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ut præfertur confect', per manus ſuas propr' deliberaver' indictament' præd' hic in cur' de record', in forma juris terminand', &c. Ac ſuperinde ad iſtàm eandem deliberat' gaol' dicti Dom' Regis de Newgate tent' per adjorn' præd', pro com' præd', apud Juſtice Hall præd', præd' die Mercur' 30 die ejuſdem menſis Decembr', anno primo ſuprad', coram præfat' Juſtic' dicti Dom' Regis, ad præd' gaolam ipſius Dom' Regis de Newgate præd', de priſonar' in eadem exiſten' deliberand' aſſign', ven' præd' Johannes Hampden ſub cuſtod' Benjamin' Thorowgood, & T. Kinſey, Mil' Vic' com' Mid' præd', in cujus cuſtod' ex cauſa præd' præantea commiſs' fuit, ad barr' hic duct' in propr' perſona ſua, qui committitur præfat' Vic', &c. Et ſtatim de præmiſs' in indictament' præd' ſpecificat' ei ſuperius impoſit', allocut' qualit' ſe velit inde acquietari, idem Johannes Hampden dic' quod ipſe non poteſt dedicere, quin ipſe eſt culpabil' de alta proditione præd' in indictament' præd' ſpec' ei ſuperius impoſit' modo & forma prout per indictament' præd' ſuperius verſus eum ſupponitur, & altam prodition' præd' in indictament' præd' expreſſe cognovit: Et ſtatim quæſit' eſt de præfat' Johanne Hampden, ſi quid pro ſe habeat, vel dicere ſciat, quare cur' hic ad judic' & execution' de eo ſuper conviction' ſuam præd' & cognition' ſuam propr' altæ proditionis præd' indictament' præd' ſuperius ſpec' procedere non debeat, qui nihil ulterius dic' præterquam ut prius dixerat, ſuper quo vis', & per cur' hic intellectis omnibus & ſingulis præmiſs' cons' eſt per cur' hic, quod præd' Johannes Hampden ducatur ad gaol' dicti Dom' Regis de Newgate unde ven', & ibidem ſuper traham ponatur, & abinde ad locum execution' trahatur, & ibidem per collum ſuum ſuſpendatur, & vivens ad terr' proſternatur, & quod ſecreta membra ſua amputentur, & interiora extra ventrem ſuum capiantur, & in ignem ponantur, & ibidem comburentur, & quod caput ejus amputetur, quodque corpus ejus in quatuor partes dividatur, & quod caput & quarteria ſua ponantur ubi Dominus Rex ea aſſign' voluerit: Et modo, ſcil' die Mercur' prox' poſt quinden' Paſchæ iſto eodem termino, coram Dom' Rege apud Weſtm' ven' præd' Johannes Hampden, juxta formam recognition' per ipſum & pleg' ſuos in hac parte prius cognit' in propr' perſona ſua, qui committitur Mar', &c. & adtunc & ibidem per cur' dicti Dom' Regis hic quæſit' eſt de eodem Johanne Hampden, ſi quid pro ſe habeat, vel dicere ſciat, quare cur' hic ad execution' ſuper judic' præd' in forma præd' reddit' procedere non debeat, qui ſtatim dic' quod dictus Dominus Rex nunc, ex gra' ſua ſpeciali, ac ex certa ſcienc' & mero motu ſuis, per ſuas literas paten' ſub magno ſigillo ſuo Angliæ, geren' dat' apud Weſtm' 19 die Febr', anno regni dicti Dom' Regis nunc ſecundo, pardonavit, remiſit, relaxavit ac per præſentes pro ſe, hæredibus, & ſucceſſoribus ſuis, pardonavit, remiſit, & relaxavit Johanni Hampden nuper de paroch' ſancti Ægidii in campis in com' Midd', Gen', ſeu quocunque al' nomine vel cognitione, ſeu adition' nominis vel cognitionis aut loci, idem J. ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, omn' & omnimod' proditiones, miſpriſion' prodition', tranſgr', malefacta, crimina, & offens' quæcunque, per ſe ſolum, ſive cum aliqua al' perſon' vel aliquibus al' perſon' contra dictum Dom' Regem, vel præchariſſimum fratrem ſuum, Carolum ſecund' nuper Regem Angliæ, &c. defunct' ante 35 diem Januar' ult', quandocunque, qualitercunque, ſeu ubicunque fact', commiſs', ſive perpetrat', licet idem J. H. de præmiſs', vel aliquo præmiſs' indictat', arreſtat', appellat', rectat' impetit', attinct', convict', condempnat', utlagar', ſive adjudicat' exiſtit, vel non exiſtit, aut inde indictari, arreſtari, appellari, rectari, impetiri, attingi, convinci, utlagari, condempnari, ſive adjudicari, contigerit in futuro, ac omnia & ſingula indictament', judicia, condempnationes, attinctur', executiones, fines, impriſonamen', punition', pœnas mortis, pœnas corporal', & omn' al' pœn' & pœnalitat' quæcunque ſuper vel verſus præd' Johannem H. de, pro, ſive concernen' præmiſs' ſeu eor' aliquo habit' fact', reddit', ſive adjudicat', aut in poſterum habend', fiend', reddend', ſive adjudicand', necnon omnia & ſingula utlagar' verſus dict' J. H. ratione ſive occaſione præmiſs', ſeu eor' aliquor' vel alicujus eor' promulgat', ſive in poſterum promulgand', ac omnia & omnimod' ſect', querel', fines, forisfactur', impetitiones, ſeiſuras, proceſs', & demand' quæcunque, quæ dictus Dominus Rex verſus ipſum ratione præmiſs', ſeu eor' alicujus habuit, habet, ſeu in futuro habere poterit, aut hæred' & ſucceſſor' ejus ullo modo habere poterint in futuro, ſectamque pacis ſuæ, quæ ad dict' Dom' Regem verſus præfat' J. H. pertinent, ſeu pertinere poterit, ratione præmiſs', ſeu eor' aliquor' vel alicujus eor', & firmam pacem ſuam ei inde dedit & conceſs' per præſentes: *Et idem* J. H. *profert hic in cur' literas paten' præd' præmiſs' teſtificant', in hæc verba:* Jacobus ſecundus, Dei gra', &c. omnibus ad quos præſentes literæ noſtræ pervenerint, ſalutem. Sciatis quod nos de gra' noſtra ſpecial', ac ex certa ſcienc' & mero motu noſtris pardonavimus, remiſimus, & relaxavimus, ac per præſentes pro nobis, hæred', & ſucceſſor' noſtris pardonamus, remittimus, & relaxamus J. H. de paroch', &c. Gen', ſeu quocuncq; al' nomine vel cognitione ſeu additione nominis, vel cognitione, aut loci idem J. ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, vel nuncupabatur, omn' & omnimod' prodition', miſpriſion', prodition', tranſgr', malefacta, crimina, & offens' quæcunque per ſe ſolum, ſive cum aliqua al' perſona, vel aliquibus al' perſonis contra nos vel præchariſſimum fratrem noſtrum Carolum ſecund' nuper Regem Angliæ, &c. defunct', ante 25 diem' Januar' jam ult' claps', quandocunque, qualitercunque, ſeu ubicunque fact', commiſs', ſive perpetrat', licet idem J. H. de præmiſs' vel aliquo præmiſs' indictat', arreſtat', appellat', rectat', impetit', attinct', convict', condempnat', utlagat', ſive adjudicat' exiſtit, vel non exiſtit, aut inde indictari, arreſtari, appellari rectari, impetiri, attingi, convinci, utlagari, condempnari, ſive adjudicari, contigerit in futuro, ac omnia & ſingula indictament', judic', condempnationes, attinctur', executiones, fines, impriſonament', punition', pœnas mortis, pœnas corporal', & omnia al' pœnas & pœnalitat' quæcunque ſuper vel verſus præd' J. H. de, pro, ſive concernen' præmiſs' ſeu eor' aliquo habit', fact', reddit', ſive adjudicat', aut in poſterum habend', fiend', reddend', ſive adjudicand', necnon omnia & ſingula utlagar' verſus dict' J. H. ratione ſive occaſione præmiſs' ſeu eor' aliquor' vel alicujus eor' promulgat' ſive in poſterum promulgand' ac omn' & omnimod' ſect', querel', fines, forisfactur', impetitiones, cenſuras, proceſs' & demand' quæcunq; quæ nos verſus ipſum ratione præmiſs', ſeu eor' alicujus habuimus, habemus, ſeu in futuro habere poterimus, aut hæred' vel ſucceſſor' noſtri nullo modo habere poterint in futuro, ſectamq; pacis noſtræ, quæ ad nos verſus præfat' J. H. pertinet ſeu pertinere poterit ratione præmiſs' ſeu eor' aliquor', vel alicujus eor' firmam pacem noſtram ei inde damus & concedimus per præſentes, nolentes quod idem J. H. per vicecom', juſticiar', ballivos, aut al' miniſtros, hæred' ſeu ſucceſſor' noſtror', occaſione præmiſs' ſeu eor' alicujus moleſtetur, occaſionetur, perturbetur, ſeu in aliquo gravetur, volentes quodq; hæ literæ noſtræ paten' (quoad omnia & ſingula præmiſs' ſuperius mentionat') bon', firm', valid' & effectual' in lege ſint & erint, licet crim' & offens' præd' minus certe ſpecificat' exiſt': Quodque hæc pardonatio noſtra in omnibus curiis noſtris & alibi interpretetur & adjudicetur in beneficentiſſimo ſenſu pro firmior' relaxatione, pardonatione, & exoneratione præd' J. H. ac etiam placitetur & allocetur in omnibus cur' noſtris, abſque aliquo brevi de allocatione in ea parte prius obtent' ſeu obtinend', non obſtante aliquo defectu aut aliquibus defectibus in his literis patentibus content', aut aliquo ſtatut', act', ordinatione, ſeu proviſione, proclamatione, ſive reſtriction', aut aliqua al' re, cauſa, vel materia quacunq; in contrar' inde in aliquo non obſtante. In cujus rei teſtimon' has literas noſtras fieri fecimus patentes. T. meipſo apud Weſtm', 19 die Feb' anno regni noſtri ſecundo. *Quar' quidem literar' paten' prætextu idem* J. H. *pet' quod ipſe de præmiſs' per cur' hic exoneretur.* Super quo vis' & per cur' hic intellectis omnibus & ſingulis præmiſs' cons' eſt, quod præd' J. H. eat inde ſine die, &c. Et poſtea, ſcil', die Lunæ prox' poſt craſtin' aſcenſion' Dom', iſto eodem term', coram Dom' Rege apud Weſtm' ven' præd' J. in propr' perſona ſua, & profert hic in cur' quoddam breve Dom' Regis nunc clauſum, Juſtic' ſuis hic direct', qui ſequitur in hæc verba: Jacobus ſecundus, &c. Juſtic' noſtris ad placita coram nob' tenend' aſſign', ſalutem. Quia in record' & proceſs', ac etiam in redditione judic' cujuſdam indictament' coram Juſtic' noſtris ad gaolam noſtram de Newgate de priſonar' in eadem exiſten' deliberand' aſſign', verſus J. H. de paroch', &c. in com' Midd', Gen', pro altis proditionibus contra perſon' Dom' Caroli ſecundi nup' Regis Angliæ, fratris noſtri præchariſſimi, unde coram eis nup' attinct' fuit, ut dicitur, error interven' manifeſt', ad grave dampn' ipſius Johannis, ſicut ex querela ſua accepimus: Nos error' ſi quis fuerit, modo debito corrigi, & eidem Johanni plenam & celerem Juſtic' fieri volentes in hac parte, vobis mandamus, quod ſi judic' inde reddit' ſit, tunc viſis & examinat' record' & proceſs' præd', quæ coram nob' certis de cauſis Venire fecimus, & coram vobis jam reſident, ut dicitur, ulterius inde pro errore ill' corrigend' fieri faciatis, quod de jure & ſecund' legem & conſuetud' regni Angl' fuerit faciend'. Teſt' meipſo apud Weſtm' 14 die Maii, anno regni noſtri ſecund'. Et ſup' hoc idem J. H. dic', quod in record' & proceſs' præd', necnon in redditione judicii attinctur' præd' manifeſt' eſt errat' in hoc, videlicet, quod ubi per indictament' præd' mentionatur quod deliberatio gaolæ in recordo judicii, & attinctur' præd' mentionat', tent' fuit pro com' Midd' apud Juſtice Hall in le Old Baily, in ſuburbiis civit' London', non apparet per record' præd' quod Juſtice Hall, nec le Old Baily, ſunt in com' Midd', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, videlicet, quod indictamentum præd' mentionatur fore capt' 7 die Decemb' in record' præd' mentionat', coram Juſtic' de audiend' & terminand' in recordo præd' mentionat', & per eos fore deliberand' Juſtic' ad goal' deliberation' in eodem recordo ſpecificat', 30 die Decembr' tunc poſtea in forma juris terminand', ſed non apparet per record' convictionis præd', quod ſeſſio de audiend' & terminand' habuit aliquod adjornament' vel continuation' uſque dictum 30 diem Decembr', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, quod verba vi & armis, &c. omittuntur in indictament' præd', ideo in eo manifeſt' eſt errat'. Errat' eſt etiam in hoc, quod conſtat per record' præd', quod proceſs' & judic' præd' ſunt intrat' & recordat' ſup' record' Juſticiar' de audiend' & terminand', & non ſuper record' Juſtic' goal' deliberand', ideo in eo manifeſt' eſt errat'. Errat' eſt etiam in hoc, videl', quod non apparet per record' præd', per qualem authoritat' Juſtic' ad gaol' deliberation' in record' præd' mentionat', proceſs' & judic' præd' reddider' verſus ipſum præd' J. H. ſup' indictament' præd', ideo in eo manifeſt' eſt errat'. Errat' eſt etiam in hoc, quod ſup' reddition' judic' in record' præd' mentionat' non apparet quis fuit, qui ex parte Dom' Regis pro eodem Dom' Rege pet' judic' ſup' conviction' de materiis in indictament' præd' mentionat', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, quod in record' præd' dicitur, quod ad deliberation' gaol' Dom' Regis de Newgate, tent' pro com' Midd' apud Juſtice Hall in le Old Baily in ſuburbiis civit' London' die Mercur', ſcil', 9 die Decembr' coram Juſtic' gaol' deliberation' in eodem record' mentionat', quod iſta gaol' deliberatio adjorn' fuit per præfat' Juſtic', ubi dici debuit adjornat' eſt, & non exprimi via recitationis in tempore præterit', & in alio loco record' mentionat' præd' dicitur, quod iſta gaol' deliberatio tent' fuit, ubi debuit exprimi tent' eſt, & non quod tent' fuit, quia in tenſu præterito eſt mera recitatio tenendi & adjornandi cur' ill' & non poſitivus actus cur' ill' gaolæ deliberation' de determination' indictament' præd', ideo in eo manifeſt' eſt errat'. Erratum eſt etiam in hoc, videl', quod judic' præd' reddit' eſt pro Domino Rege, ubi reddi debet pro defend', & in eo manifeſt' eſt errat'. Et hoc parat' eſt verificare, unde pet' judic', & quod judic' & attinctur' præd' ob error' præd', & al' in record' & proceſs' præd' apparen' compert' exiſten' revocetur, adnulletur, & penitus pro nullo habeatur, & quod ipſe idem J. H. ad communem & liberam legem hujus regni Angliæ, & ad omnia quæ ipſe occaſione judicii & attinctur' præd' amiſit reſtituatur, & quod ipſe, tam de eadem conviction & attinctur', quam de indictament' præd' per cur' hic dimittatur & exoneretur, & quod cur' hic procedat ad examination' record' & proceſs' præd', &c. & quia neceſſar' & expediens eſt, antequam cur' hic in hac parte procedat, quod tenentes terrar' & tenementor', quæ fuer' præd' Johannis 20 die Julii, anno regni dict' Dom' Caroli ſecundi, nup' Regis Angliæ, &c. 35. quo die alta proditio præd' fieri ſupponitur, vel unquam poſtea præmuniantur eſſendi, coram dict' Dom' Rege nunc auditur' record' proceſs præd', ſi, &c. ideo præcept' eſt Vic' com' Midd' præd', quod per probos & legales homines de balliva ſua, Scir' fac' ſeparatim tenent' terrar', & tenementor', quæ fuer' præd' Johannis prædict' 20 die Julii, anno regni dicti Dom' Caroli ſecundi nuper Regis Angliæ, &c. 35 ſuprad' vel unquam poſtea, quod ſint coram Dom' Rege in craſtino ſanct Trinitat' ubicunque, &c. auditur' record' & proceſs' præd', ſi, &c. idem dies dat' eſt præfat' J. Hampden, &c. & ſuper hoc de gratia cur' ſpecial' præd' J. H. traditur in ball' H. A. de, &c. Arm' & W. J. de, &c. uſque ad præfatum terminum, & ſic, &c.

It does not appear by the Precedent, whether the Judgment was reverſed or affirmed, nor is the Report of this Caſe to be found in any of the Reports of that Time.

Rex verſus Dom' Delamere (*l*), *for* High-Treaſon.

1 *Jac'* II. *Rot'* 5.

Ceſtr' ſſ. PER quandam inquſition' capt' apud Ceſtr', in com' Ceſtr', die Veneris 11 die Decembr', anno regni Domini Jacobi ſecundi, Dei gra' Angl', Scotiæ, Fran', & Hiberniæ Regis, fidei defenſor', &c. primo coram Edwardo Lutwyche Mil', un ſervien' dicti Dom' Regis ad legem, ac Juſtic' Ceſtr' Johanne Warre Arm', altero Juſtic' Ceſtr', Philippo Egerton Mil', & Petro Shakerley Arm'; per literas paten' ejuſdem Domini Regis eis, & aliis & quibuſcunque trib' vel plur' eor' inde confect', ad inquirend' per ſacramentum probor' & legalium hominum de com' Ceſtr', ac al' viis, mediis & modis, quibus melius ſciviſſent aut potuiſſent, tam infra libertat', quam extra, per quos rei veritas melius ſciri potuiſſet & inquiri de quibuſcunque proditionib', miſpriſionib' prodition', inſurrection,' rebellion', cntrafactur,' tonſur', lotur', falſis fabricationib', & al' falſitat' monet' hujus regni Angl', & al' regnor' ſive dominior' quorumcunque, ac de quibuſcunque murdris, felon' homicid', interfection', burlgar', raptib' mulier', congregation' & conventicul' illicit' verbor' prolationib', coadunationib' miſpriſionib', conſiderationib', falſis allegane', tranſgr', riotis, routis, retentionib', eſcalpiis, contempt', falſitat', negligenc', concelament' manutenen', oppreſſionib', cambiparciis, deceptionib', & al' malefactis, offens' & injur' quibuſcunque, necnon acceſſar' eorundem infra com' Ceſtr' præd' tam infra libertat' quam extra, per quoſcunque & qualitercunque habit', fact', commiſs', ſive perpetrat', per quos vel per quem, cui vel quibus, quando, qualit', & quomodo, ac de aliis articulis & circumſtanc' præmiſs', aut eor' quod libet, ſeu eor' aliquid vel aliqua qualitercunque concernen' plenius veritat', & ad eaſdem prodition' & al' præmiſs' audiend' & terminand' ſecundum legem & conſuetud' regni dicti Domini Regis nunc Angl' aſſign', per ſacrament' 12 jur' probor' & legalium homin' com' Ceſtr' præd', tunc & ibidem jurat' & onerat' ad inqurend' pro dicto Domino Rege, & corpore com' Ceſtr' præd', exiſtit præſentat', quod Henricus Baro de Delamere in com' Ceſtr', ut falſus proditor contra illuſtriſſimum & excellentiſſimum Principem Dominum Jacobum ſecundum, Dei gra' Angl', Scotiæ, Franc', & Hiberniæ Regem, fidei defenſor,' naturalem Dominum ſuum, timorem Dei in corde ſuo non habens, nec debit' ligeanc' ſuæ ponderans, ſed inſtigatione diabolico mot' & ſeduct', cordialem dilection', & veram, debit', & naturalem obedienc', quas verus & fidel' ſubdit' dicti Domini Regis erga ipſum Dominum Regem gereret, & de jure gerere tenebatur, penitus ſubtrahens, machinans, practicans, & totis viribus ſuis intendens pacem & communem tranquilitat' hujus regni Angl' inquietare, moleſtare, & perturbare, & guerram & rebellion' contra dictum Dominum Regem infra hoc regn' Angl'. ſuſcitare, movere, & procurare, & gubernation' dicti Domini Regis hujus regni Angl' ſubvertere, mutare, & alterare, & dictum Dominum Regem a titulo, honore, & regali nomine, coron' imperial' regni ſui Angl' deponere & deprivare, & dictum Dominum Regem ad mortem & final' deſtruction' adducere & ponere, 14 die April', anno regni dicti Domini Jacobi ſecundi nunc Regis Angl', &c. primo, ac divers' al' dieb' & vicib', tam antea quam poſtea, apud Mere in com' Ceſtr' præd' falſo, malitioſe, diabolice, & proditorie, cum divers' al' falſis proditorib' & repellib' jur' præd' ignot', conſpiraviſſet, compaſſaviſſet, & imaginat' fuiſſet, & intendebat dictum Dominum Regem ſupremum, verum & naturalem Dominum ſuum, non ſolum de regali ſtatu, titulo, poteſtat', & regmine regni ſui Angl' deprivare & dejicere, verum etiam eundem Dominum Regem interficere, & ad mortem adducere & ponere, & antiquam gubernation' hujus regni Angl' mutare, alterare, & penitus ſubvertere, & ſtragem miſerabilem int' ſubdit' dicti Domini Regis per totum regn' Angl' cauſare & procurare, & inſurrection' & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' procurare & auxiliari & ad eaſdem nefandiſſimas, nequiſſimas, & diaboliças prodition' & proditor' compaſſation' & propoſita ſua præd' aſſat' perimplend', imagination', perficiend', & ad effectum redigend' idem H. Baro de D. ut falſus proditor adtunc & ibidem, ſcil' dicto 14. die April', anno 1. ſuprad', & divers' al' dieb' & vicib', tam antea, quam poſtea, apud Mere præd' in com' præd' falſo, illicite, nequiſſime, & proditor' cum Carolo Gerard' Arm' & al' falſis proditor' jur' præd' ignot', ſe aſſemblabat, congregabat, conſultabat, & agreabat ad ſuſcitand' & procurand' divers' magn' denar' ſum', & ingent' numerum homin' armator ad guerram & rebellion' contra dictum Dominum Regem infra hoc regn' Angl' levand' & faciend', ac civit' Ceſtr' in com' ejuſdem civit' necnon caſtrum dicti Dom' Regis Ceſtr', apud Ceſtr' in com Ceſtr' præd', & omnes munition' bellicas (Anglice vocat' *the Magazines*) in eodem caſtro adtunc exiſten' intrare, capere, ſeiſire, & prendere (Anglice *to ſurprize*) & in poſſeſſion' & poteſtat' ſuas obtinere. Ac jur' præd' ulterius ſuper ſacramentum ſuum præd' tunc dixer', quod præd' H. Baro Delamere poſtea, ſcil' 27 die Maii, anno 1. ſuprad', falſo, illicite, nequiſſime, & proditorie iter feciſſet a civit' London uſque ad Mere præd' in Com' Ceſt,' præd' ad prodit' propoſita ſua præd' perimplend' & perficiend', ac quod idem H. Baro de Delamere poſtea, ſcilicet 4 die Junii, anno 1. ſuprad', apud M. præd,' in com' Ceſtr' præd', in ulterior' proſecution' præd' illicit', nequiſſimor', & proditor' propoſitor' ſuor', divers' ligeos & ſubdit' dicti Domini Regis, jur' præd' ignot' cum eodem H. Baron' de D. & præd' al' falſis proditorib'. jur' præd' ignot', falſo, illicite, nequiſſime, & proditorie, in guerra & rebellion' præd', & in proditoriis propoſit' ſuis præd' jungere & adhærere, excitaviſſet, animaviſſet, & perſuaſiſſet contra ligeanciæ ſuæ debit', contra pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, necnon contra formam ſtatuti in hujuſmodi caſu edit' & provis'.

Rex verſus Dominum Mohun, *for the* Murder *of* W. Mountford.

4 *W. & M.*

THis Record is in the Trial (*m*).

Rex verſus Charnock, *for* High-Treaſon.

8 *Gul'.* III. *O. B.*

His Record is in the Trial (*n*).

Rex verſus Cranburne, Lowick, & al' (*o*), *for* High-Treaſon.

7 *Gul'* III.

Midd' ſſ. JUratores pro Domino Rege ſuper ſacramentum ſuum præſentant, Quod Chriſtophorus Knightley, nuper de paroch' ſanct' Pauli Covent Garden in com' præd' Generoſus, Robertus Lowick nuper de paroch' ſancti Pauli Covent Garden in com' prædicto Gen', Ambroſius Rookwood nuper de parochia ſancti Pauli Covent Garden in com' prædicto Generoſus, & Carolus Cranburne nuper de parochia ſancti Pauli Covent Garden in com' prædicto Yeoman, timorem Dei in cordibus ſuis non habentes, nec debit' ligeanciæ ſuæ ponderan', ſed inſtigatione diabolica moti & ſeducti, ut falſi proditores contra ſereniſſimum, illuſtriſſimum, clementiſſimum, & excellentiſſimum Principem, Dom' Gulielmum tertium, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regem, fidei defenſorem, &c. ſupremum, verum, legitimum, legalem, & indubitatum Dom' ſuum, cordialem dilectionem, ac veram & dubitam obedientiam, fidelitatem & ligeanciam, quas quilibet ſubditus dicti Dom' Regis nunc erga ipſum Dominum Regem gereret, & de jure gerere tenetur, ſubtrahentes & penitus extinguere intendentes ac machinantes, & totis ſuis viribus excogitantes, deſignantes, & conſpirantes gubernationem hujus regni Angliæ, ſub ipſo Domino Rege nunc de jure debit', felicit', & optime ſtabilit', omnino ſubvertere, mutare, & alterare necnon eundem Dom' Regem ad mortem & finalem deſtructionem ponere & adducere, ac ſubditos ſuos fideles, & liberos homines hujus regni Angliæ in ſervitutem intolerabilem & miſerrimam Ludovico Regi Gallico ſubjugare & mancipare, decimo die Februarii, anno regni dic' Dom' Regis nunc ſeptimo, & diverſis aliis diebus & vicibus, tam antea, quam poſtea, apud parochiam ſancti Pauli Covent Garden præd', in com' prædicto' falſo, malitioſe, diabolice, & proditorie compaſſaver', imaginati & machinati fuer', excogitaver', deſignaver' & intendebant dict' Dom' Regem nunc occidere, interficere, & murdrare, ac ſtragem miſerabilem inter fideles ſubditos ipſius Dom' Regis per toum hoc regn' Angliæ facere & cauſare, & ad eaſdem nefandiſſimas, nequiſſimas, & diabolicas proditiones, & proditorias compaſſationes, machinationes, & propoſita ſua prædicta perimplend', perficiend', & ad effectum redigend', ipſi iidem Chriſtophorus Knightley, Robertus Lowick, Ambroſius Rookwood, & Carolus Cranburne, & quamplurimi alii falſi proditores (juratoribus præd' ignot') poſtea, ſcil' eodem decimo die Februarii, anno ſupradict', apud parochiam prædictam, in com. præd', ac diverſis aliis diebus & vicibus, tam antea, quam poſtea, ibidem & alibi in eodem com' falſo & malitioſe, adviſate, clandeſtino, proditorie ac vi & armis conveniebant propoſuer', tractaver', conſultaver', conſenſer', & agreaver', ad ipſum Dom' Regem nunc ex inſidiis & dolo percutiend' (Anglice *to aſſaſſinate*) Interficiend' & murdrand', & ad execrabilem, horrendam, & deteſtabilem aſſaſſinationem (Anglice *Aſſaſſination*) & interfectionem ill' citius exequend' & perpetrand' poſtea, ſcil' eiſdem die & anno, ac diverſis aliis diebus & vicibus, apud parochiam prædictam, in com' præd', proditorie tractaver', propoſuer', & conſultaver' de viis, modis & mediis, ac tempore & loco ubi, quando, qualiter', & quomodo dictum Dom' Regem ſic ex inſidiis facilius interficerent, & conſenſer', agreaver', & aſſenſer', quod quadraginta homines equeſtres, aut eo circiter (quorum iidem Chriſtoph' Knightley, Robertus Lowick, Ambroſius Rookwood, & Carolus Cranburne forent quatuor, & quilibet eorum proditorie ſuper ſe ſuſcepit eſſe unum) cum bombardio, ſclopis & ſclopetis, pulvere bombardico, & globulis plumbeis oneratis, & cum gladiis enſibus & aliis armis, armat', inſidiati forent & eſſent in ſubſeſſa (Anglice *in Ambuſh*) ad eundem Dom' Regem in rheda ſua (Anglice *his Coach*) exiſten', quando foris iret' invadend'; quodque quidam & competens numerus de hominib' illis ſic armat', in ſatellites (Anglice *the Guards*) ipſius Dom' Regis eum tunc attenden', & ſecum exiſten', agreſſi forent, & eos expugnarent & devincerent, dum alii eorundem homin' ſic armat' ipſum Dom' Regem percuterent, interficerent, occiderent, & murdrarent, & iidem Chriſtophorus Knightley, Robertus Lowick, Ambros' Rookwood, & Carol' Cranburne, ad prodition' & omnes proditor' intention', deſignation', & machination' ſuas præd' exequend', perpetrand', perimplend', & ad effectum redigend', poſtea (ſcil' prædicto decimo die Februarii, anno 7. ſupradicto, apud paroch' præd' in com' prædict') diverſos equos, & quamplurima arma, bombardas, ſclopos, enſes, & gladios, & al' armamenta, munition', & res bellicoſas, & inſtrumenta militaria, falſo, malitioſe, ſecrete, & proditore obtinuer', emebunt, colleger', & procuraver', ac emi, obtineri, colligi, & procurari cauſaver', ea intent', ad illum in circa deteſtabil', horrend', & execrabil' aſſaſſinationem, interfectionem, & murdrum dicti Dom' Regis nunc, ut præfertur, utend', occupand' & impendend', & ad eadem præmiſſa tutius & certius exequen', faciend', & perpetrand', præd' Chriſtoph' Knightley, cum quodam Edward' King (nup' de alta proditione in machinando & conſpirando mortem dicti Dom' Regis nunc deb' convict' & attinct') per conſenſum & aſſenſum diverſorum de proditoribus & conſpiratoribus prædictis, dict' 10. die Februarii, anno 7. ſupradict', proditorie ivit & acceſſit ad locum propoſitum, ubi hujuſmodi intenſa aſſaſſinatio, interfectio, & murdrum dicti Dom' Regis ex inſidiis fact', perpetrat', & commiſs' forent, ad vidend', ſpeculand', & obſervand', convenientiam, & aptitudinem ejuſd' loci pro hujuſmodi inſidiis, aſſaſſination', & interfectione ibidem fiend', perpetrand', et committend', ac (loco illo ſic viſo & obſervato) poſtea (ſcil' eiſdem die & anno) obſervationes ſuas inde ſepara-

(*l*) Vol. IV. pag. 210. N°. 139 (*m*) Vol. IV. p. 510. N°. 151. (*n*) Vol. IV. p. 562. N°. 153. (*o*) Vol. IV. p. 698. N°. 157.

libus de dictis proditor' & conspirator' retulit & impertivit, videlicet, apud paroch' prædict' in com' prædict', prædictusq' Carolus Cranburne, eisdem die & anno, ibidem in ordine ad eand' execrabil', horrend', & detestabil' assassination' & interfection' dicti Dom' Regis per proditores & conspiratores præd' promptius & magis audaciter exequend', perpetrand', & committend', advisate, scienter, & proditorie tulit & portavit inter diversos de proditoribus & conspiratoribus illis prorsum & retrorsum ab aliquibus ad al' eor' catalogum (Angl' *a List*) de nominibus diversor' homin' de illis, qui designat' & appunctuat' fuer' ad eund' Dom' Regem, sic ut præfertur, ex insidiis interficiend' & murdrand', contra debit' ligeantiæ ipsor' Christoph' Knightley, Roberti Lowick, Ambr' Rookwood, & Caroli Cranburne, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, necnon contra formam statuti in hujusmodi casu edit' et provis', &c.

Rex versus Vaughan, *(p) for* High-Treason.

7 *Gul'* III.

JUrat' pro Dom' Rege super sacram' suum præsentant, quod ante & continue usque ad octav' diem Julii, anno regni Dom' nostri Willielmi tertii, Dei gratia Angl', Scot', Franc', et Hibern' Regis, fidei defensor', &c. 7. fuit bellum apertum inter Dom' Willielmum nunc Regem Angl', &c. et Ludovicum Regem Gallicum, quodque bellum illud eod' 8. die Julii, anno 7. supradict', et semper postea hucusq' continuat' fuit, et adhuc existit, quodq; per totum tempus præd' dictus Ludovicus Rex Gallicus, et ejus subdit', fuer', et adhuc existunt inimici dicti Dom' Regis nunc, ac quod tempore belli illius, et ante prædict' octavum diem Julii, anno septimo suprad', dict' Ludovicus Rex Gallicus (int' al') quand' navicul' armat', vocat' *Le Loyal Clencarty* (cujus Tho' Vaughan subdit' dicti Dom' Regis nunc Angl', &c. adtunc fuit capitaneus) cum quamplur' subdit' Gallicis, inimicis dicti Dom' Regis nunc, ad numerum 15. personar' replet', præparavit ad naves ac bona, catall', et denar' dict' Dom' Regis nunc Angl', &c. et subditor' suor' super alto mari, ac infra jurisdict' admiralitatis Angl' modo guerrino capiend' et spoliand', et bellum præd' contra dict' Dom' Regem nunc super alto mari, ac infra jurisdiction' admiral' Angl' præd' gerend': Quodque tempore belli præd' inter ipsum Dom' Regem nunc, et præd' Ludovicum Regem Gallicum, Thomas Vaughan nuper de Galloway in regno Hibern' nauta, existens subdit' ejusdem Dom' Regis nunc Angl', &c. ut falsus proditor contra eundem Dom' Regem nunc, supremum Dom' suum, timorem Dei in corde suo non habens, nec debit' ligeanc' suæ ponderans, sed instigatione diabolica mot' et seduct', cordialem dilectionem, ac veram et debitam obedientiam, quas quilibet verus et fidelis subdit' dict' Dom' Regis nunc erga ipsum Dom' Regem de jure gerere tenetur, penitus subtrahens, ac machinans et intendens, quantum in se fuit, bellum prædict' contra dictum Dom' Regem nunc prosequi et auxiliari, idem Thomas Vaughan dicto 8. die Julii, anno regni dict' Dom' Regis nunc 7. supradicto, vi et armis, &c. super alto mari in quodam loco circa 14. leucas a Deal distante, ac infra jurisdiction' admiral' Angl', seipsum præfat' Thomam Vaughan ut militem (Angl' *a Soldier*) ad bellum præd' contra dict' Dom' Regem nunc geren' et prosequen', in servitium ipsius præfat' Ludovici Regis Gallici, in navicul' armat' præd', vocat' *Le Loyal Clencarty*, falso, malitiose, nequissime, et proditorie posuit; et quod ipse idem Tho' Vaughan in navicul' armat' præd', vocat' *Le Loyal Clencarty*, adtunc et ibidem sic existen', vi et armis, &c. adtunc et ibidem super alto mari præd', ac infra jurisdiction' admiralitatis Angl' præd', dictis inimicis dicti Dom' Regis nunc, in dicta navicula armata, vocat' *Le Loyal Clencarty*, adtunc et ibidem scilicet existen', falso, malitiose, nequissime, et proditorie fuit adhærens, auxilians, et comfortans; et quod præd' Tho' Vaughan in execution' et performatione adhæsionis, auxiliationis, et comfortationis suæ præd' postea, scil' dicto 8. die Julii, anno supradict', ibidem super alto mari præd', ac infra jurisdiction' admiralitat' Angliæ, simul cum dictis inimicis dict' Dom' Regis nunc, in navicul' armat' præd', vocat' *Le Loyal Clencarty*, adtunc et ibidem existen', ad quamplur' locos maritimos in eadem navicul' armat', vocat' *Le Loyal Clancarty*, in exploratione (Anglice *Cruising*) ea intentione, ad prædand' naves, bon', catall' et denar' ejusdem Dom' Regis, et subditor' suor' super alto mari præd', ac infra jurisdiction' præd', vi et armis, &c. malitiose, nequissime, et proditorie navigavit, contra ligeanc' suæ debitum, contra pacem dicti Dom' Regis nunc, coron' et dignitat' suas, &c. necnon contra formam statut' in hujusmodi casu edit' et provis', &c.

Et jur' præd' pro dicto Dom' Rege super sacram' suum præd' ulterius præsent', quod præd' T. Vaughan, ut falsus proditor contra dict' Dom' Regem nunc Angl', &c. suprem' Dom' suum ulterius machinans, practicans, et tota vi sua intendens pacem et communem tranquillitat' hujus regni Angl' perturbare, et guerram et rebellion' contra dict' Dom' Regem super alto mari præd', ac infra jurisdiction' admiralitat' Angl' suscitare, movere, et procurare, et dict' Dom' Regem a titulo, honore, & regali nomine, coron' imperial' regni sui Angl', & dominior' suor' super alto mari præd' deponere & deprivare, & stragem miserabilem subditor' ejusdem Dom' Regis nunc hujus regni sui Angl' super alto mari, ac infra jurisdiction' admiral' Angl' præd' navigan', causare & procurare, præd' 8. die Julii, anno regni dicti Dom' Regis nunc 7. suprad', super alto mari, circa 14. leucas a Deal distante, ac infra dominium coron' Angl', & infra jurisdiction' admiralitat' Angl' falso, malitiose, diabolice, & proditorie, vi & armis, &c. cum quamplur' al' falsis rebellib' & proditorib', jur' præd' ignot', guerram contra dict' Dom' Regem nunc paravit, ordinavit, levavit, & gessit; & quod idem Thomas Vaughan, in executione & performatione guerræ & proditionis suæ præd' adtunc & ibidem, scil' præd' octavo die Julii, anno 7. suprad', super alto mari, circa 14. leucas a Deal distante, ac infra jurisdiction' admiralitat' Angl' in dicta navicul' armat', vocat' *Le loyal Clencarty*, vi & armis, &c. cum quamplur' aliis falsis rebellib' & proditoribus, jur' præd' ignot' ad numerum 15. personar', modo guerrino armat' & arraiat', viz. tormentis, & al' armis, tam invasivis, quam defensivis, vi & armis, &c. falso, malitiose, & proditorie, adtunc & ibidem congregat' & assemblat' existen', seipsum simil' armat' & arraiat', malitiose, proditor', & aperte assemblavit & conjunxit; & quod præd' T. Vaughan adtunc & ibid' in dicta navicul' armat', vocat' *Le Loyal Clencarty*, cum dictis al' falsis rebellibus & proditorib' (sicut præfertur) assemblat' existen', postea, scil' dicto 8. die Julii, anno 7. supradict', super alto mari præd', ac infra domin' coron' Angliæ, & infra jurisdiction' admiralitat' Angl' præd', simul cum dictis al' rebell' & proditorib', in navicul' armat' præd', vocat' *Le Loyal Clencarty*, adtunc & ibidem, ad quamplur' locos maritimos in eadem navicul' armat', vocat' *Le Loyal Clencarty*, in exploration' (Angl' *cruising*) ea intentione ad prædand', spoliand' & asportand' naves, bond', catall', & denar' dicti Dom' Regis, & subdit' suor' super alto mari præd', ac infra jurisdiction' prædict', vi & armis, &c. malitiose, nequissime, & proditorie navigavit, contra ligeanc' suæ debit', contra pacem dicti Dom' Regis nunc, coron' & dignitat' suas, &c. necnon contra formam statut' in hujusmodi casu edit' & provis', &c.

Rex versus Com' Warwick & *Dom'* Mohun, *for the* Murder *of* R. Coote.

11 *Gul.* III.

THIS Record is in the Trial (q)

Regina versus Fuller (r), *for a* Cheat.

1 *Annæ.*

London ff. QUod Willielmus Fuller nuper de, &c. primo die Januarii, anno regni Dom' Willielmi tertii nuper Regis Angl', &c. 13. apud London in paroch' beatæ Mariæ de Arcubus, in warda de Cheap, existens impostor & communis mendax, & persona malorum nominis, famæ, & reputationis, falso, malitiose, nequit' & seditiose machinans, practicans, & intendens dict' Dom' Willielmum tertium nuper Regem Angl', & subdit' suos falso & illicite deludere, decipere, & defraudare, & discordia inter eundem nuper Regem, & quamplur' proceres, magnates hujus regni Angliæ, & magnos officiarios & ministros fiduciat' per dictum nuper Regem in negotiis suis concernen' regimen & gubernation' dicti regni sui Angliæ, & al' ligeos & fidel' subdit' dicti regni Angliæ movere, excitare, & suscitare, ac etiam proceres, magnates hujus regni Angliæ, & magnos officiaros & ministros dicti nuper Regis per ipsum, ut præfertur, fiduciat', & al' ligeos & fidel' subdit' suos, in maximum odium, contempt', & vilipendium cum eodem nuper Dom' Rege inducere & inferre, ad divers' denar' summas ab eodem Dom' nuper Rege callide, subdole, fraudulent' & deceptive acquiere & obtinere, ipse idem Willielmus Fuller, præd' primo die Januarii, anno regni dicti Dom' nuper Regis 13. apud London præd', in parochia & warda præd', ad nequissimas machination', practication', & intention' suas præd' perimplend', perficiend', & ad effectum redigend', de diversis officiariis & al' subditis dicti nuper Regis Willielmi tertii, & de responsione (Anglice *Correspondence*) inter eos & Jacobum secundum nuper Regem Angl', dum idem nuper Rex Jacobus secundus apud quendam locum vocat' *St. Germains*, in regno Franciæ residebat, falso pretens' fuisse habit', ac de diversis denar' summis per dictum Jacobum secund' nuper Regem Angliæ, in regno Franciæ in hoc regnum Angl' distribuend' inter diversos subdit' dicti nuper Regis Willielmi tertii falso prætens' fore miss' quoddam falsum, fictum, scandalosum, & defamatorium libellium, intitulat' *Original Letters of the late King*'s (dictum Jacobum secundum nuper Regem innuendo) *and others, to his greatest Friends in* England, *with the Depositions of* Thomas Jones *and* Thomas Witherington, *Esquires, proving the Corruption lately practised to ruin this Nation*, adtunc & ibidem falso, illicite, nequit', injuste, malitiose, scandalose, & deceptive composuit, scripsit, & impressit, & imprimi causavit, in quo quidem falso, ficto, scandaloso, & defamator' libello continetur (inter alia) ut sequitur, videl', Thomas Jones *Esquire deposeth, That he being at* St. Germain's (præd' locum vocat' St. Germains in regno Franc' innuendo) *the Court of the late King* James (præd' Jacobum secund' nup' Regem Angl' &c. innuendo) *in* France, &c. Et idem Attorn' dict' Dominæ Reginæ nunc general', pro ead' Dom' Regin' ulterius dat' cur' hic intelligi & informari, quod prædict' Willielmus Fuller, præd' primo die Januarii, anno 13. supradict', apud London præd', in parochia & warda præd', ad nequissimas machinationes, practication', & intentiones suas prædict' ulterius perficiend', perimplend', & ad effectum redigend', de diversis officiariis & al' subdit' dicti nuper Regis Willielmi tertii, & de ficta responsione (Anglice *Correspondence*) inter eos & Jacobum secundum nuper Regem Angliæ, dum idem nuper Rex Jacobus secundus in regno Franciæ residebat, falso pretens' fuisse habit', ac de diversis denariis summis per dict' Jacobum secundum, nuper Regem Angliæ, a Regno Franciæ in hoc regnum Angliæ distribuend' inter diversos subdit' dicti nuper Regis Willielmi tertii pretens' fore miss', quoddam al' falsum, fictum, scandalos' & defamator' libellum, intitulat' (int' al') *Twenty-six Depositions of Persons of Quality and Worth*, adtunc & ibid' falso, illicite, nequit', injuste, malitiose, scandalose, & deceptive composuit, scripsit, impressit, & imprimi causavit, in quo quidem falso, ficto, scandaloso & defamatorio libello continentur, int' al', ut sequitur, videl', *Mr.* Jones *has also made Oath, that he paid* 5000 l. *more by the late King's Order* (ordin' dicti Dom' Jacobi secundi, nuper Regis Angliæ, iterum innuend') &c. Et quod prædictus Willielmus Fuller postea, scil' dicto 1. die Januarii, anno regni dicti Dom' Willielmi tertii, nuper Regis Angliæ, &c. 13 supradict', dictos falsos, fictos, scandalosos, & defamatorios libellos, absque aliqua legali authoritate, vi & armis, &c. apud London præd', in parochia & warda prædict', illicite & injuste publicavit, utteravit, & pro veritate affirmavit, ubi revera & in facto præd' Thomas Jones nunquam super sacrament' suum deposuit prout in præd' falso, ficto, scandaloso, & defamator' libello superius mentionat' continetur, ac ubi revera & in facto, omnia & singula præd' scandalos' defamator' libell' content' & superius specificat' fuer' & sunt falsa, ficta, & veritati omnino contrar', in magnum scandal', præjudic' & abusion' dicti Dom' Willielmi tertii, nuper Regis Angliæ, &c. & magnor' officiarior' & ministror' dicti nuper Regis Willielmi tertii per ipsum, ut præfertur, fiduciat', & alior' ligeor' & subditor' ejusd' nuper Regis, in malum exemplum omnium alior' in hujusmodi casu delinquen', ac contra pacem dicti nuper Dom' Regis Willielmi tertii, coron' & dignitat' suas, &c.

(p) Vol. V. p. 17. No. 162. (q) Vol. V. p. 137. N°. 164. (r) Vol. V. p. 441. N°. 173.

Rex

Rex verſus Hathaways (*s*), *for a* Cheat.

Surr' ſſ. MEmorand', quod Edwardus Northey, Al' Attorn' Dom' Regis nunc General', qui pro eodem Dom' Rege in hac parte ſequitur, in propria perſona venit hic in curia dicti Dom' Regis, coram ipſo Rege apud Weſtm', die Jovis prox' poſt tres ſeptimanas ſancti Michaelis iſto eod' term', & pro eod' Dom' Rege dat cur' hic intelligi & informari, quod quidem Richardus Hathaway, nuper de Southwark in com' Surr' Laborer, exiſtens perſona malor' nominis & famæ, & impoſtor, & machinans & malitioſe intendens quandam Saram Morduck, ux' cujuſdam Edwardi Morduck de Southwark in com' præd', Waterman, fœminam per totum vitæ ſuæ tempus exiſten' honeſtam & piam, & non Sagam (Anglice a *Witch*) nec Magiam (Anglice *Witchcraft*) Incantamentum (Anglice *Inchantment*) Incantamentum (Anglice *Charm*) Faſcinationem (Anglice *Sorcery*) unquam exercen', in periculo vitæ fuæ amiſſionis inducere, 11 die Febr', anno regni dicti Dom' Regis nunc 12. apud Southwark præd' in com' præd' in præſentia & auditu diverſarum perſonarum, falſo, malitioſe, diabolice, & ſcient', & ut falſus impoſtor, prætendebat & aſſerebat ſeipſum per eand' Saram fuiſſe faſcinatum (Anglice *bewitched*) occaſione prætens' faſcination' illius non poſſe edere, ac per magnum tempus, ſcil' per ſpatium decem ſeptimanar' jejunaſſe, ac diverſis morbis adtunc & ibid' affici, & quod ipſe per ipſius Richardi extractionem ſanguinis ejuſd' Saræ per ſcalpationem a prætens' faſcinatione præd' liberat' foret, quodq; præd' Richard' adtunc & ibid', vi & armis, eandem Saram ſcalpſit, & ſanguinem ipſius Saræ tunc & ibid' per ſcalpation' ill' extraxit, & ſuperinde præd' Richard' adtunc & ibid' falſo, malitioſe, & ſcient' aſſeruit ſeipſum a morbis illi', per extraction' ſanguinis præd', liberari, ubi revera & in facto præd' Richard' nunquam faſcinat' fuit, & non jejunaſſet per ſpatium præd', nec per aliquod magnum tempus, & ubi revera & in facto præd' Richard' adtunc & ibid' bene ſciebat ſeiſpum minime faſcinatum fuiſſe per eand' Saram, in maximum dicti Dom' Regis nunc, legumq; ſuarum contemptum, & vilipend', in valde malum & pernicioſum exemplum alior' in hujuſmodi caſu delinquentium, & contra pacem ejuſd' Dom' Regis, coron' & dignitat' ſuas, *&c.* Unde idem Attorn' dicti Dom' Regis nunc general' pro eod' Dom' Rege, pet' adviſamentum cur' hic in præmiſſis, & debitum legis proceſſum verſus præfat' Richard' Hathaway in hac parte fieri ad reſpondend' dicto Dom' Regi de & in præmiſſis, *&c.*

Regina verſus Hathaway (*t*), *for an* Aſſault.

2 *Annæ.*

Surr' ſſ. MEmorand', *&c.* quod quidam Richard' Hathaway, nuper de Southwark in com' Surr', Laborer, Thomas Wellyn, & al', cum diverſis al' perſonis eidem Attorn' General' ignotis, 25 die Septemb', anno regni dicti Dom' Regis nunc 12 apud Southwark prædict', in com' præd', vi & armis, *&c.* illicite, riotoſe & routoſe ſeſe aſſemblaver', & magnam affraiam & riotam adtunc & ibid' fecer', & ſic aſſemblat' exiſten', vi & armis, *&c.* adtunc & ibidem, in & ſuper quandam Saram Morduck, uxor' cujuſdam Edwardi Morduck, nuper de eadem, Waterman, adtunc & ſemper antea ibid' exiſten', fœmin' honeſtam, & non Sagam, nec unquam Magiam (Anglice *Witchcraft*) Incantamentum (Anglice *Inchantment*) Incantamentum (Anglice *Charm*) Faſcination' (Anglice *Sorcery*) exercen', in pace Dei, & dicti Dom' Regis adtunc & ibidem exiſten', inſult' fecer', & ſub iniquo pretextu, contra legem, tentand' an præd' Sara adtunc fuit Saga, eod' Richardo adtunc & ibidem falſo, nequit', ſcien', & malitioſe prætenden' & aſſeren' ſeipſum per eand' Saram faſcinatum fuiſſe, ubi revera ipſe præd' Richardus nullo modo unquam faſcinat' fuit, & adtunc & ibid' bene ſciebat ſeipſum minime faſcinat' fuiſſe vel eſſe, ipſam Saram, adtunc & ibid' verberav', ſcalpſer', vulneraver', & maletractaver', ita quod de vita ejus maxime deſperabatur, & alia enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipſius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem coron' & dignitat' ſuas, *&c.* Et idem Attorn' dicti Dom' Regis nunc general' ulterius dat cur' hic intelligi & informari, Quod præd' Richard', & al', *&c.* cum divers' al' perſon' eid' Attorn' general' ignotis, 11 die Febr', anno regni dicti Dom' Regis nunc 12 ſuprad', apud Southwark præd', in com' præd', vi & armis, *&c.* riotoſe, routoſe, & illicite ſeſe aſſemblaver', & magnam affraiam & riotam adtunc & ibid' fecer', & ſic aſſemblat' exiſten', vi & armis, *&c.* adtunc & ibid' in & ſuper præd' Saram, in pace Dei & dicti Dom' Regis adtunc & ibid' exiſten' inſult' fecer', & ipſam Saram adtunc & ibid' verberaver', ſcalpſer', vulneraver', & maletractaver', ita quod de vita ejus maxime deſperabatur & al' enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipſius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem coron' & dignitat' ſuas. Et idem Attorn' dicti Dom' Regis nunc general' ulterius dat' cur' hic intelligi & informari, quod præd' Richardus, & al' *&c.* cum diverſis al' perſon' eidem Attorn' General' ignotis, poſtea, ſcil' præd' 11 die Febr', anno 12 ult' ſuprad', apud Southwark præd' in com' præd', vi & armis, *&c.* adtunc & ibid' in & ſuper præd' Saram inſult' fecer', & ipſam Saram adtunc & ibid' verberaver', ſcalpſer', vulneraver', & maletractaver', ita quod de vita ejus deſperabatur, & alia enormia eidem Saræ adtunc & ibid' intuler', ad grave dampnum ipſius Saræ, in contempt' dicti Dom' Regis nunc, & contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, *&c.* Unde idem Attorn' dicti Dom' Regis nunc general', pro eodem Dom' Rege, pet' adviſamentum cur' hic in præmiſſis, & debitum legis proceſſum verſus præfat' Richardum, & al', *&c.* in hac parte fieri ad reſpondend' dicto Dom' Regi de & in præmiſſis, *&c.*

Regina verſus Bouchier (*u*), *for* High-Treaſon.

2 *Annæ.*

Suſſex' ſſ. JUR' pro Dom' Regina ſuper ſacram' ſuum preſentant, quod Jacobus Bouchier, nuper de London', Gen', qui fuit ſubdit' Dom' Gulielmi tertii, nuper Regis Angl', Scot', Franc', & Hibern', & modo exiſtit ſubdit' excellentiſſimæ Principis Dom' Annæ, nunc Reginæ Angl', Scot', Franc', & Hibern', poſt 11 diem Decem', anno Dom' 1688, ſcil' 1 die Auguſt', anno Dom' 1689, fuit in regno Hiberniæ & poſtea & antea 3 diem Decemb', anno Dom' 1697, ſcil' 1 die Decemb', anno Dom' 1694 præd' Jacob' Bouchier voluntarie ibat in regnum Franciæ ſine licentia a Dom' Willielmo tertio, nup' Rege Angliæ, vel a Dom' Maria, nup' Regina Angliæ, & quod præd' Jacob' Bouchier præd', 3 die Decemb', anno Dom' 1697, non fuit infra dominia Dom' Willielmi tertii, nuper Regis Angliæ, *&c.* quodq; idem Jacob' Bouchier, timorem Dei in corde ſuo non habens, & debit' ligeantiæ ſuæ erga dictam Dom' Annam nunc Regin' Angliæ, *&c.* ſupremam, veram, legitimam, legalem, & indubitat' Dom' ſuam minime ponderans, & ut falſus proditor contra eand' Dom' Annam nunc Regin' Angliæ, *&c.* poſt 14 Diem Januar', anno Dom' 1697, ſcil' 10 die Decemb', anno regni Dom' Annæ nunc Reginæ Angliæ, *&c.* 2, proditorie redivit & veniebat in hoc regnum Angliæ, ſcil', apud Eaſt Bourne in com' Suſſex', ſine licentia a dicto Dom' Gulielmo tertio, nuper Rege Angliæ, *&c.* ſub privato ſigillo ejuſdem nuper Regis, vel a dicta Dom' Anna, Regina nunc, ſub privato ſigillo ejuſdem Dom' Reginæ nunc obtent', contra ligeantiæ ſuæ debit', & contra formam ſtatuti in hujuſmodi caſu nuper edit' & provis', ac contra pacem, *&c.*

Regina verſus Lindſay (*x*), *for* High-Treaſon.

Midd' ſſ. JUR' pro Dom' Regina ſuper ſacram' ſuum præſentant, quod David Lindſay, nuper de London, Gen', qui fuit ſubdit' Dom' Willielmi tertii, nuper Regis Angl', Scot', Franc', & Hibern', & modo exiſtit ſubdit' excellent' Principis Dom' Annæ, nunc Reginæ Angl', Scot', Franc', & Hibern', poſt 11 diem Decem', anno Dom' 1688, ſcil' 26 die Martii, anno Dom' 1689, fuit in regno Angliæ, ſcil' apud paroch' ſancti Martini in campis in com' Middleſex, & poſtea & ante 3 diem Decemb', anno Dom' 1697, ſcil' 1 die Octobr' anno Dom', 1696, præd' David Lindſay voluntarie ibat in regnum Franciæ, ſine licentia a Dom' Willielmo tertio, nup' Rege Angliæ, vel a Dom' Maria, nuper Regina Angliæ, & quod prædict' David Lindſay, præd' 3 die Decemb', anno Dom' 1697, non fuit infra dominia Dom' Willielmi tertii, nup' Regis Angliæ, *&c.* quodque idem David Lindſay, timorem Dei in corde ſuo non habens, & debit' ligeantiæ ſuæ erga dictam Dom' Annam nunc Regin' Angliæ, *&c.* ſupremam, veram, legitimam, legalem, & indubitat' Dom' ſuam, minime ponderans, & ut falſus proditor contra eandem Dom' Annam, nunc Regin' Angliæ, *&c.* poſt 14 diem Januar', anno Dom' 1697, ſcil' 10 die Decemb' anno regni Dom' Annæ nunc Reginæ Angliæ, *&c.* 2, proditorie redivit & veniebat in hoc regnum Angliæ, ſcil' apud præd' paroch' ſancti Martini in campis in com' Midd', ſine licentia a dicto Dom' Willielmo tertio, nup' Rege Angl', *&c.* ſub privat' ſigil' ejuſd' nup' Reg', vel a dicta Dom' Anna, Reg' nunc, ſub privat' ſigil' ejuſd' Dom' Reg' nunc obtent', contra ligean' ſuæ debit', & contra form' ſtatuti in hujuſmodi caſu edit' & provis', ac contra pacem dicti Dom' Reginæ nunc, coron' & dignitat' ſuas, *&c.*

Dominus Rex verſus Coke & Woodburne (*y*).

Suffolk ſſ. JUR' pro Dom' Rege ſuper ſacrament' ſuum præſentant, quod Johan' Woodburne, nuper de Burgo de Bury Sancti Edmundi in com' Suff', Lab', & Arundel Coke, alias Cooke, nuper de Burgo præd', Arm', poſt 24 diem Junii, anno Dom' 1721, ſcil' 1 die Januar', anno regni Dom' Georgii nunc Regis Magnæ Britan', *&c.* 8, machinantes quendam Edw' Criſpe, Gen', adtunc & adhuc exiſten' ſubdit' dicti Dom' Regis nunc, mahemare & deformare, apud Burg' præd' in com' præd', vi & armis, *&c.* in & ſuper præd' Edw' Criſpe, in pace Dei, & dicti Dom' Regis adtunc & ibid' exiſten', ex propoſito (Anglice *on purpoſe*) ac ex malitiis ſuis præcogitat', & per inſidias (Anglice *by lying in wait*) illicite & felonice inſult' fecer'. Et quod præd' Johan' Woodburne cum quadam Secure (Anglice *a Bill*) valor' un' denar', quam ipſe idem Johan' in manu ſua dextra adtunc & ibid' habuit & tenuit, naſum præfat' Edw' Criſpe ex propoſito ac ex malitia ſua præcogitat', & per inſidias, adtunc & ibid' illicite & felonice fidit (Anglice *did ſlit*) cum intention' ad eund' Edward' Criſpe ita faciendo modo præd' mahemand' & deformand'. Quodque præd' Arundel, tempore felon' præd', per præfat', Johan' Woodburne, modo & forma præd', illicite & felonice commiſs' & perpetrat', ſcil' eod' 1 die Januar', anno 8 ſuprad', apud Burg' præd' in com' præd' ex propoſito ac ex malitia ſua præcogitat', & per inſidias, illicite & felonice fuit præſens, auxilians, & abettans præfat' Johan' Woodburne ad felon' præd', in forma præd', felonice committend' & perpetrand'. Et ſic Jur' præd' dicunt ſuper ſacrament' ſuum præd', quod præd' Johan' Woodburne, & Arundel, dicto 1 die Januar', anno 8 ſupradict', apud Burg' præd' in com' præd, vi & armis, *&c.* ex propoſito ac ex malitiis ſuis præcogitat', & per inſidias, felon' præd' in form' præd', illicite & felonice commiſer' & perpetraver', & uterque eor' commiſit & perpetravit, contra pacem dicti Dom' Regis nunc, coron' & dignitat' ſuas, necnon contra form' ſtat' in hujuſm' caſu edit' & provis'.

(*s*) Vol. V. p. 482. No. 177. (*t*) Vol. V. p. 504. (*u*) Vol. V. p. 506. No. 178. (*x*) Vol. V. p. 508. No. 179. (*y*) Vol. VI. p. 212. No. 192.

FINIS.

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BIBLIOTHECA
REGIA
MONACHENSIS.

BSB Bayerische StaatsBibliothek
MDZ Münchener DigitalisierungsZentrum Digitale Bibliothek

Hargrave, Francis, 1741-1821 [Verfasser eines Vorworts] [Zusammenstellender]

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